PART III
 RENDERED INVALID: THE HISTORY OF ANTI-ARAB HATE CRIME REPORTING AND DATA COLLECTION
The preceding chapters provide important context regarding the nature of targeted violence against Arab Americans.

Part One considers the civil rights concerns of the Arab American community. Having emerged as a “new ethnic and political constituency” in the mid-twentieth century, Arab Americans advocated for their interests in a broad range of public affairs, forming national and community-based organizations to promote increased political representation and civic engagement.1 Seeking to preempt the hard-won progress of Arab American organizations and political activists, specifically when it came to advocacy for Palestinian human rights, reactionary movements resorted to a “campaign of vilification” against Arab American leaders and the broader community. Discrimination, political exclusion, harassment, and intimidation of Arab Americans in the 1970s and ’80s prompted newfound concerns regarding the community’s civil rights. The subject of multiple congressional hearings, targeted violence against Arab Americans seemed to increase during this period as well, specifically in relation to developments in the Middle East or incidents of mass-violence.

These attacks came to be understood within the nascent concept of hate crime. In the 1980s, state governments began collecting data on incidents of bias-motivated violence and publishing annual statistics. Hate crime also prompted a response within the criminal justice system, as state legislatures enacted criminal statutes prohibiting crimes committed because of race, ethnicity, religion, national origin, and other protected characteristics. Congress ultimately passed legislation requiring federal hate crime data collection and a federal hate crime statute.2

Part Two explores the nature of anti-Arab hate crime, the harms inflicted on individual victims and communities, and the limitations of existing laws, policies, and their irregular enforcement to address those harms. Arab Americans continue to face similar threats of targeted violence in the twenty-first century as in previous decades. In recent years, however, those threats appear to have increased amid burgeoning xenophobia, racism, and anti-Arab and anti-Muslim sentiment. The four narrative vignettes provided in Part Two encapsulate distinct concerns relating to hate crime targeting Arab Americans and the nation’s response to bias-motivated violence against specific communities.

In Part Three, we consider the history of hate crime reporting and data collection in the United States within the context of targeted violence against Arab Americans.

The first section: “Targeted Violence Against Arab Americans and the Hate Crime Statistics Act of 1990,” examines the development of the national hate crime reporting and data collection system. After providing an overview of the national Uniform Crime Reporting (UCR) hate crime data collections, the chapter’s second section outlines key developments leading up to the passage of the Hate Crime Statistics Act of 1990 (HCSA), which required the Justice Department to collect data on incidents that manifest evidence of prejudice based on different protected characteristics. Given that targeted violence against Arab Americans influenced the passage of the HCSA, the original UCR hate crime data collections were structured to collect data on anti-Arab hate crime. However, Bias Motivation Code 31 (Anti-Arab) was eliminated from the data collections in 1992. Published in 1993, the inaugural edition of the Federal Bureau of Investigation’s (FBI) annual report, Hate Crime Statistics, did not provide data on anti-Arab hate crime.

Section Two: “The (Re)Introduction of Anti-Arab Hate Crime to Federal Data Collections,” sets the groundwork for one of the most significant findings of this report. In response to a request from the Office of Management and Budget, the FBI removed Bias Motivation Code 31 (Anti-Arab) from the national UCR hate crime data collections in 1992. As the result of a significant pressure campaign following the 2012 bias-motivated Oak Creek shooting, the FBI reintroduced Code 31 to UCR hate crime data collections in 2015, along with new bias motivation codes for anti-Sikh hate crime, anti-Hindu hate crime, and five additional religious bias motivation categories. During this process, the federal government did not indicate that Code 31 existed during the original developmental stages of the UCR hate crime data collections, leaving the impression it was an entirely new category. After a brief introduction, Section Two retraces the community-led pressure campaign, the resulting

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I. Targeted Violence Against Arab Americans and the Hate Crime Statistics Act

A Background on UCR Hate Crime Data Collections

Since the development of the national Hate Crime Statistics Program in 1990, the Criminal Justice Information Services (CJIS) Division has periodically refined, modernized, and augmented the national UCR hate crime data collections, resulting in statistics that are not only more accurate, but also more representative.

When reporting hate crimes to the FBI UCR Program, law enforcement agencies choose from a set of predefined data submission fields to indicate the particular bias motivation associated with an offense. Currently, participating agencies have two options for submitting hate crime data: The Summary Reporting System (SRS), and the National-incident Based Reporting System (NIBRS). Both formats utilize the same set of data submission fields, known as bias motivation codes. First developed in the 1930s, SRS does not communicate the granular details captured through NIBRS. The FBI UCR Program will officially retire the antiquated SRS format in January 2021. By this date, every law enforcement agency in the country will be required to submit crime data through NIBRS, which will promote improved statistics and greater police transparency.

NIBRS collects an array of granular details pertaining to each specific incident, including victim and offender demographics (race, ethnicity, gender, age) and the relationship between those involved. One potential application of NIBRS data is in determining the gendered dimensions of hate crime; that is, the way members of targeted or vulnerable communities are subject to specific forms of bias-motivated violence depending on their actual or perceived gender.

To accommodate for the addition of eight new bias motivation categories in 2015, the FBI UCR Program incorporated eight additional data submission fields into the existing SRS and NIBRS formats. Beginning that year, law enforcement agencies could use bias motivation code 31 (Anti-Arab) to report crimes to the FBI UCR program that manifest evidence of prejudice against people of Arab descent. The seven religious categories also received corresponding bias motivation codes: 28 for Anti-Mormon; 29 for Anti-Jehovah's Witness; 81 for Anti-Eastern Orthodox, 82 for Anti-Other Christian, 83 for Anti-Buddhist, 84 for Anti-Hindu, and 85 for Anti-Sikh.

Similar introductions were administered in 2013 when, pursuant to the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, UCR data collections were amended to include gender and gender identity bias-motivated crimes. That same year, the FBI UCR Program introduced bias motivation code 16 to account for the bifurcation of Anti-Asian/Pacific Islander into discrete categories. These changes were made in accordance with

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1 After converting the invalid submissions on the back-end, the FBI UCR Program recorded them as Anti-Other Ethnicity/National Origin incidents in Hate Crime Statistics. The program started rejecting all “improperly coded data” from reporting agencies beginning in 2004.

the Office of Management and Budget’s 1997 revisions to federal standards on race and ethnicity. Law enforcement officials now have the option to report hate crimes via bias motivation code 14 (Anti-Asian), or bias motivation code 16 (Anti-Native Hawaiian or Other Pacific Islander). In further compliance with the 1997 revisions, the FBI UCR Program augmented the anti-Hispanic bias type, identified by code 32, to Anti-Hispanic or Latino.

Upon recommendation from the CJIS Division’s Advisory Policy Board, sexual orientation bias types were revised that year as well. While the FBI UCR Program adjusted the terminology for all five bias motivations, perhaps the most substantial development occurred with respect to bias motivation code 43, which was changed from Anti-Homosexual to Anti-Lesbian, Gay, Bisexual, and Transgender (Mixed Group).

Prior to these updates, the last significant introduction to the list of reportable bias types took place in 1997, when the FBI UCR program began collecting hate crime data on disability bias-motivated crimes, as required by a 1994 amendment to the Hate Crime Statistics Act.6

Whether the revision of a former category or the introduction of a new one, each example cited above represents a significant improvement to UCR data collections on hate crime. Over time, the FBI UCR Program has taken steps to refine, modernize, and augment its hate crime data collections, resulting not only in better statistics overall, but statistics that take previously overlooked communities into account. With respect to the 2015 UCR modifications, the introduction of a discrete bias motivation category to report anti-Arab hate crimes was significant on multiple fronts: not only did the FBI UCR Program start collecting data and publishing statistics on bias-motivated violence against Arab Americans, the CJIS Division developed training materials as well. Formulated in consultation with representatives from the Arab American community, these materials help ensure law enforcement personnel across the country are better equipped to report, investigate, and respond to anti-Arab hate crime.

The 2015 UCR modifications marked a critical development for Arab Americans, a community often under threat, and yet, previously overlooked in official statistics. As detailed in Part One, targeted attacks against Arab Americans, or those perceived to be of Arab descent, have historically intensified in the wake of developments in the Middle East, incidents of mass violence, and even tragic mass-casualty events. AAI president James Zogby referenced this trend in a testimony before the U.S. Commission on Civil Rights, just one month after 9/11 and a subsequent upsurge of retaliatory hate crimes against individuals perceived to be Arab or Muslim.7 Such “backlashes,” as he called them, were something many Arab Americans “had come to expect.” He went on to describe similar experiences during the Iranian hostage crisis in 1979, in the immediate aftermath of the 1995 Oklahoma City bombing, and following the 1996 explosion of TWA Flight 800, all of which had no ostensible ties to Arabs or Arab Americans, but nevertheless kindled widespread anti-Arab sentiment and outbursts of targeted violence.

The lack of a discrete anti-Arab category in UCR hate crime data collections, prior to the 2015 modifications, compounded the damage of recurrent anti-Arab backlash. There was no official reporting mechanism to capture each surge. Without government data, anti-Arab hate crime would remain a measureless threat, and Arab Americans, invisible victims. This consequence was no more evident than in the wake of 9/11, when hundreds, if not thousands, of hate crimes were committed against Arab Americans. While media accounts and reports from civil rights and advocacy organizations stressed the severity of the situation, the absence of government data curtailed an effective policy response and left law enforcement personnel unprepared to address future escalations.

As stated previously, despite the post-9/11 backlash and apparent upsurge in 2003 coinciding with the U.S. invasion of Iraq, the federal government did not begin publishing statistics on anti-Arab hate crime until 2015, and only after a considerable pressure campaign in the wake of Oak Creek. Records indicate, however, that between 1991 and 2003, the FBI UCR Program collected anti-Arab hate crime data from participating law enforcement agencies using the same bias motivation code supposedly first introduced in 2015. Those data were converted and then published under an aggregate category. As subsequent research revealed, the initial

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8 Submission to the U.S. Comm. on Civil Rights (Oct. 12, 2001) (statement of Dr. James J. Zogby, President, Arab American Institute), available at http://b.3cdn.net/aai/08676be5849ccd51ef_rjm6bh2z1.pdf.
UCR hate crime data collections were designed to collect data on anti-Arab hate crime. In other words, the 2015 UCR modifications did not mark the introduction of bias motivation code 31 (Anti-Arab), but rather its reintroduction.

As we noted in the paragraphs above, the FBI UCR Program has improved federal hate crime data collections over time, revising terminology for certain bias types and incorporating additional bias motivation categories. Bias Motivation Code 31 (Anti-Arab) is the only category ever to be removed from UCR hate crime data collections. Although the FBI UCR program eliminated anti-Arab hate crime from official data collections in 1992, law enforcement agencies continued to submit hate crime data using code 31 until 2003. Even after the 2001 release of an FBI bulletin notifying state UCR programs that Code 31 submissions would be rejected, law enforcement agencies nevertheless reported more than 250 anti-Arab hate crime incidents that year, the majority of which occurred post-9/11.

**Bias Motivation Code 31 (Anti-Arab) is the only category ever to be removed from UCR hate crime data collections.**

After 2003, the FBI UCR Program rejected all data submissions with Bias Motivation Code 31 (Anti-Arab), that is, of course, until the reintroduction of the category in 2015. In the absence of federal data, a number of state UCR programs continued to publish statistics on anti-Arab hate crime in their own state-level reports.

As we consider the introduction, elimination, and reintroduction of Bias Motivation Code 31 (Anti-Arab), let us begin with the development of the UCR hate crime statistics program, first launched after the passage of the Hate Crime Statistics Act (HCSA) in 1990.

**The Emergence of the Anti-Hate Crime Movement**

While bias-motivated violence has plagued American society since its inception, it was not until recent decades that “hate crime” became an identifiable, distinct social issue deserving of both public attention and government response. The emergence of an anti-hate crime movement in the 1980s led to the passage of the Hate Crime Statistics Act of 1990. A few years later, Congress defined hate crime under the Violent Crime Control and Law Enforcement Act of 1994. Legal scholars attribute these developments in part to a shift in American public opinion: the combined, sometimes antagonistic forces of the civil and victims’ rights movements created a cultural and political landscape in which “hate crime could be named as a specific form of victimization.”

The passage of the Civil Rights Act of 1968, which enacted a statute prohibiting the use of force, or threat of force, to willfully injure, intimidate, or interfere with another person because of their “race, color, religion or national origin” and participation in a number of federally protected activities, would precede future legislation, as would the efforts of prominent civil rights organizations to highlight the issue of bias-motivated crime. Another important factor during this time was an increased focus on victimization within the criminal justice system, evidenced in both the Omnibus Victim and Witness Protection Act of 1982 and the Victims of Crime Act of 1984. While advanced through legislation, the victims’ rights movement was more the product of changing cultural attitudes associated with the women’s rights movement of the 1970s. In what we might call a politicization of shared experience, violence, particularly violence against women, became increasingly understood as a systemic issue, one in which isolated events expose common structural inequities.

Communities at the intersection of civil and victims’ rights were for the most part excluded from activist discourse. Whereas the civil rights and victims’ rights movements failed to coalesce at the margins, at the center, they at times came into direct confrontation, given the former’s “hard-won social progress” in the field of defendants’ rights. These dynamics aside, the achievements of either movement produced a cultural and political landscape in which the anti-hate crime movement could thrive. As legal scholar Terry A. Maroney notes in the *New York University Law Review,*

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Civil rights movements had called attention to the personal costs of minority groups’ political victimization; the victims’ rights movement had called attention to the political context of personal victimization. Hate crime victims represented the site of overlap between these movement stories. “Hate crime” thus became a resonant new diagnosis. An old problem was reformulated, and an old class of victims acquired a new, specific subjectivity. Medgar Evers and Vincent Chin could now be seen, not as political martyrs, but as hate crime victims.13

With the emergence of the anti-hate crime movement in the 1980s, in addition to an apparent proliferation of bias-motivated violence nationwide, came increased support for policies aimed at prevention. The response developed first at the state and local levels, with collaborative efforts between law enforcement agencies, advocacy groups, and state-based commissions to track and report bias-motivated crimes. In 1981, Maryland passed the first statute of its kind, which required law enforcement “to collect and analyze information relating to incidents apparently directed against racial, religious, or ethnic groups,” and forward that information on a monthly basis to the state’s Human Relation Commission.14 That same year, Maryland’s governor appointed a Task Force on Violence and Extremism, which published a series of annual reports on bias-related issues throughout the state.15

While the 1980s saw the introduction of statutes in numerous states involving penalty enhancement, civil remedies, and police training,16 data collection remained a top priority in the effort to prevent hate crime in American communities. Following in the footsteps of Maryland, a number of states, including Connecticut, New Jersey, and Pennsylvania, passed legislation aimed at reporting and data collection of bias-motivated incidents. State-led efforts, however, could not present a national picture. As the decade waned, Congress would cite the lack of national data as grounds for federal legislation.

**Passing the Hate Crime Statistics Act**
The effort to enact federal legislation requiring hate crime data collection at the national level faced considerable resistance, both in Congress and from officials at the Department of Justice. Among congressional members, the most pronounced opposition to the gathering of hate crime statistics was, if not inflammatory, then ardently ideological. In particular, the requirement to collect statistics on bias-motivated crimes relating to sexual orientation stirred vociferous dissent. Senator Jesse Helms (R-NC) decried the measure as a concession to “the radical elements of the homosexual movement.”17 Alternatively, some criticism of the Hate Crime Statistics Act was more restrained. In a 1989 Senate Judiciary Committee report, Senator Chuck Grassley (R-IA) described the HCSA as “well-intentioned… with straight-forward and laudable goals,” but expressed concerns regarding the subjective nature of determining motivation.18 The senator would ultimately support the bill, as would other committee members who cited the indeterminate costs associated with implementing a nationwide hate crime data collection system.19

Months later, on February 8, 1990, the Hate Crime Statistics Act passed through the Senate with broad support, 92-4. Notably, the Senate passed a unanimous amendment.20 The section reads:

> Sec. 2. (a) Congress finds that—(1) the American family life is the foundation of American society, (2) Federal policy should encourage the well-being, financial security, and health of the American family, (3) schools should not de-emphasize the critical value of American family life. (b) Nothing in this Act shall be construed, nor shall any funds be appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality.21

The amendment’s ideological bent is best evidenced alongside Senator Helms’s own submission, which declared “the homosexual movement threatens the strength and...
survival of the American family as the basic unit of society.”

While the Helms amendment was ultimately rejected, its counterpart reads like a partial consolation: a muted, though comparably dismissive, censure of homosexuality.

Officials at the Department of Justice shared the concerns of Senator Grassley and others who cited the subjective nature of determining motivation as an impediment to collecting data on bias-motivated crimes. Such reservations were debated at length in 1985, when the House Judiciary Subcommittee on Criminal Justice held a hearing on the HCSA. The hearing was organized in response to an apparent upsurge in bias-motivated violence against certain communities and featured testimonies from civil rights organizations, state agencies with experience collecting hate crime data, and elected officials from those states. Many witnesses were supportive of the proposed legislation. However, officials from the Bureau of Justice Statistics (BJS) and the FBI cautioned against a nationwide hate crime data collection under the Justice Department's Uniform Crime Reporting (UCR) system. As BJS Director Steven R. Schlesinger noted in his testimony:

To be useful criminal justice data must be credible. Data collection must follow uniform rules and procedures. Definitions must be clearly articulated. Personnel must be properly trained and their work systematically audited. …Only if these principles are followed can we be confident that the results accurately depict reality and thereby provide policymakers with the sound information they need.

Speaking on the department’s behalf, BJS Director Schlesinger expressed concerns about the “difficulty of classifying crimes based upon the supposed motivation of the offender.” With respect to the pending legislation, Schlesinger cited both overbreadth and vagueness as additional drawbacks: the bills required data collection on a wide range of offenses and established ambiguous standards for determining bias motivation. Despite his reservations, Schlesinger recognized that better information on bias-motivated violence was a commendable goal. He ended his testimony with an assurance that “every affected component of the Department of Justice [would assist the Subcommittee] in formulating a workable system of securing the data we all desire.”

According to Justice Department officials, reporting subjective information like bias motivation through the UCR system would compromise the integrity of its data collections and provide, at best, unreliable statistics. Referring to the apparent upsurge, William M. Baker, the Assistant Director for the FBI’s Office of Congressional and Public Affairs, recognized that additional information on bias-motivated crimes would be beneficial. Baker nevertheless cautioned against the introduction of bias motivation to the UCR. Baker warned legislators: “To request that a police officer…determine motivational factors would not reflect statistically accurate data; only opinion.”

Committee members acknowledged the FBI’s concerns, but maintained that the issue of bias-motivated violence in American communities required a comprehensive response on the part of government, and that effective policymaking could not occur without substantive data. The bill was voted out of the Judiciary Committee and passed through the House, but was still pending in the Senate when the 99th Congress adjourned. While the HCSA waited to reach the Senate floor, key developments would transpire in the interim, including a 1988 Senate hearing in which the issue of anti-Arab hate crime was repeatedly raised.

On June 21, 1988, the U.S. Subcommittee on the Constitution held a hearing on three bills relating to the collection and publication of national hate crime data. Representatives from prominent civil rights and advocacy organizations testified before the committee on the importance of collecting reliable hate crime statistics, including former Senator James G. Abourezk. As National Chair for the American-Arab Anti-Discrimination Committee (ADC), Abourezk spoke at length regarding the issue of a backlash of anti-Arab violence in the wake of incidents in the Middle East or related policy developments, and cited the case of the 1985 murder of Alex Odeh discussed previously in the report. Abourezk attributed this tragedy to a broader political atmosphere that legitimized anti-Arab animus and maligned Arab Americans. Despite the dramatic nature of Odeh’s murder, the incident received little attention in the media. According to Abourezk, “There was virtually no coverage of the death. …Alex Odeh remained anonymous, his family receiving nothing more than telephoned threats of death if they went through with his funeral a few days later.”

23 Id.
24 Id.
The murder of Alex Odeh had previously featured prominently in a 1986 hearing before the House Subcommittee on Criminal Justice. Entitled “Ethnically Motivated Violence Against Arab Americans,” the unprecedented hearing focused on the proliferation of targeted violence against prominent Arab American organizations and political activists. James Zogby, who co-founded the Arab American Institute just one year earlier, provided testimony regarding the nature and extent of anti-Arab sentiment in American politics and popular culture. Discussing the 1980 firebombing of his office at the Palestinian Human Rights Campaign in Washington, DC, and the physical assault of his brother, John Zogby, in upstate New York, he asserted that anti-Arab violence was related to a broader “campaign of vilification” against the community:

The acts of violence and threats of violence against Arab Americans, leaders, and organizations are but part of the larger picture of discrimination, harassment, and intimidation that we are victims of today.

To conclude his testimony, Zogby provided a series of recommendations, including a demand that federal authorities secure indictments against perpetrators of anti-Arab violence or threats of violence, and a request for the U.S. Commission on Civil Rights to investigate the extent of violence against Arab Americans in the United States.\(^{28}\) Notably, other witnesses discussed the need for improved federal data collections and statistics on incidents of anti-Arab violence.\(^{29}\)

Abourezk, in the 1988 hearing, would also lay out the need for a closer investigation of the extent of this violence. Given not only the broader, systemic intimations of Odeh’s murder, but also the public’s disregard for the incident and similar crimes, Abourezk reasoned that if reporting and data collection could heighten public awareness, then perhaps such efforts could raise public concern as well. During a panel discussion with committee members and fellow representatives from civil rights and advocacy organizations, Abourezk continued to develop his thoughts on the matter, discussing the accountability of public figures who fail to denounce, much less confront, incidents of bias-motivated violence. He attributed the persistent targeting of Arab Americans, along with members of the Black and Jewish communities, in part to an “aura of permissiveness,” which in the case of Alex Odeh referred not only to the anti-Arab rhetoric circulating airwaves in the prelude to violence, but the acquiescence of politicians and the media in its wake. Subcommittee Chairman Paul Simon (D-IL) closed the panel with the following statement:

We must stand up against any discrimination that comes, whether it’s against black Americans or Jewish Americans or Arab Americans or Asian Americans or against gays and lesbians. … Whenever that violence occurs, whenever that poison of hatred comes into our society, we have to fight it. And one of the effective ways of finding out how much of a problem we have is to have adequate data gathered.\(^{30}\)

Despite the appeals of Senator Simon and others who provided testimony or material submissions, consisting of both fellow members of Congress and non-government advocates, representatives from the Justice Department remained apprehensive toward data collection and statistical renderings of bias-motivated violence.

Approximately one month after the Senate hearing, the Subcommittee on the Constitution reported S. 702 favorably to the full Senate Judiciary Committee. As one of three bills at the center of the hearing, S. 702 provided “for the collection of data about crimes that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity.” The bill subsequently passed through the Judiciary Committee on August 10, 1988. Notably, Senator Grassley’s amendment to include “membership or non-membership in a labor organization” in the prescribed data collections was voted down, 5-7.\(^{31}\) The bill was pending in the Senate when the 100th Congress adjourned. Shortly after the 101st Congress convened, Senator Simon reintroduced the Hate Crime Statistics Act as S. 419, and on March 9, 1989, the Judiciary Committee once again reported the bill favorably to the Senate.\(^{32}\) Nearly one year later, on


\(^{28}\) Id., at 140.

\(^{29}\) See statement of Rep. Mervyn M. Dymally (regarding the importance of maintaining an “accurate verifiable record” of incidents targeting Arab Americans), id., at 93.

\(^{30}\) Id.


\(^{32}\) S. Comm. on the Judiciary, S. Rep. 101-21, supra note 42, at 5.
February 8, 1990, the Senate passed H.R. 1048, the bill’s House counterpart, in lieu of S. 419.33

After five years of debate, the Hate Crime Statistics Act was signed into law on April 23, 1990. Responsibilities pursuant to the HCSA, including the development, implementation, and oversight of a national crime data collection for crimes “that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity,” were delegated to the FBI UCR Program.34 Readers should note that anti-disability hate crimes were added to mandatory data collections in 1994. Fifteen years later, Congress passed the Shepard/Byrd Act, which amended the data collections to include crimes that manifest evidence of prejudice based on gender or gender identity. Those changes were administered in 2013.

Following the passage of the HCSA, the FBI UCR Program collaborated with law enforcement agencies throughout the country, in addition to civil rights and advocacy organizations, to establish an effective and uniform procedure for reporting bias-motivated crimes, compiling data, and publishing annual statistics. In 1993, the FBI UCR Program published Hate Crimes Statistics, 1990: A Resource Book, which assessed the data collection strategies of 11 states with requirements to report, compile, or publish information relating to bias-motivated crime. At the time of publication, the FBI UCR Program had already formalized its data collections with authorization from the Office of Management and Budget, and soon thereafter released Hate Crime Statistics, 1992. The first installment of the report provided information based on voluntary data submissions from 6,181 law enforcement agencies in 42 states.35

II. The (Re)Introduction of Anti-Arab Hate Crime to Federal Data Collections

The 2015 UCR Modifications

When reporting a hate crime incident to the FBI UCR Program, law enforcement agencies select from a list of “bias motivation codes” to indicate the specific bias type associated with that incident. In 2015, the FBI UCR Program introduced eight additional bias motivation codes into its national hate crime data collections. Each bias motivation code reflected a specific bias type previously unreported in federal hate crime statistics. The majority of the newly introduced bias types correspond to crimes committed because of actual or perceived religious affiliation: Anti-Buddhist, Anti-Eastern Orthodox, Anti-Hindu, Anti-Jehovah’s Witness, Anti-Mormon, Anti-Other Christian, and Anti-Sikh. The remaining bias type corresponds to crimes committed because of actual or perceived ethnicity; law enforcement agencies could now submit anti-Arab hate crime data to the FBI UCR Program using Bias Motivation Code 31 (Anti-Arab).

Prior to the 2015 UCR modifications, law enforcement agencies were required to report hate crimes demonstrating the seven religious bias types using Bias Motivation Code 25 (Anti-Other Religion). When reporting anti-Arab hate crime incidents to the FBI UCR Program, law enforcement agencies were required to submit their data using Bias Motivation Code 33. Originally titled “Anti-Other Ethnicity/National Origin,” Bias Motivation Code 33 was re-designated as “Anti-Not Hispanic or Latino” in 2013.

The 2015 UCR modifications marked a significant improvement to the national hate crime reporting and data collection system. With the introduction of eight additional bias motivation codes, law enforcement agencies could report incidents through the national UCR hate crime data collections with greater specificity. As a result, the FBI UCR Program could produce more accurate statistics on the nature and extent of hate crime targeting specific communities, including Arab Americans.

Targeted because of their actual or perceived ethnicity, Arab Americans had long-advocated for their representation in federal hate crime statistics. In a 1997 report on hate crimes and discrimination against Arab Americans, researchers from the American-Arab Anti-Discrimination Committee (ADC) wrote: “Without recognized and published documentation, it seems as if there are no hate crimes against Arab Americans. When no Arab American category exists, policy-makers, academics, and social commentators can routinely ignore the hate crimes against the Arab American community.”36

Despite efforts to incorporate anti-Arab hate crime into national UCR data collections, federal statistics would

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33 Hate Crime Statistics Act, H.R. 1048, supra note 45.
34 Id.
not feature anti-Arab hate crime data until 2015. During this period, Arab Americans faced significant outbursts of targeted violence, particularly in 2001, when a dramatic surge of anti-Arab and anti-Muslim hate crimes occurred in the wake of 9/11. Often mistakenly perceived to be Arab or Muslim, Sikh Americans also suffered unprecedented levels of violence during the post-9/11 backlash. The first reported victim of a hate crime murder in response to the 9/11 attacks was Balbir Singh Sodi. A Sikh American man, Sodi was shot to death at the gas station he owned in Mesa, Arizona, on September 15, 2001. Following the tragedies of the post-9/11 backlash, the need for improved federal hate crime data became an important civil rights concern of the Sikh American community as well. In January 2011, the Sikh Coalition, founded as a volunteer organization in response to post-9/11 violence against Sikh Americans, sent a letter to U.S. Attorney General Eric Holder.

When a discrete community is acutely susceptible to hate violence in the United States, it is critically important for our federal authorities to devise means of tracking hate violence against the affected community. On this ground, we believe that failing to record hate crimes against Sikhs necessarily undermines our collective interest in compiling data which are comprehensive and accurate. Despite these challenges, Sikh Americans continued to advocate for their representation in federal hate crime statistics. In April 2012, the Sikh Coalition spearheaded a letter signed by 94 members of Congress to the Department of Justice, calling for improved data collection on hate crimes targeting Sikh Americans. In a press release about the letter, the Sikh Coalition wrote:

In light of this overwhelming show of Congressional support for the Sikh community, the Sikh Coalition hopes that the Justice Department and FBI will finally honor our community’s request for recognition. Doing so will increase hate crime reporting, improve the accuracy and quality of hate crime data, and strengthen relationships between Sikhs and local law enforcement agencies nationwide.

The Oak Creek Tragedy
On August 5, 2012, a shooting at the Sikh Gurdwara in Oak Creek, Wisconsin, left six people dead and another four wounded, including a responding police officer. The gunman, Wade Michael Page, had various ties to the white supremacist movement, including through the white-power music scene. Page was later identified as a member of a prominent neo-Nazi skinhead organization monitored by the Southern Poverty Law Center. The tragedy of Oak Creek reverberated through the media, rattling communities in fear of targeted violence because of how they dressed, what they looked like, or where they worshipped. Following the incident, advocates representing a broad coalition of targeted or vulnerable communities urged the federal government to improve its response to hate crime. Just two weeks after the Oak Creek shooting, the Sikh Coalition wrote a letter to the U.S. Senate Judiciary Committee demanding a hearing on “the need to address hate crimes and the proliferation of hate groups in the United States.”

Over 150 civil rights, religious, and advocacy organizations, including the Arab American Institute, signed the letter. In particular, the Sikh Coalition hoped the hearing would

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43 Ryan Lenz, “Neo-Nazi Killer Wade Page was Member of Hammerskin Nation,” Southern Poverty Law Center (Aug. 8, 2012), https://www.splcenter.org/hatewatch/2012/08/08/neo-nazi-killer-wade-page-was-member-hammerskin-nation.
examine the implementation status of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, improvements to hate crime reporting and data collection, and hate crime prevention measures.

On September 19, 2012, the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, held a hearing entitled “Hate Crimes and the Threat of Domestic Extremism.” With Subcommittee Chairman Senator Dick Durbin (D-II) presiding, the hearing featured testimonies from a range of witnesses, including Deputy Assistant Attorney General of the Justice Department’s Civil Rights Division, Roy Austin. In his statement, Mr. Austin said the previous month’s incident at Oak Creek “highlighted the question whether to re-examine the categories…listed on the FBI’s data collection form,” and that the Civil Rights Division and the Justice Department’s Community Relations Service would convene a meeting to discuss potential improvements. While Mr. Austin’s statement was limited to a discussion of additional religious categories, he did recognize the severity and prevalence of hate crime targeting Arab Americans. In their submissions for the record, multiple organizations emphasized the need for federal statistics on anti-Arab hate crime.

In October 2012, the Civil Rights Division and Community Relations Service convened a townhall meeting with multiple civil rights and religious organizations. Participants focused on the need for improved accuracy and representation in federal hate crime statistics, and recommended anti-Arab, anti-Sikh, and anti-Hindu hate crime be added to the national UCR hate crime data collections. According to Eric Treene, Special Counsel for Religious Discrimination at the Civil Rights Division, “Based on the information we received at the meeting, and our enforcement experience, we recommended… that Sikh, Hindu, and Arab/Middle Eastern be added as categories.” Later that month, representatives from ADC, the Sikh Coalition, and the Community Relations Service met with the Criminal Justice Information Services (CJIS) Division’s UCR Subcommittee to discuss the potential UCR modifications.

The Campaign for Additional Categories
On February 19, 2013, Attorney General Holder and Director Mueller received a letter from 20 senators documenting the frequency of targeted violence against Sikh Americans, Hindu Americans, and Arab Americans. In their discussion of anti-Arab hate crime, the senators considered the impact of post-9/11 backlash on Arab Americans in particular. Citing Justice Department data, the senators wrote that 16 of the 43 ‘backlash’ prosecutions brought by the Civil Rights Division “involved attacks in whole or in part based on the fact that the victim was Arab or Middle Eastern.” The letter also addressed the hate crime prosecution of Patrick Syring for sending email and voicemail threats to AAI President James Zogby, and cited AAI survey data published in September 2012. According to the survey, 40 percent of Arab Americans polled reported they had personally experienced ethnic discrimination, up significantly from previous decades. The senators concluded:

Given that Arab Americans, regardless of their religion, face intolerance and violence motivated by bias against their ethnicity, revising the Hate Crime Incident Report form to include an anti-Arab

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45 The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249, expanded the federal definition of hate crime to include offenses committed because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. The Act also provided federal assistance to state, local, and tribal partners for hate crime prosecutions. See Civil Rights Div., U.S. Dep’t of Justice, Hate Crime Laws (last updated July 28, 2017), https://www.justice.gov/ocrt/hate-crime-laws. The Act also amended the Hate Crime Statistics Act of 1990 (HCSA), 28 U.S.C. § 534, to require the Justice Department to collect data on crimes that manifest evidence of prejudice based on gender and age, as well as the frequency of targeted violence against Sikh Americans, Hindu Americans, and Arab Americans. In their discussion of anti-Arab hate crime, the senators considered the impact of post-9/11 backlash on Arab Americans in particular. Citing Justice Department data, the senators wrote that 16 of the 43 ‘backlash’ prosecutions brought by the Civil Rights Division “involved attacks in whole or in part based on the fact that the victim was Arab or Middle Eastern.” The letter also addressed the hate crime prosecution of Patrick Syring for sending email and voicemail threats to AAI President James Zogby, and cited AAI survey data published in September 2012. According to the survey, 40 percent of Arab Americans polled reported they had personally experienced ethnic discrimination, up significantly from previous decades. The senators concluded:

Given that Arab Americans, regardless of their religion, face intolerance and violence motivated by bias against their ethnicity, revising the Hate Crime Incident Report form to include an anti-Arab
category would allow law enforcement to better track and respond to hate crimes against the Arab American community.53

After expressing support for the introduction of anti-Sikh, anti-Hindu, and anti-Arab hate crime into national UCR hate crime data collections, the senators asked Attorney General Holder and Director Mueller to forward their letter to all 35 members of the CJIS Advisory Policy Board.

Composed of 35 representatives from criminal justice agencies, national security agencies, and related organizations, the CJIS Advisory Policy Board meets regularly to review “policy, technical, and operational issues related to CJIS Division programs.” In conjunction with the Civil Rights Division and the Community Relations Service, the FBI UCR Program began developing materials on the proposed modifications. The Program also sought input from advocacy organizations and other members of the public during this process, and in the spring of 2013, delivered its proposal to the CJIS Advisory Policy Board.54 Based on their review, the Board then makes recommendations to the Director of the FBI.52 Prior to the spring 2013 advisory process, both the CJIS Advisory Policy Board and FBI Director Robert Mueller received multiple letters advocating for improved data collection on anti-Arab, anti-Sikh, and anti-Hindu hate crime.

On March 21, 2013, the board members also received a letter from over 100 members of Congress underscoring the “specific, demonstrated need” for anti-Arab, anti-Sikh, and anti-Hindu hate crime data.60 On June 28, 2013, nearly one year after the Oak Creek shooting, FBI Director Mueller authorized these proposed modifications to the national UCR hate crime data collections.

The Implementation Process

While Director Mueller authorized the proposed UCR modifications in the summer of 2013, the FBI anticipated it would take an additional two years for the FBI UCR Program

to implement the necessary “technical enhancements, procedural changes, and manual revisions” required to collect data on the eight additional bias motivation categories. In addition to redesigning the data collections, the CJIS Division would have to update its hate crime data collection guidelines and training materials for law enforcement agencies participating in the national UCR program to reflect the new reportable bias motivations. During this process, the CJIS Division tested the redesigned data collections with multiple working groups consisting of law enforcement officers and civilian law enforcement employees. The data collections were redesigned in consultation with the Office of Management and Budget. In a June 2014 working group, the CJIS Division partnered with the West Virginia University Police Department and tested the “cognitive and usability elements of the redesigned collection.”

With respect to incorporating anti-Arab, anti-Sikh, and anti-Hindu bias motivation codes into the Hate Crime Incident Report form, the CJIS Division recorded four separate findings based on the June 2014 test. First, law enforcement personnel reported difficulty in distinguishing between incidents that manifest evidence of anti-Arab bias, anti-Sikh bias, or anti-Hindu bias. According to the CJIS Division, “most of the incidents were classified as anti-Muslim or anti-Arab if there was any indication of ethnic headwear or symbols.” Second, participants often classified incidents as anti-Arab hate crimes simply because the victim was speaking Arabic. Third, law enforcement personnel with military experience reported that prior military training had familiarized them with Arab, Sikh, and Hindu communities. And finally, most of the participants indicated specific training would improve their ability to accurately report hate crimes targeting Arab, Sikh, and Hindu Americans. Based on these findings, the CJIS Division determined improved training materials were needed to educate law enforcement personnel about ethnic and religious minority groups.

Working with civil rights and advocacy organizations, the CJIS Division developed specific hate crime training scenarios and reporting guidelines for law enforcement personnel. The current edition of the CJIS Division’s Hate Crime Data Collection Guidelines and Training Manual provides instruction on distinguishing between anti-Arab, anti-Hindu, anti-Muslim, and anti-Sikh hate crimes, special considerations when working with victims from Arab, Hindu, Muslim, Sikh, and South Asian communities, specific training scenarios, and case exercises.

Documents from the CJIS Division indicate that one additional finding from the June 2014 test was incorporated into the redesigned UCR hate crime data collections. After testing two separate data collection formats on race and ethnicity, the CJIS Division determined all bias motivation codes corresponding to race and ethnicity should be presented in a combined category. Prior to the 2015 UCR modifications, bias motivation codes were separated into seven aggregate categories: Race, Religion, Sexual Orientation, Ethnicity, Disability, Gender, and Gender Identity.

According to the Office of Management and Budget’s standards for the classification of federal data on race and ethnicity, it is preferable to collect data on race and ethnicity separately, but the use of a combined format is not prohibited. These standards are outlined in Office of Management and Budget Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, which was originally published in 1977. Revised in 1997, OMB Directive No. 15 also provides the minimum designations for race and ethnicity to be used in federal statistics and data collections. The minimum racial designations include: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White. The minimum ethnic designations include: Hispanic or Latino; and Not Hispanic or Latino. When collecting data based on race and ethnicity, federal programs are not required to limit their statistical renderings to the minimum designations listed above:

61 Id., at 8.
62 The FBI UCR Program is a component of the CJIS Division.
66 Prior to the 1997 revisions, there were four minimum racial designations: American Indian or Alaskan Native; Asian or Pacific Islander; Black; and White. Pursuant to the 1997 revisions, the designation of Asian or Pacific Islander was bifurcated into Asian and Native Hawaiian or Other Pacific Islander, and the designation of Black was amended to Black or African American. The designation of American Indian or Alaskan Native was also modified to American Indian or Alaska Native.
In no case shall the provisions of the standards be construed to limit the collection of data to the categories described above. The collection of greater detail is encouraged; however, any collection that uses more detail shall be organized in such a way that the additional categories can be aggregated into these minimum categories for data on race and ethnicity.68

Therefore, federal programs are permitted to collect data and publish statistics on additional racial and ethnic categories, so long as the additional categories are tabulated as subsets of the minimum designations.69 According to the FBI Crime Statistics Management Unit, the CJIS Division worked with the Office of Management and Budget to determine the most appropriate method to incorporate anti-Arab hate crime into national UCR data collections. While federal standards do not provide a minimum ethnic designation for individuals of Middle Eastern or North African descent,70 the U.S. Census Bureau’s American Community Survey (ACS) has collected demographic data based on “Arab ancestry” since 2005.71 According to the Census Bureau, “[a]ncestry refers to a person’s ethnic origin or descent, roots, or heritage, or the place of birth of the person or the person’s parents or ancestors before their arrival in the United States.”72 Between 1980 and 2000, ancestry data, including data on Arab ancestry, were collected on the long form of the decennial census.73 In consultation with the Office of Management and Budget, the CJIS Division decided to apply this construction of Arab ancestry into national UCR hate crime data collections: not as a distinct ethnicity, but rather as an ethnic subset. In order to accommodate the inclusion of anti-Arab hate crime into federal data collection, the combined category of Race/Ethnicity was therefore expanded to Race/Ethnicity/Ancestry.74

The U.S. Census Bureau is prohibited under federal law from conducting mandatory data collections on religious belief and affiliation.75 Given that OMB Directive No. 15 provides standards for the classification of federal data on race and ethnicity, but not religious affiliation, the incorporation of the seven additional religious bias motivation categories into national UCR data collections was relatively straightforward. While the CJIS Division added some relevant key terms to the 2015 edition, the current Hate Crime Data Collection Guidelines and Training Manual does not include specific instructions, special considerations, training scenarios, or case exercises on anti-Buddhist, anti-Eastern Orthodox, anti-Jehovah’s Witness, anti-Mormon, or anti-Other Christian hate crime. Provided on page five of the guidelines and training manual, the table shown above features every reportable bias motivation category in current UCR hate crime data collections, along with its corresponding bias motivation code.76 When submitting anti-Arab hate crime data to the FBI UCR Program, law enforcement agencies use Bias Motivation Code 31 (Anti-Arab).

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68 Prior to the 1997 revisions, the two minimum designations were Hispanic Origin and Not of Hispanic Origin. The designations were changed to Hispanic or Latino and Not Hispanic or Latino.


70 Despite the persistent efforts of stakeholders, including the Arab American Institute, the Office of Management and Budget has not introduced a minimum ethnic designation for individuals of Middle Eastern or North African descent; See Arab American Institute, Issue Brief: The U.S. Census, (Oct. 30, 1997), available at https://www.aaiusa.org/2020census.

71 Office of Management and Budget, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,” supra note 35.


74 Arab American Institute, The U.S. Census, supra note 38.

75 See CJIS Div., Fed. Bureau of Investigation, “Hate Crime Data Collections Guidelines and Training Manual” (“With the revised race and ethnicity categories and the addition of an ancestry (a subcategory of ethnicity), the OMB advised the program to publish the data in a combined category of Race/Ethnicity/Ancestry Bias.”), supra note 31, at 11.

76 13 U.S.C. § 221(c).

77 The code for the Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group) bias motivation is not listed in this table. The appropriate code is 43.
Readers may note that, in order to accommodate the collection of data concerning anti-Arab hate crime, no changes were made to Directive No. 15. Instead, the addition was made within the parameters of OMB’s existing minimum designations. That no changes to the federal standards on race and ethnicity were required to incorporate the collection of anti-Arab data into federal hate crime statistics in 2015, eliminates those standards as the cause of the FBI UCR Program’s removal of the original anti-Arab Bias Motivation Code 31 in 1992.

Hate Crime Statistics 2015-2016: New Categories, a Reported Surge, and a Surprising Find

Just as the FBI had anticipated, it took two years for the CJIS Division to formalize the introduction of the new bias motivation codes into national UCR hate crime data collections. That process included technical enhancements, procedural changes, and manual revisions: the CJIS Division refined and reformatted its data collections to promote accurate submissions, worked with the Office of Management and Budget to ensure compliance with procedural standards, and collaborated with civil rights and advocacy organizations to prepare guidelines and training materials for law enforcement.

Following the 2015 UCR modifications, law enforcement agencies could report hate crimes to the FBI UCR Program with greater specificity, ensuring more accurate and representative data on hate crime targeting communities previously overlooked in official statistics. Published in November 2016, Hate Crime Statistics, 2015, recorded a total of 37 anti-Arab hate crime incidents reported nationwide. That number increased 38 percent the following year, when 51 anti-Arab hate crimes were recorded in the 2016 edition of the FBI’s annual report. Hate crimes targeting Sikh and Hindu Americans increased in 2016 as well. Some might attribute this increase to a reporting effect, given that between 2015 and 2016, hate crime victims and responding officers likely became more aware of the new categories and, therefore, more receptive to reporting incidents when they occurred. Furthermore, relatively few anti-Arab, anti-Sikh, and anti-Hindu incidents were reported in 2015 and 2016. Therefore, a variation of just one or two incidents represents multiple percentage points. Despite these qualifications, reported increases occurred in the case of more established bias motivation categories as well. Reports of anti-American Indian or Alaska Native, anti-Jewish, anti-Islamic (Muslim), and anti-Transgender hate crime saw consecutive annual increases in 2015 and 2016. Of these categories, Anti-Islamic (Muslim) hate crime incidents saw the most dramatic increase: after surging 67 percent in 2015, the total number of anti-Islamic (Muslim) hate crime incidents rose another 20 percent in 2016, from 257 incidents, to 307. Altogether, hate crime incidents reported nationwide increased 6.8 percent from 2014 to 2015, and another 4.6 percent in 2016, representing the first consecutive annual increase since 2004.

III. The History of Code 31

The Complicated History of Anti-Arab Hate Crime Reporting

The question of whether federal statistics capture the true nature and extent of hate crime in the United States is central to this report. Our findings suggest they do not. However, accounts in the news media and reporting from prominent civil rights and advocacy organizations support the notion that targeted violence against specific communities has intensified in recent years, and particularly since 2015. If we are truly in the midst of a nationwide surge of hate crime, then we might attribute that surge, in part, to concerning developments in American politics and popular culture.

In writing this report, we hoped to confront the burgeoning xenophobia, racism, and anti-Arab and anti-Muslim sentiment threatening our communities. As for the remaining incentives, both the introduction of anti-Arab hate crime to federal data collections and the present lack of research into targeted violence against Arab Americans motivated our work. Specifically, we hoped to write a report focused on anti-Arab hate crime data reported through official government channels. Given our impression that Bias Motivation Code 31 (Anti-Arab) was incorporated into federal hate crime data collections in 2015, we assumed our research would be limited to just two years of statistics.

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77 Of the eight bias motivation categories introduced to national UCR hate crime data collections in 2015, Anti-Eastern Orthodox accounted for a plurality of all incidents, at 58 in total. Behind Anti-Arab, Anti-Other Christian was third, at 15 incidents.
We began our research at the state level, as state UCR programs often provide annual statistics on the same hate crime data they end up forwarding to the FBI UCR Program for publication in Hate Crimes Statistics. To our surprise, we discovered UCR programs in 25 states published data on anti-Arab hate crime in their annual statistics at some point between 1991 and 2014.\(^79\)

The 1992 edition of the FBI’s Hate Crime Statistics did not provide data on anti-Arab hate crime. While the program’s initial data collections were structured so as to include a discrete reporting category for anti-Arab bias, as previously noted, the category was removed during the authorization process upon recommendation from the OMB, in accordance with Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.\(^80\) This narrative was confirmed by the FBI’s Crime Statistics Management Unit.

Despite the elimination of anti-Arab hate crime from official UCR data collections, law enforcement agencies continued to submit hate crime data using Bias Motivation Code 31 (Anti-Arab). The FBI UCR Program would then convert each code 31 submission to Bias Motivation Code 33 (Anti-Other Ethnicity/National Origin) prior to publication in Hate Crime Statistics. This trend continued until 2003, when the FBI UCR Program restructured its hate crime data collections to reject any submissions with code 31. According to a 2001 UCR State Program Bulletin, the federal government sequentially phased out code 31 from official UCR hate crime data collections. In this particular bulletin, dated July 2001, the FBI UCR Program reminds participating state programs that submissions denoting anti-Arab hate crime are invalid:

> When reporting bias motivation types via Hate Crime Incident Report Forms [SRS format] and NIBRS Data Element 8A, Bias Motivation, a few states are submitting data with an invalid code of 31 to indicate Anti-Arab as an Ethnicity/National-Origin Bias. All contributors please note that 31 is not a valid bias motivation code. During NIBRS’ developmental stages, code 31 was accepted. However, in 1996 the code became invalid. Though the national Program currently accepts these data and converts the bias motivation code to 33 for Anti-Other Ethnicity/National Origin, programming changes are forthcoming that will result in the rejection of improperly coded data.\(^81\)

The remaining publicly available reference to code 31 comes in the form of a similar state program bulletin. Dated December 2001, this bulletin references the July announcement regarding state UCR programs’ use of the invalid code and further explains the pending changes. Following a one-year conversion period concluding in January 2003, the FBI UCR Program would begin rejecting any code 31 submissions and “issue an error message to the contributor stating that the code is invalid.”\(^82\) The state UCR program would then have to resubmit the data using an alternative code.

From 1991 to 2003, law enforcement agencies in 32 states and the District of Columbia reported over 800 anti-Arab hate crime incidents to the FBI UCR Program. These totals were extracted from Excel versions of 1991-2003 FBI Hate Crime Master Files, which contain records of raw data submitted from participating law enforcement agencies. The FBI’s Crime Statistics Management Unit shares these files upon request. None of the data were reflected in corresponding editions of Hate Crime Statistics. As mentioned in the paragraph above, the FBI UCR program converted each invalid code 31 submission to Bias Motivation Code 33 (Anti-Other Ethnicity/National Origin).

Logical questions arise. Was the CJIS Division aware that state UCR programs were providing anti-Arab hate crime data in their annual statistics? If so, then why not indicate that law enforcement agencies in certain states had experience collecting data on anti-Arab hate crime during the 2013 advisory process or the UCR modifications? Furthermore, had 25 separate state UCR programs independently decided to collect data and publish annual statistics on anti-Arab hate crime, or had they structured their data collections in accordance with federal standards? Further, readers might question why agencies started reporting anti-Arab hate crimes even though the category was removed prior to the initial publication of hate crime statistics. While we cannot know for sure, based on other

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\(^79\) One of those states, Hawaii, does not have a state UCR Program. Housed within the Department of the Attorney General, the Crime Prevention and Justice Assistance Division is responsible for publishing annual state-level hate crime statistics.


materials uncovered in our research, we can assume that law enforcement agencies received data collection guidelines and training manuals during the developmental stages. These training materials contained guidance on an "Anti-Arab" category as part of hate crime incident report forms.

In 2001 alone, agencies in 15 states submitted 254 incidents using bias motivation code 31 to the FBI UCR Program. These submissions contributed to a dramatic 424 percent increase of Anti-Other Ethnicity/National Origin hate crime incidents reported in Hate Crime Statistics that year. At 1,501 incidents, Anti-Other Ethnicity/National Origin hate crime accounted for more than 15 percent of the annual nationwide total of 9,730 incidents, and was second only to Anti-Black or African American hate crime (2,899 incidents) among all reportable bias motivation categories.

Subtracting the 254 improperly coded incidents from the annual total of 1,501 leaves us with 1,247 properly coded Anti-Other Ethnicity/National Origin submissions. Of these code 33 submissions, we can assume that a significant number correspond to incidents demonstrating anti-Arab bias. Approximately four-fifths (1,008 incidents) of code 33 submissions in the FBI’s 2001 Hate Crime Master Files were reported between September 11 and December 31, 2001. This represents an eleven-fold increase over the same period the previous year.

Writing in a 2004 empirical analysis published in the Tulane Law Review, legal scholar William Rubenstein estimated that of the 1,501 Anti-Other Ethnicity/National Origin hate crime incidents reported in 2001, anti-Arab hate crime accounted for a total of 1,231 incidents. He arrived at this estimate using hate crime reports from Los Angeles County, which featured disaggregated data for “Anti-Latino” and “Anti-Mid-East” hate crime, and extrapolating that data to find an annual nationwide total. According to this methodology, Rubenstein estimated that nationwide, approximately 65 anti-Arab hate crimes occurred each year between 1996 and 2000. This estimate is supported through a second approach based on the nationwide increase of anti-Islamic (Muslim) hate crime incidents.

The second way of estimating the anti-Arab sub-total is to start by assuming that anti-Arab hate crimes increased after September 11 at the same pace as anti-Islamic [Muslim] hate crimes increased. …If one assumes that all of the 2001 increase in “other ethnic” hate crimes are anti-Arab, that makes the pre-2001 anti-Arab raw data about 68 reports per year, which is, again, relatively similar to the number arrived at with the Los Angeles methodology.

Hate Crime Master Files from 1991 and 1992, when UCR hate crime data collections were still structured to receive bias motivation code 31 submissions, also support Rubenstein’s annual pre-9/11 estimate. In 1991, law enforcement agencies in 16 states submitted 73 incidents using bias motivation code 31. Agencies in 12 states submitted 60 incidents in 1992, making for a nationwide average of 67 anti-Arab hate crime incidents per year over this period. The number of code 31 submissions recorded in Hate Crime Master Files gradually declined after 1992, when the FBI UCR Program removed the category from official hate crime data collections. Between 1998 and 2000, law enforcement agencies submitted an average of 29 incidents using code 31.

Given this gradual decline of code 31 submissions after the elimination of anti-Arab hate crime from official UCR data

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81 CO, CT, IL, KY, MA, MI, MO, NJ, ND, OH, TN, TX, UT, VA, WA.
82 AZ, CO, CT, GA, ID, IL, MD, MN, NJ, OH, OK, OR, TX, VA, WA.
86 Id., at 1237.
87 AZ, CO, CT, GA, ID, IL, MD, MN, NJ, OH, OK, OR, TX, VA, WA, WI.
collections, the 254 incidents recorded in the 2001 Hate Crime Master File are all the more remarkable.

Looking to the data, we cannot determine exactly how many of the nearly five thousand submissions with code 33 from 1992 to 2003 refer to an anti-Arab bias-motivated crime. The hate crime master files do indicate, however, that one-fifth of these submissions correspond to the weeks between September 11 and December 31, 2001, representing a 900 percent increase over the same period the previous year. Given the immediate aftermath of 9/11 saw an extraordinary surge of anti-Arab and anti-Muslim violence, we can reasonably ascribe this increase of code 33 submissions in large part to the post-9/11 backlash, specifically hate crimes targeting Arab Americans. While anti-Arab violence likely accounted for a greater percentage of anti-other ethnicity/national origin incidents reported after 9/11, a significant proportion of pre-9/11 code 33 submissions were likely motivated because of anti-Arab bias.

Just as Code 31 was rendered invalid in federal data collections, so too were anti-Arab hate crime victims rendered invisible in official statistics.

Despite a persistent and demonstrated threat of bias-motivated violence against the community, code 31 (Anti-Arab) was rendered invalid for nearly 25 years, precluding not only reliable statistics on hate crimes targeting Arab Americans, but limiting the opportunity to draft meaningful policy solutions and raise public awareness as well. Just as bias motivation code 31 (Anti-Arab) was rendered invalid, so too were Arab Americans rendered invisible.

Discrepancies in Federal and State Data

In the first section of this chapter we identified our principal motivations for writing this report. The apparent nationwide surge of bias-motivated violence, evidenced in official data, media accounts, and research from leading civil rights and advocacy organizations, necessitates an improved response to hate crime in American communities. This need for comprehensive hate crime reform, particularly at the state level, is addressed in our resource guide, Rating the Response: Hate Crime Legislation, Reporting, and Data Collection in the United States, provided in Appendix A of this report. Our second motivation relates specifically to the Arab American community. As the first report on hate crimes and other bias-motivated incidents targeting Arab Americans in over a decade, and the first ever to utilize official government data, Underreported, Under Threat fills a critical void. In the course of our research, perhaps the most significant finding was that of a former UCR hate crime category denoting anti-Arab bias. Prior knowledge of the category, even among seasoned activists and experts engaged in hate crime-related work, was limited at best. This can be attributed, in part, to the lack of archived information regarding the developmental stages of the UCR hate crime data collections. Inattention to state-based publications, many of which provided anti-Arab hate crime statistics between 1992 and 2014, may have likewise contributed to the category’s relative obscurity. Even beyond the issue of anti-Arab hate crime, state-based statistics are the subject of scant analysis.

As our research has demonstrated, state and federal data yield significant discrepancies, thereby illuminating one of many breakdowns in the hate crime reporting and data collection system.

While looking at anti-Arab hate crime data at the state and federal level in the course of researching this report, it became apparent these incidents are severely underreported. While state UCR programs are collecting and publishing their own statistics, these are not being translated to the FBI’s reporting on hate crime. Taking incidents of anti-Arab hate crime reported through official state level channels and the number of anti-Arab hate crimes reported by the FBI UCR program to create an adjusted total, we can see there is a deep discrepancy in the number of incidents reported by state UCR programs and the FBI. In 2015, adjusting for discrepancies between federal and state reporting raises the FBI UCR Program’s number of reported anti-Arab incidents from 40 to 79, a roughly 98 percent increase that represents an undercount of 38 incidents. In 2016, when adjusting for discrepancies in reported totals, the federal total jumps from 58 anti-Arab incidents, to 88, this time representing a roughly 52 percent increase, with 24 uncounted incidents of anti-Arab bias.

At first glance, this decrease in the undercount seems to suggest the inconsistencies in reporting between the state and federal system began to resolve during the second year of anti-Arab data collection at the federal level. A closer look, however, shows that while the gap in the reported incidents lowered, the number of states with a discrepancy in the data reported at state and federal levels remained the same.
In 2015, 29 states reported on anti-Arab incidents at the state level. Of those 29 states, eight reported a different number of anti-Arab incidents in their state level reporting than are reported by the FBI UCR program. Of the remaining 21 states that submitted data without discrepancies between the state and federal levels, 10 submitted zero data. The following year, 26 states reported state level data on anti-Arab incidents. Again, eight had discrepancies between their state and federal level submissions, meaning that in 2016 only 18 states submitted data without discrepancies between state and federal reporting. Of those 18, six submitted zero data.

Interestingly, only two states, Michigan and Texas, displayed discrepancies in state and federal level reporting in both 2015 and 2016. Both states are home to high concentrations of Arab Americans, with the second and fourth largest Arab American populations, respectively. On our rating scale indicating states’ responses to hate crime reporting and prevention detailed in the resource guide attached to this report, Texas receives a “moderate” score of 80, while Michigan is rated as “average” with a score of 70. It is significant to note that both states are lower on the scale due to the fact that neither has a statute that requires specific law enforcement training on hate crime.

Both the drastic undercount of anti-Arab incidents at the federal level, and the continued inconsistencies in reporting between state and federal UCR programs, underscore the damage caused by the removal of Bias Motivation Code 31 from the FBI UCR Program’s reporting. Despite the undercount decreasing in the year since the code’s reintroduction to federal level reporting, there continues to be a steady level of inconsistency between state and federal reporting of anti-Arab incidents, and that the states with reporting discrepancies have varied from year to year, indicates an enduring consequence of the invisibility in federal reporting of anti-Arab hate.

The discrepancies in reporting, however, are not limited to anti-Arab incidents. Our findings suggest the quality of federal data on hate crime is greatly flawed, with research showing a systemic undercount of hate crime overall. Between 2012 and 2016, thousands of hate crimes were reported at the state level but not published in federal statistics. In examining the adjusted totals for the number of overall bias incidents in that time frame, we found 1,902 bias incidents went unaccounted for in FBI reporting. In some cases, these discrepancies are startling. In 2012, Oregon’s state UCR program reported 114 more incidents than appeared that year in the FBI’s statistics. In 2016, Michigan’s state UCR reported 91 more incidents than the FBI. That such a deep undercount remains, not only for the newly reintroduced anti-Arab category, but across hate crime reporting data, should raise concerns. This is an indication of a larger breakdown in hate crime reporting, one that lies outside well-known barriers such as community distrust, lack of law enforcement training in identifying hate crimes in the first place, or improper reporting. While these cited examples are severe, such large inconsistencies appearing year after year imply a systemic issue in the reporting mechanisms between state and federal programs. This nationwide discrepancy opens a new avenue of improvement for advocates looking to better statistics on hate crime against their community.

Figure 3: Numerous discrepancies emerge in various states, resulting in an adjusted total that exceeds the totals reported each year in FBI Hate Crime Statistics.