CONCLUSIONS & RECOMMENDATIONS
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In Part I of this report we contextualized anti-Arab animus in the United States and provided a brief history of the U.S. government’s evergreen securitization of the Arab American community. In Part II we provided narratives of four specific incidents of anti-Arab violence. Lastly, in Part III we analyzed discrepancies between federal and state level hate crime reporting and data collection with respect to incidents directed at Arab Americans. Below, we detail our conclusions of these sections and provide recommendations for all levels of government to address the issues identified throughout this report.

CONCLUSIONS

Community Distrust of Law Enforcement

Last year, the Arab American Institute (AAI) launched the #ReportHate Project, a 16-state, multi-partner initiative to respond to the rising tide of bigotry and bias-motivated crime, as well as the under-reporting of hate crimes. While each local community presented unique concerns, common threads quickly became evident. The testimonies and findings of the Project support and reinforce the conclusions and recommendations in this report.

This report has shown that hate crimes targeting Arab Americans have historically intensified in the wake of developments in the Middle East or incidents of mass violence. This “backlash” effect continues to impact Muslim, Arab, and South Asian (MASA) communities in the United States. Further, the threat of hate crimes targeting Arab Americans has increased amid burgeoning xenophobia, racism, and anti-Arab and anti-Muslim sentiment.

In light of these realities, healthy relations between Arab Americans and law enforcement agencies are a central part of supporting victims and protecting targeted communities. However, this has not been the reality. While the Federal Bureau of Investigation (FBI) first published anti-Arab hate crime statistics in 2015, the federal government previously collected anti-Arab hate crime data for over a decade, but never shared the data in official statistics.

Across the country many groups expressed a specific distrust of government stemming from the rhetoric and actions of the Federal Government, and, increasingly, the Trump Administration. As was once pointedly asked by a community partner, “What are we to do when the government itself commits a hate crime?” The law enforcement agency with the highest visibility in the community is the local police department, and they experience first-hand the consequences of this distrust.

Fears of cooperation between the federal and local governments mean many who wish to specifically report a hate crime are not willing to do so through their local law enforcement agencies. Individuals do not want to avail themselves to the criminal justice system if their citizenship status might be investigated or if they will be treated differently based on their identity.

Consistent Reporting

This report has found the laws, policies, and law enforcement practices designed to prevent or respond to hate crime vary from state to state. In particular states, hate crime victims, their families, and their communities have limited recourse to secure a substantial sense of justice. Between 1991 and 2003, law enforcement agencies in 32 states and the District of Columbia reported over 800 anti-Arab hate crime incidents to the FBI. The agencies reported these incidents despite the federal government’s elimination of anti-Arab hate crime reporting code from official data collections. While some state-level statistics provide anti-Arab hate crime data for 1991-2016, these data do not provide an accurate representation of the nature and extent of hate crime targeting Arab Americans.

Crucially, local law enforcement agencies representing large populations fail to consistently report hate crimes. AAI has found that 1,357 participating agencies failed to submit incident reports or zero data, indicating there were no hate crime incidents reported within their jurisdictions, in at least one of the four quarterly submission periods in 2016, resulting in a blank submission. Some of these agencies represent very large populations with comparatively high rates of hate crime in periods for which they did submit incident reports. Among law enforcement agencies representing populations of 25,000 or more, 138 agencies failed to submit incident reports or zero data during at least one quarterly submission period. Of those 138 agencies, a total of 23 represented populations of 100,000 or more.
This report highlights the distinction between an agency reporting to the FBI that no hate crimes have been recorded during a given quarter, and a lack of reporting any data in a given quarter. The former is an affirmative statement that the reporting agency has no knowledge of hate crimes within the jurisdiction, while the latter may be caused by an oversight, reporting error, or a lack of due diligence at some point in the reporting process. The frequent and widespread failure to consistently report hate crime data limits analysis for the jurisdictions served by the 1,357 agencies noted above, including those representing smaller, tribal jurisdictions to those serving some of the largest metropolitan areas in the country. Attempts to use hate crime data to perform robust longitudinal analyses, jurisdictional comparisons, or assessments of the impact of reforms are rendered impossible by incomplete data.

Discrepancies between State and Federal Data
This report has found that state-level statistics systemically contradict federal data, suggesting that more hate crimes are reported in each state than are reflected in federal statistics. These discrepancies underscore the enduring limitations of national hate crime data. Between 2012 and 2016, thousands of hate crimes were reported at the state level but not published in federal statistics. While data published in federal statistics suggest that hate crime incidents are increasing, our findings intimate the magnitude of that increase remains elusive for federal data to accurately capture.

In 1990, Congress passed the Hate Crime Statistics Act (HCSA) requiring the Department of Justice (DOJ) to collect data “about crimes that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity.” Subsequent amendments to the HCSA added disability, gender and gender identity to the list of reportable bias types. The hate crime data collections were incorporated into the FBI’s Uniform Crime Reporting (UCR) Program, and since 1992 the FBI has published Hate Crime Statistics. The annual report, which is based on voluntary submissions from law enforcement agencies across the country, is the principal resource for communities, advocates, and policymakers on the nature and extent of hate crime in the United States.

Because the FBI’s annual report is based solely on voluntarily reported data from state and local agencies, data from the myriad of jurisdictions which fail to participate is not incorporated. As such, the report systematically misrepresents and undercounts what is likely the true nature and extent of hate crime in American communities. According to the National Crime Victimization Survey (NCVS) approximately 250,000 hate crime victimizations occurred in the United States each year between 2003 and 2015. On average, only 8,340 victims were reported in Hate Crime Statistics over this period, suggesting a considerable discrepancy between the number of hate crimes that occur and those reported in federal statistics.

A total of 37 states and the District of Columbia compile statistical publications based on hate crime data submissions from participating law enforcement agencies. Data from these annual state-based hate crime reports often contradict corresponding state totals recorded in Hate Crime Statistics. Such discrepancies should not occur, given that most law enforcement agencies in the United States submit hate crime data to the FBI through a state-level UCR program, and these state UCR programs are the agencies responsible for publishing annual state-level statistics. Over the last five years, however, nearly 2,000 additional hate crimes were reported at the state level but not published in federal statistics.

Our research herein affirms these significant shortcomings in federal hate crime statistics. These shortcomings occur both with respect to the participation of law enforcement agencies in the national hate crime statistics program and discrepancies between federal and state-based hate crime statistics. For example, in 2016 a total of 15,254 law enforcement agencies, representing 49 states and the District of Columbia, participated in the FBI hate crime statistics program. Of these 15,254 participating agencies, just 1,776 submitted incident reports for publication in Hate Crime Statistics. The vast majority of participating agencies submitted zero data.

RECOMMENDATIONS
Broadly, without the support of state legislatures, or the cooperation of state, local, and tribal law enforcement,
the federal government will not achieve the goal of hate crime prevention, nor will it be capable of providing accurate statistics on the nature and extent of hate crime in American communities. Hate crimes present a unique harm, requiring unique solutions. As a result of violence, they harm the individual’s physical person or property. However, they also harm the individual’s targeted identity, belonging, and sense of safety. Importantly, they also harm the targeted community, creating or exacerbating fear of, and division from, society at large. While not intended to be an exhaustive list, the following are recommendations to address hate crime.

**Universal Implementation of NIBRS**

State governments must transition to the National Incident-Based Reporting System (NIBRS), which will facilitate improved hate crime data collection and statistics. Every data submission through NIBRS must indicate whether a crime is bias-motivated and, if so, the offender’s particular bias motivation in relation to a set of predefined bias motivation categories. By January 2021, all law enforcement agencies in the United States will be required to report crime information through NIBRS. Currently, only 16 states have made a complete transition to NIBRS-compliant reporting. An additional 18 states utilize both Summary Reporting System (SRS) and NIBRS data. The federal government has provided assistance to state UCR programs and local law enforcement agencies to facilitate the transition from SRS to NIBRS. Provided that agencies are incapable of implementing NIBRS before 2021, this transition may require additional federal assistance.

NIBRS represents a technically superior alternative to the traditional SRS. Given that bias motivation is a mandatory data element in all NIBRS submissions,\(^1\) law enforcement personnel using NIBRS must indicate whether a crime is bias-motivated and, if so, the offender’s particular bias motivation with respect to a set of predefined bias motivation categories. Each category is assigned with a specific “bias motivation code.” If the offense is not bias-motivated, or the offender’s bias motivation does not correspond to the bias categories identified in UCR hate crime data collections, then reporting agencies enter the Bias Motivation Code 88 (none).

However, the implementation of NIBRS alone is unlikely to significantly improve hate crime data collections, as concerns remain over the potential for classification errors to impact the accuracy of official hate crime statistics. This concern is addressed in a 2011 study from West Virginia’s Criminal Justice Statistical Analysis Center, which estimated that Group A Hate Crimes\(^2\) were undercounted by approximately 67 percent in the state’s incident-based reporting system.\(^3\) The authors found the undercounts were primarily a result of officers failing to recognize “bias-indicators” when present in a given incident. Therefore, while the state of West Virginia had transitioned to NIBRS, concerns regarding the quality, reliability, and accuracy of hate crime data remain.

We have reason to believe the nationwide transition to NIBRS will improve federal hate crime data collections. However, the findings of the West Virginia study demonstrate the transition to NIBRS alone will not solve the current issue; if law enforcement personnel cannot identify bias-indicators present in a given hate crime incident, or if they do not know how to operate the reporting system proficiently, we will continue to see flaws in our official hate crime statistics.

**Mandatory Reporting**

The preceding section examines the current federal response to hate crime and enduring limitations to hate crime prevention. The introduction of national hate crime data collection represents an important step the federal government has taken toward preventing hate crime in American communities. However, more must be done at the state and local levels to support effective utilization of NIBRS as agencies complete their full transitions to the system. To complement federal legislation and related authorities, state legislatures must pass laws that: prohibit hate crime offenses and offer inclusive protections for hate crime victims; require law enforcement to report, collect data, and publish annual statistics on hate crime incidents; and establish mandatory hate crime training for law enforcement certification.

Specifically, data collection statutes must require a centralized state repository, or state UCR program, to collect hate crime data submissions from participating agencies entering Bias Motivation Code 88. Additionally, the authors found that the undercounting of hate crimes was significantly lower in states that strongly enforced mandatory reporting requirements. This highlights the importance of implementing strong mandatory reporting laws to ensure accurate hate crime statistics.

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\(^{1}\)A data element is a unit of data that conveys the granular details of a particular incident, which would otherwise require a lengthy description, and condenses that information into a predefined code. NIBRS consists of 58 data elements, which, in addition to bias motivation, include location type, ethnicity of victim, arrest date, and many more. Due to the fact that bias motivation is a mandatory data element, every data submission through NIBRS must communicate whether a crime is motivated because of an offender’s bias against someone’s actual or perceived characteristics.

\(^{2}\)Murder and Non-negligent manslaughter, Forcible sex offenses, Non-forcible sex offenses, Robbery, Aggravated assault, Burglary, Motor vehicle theft, Arson.

law enforcement agencies. As of this submission, 28 states have data collection statutes. Among these states, 23 have statutes that also require law enforcement agencies to report hate crimes to their respective state UCR programs. While New Mexico does not require state-level data collection, state law does require law enforcement agencies to report hate crime incidents to the FBI UCR Program. A greater number of states publish annual statistics on hate crime than require hate crime reporting or data collection. As of this submission, 37 states and the District of Columbia publish annual state-level hate crime statistics. However, only 18 states publish statistics on every bias motivation category identified in Hate Crime Statistics. With respect to hate crimes targeting Arab Americans, 24 states publish anti-Arab hate crime statistics in their annual reports.

Given that national hate crime data collections are based on voluntary submissions from participating law enforcement agencies, state legislatures must pass legislation requiring hate crime reporting and data collection on the part of law enforcement. This would promote more accurate statistics in support of the federal response to hate crime. As demonstrated in the previous section, state-level statistics are helpful for identifying breakdowns within the hate crime reporting and data collection system. Historically, state-level statistics have also provided more granular details on the nature and extent of hate crime in particular communities.

While the federal NIBRS data reporting does not represent a panacea with respect to the central challenges described in this section, the reform represents an important step forward which can serve as a foundation for further advocacy on hate crime reporting improvements at all levels.

**Improved Inclusiveness**

With respect to reviewing protected categories, NIBRS has six “bias categories:” race/ethnicity/ancestry, religion, sexual orientation, disability, gender, and gender identity. In reviewing state statutes, our research found a broad range of coverage of these or additional categories. By comparing these existing statutes, pending bills, and input from advocates part of our #ReportHate Project, we have found strong reasons to recommend broader protections under hate crimes statutes than those found in the NIBRS categories.

As such, the following categories warrant protection under any model hate crime statute, as evidenced by their subject to heightened scrutiny under Constitutional Equal Protection jurisprudence: citizenship, race or color, ancestry or national origin, gender or gender identity, marital status, sexual orientation, and parental status or reproductive choice. Missing from this list are important categories found in existing laws or advocated for in our #ReportHate meetings around the country, such as mental or physical disability, age, and homelessness.

We recommend these broader categories, as these groups have been historically discriminated against and have diminished societal power to protect themselves via the political process. This discrimination has been evidenced in the federal courts and in our daily lives.

**Enhanced Emphasis on Community-Police Relations**

Perhaps the most challenging aspect of the under-reporting of hate crimes occurs before government agencies even get involved. From our #ReportHate Project, we learned the various reasons why individuals and communities do not contact law enforcement officials to report a potential hate crime. Most notably, consent decrees absolving fault following police misconduct, participation in the 287(g) program, police brutality, community accounts of racial profiling, cooperation with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), or Department of Homeland Security (DHS), and complicity with discriminatory federal practices all breed distrust and tension between communities impacted by hate crimes and local law enforcement. Further, a lack of understanding of how hate crimes work, in addition to misinformation about

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11. See Massachusetts Board of Retirement v. Murgia subjecting age to rational basis scrutiny.
the reporting process and victims’ rights stifle a willingness to detail traumatic events to the government.

As public servants, law enforcement agencies have the difficult task of being the face of the American criminal justice system on a daily basis, and as such are best positioned to invest in long-term trust-building and educational efforts with local communities, advocacy organizations, and religious and cultural institutions.

To that end, this report has identified that the best community-police relations result when local agencies 1) demographically resemble the communities they serve, 2) employ community liaison units which meet regularly with vulnerable and/or targeted communities, 3) communicate rights and resources available to all people in all relevant languages, contexts, locations, and media, and 4) exhibit transparency in areas such as internal discipline, cooperation with other agencies and federal programs, and data collection and use.

Further, empowering DOJ’s Community Relations Service (CRS) to conduct bias-related trainings, expanding and promoting programs such as the Death in Custody Reporting Act and the National Use of Force database, or additional programming such as About Face: Turning Away From Hate, an implicit bias training conducted by the DOJ’s Middle District of Florida, are all potential steps toward building and promoting trust among the diverse communities impacted by hate crimes.

**Required Law Enforcement Training**

This report places high value on the importance of training law enforcement to effectively identify and prosecute hate crimes. Indeed, mandatory law enforcement training is one of seven measures we use to arrive at our individual state ranking system. With that, it is significant to note the very serious subjects of this report—Arab Americans, as well as American Muslims—have historically been misrepresented in law enforcement training manuals and curricula by government agencies and officials. A recent report by ProPublica corroborates the findings of this report that police training is often inadequate with respect to responding to and reporting hate crimes, as well as interacting with victims.

This was a specific problem at all levels of training, including federal agencies like the FBI. Training material containing misinformation, stereotypes, or anti-Arab and anti-Muslim bigotry is likely to engender bias policing.

As an example, a January 2009 presentation by the FBI’s Law Enforcement Communications Unit states that Islam is a religion that “transforms [a] country’s culture into 7th-century Arabian ways.” A presentation from a March 21, 2011 FBI training, “Strategic Themes and Drivers in Islamic Law,” included statements such as “Accommodation and compromise between [Islam and the West] are impermissible and fighting [for Muslims] is obligatory.” The bias training material was raised directly to FBI Director Mueller by Senator Richard Durbin in a 2012 letter citing concerns regarding agents being told, “Islam is a highly violent radical religion,” mainstream American Muslims are likely to be terrorist sympathizers,” and the “Arabic mind” is “swayed more by ideas than facts.” As this report calls on increased training to improve hate crime reporting, it is necessary to note that this too has been an area where government action has been to the detriment of the community.

Additionally, officers in all first-responding law enforcement agencies should be trained specifically to identify, investigate, and appropriately respond to potential hate crimes, which must include preserving evidence and addressing victim concerns. Local law enforcement agencies should participate in DOJ-sponsored training sessions, including those involving the Department’s Community Relations Service. More specifically, CRS can work with local officials to improve communication between law enforcement agencies and community organizations, facilitate mediation meetings, and assist in developing policies in response to local hate-based activity, cultural sensitivity, and the actual process of hate crime reporting.

To reiterate, any cultural sensitivity and understanding training must not proliferate inaccurate and damaging information about American Muslims and remain focused on specific training needs.

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26 United States, Department of Justice, “Training for Hate Crime Prevention” (July 28, 2017)
stereotypes and tropes about the very communities in need of protection from bias and hate.

**Existing Structures and Reform Efforts**

Last year, in response to increased hate crimes during the 2016 election, the policies of the Trump Administration, and events such as those which transpired in Charlottesville, VA on August 12, 2017, representatives introduced various bills in Congress regarding hate crimes. Based on the findings of this report, we would recommend the passage of the following legislation at the federal level: NO HATE Act (S.662),\(^\text{26}\) Hate Crime Victim Assistance Act (H.R.4065),\(^\text{27}\) and Protecting Religiously Affiliated Institutions Act (S.994).\(^\text{28}\)

In addition to the above legislation, the executive branch could utilize existing structures to create an independent, inter-agency working group to address hate crime and bias incidents at the national level. This should lead to the creation of a hatercrimes.gov website, which would be devoted exclusively to government responses to hate crimes, allowing Americans in any jurisdiction access to all available government resources for victims of hate.

Other notable proposals range from empaneling a commission to study the rise in hate crimes,\(^\text{29}\) strengthening measures for crimes on college campuses,\(^\text{30}\) and preventing those convicted of hate crimes from obtaining firearms.\(^\text{31}\) Congress and the Executive branch should further consider: enforcing the Fair Housing Act’s discrimination provisions; funding grants under Sec. 4704 of the Hate Crime Prevention Act; the creation of an interagency hate crimes working group; and increases in budgets and capacities for civil rights offices.

**Restorative Justice**

In general, hate crime statutes intend to symbolically and practically remedy “the special harms of crimes motivated by bias or prejudice by increasing public awareness of the serious consequences of intergroup violence and providing protection for victims.”\(^\text{32}\) The thrust of most hate crime statutes is the enhanced penalty. That is, assault which was motivated by hate of a particular group is generally eligible for greater penalties than simple assault of the same degree. It is important to note that most hate crime laws do not proscribe new conduct, but simply proscribe additional penalties to already proscribed conduct when certain motivating factors are proved beyond a reasonable doubt. Such enhancement is designed to express society’s disapproval of violence motivated by particular characteristics.

However, a blanket application of longer prison sentences often distributes prison time discriminatorily,\(^\text{33}\) and presents diminishing returns for society.\(^\text{34}\) While hate crime laws must reflect societal condemnation of hate-motivated violence, local partners with our #ReportHate Project have expressed discomfort of simply extending sentences within existing penal institutions.

As such, the #ReportHate Project’s proposed model statute allows flexibility in how a judge enhances a penalty after a hate crime conviction, be it via longer sentences, financial restitution, community service, or required educational programming. This approach balances the importance of assessing each incident individually, the desire to enhance penalties for hate crime, and the values of restorative justice. Broadly, restorative justice attempts to mend the damage caused by the crime and focuses on including the perpetrator in healing processes in an attempt to reduce recidivism and improve societal health. State laws should, as our model statute does, allow judges the option to require those convicted of hate crimes to repay the targeted community for damages or perform community service with, or complete educational programming on, the targeted community. However, this is not to replace the underlying penalty. That is, the penalty for assault which was motivated by hate of a particular group should include the penalty for simple assault and a judicially-determined restorative justice requirement. The availability of restorative justice options will benefit impacted communities and promote greater understanding between social groups.

One example that highlights the importance of healing is provided in Part III of this report in the discussion of the

\(^{26}\) NO HATE Act, S 662, 115th Cong. (2017-2018)


\(^{30}\) CAMPUS HATE Crimes Act, H.R. 4093, 115th Cong. (2017-2018)

\(^{31}\) Disarm Hate Act, H.R. 2841, 115th Cong. (2017-2018)


incident of Ghaith Sahib, Tiffany Sahib, and the Employees of DarSalam Restaurant. The perpetrator of the anti-Arab hate crime, an Iraq War veteran, suffered from post-traumatic stress disorder (PTSD). One can make the case that both the perpetrator and the peace of mind of the victims, were better served by the sentence of probation, payment of compensatory fines, and effective mental health treatment for PTSD instead of a prison sentence.

Other Reforms
This report has identified various important reforms in reviewing existing hate crime policies which escape the categorization offered above. These are best presented as bulleted items that local, state, and federal entities should consider when endeavoring to improve the efficacy of hate crime structures and initiatives throughout the criminal justice system:

- The DOJ and relevant state agencies should provide funding for local agencies to assess and consolidate available resources for reporting hate crimes and supporting victims within all jurisdictions. For example, some locations have victim support services, victim hotlines, and human rights commissions at the local, county, and state levels, whereas others may have none of the above. This disparity, along with jurisdictional confusion among the public, leads to some citizens being unaware of which of the various resources to contact when victimized, and leaves other citizens largely unsupported by any resource beyond contacting local law enforcement directly.

- Next, the DOJ and relevant state agencies should provide funding for state and local law enforcement agencies to establish new hotlines, websites, and other resources where jurisdictions are lacking adequate existing victim and reporting resources. First, existing resources should be streamlined to make clear to average citizens their avenues when victimized by hate. Next, new initiatives should be launched in jurisdictions where existing resources for reporting or seeking support for hate crime are lacking. For example, our #ReportHate Project has shown that community liaison units which meet regularly with vulnerable communities, and whose demographic make-up reflect the communities they serve, often increase community knowledge of existing resources. Lastly, all informational, reporting, and support resources must comply with regulations under Sec. 508 of the Rehabilitation Act and be made available in all relevant languages and all available media.

- Any change in hate crime laws, policies, or resources should be communicated broadly via publicity campaigns which direct constituents to information for local, state, and federal laws and resources to best inform people of existing and new policies. Such a campaign would, as the resources themselves, be cognizant of the needed access issues for populations vulnerable to hate crime victimization, such as language access, illiteracy, disability, and those unfamiliar with the American legal system.