



## **Failure to Protect: U.S. Violations of the International Covenant on Civil and Political Rights**

A shadow report by the International Center for Advocates Against Discrimination (ICAAD)  
prepared for the United Nations Human Rights Committee on the occasion of its review of

The United States of America's Fourth Periodic Report to the UN Committee on Human Rights  
Concerning the International Civil and Political Rights

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### **Prepared by: Principal Authors, Editors, and Researchers**

*Hansdeep Singh (J.D., L.L.M. in International Law), Director of Legal Programs*

*Jaspreet Singh (J.D.), Director of Policy & Advocacy*

Tel: 917-971-5713

Email: [Info@icaadglobal.org](mailto:Info@icaadglobal.org)

Website: [ICAADglobal.org](http://ICAADglobal.org)

**The International Center for Advocates Against Discrimination (ICAAD)** was founded for the purpose of combating structural discrimination globally and promoting human rights norms consistent with public international law. ICAAD works to strengthen legal systems by bridging gaps in the implementation of laws and policies. ICAAD has worked with government agencies, including the U.S. Department of Justice (DOJ), to help identify how minority communities are adversely impacted by the systemic flaws in documenting and preventing hate crimes in the United States. ICAAD works to target and remedy these systemic failings, which contribute to high rates of bias-motivated violence and murder because government resources are not being allocated to train, monitor, and prevent bias-motivated crimes against particularly vulnerable communities.

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## SUMMARY

This Shadow Report is an **initial submission** to the United Nations Human Rights Committee and is not covered in the list of issues or NGO list of issues reports. The violations detailed in this Report have not been thoroughly briefed before the Human Rights Committee, and thus, the U.S. government has not provided a detailed assessment on this matter in its Fourth Periodic Report. Therefore, the submission tries to be comprehensive in laying out the context and evidence for why the U.S. federal government has failed to protect minority communities from hate crimes through a combination of inadequate data collection, limited training of law enforcement to investigate and document hate crimes, and the failure to devote resources at the Executive level to monitor domestic extremists with supremacist ideologies.

Under the current Uniform Crime Reporting (UCR) Program led by the Federal Bureau of Investigation (FBI), only 3% percent of all hate crimes are documented through the UCR Program. Out of 14,575 participating law enforcement agencies in the UCR program, *86.7% of these agencies reported zero hate crimes in their jurisdiction*, including 64 jurisdictions with a population over 100,000. The jurisdictions that reported zero hate crimes represent almost one third of the U.S. population.

In 2011, the UCR reported 7,713 victims of hate crimes, whereas, the National Crime Victimization Survey (NCVS) reported on average 259,700 hate crimes a year from 2007-2011. The 35 fold gap in documenting hate crimes reveals systemic flaws that result in the government failing to devote adequate resources: to train police officers in properly identifying bias indicators in crime, to monitor domestic hate groups rather than disproportionately focusing on Islamic extremism, and to protect particularly vulnerable communities from hate crimes.

According to NCVS, 65% of all hate crime victimizations are never reported to the police. Many of the reasons stem from mistrust of law enforcement to: investigate their claim thoroughly, prosecute the case as a hate crime, prevent retaliation, and not use their position to deport victims who lack status. Moreover, there is no federal mandate to ensure recording of hate crimes by local law enforcement jurisdictions, reporting is *voluntary*. The combination of voluntary reporting with a failure to adequately train police officers to identify bias indicators in crime, there is little chance that the scope of violence directed at vulnerable communities is understood. Ultimately, the culture of a police department can be strong determinant on whether hate crimes documentation is seen by police officers as necessary to protect vulnerable communities or functions to support the “agendas of gay and minority groups.”

Although mandating documentation of hate crimes is a priority at the local level, there are other factors that can help bridge the gap. Revitalization of Hate Crimes Task Forces that engage with civil society and communities in partnership can function as a strong bulwark against bias-

motivated crime. Additionally, implementing hate crimes investigating and reporting procedures into Patrol Guides (police officer manual) would enhance hate crimes documentation.

Unfortunately, the failure to properly document hate crimes is compounded by the federal government's limited monitoring of domestic hate groups. On August 5, 2012, one of the largest hate crimes in U.S. history occurred with the killing of six worshipers at Oak Creek Sikh Gurdwara. This massacre highlighted the government's failure to monitor domestic extremist groups who hold supremacist ideologies. During a Senate hearing on hate crimes, former senior analyst for the Department of Homeland Security (DHS), Daryl Johnson, testified that that "domestic rightwing extremists trumped all other forms of ideologically motivated violence in the U.S. for number of deaths" since September 11, 2001. Furthermore, DHS reduced the number of analysts who monitor domestic extremism (non-Islamic) from eight analysts to one in 2009. Disproportionate resources have been used on surveillance and monitoring of Islamic extremism, leaving the U.S. with a blind spot for domestic hate groups that have swelled to its highest levels.

Although the U.S. government has taken some affirmative steps to address hate crimes since the last Periodic Report in 2006, it doesn't address the failure of proper data collection, training of law enforcement, and monitoring of domestic hate groups, each of which have severe downstream effects. For example, relevant law enforcement agencies don't have enough information to identify crime patterns and make sound decisions about how to allocate limited resources to prevent, prosecute, and protect communities from bias-motivated acts. Ultimately, we are all left more vulnerable when we are veiled off from the true scope of the bias-motivated violence in the U.S.

# THE FAILURE OF THE UNITED STATES TO COMPLY WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

## I. EQUALITY BEFORE THE LAW (ARTICLE 26)

In finding that the U.S. government has failed to adequately safeguard minority communities in the U.S., we rely on Article 26's non-discrimination principle, which reaches discrimination both in law and fact that arises from public and private actors.<sup>1</sup> Therefore, to comply with Article 26 of the ICCPR, the U.S. must take affirmative steps to “diminish or eliminate conditions which cause or help to perpetuate discrimination”<sup>2</sup>, thereby, uprooting the structural issues that make minority communities susceptible to bias-motivated crimes (hate crimes).

Since the U.S. last underwent its periodic review before the Human Rights Committee (HRC) in 2006, prominent social issues have played an increasing role in violence against minority communities.<sup>3</sup> For instance, the societal trauma of 9/11 still persists. Muslim,<sup>4</sup> Arab, Sikh,<sup>5</sup> and South Asian communities face an increasing wave of hate crimes, especially after triggering

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<sup>1</sup> U.N. Human Rights Committee, *General Comment No. 18: Non-Discrimination*, ¶¶ 9, 12 (Oct. 11, 1989), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument).

<sup>2</sup> *Id.* at ¶ 10.

<sup>3</sup> Hansdeep Singh and Simran Jeet Singh, *The Rise of Hate Crimes Can Be Tied Directly to Hateful Speech*, THE DAILY BEAST (Sept. 6, 2012), <http://www.thedailybeast.com/articles/2012/09/06/the-rise-of-hate-crimes-can-be-tied-directly-to-hateful-speech.html>; Cristina Costantini, *Anti-Latino Hate Crimes Rise as Immigration Debate Intensifies*, HUFFPOST LATINO VOICES (Oct. 18, 2010), [http://www.huffingtonpost.com/2011/10/17/anti-latino-hate-crimes-rise-immigration\\_n\\_1015668.html](http://www.huffingtonpost.com/2011/10/17/anti-latino-hate-crimes-rise-immigration_n_1015668.html); Christopher Rudolph, *Mark Potok Discusses Hate Crime Data And Relationship to LGBT Victories (Video)*, HUFFPOST GAY VOICES (May 22, 2013), [http://www.huffingtonpost.com/2013/05/22/mark-potok-hate-crimes\\_n\\_3322008.html](http://www.huffingtonpost.com/2013/05/22/mark-potok-hate-crimes_n_3322008.html).

<sup>4</sup> See generally Christian Unkelbach et. al., *The Turban Effect: The Influence of Muslim Headgear and Induced Affect on Aggressive Responses in the Shooter Bias Paradigm*, ELSEVIER, Vol. 44, Issue 5, 1409-1413 (Sept. 2008) (“We predicted and found a significant bias for participants to shoot more at Muslim targets.”).

<sup>5</sup> Sikhs, who religiously manifest their faith externally by wearing turbans and five articles of faith, including maintaining unshorn hair, have been attacked because they are perceived as the “other” in a rising tide of anti-immigrant sentiment and also because they are mistakenly perceived to be extremists or terrorists who perpetrate acts of violence against the U.S. See generally M. K Ahluwalia, *Holding my breath: The Experience of Being Sikh After 9/11*. TRAUMATOLOGY, 17 (3), 41-46 (2011); M. K. Ahluwalia et. al., *Sikh Men Post-9/11: Misidentification, Discrimination, and Coping*, ASIAN AMERICAN JOURNAL OF PSYCHOLOGY, 1(4), 303-314 (2010); K. Y. Joshi, *The Racialization of Hinduism, Islam, and Sikhism in the United States*, EQUITY AND EXCELLENCE IN EDUCATION, 39, 211-226 (2006).

events (also known as “vicarious retribution”),<sup>6</sup> more than a decade later. Even as the LGBT community has made tremendous strides in changing the climate toward marriage equality in the U.S., nevertheless, the backlash has persisted since 2005 and current bias-motivated violence against the LGBT community is at its zenith.<sup>7</sup> Past and current discussions around immigration reform veer dangerously toward the demonization and marginalization of the Latino community with intermittent spikes in violent hate crimes directed towards them.<sup>8</sup>

The legal reality for minorities combined with the prevailing political discourse<sup>9</sup> continue to foster “othering” and discrimination, which perpetuates bias related crimes. These legal realities include: 1) NYPD surveillance of Muslims/ Arabs;<sup>10</sup> 2) the lack of a federally recognized right to marry for the LGBT community and the absence of employment protections for LGBT workers in many states;<sup>11</sup> 3) the failure of accommodations to allow groups who manifest their faith externally to serve in the military and law enforcement (e.g. Sikhs (turbans, beard), Jews

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<sup>6</sup> See generally Lickel, Brian et. al., *Vicarious Retribution: The Role of Collective Blame in Intergroup Aggression*, PERSONALITY AND SOCIAL PSYCHOLOGY REVIEW 10(4): 372-90 (2006). A statistical analysis report produced for the National Consortium for the Study of Terrorism and Responses to Terrorism concluded that “anti-minority hate crimes follow acts of terrorism. Additionally, attacks against symbols of core American ideas . . . and those perpetrated by groups with a religious motivation . . . tended to be associated with the largest increases in anti-minority hate crimes.” Kathleen Deloughery et. al., *Analysis of Factors Related to Hate Crime and Terrorism*, National Consortium for the Study of Terrorism and Responses to Terrorism, Final Report to the National Consortium for the Study of Terrorism and Responses to Terrorism, 21 (Dec. 2012); Ilir Disha et. al., *Historical Events and Spaces of Hate: Hate Crimes Against Arabs and Muslims in Post-9/11 America*, SOCIAL PROBLEMS, VOL. 58, NO. 1, PP. 21-46, 25-26 (Feb. 2011).

<sup>7</sup> See NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS (NCAVP), LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE VIOLENCE IN 2012 (2013), [http://www.avp.org/storage/documents/ncavp\\_2012\\_hvreport\\_final.pdf](http://www.avp.org/storage/documents/ncavp_2012_hvreport_final.pdf); See G. M. Herek, *Anti-Equality Marriage Amendments and Sexual Stigma*, JOURNAL OF SOCIAL ISSUES, 67: 413–426 (2011). Only 13 states and the District of Columbia recognize the right to marry for same-sex couples. See AMERICAN CIVIL LIBERTIES UNION (ACLU), SAME-SEX RELATIONSHIP RECOGNITION, <https://www.aclu.org/maps/same-sex-relationship-recognition>.

<sup>8</sup> See generally Matthew D. Trujillo, *The Interplay Between Prejudice Against Latinos and Policy: A Social Psychological Perspective*, <http://isites.harvard.edu/fs/docs/icb.topic1068560.files/Trujillo.pdf> (Unpublished).

<sup>9</sup> Disha, *supra* note 6, at 26 (“research during the past decade indicates that political change and political discourse can directly and indirectly influence intergroup violence”).

<sup>10</sup> See AMERICAN CIVIL LIBERTIES UNION (ACLU), BLOG OF RIGHTS: NYPD MUSLIM SURVEILLANCE, <https://www.aclu.org/blog/tag/nypd-muslim-surveillance>.

<sup>11</sup> See HUMAN RIGHTS CAMPAIGN, MARRIAGE CENTER, <HTTP://WWW.HRC.ORG/CAMPAIGNS/MARRIAGE-CENTER>; HUMAN RIGHTS CAMPAIGN, EMPLOYMENT NON-DISCRIMINATION ACT, <http://www.hrc.org/laws-and-legislation/federal-legislation/employment-non-discrimination-act>.

(yarmulkes), Muslims (hijab));<sup>12</sup> 4) the presence of statutes that sanction the profiling of the Latino community (e.g. SB 1070 in Arizona);<sup>13</sup> and the failure to pass federal legislation, End Racial Profiling Act (ERPA), which would target discriminatory programs like surveillance of Muslims, mandatory secondary screening for Sikhs at airports, and stop and frisk policies<sup>14</sup> directed at Black and Latino communities.

Nevertheless, the impact of hate crimes on minority communities is even more stark when viewed as part of the government's systemic failure to adequately document and prevent hate crimes. Underreporting of crimes, including hate crimes, has always been a problem, it is even euphemistically called the "dark figure" to denote crimes unreported by victims and unrecorded by law enforcement.<sup>15</sup> However, there are real consequences of underreporting because it limits: training of law enforcement to understand the vulnerability of particular minority communities, funding the Department of Homeland Security (DHS) and the FBI to monitor domestic hate groups, police presence around property that is likely to be targeted (e.g. houses of worship, community centers, gay bars etc.), funding for the installation of protective boundaries at these properties, and training by agencies, like the FBI, on measures the community can take to better protect itself. For many minority communities, the data does not adequately reflect the level of hate violence perpetrated against them, and without authoritative data on the subject matter, no government agency will allocate the necessary resources to combat the systemic problem. The combination of training law enforcement to identify bias indicators and mandating hate crimes reporting at the local level will improve the data ultimately received through the UCR program.

Hate crimes are different, when one member of a community is victimized, members of that community are simultaneously victimized.<sup>16</sup> Moreover, hate crimes elicit a unique form of

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<sup>12</sup> See SIKH COALITION, TELL CONGRESS TO SUPPORT SIKHS IN THE U.S. MILITARY, <http://www.sikhcoalition.org/advisories/2013/major-action-please-help-tell-congress-to-support-sikhs-in-the-us-military>; Billy Rennison, *Sikhs Dispute NYPD Policy Banning Beards, Turbans*, THE QUEENS COURIER (Aug. 10, 2012), <http://queenscourier.com/2012/sikhs-dispute-nypd-policy-banning-beards-turbans/>. Some law enforcement agencies in California and Washington D.C. have made accommodations for Sikh police officers.

<sup>13</sup> See AMERICAN CIVIL LIBERTIES UNION (ACLU), ARIZONA'S SB 1070, <https://www.aclu.org/arizonas-sb-1070> ("The U.S. Supreme Court has upheld the most hotly disputed part of Arizona's anti-immigrant law . . .").

<sup>14</sup> Aaron Blake, *Judge Says New York's 'Stop and Frisk' Law Unconstitutional*, THE WASHINGTON POST (Aug. 12, 2013), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/08/12/judge-says-new-yorks-stop-and-frisk-law-unconstitutional/>.

<sup>15</sup> PETER P. LYNCH ET. AL., UNDERSTANDING CRIME STATISTICS: REVISITING THE DIVERGENCE OF NCVS AND UCR, CAMBRIDGE UNIVERSITY PRESS, 67 (2007).

<sup>16</sup> AMERICAN PSYCHOLOGY ASSOCIATION, PSYCHOLOGY OF HATE CRIMES 2 (June 2009), <http://www.apa.org/about/gr/issues/violence/hate-crimes-faq.pdf>.

aggression.<sup>17</sup> The Bureau of Justice Statistics found that 92% of all hate crimes between 2007-2011 were “violent victimizations.”<sup>18</sup> The trauma, fear, and emotional distress felt by many vulnerable communities in the U.S. cannot continue to be a lived reality. A similar type of act that causes such wide-spread psychological damage to a population is terrorism. Yet, our response to hate crimes and our strategy to prevent bias-motivated crimes is wholly inadequate when compared to the resources we devote to preventing terrorism.

**A. Underreporting of Hate Crimes Masks the Severity of the Problem and Leads to Limited Governmental Resources Being Directed to Vulnerable Communities**

Congress mandated collection of data on hate crimes, under the UCR program, in response to the Hate Crimes Statistics Act (HCSA) of 1990.<sup>19</sup> The HCSA’s “purpose was to establish a national data collection system on crimes motivated by hate so that federal and local law enforcement authorities could determine whether hate crimes were isolated events or a more pervasive problem, and whether any particular groups were more likely to be targeted than others.”<sup>20</sup> The UCR and the National Incident-Based Reporting System (NIBRS) are the primary source of information on crime in the U.S.<sup>21</sup> National collection of hate crimes data did not occur until 1992.<sup>22</sup> Hate crimes, as defined under the Act (28 U.S.C. § 534) established guidelines to collect data about “crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including, where appropriate, the crimes of murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson; and destruction, damage, or vandalism of property.”<sup>23</sup>

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<sup>17</sup> See generally Kellina M. Craig, *Examining Hate-Motivated Aggression: A Review of the Social Psychological Literature on Hate Crimes as a Distinct Form of Aggression*, ELSEVIER, Vol. 7, Issue 1, 85-101 (Feb. 2002).

<sup>18</sup> NATHAN SANDHOLTZ ET AL., U.S. DEP’T. OF JUSTICE, HATE CRIME VICTIMIZATION, 2003-2011, 4 (Mar. 2013), <http://www.bjs.gov/content/pub/pdf/hcv0311.pdf>.

<sup>19</sup> S. M. HAAS ET. AL., ASSESSING THE VALIDITY OF HATE CRIME REPORTING: AN ANALYSIS OF NIBRS DATA. CHARLESTON, WV: CRIMINAL JUSTICE STATISTICAL ANALYSIS CENTER, OFFICE OF RESEARCH AND STRATEGIC PLANNING, DIVISION OF JUSTICE AND COMMUNITY SERVICE 2 (July 2011).

<sup>20</sup> Susan J. Becker, *Tumbling Towers As Turning Points: Will 9/11 Usher in A New Civil Rights Era for Gay Men and Lesbians in the United States?*, 9 WM. & MARY J. WOMEN & L. 207, 250 (2003).

<sup>21</sup> *Id.* at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*



Until recently, three particularly vulnerable communities (Arabs, Sikhs, and Hindus) did not even have codes in the UCR Form 1-699.<sup>24</sup> As a result, hate crimes perpetrated against these communities were added to catchall rather than disaggregated categories. ICAAD, and a coalition of advocacy organizations including civil rights, faith based organizations, government agencies, and over a 100 Congressional representatives, pushed for the inclusion of these three communities on the UCR Form 1-699.<sup>25</sup> Unfortunately, it took one of the largest hate motivated crimes in U.S. history, the killing of six worshippers at a Sikh Gurdwara (house of worship) in Oak Creek, Wisconsin, to build the momentum necessary to achieve this administrative change.<sup>26</sup>

Nonetheless, even as the changes go into effect in 2015, these communities still face the prospect that their voices will largely be ignored because the underlying problem of adequately documenting hate crimes has been left unaddressed. A few key reasons for this underreporting exist. Police agency participation in the national data collection program is completely *voluntary*,<sup>27</sup> police officers are inadequately trained to document and investigate hate crimes, and minority communities mistrust law enforcement,<sup>28</sup> and therefore, fail to report bias-motivated crimes to the police.

### **1. Substantial Gaps in UCR Data and Variance Between Federal Government Reporting of Hate Crimes: UCR vs. NCVS**

The FBI UCR data mask a widespread problem of reporting hate crimes under the Hate Crimes Statistics Act (HCSA). Under the UCR, the FBI recorded 6,222 bias-motivated incidents which resulted in 7,713 victims in 2011.<sup>29</sup> Out of the 14,575 jurisdictions that participated in the

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<sup>24</sup> FBI UNIFORM CRIME REPORTING (UCR), HATE CRIME INCIDENT REPORT, <http://www.fbi.gov/about-us/cjis/ucr/reporting-forms/hate-crime-incident-report-pdf>.

<sup>25</sup> Press Release, *The Battle for Inclusion has been Won; FBI Advisory Policy Board Votes to Track Sikh, Hindu, and Arab Hate Crimes*, ICAAD (June 13, 2013), <http://icaadglobal.org/mediaItem.php?id=155>; *CAPAC Praises Recommendation for FBI to Track Hate Crimes Against Sikh, Hindu, and Arab Americans* (June 6, 2013), <http://capac-chu.house.gov/press-release/capac-praises-recommendation-fbi-track-hate-crimes-against-sikh-hindu-and-arab>.

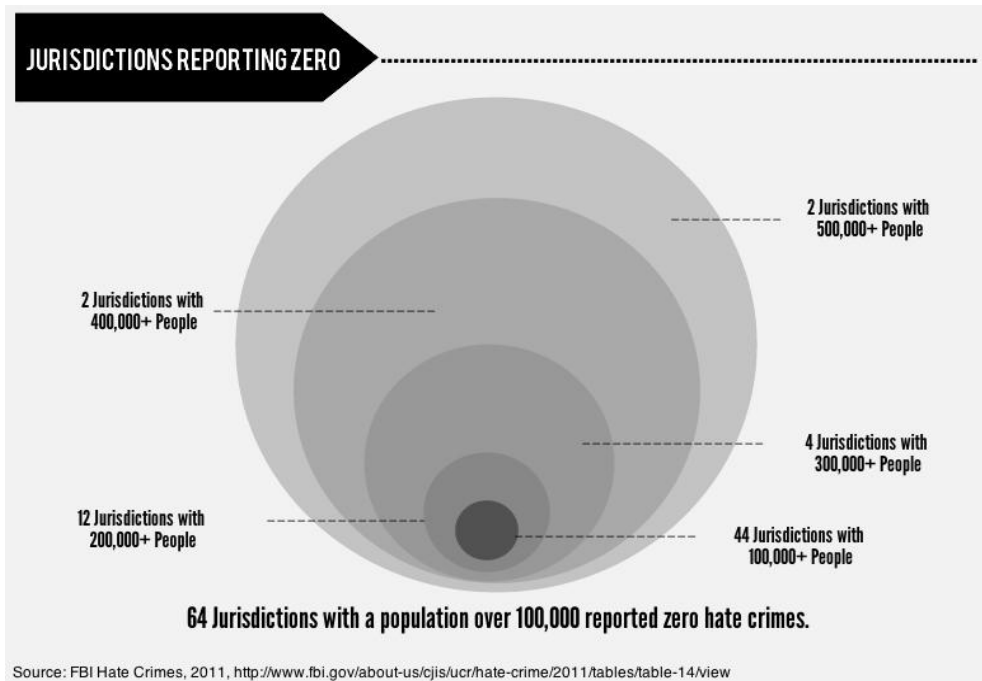
<sup>26</sup> Valarie Kaur, *One Year After Oak Creek, Why the FBI Tracking Hate Crimes is a Victory*, MSNBC (Aug. 5, 2013), <http://tv.msnbc.com/2013/08/05/one-year-after-oak-creek-why-the-fbi-tracking-hate-crimes-is-a-victory/>;

<sup>27</sup> LYNCH, *supra* note 15, at 274.

<sup>28</sup> See generally John F. Dovidio et. al., *Why Can't we Just Get Along? Interpersonal Biases and Interracial Distrust*, CULTURAL DIVERSITY AND ETHNIC MINORITY PSYCHOLOGY, Vol. 8(2), 88-102 (May 2002).

<sup>29</sup> The FBI data on hate crimes appears in the FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS, HATE CRIME STATISTICS 2011 (2012), <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011> [hereinafter "HATE CRIME STATISTICS 2011."] The specific sections of the report are available in

program, 86.7% of agencies reported zero hate crimes.<sup>30</sup> “This does not mean that they failed to report; rather, they affirmatively reported to the FBI that *no hate crimes occurred in their jurisdiction.*”<sup>31</sup> Further, in 64 of those jurisdictions, the population exceeds 100,000 people.<sup>32</sup> Breaking this down, jurisdictions representing the equivalent of almost one third (91,374,636)<sup>33</sup> of the U.S. population, reported zero hate crimes.



different online sections. The specific section where the data can be found will be indicated in each cite which refers to the report. For example, the statistic cited to above in regards to information at hate crime victims can be found at HATE CRIME STATISTICS 2011, VICTIMS, *supra* note 29 (Victims).

<sup>30</sup> See *Id.* (Hate Crime by Jurisdiction).

<sup>31</sup> Leadership Conference on Civil Rights, *Hate Crimes in America: The Nature and Magnitude of the Problem*, <http://www.civilrights.org/publications/hatecrimes/nature---and---magnitude.html>.

<sup>32</sup> See HATE CRIME STATISTICS 2011, *supra* note 29 (Hate Crime Jurisdiction, at Table 14).

<sup>33</sup> See HATE CRIME STATISTICS 2011, *supra* note 29 (Hate Crime Jurisdiction, at Table 14). Jurisdictions that reported zero hate crimes represent a population of 91,374,636 and the total U.S. population according to the U.S. Census in 2010, was 308,745,538. This means 29.5% of the population are represented in jurisdictions that reported zero hate crimes. Press Release, *U.S. Census Bureau Announces 2010 Census Population Counts -- Apportionment Counts Delivered to President*, UNITED STATES CENSUS BUREAU (Dec. 21, 2010) <http://www.census.gov/2010census/news/releases/operations/cb10-cn93.html>.

How is this possible? The FBI, in fact, has never reported more than 10,000 hate crimes in any given year.<sup>34</sup> In contrast, the Bureau of Justice Statistics' (BJS)<sup>35</sup> 2013 Special Report on hate crime victimizations, relying on data from the National Crime Victimization Survey (NCVS), found that from 2007-2011 an average of 259,700 hate crime victimizations occurred each year.<sup>36</sup> If we go further back, from 2003-2009, the NCVS reported 195,000 hate crimes per year.<sup>37</sup> Clearly, the FBI's UCR data accounts for only a marginal number of bias-motivated crimes (3%) in the U.S. The variance between the UCR and NCVS represents a 35 fold gap.

The NCVS has overcome some of the limitations of survey methodology through the use of “representative sampling on a national level in a longitudinal or repeated cross-sectional design.”<sup>38</sup> Furthermore, scholars have found that because the data is gathered from house-holds where victimizations happened within the last six months, the NCVS data “provides a more direct check on the true amount of crime, [and therefore] it is considered superior to the UCR for this purpose.”<sup>39</sup>

A big part of the data gap, as revealed by the NCVS, is that law enforcement was not notified about hate crime victimizations in 65% of the cases documented by NCVS.<sup>40</sup> The fact that two-thirds of victims don't report to the police suggests a larger systemic problem, which we address in the following section. However, even if we take into account that almost two-thirds of victims or bystanders never reported hate crimes to the police, it still leaves us with an average of over 90,000 hate crimes per year that were reported to law enforcement. Thus, the gap in underreporting by local agencies to the FBI is still greater than 10 fold.

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<sup>34</sup> The FBI data on hate crimes going back to 1996 appears in the FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: UCR PUBLICATIONS, <http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Hate>.

<sup>35</sup> The BJS is a division of the Department of Justice (part of the Executive Branch of government).

<sup>36</sup> SANDHOLTZ, *supra* note 18, at 1.

<sup>37</sup> LYNN LANGTON ET AL., U.S. DEP'T. OF JUSTICE, HATE CRIME VICTIMIZATION, 2003-2009, 1 (June 2011), <http://www.bjs.gov/content/pub/pdf/hc0309.pdf>.

<sup>38</sup> MICHAEL SHIVELY, STUDY OF LITERATURE AND LEGISLATION ON HATE CRIMES IN AMERICA 3 (Abt Associates Inc., March 31, 2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf>.

<sup>39</sup> LYNCH, *supra* note 15, at 269.

<sup>40</sup> *Id.* at 5.

## 2. Reasons for Underreporting by the Public to Law Enforcement

In addition to limits in data collection, there are numerous factors to explain why victims of hate crimes or those who witness such crimes may avoid reporting to the police. For instance, the League of United Latin American Citizens suggests undocumented persons who are victims of hate crimes may not report these incidences to the police because of a fear of law enforcement and deportation.<sup>41</sup> The Department of Justice in 2005 found that most people don't understand what meets the threshold for categorizing a crime as a hate crime.<sup>42</sup> Additionally, the American Psychological Association (APA) found that victims of hate crimes report to police at far lower rates than when faced with similar (non bias-motivated) crimes.<sup>43</sup> The APA found that trauma, fear of retaliation, and belief that law enforcement will not support them were leading causes of underreporting.<sup>44</sup>

Other factors that contribute to a lack of reporting by victims or bystanders are:

- Limited understanding of hate crimes laws and their application in the criminal justice system;<sup>45</sup>
- Limited knowledge of the rights and support services available to victims;
- Fear of retaliation;<sup>46</sup>
- Fear of being re-victimized because of the lack of investigation or prosecution;<sup>47</sup>
- Victimization of immigrants by police in their home countries often carries over to law enforcement in the U.S.;<sup>48</sup>
- Limited English proficiency;

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<sup>41</sup> Cindy Horswell, *Hate Crimes Fall in Houston and Texas*, HOUSTON CHRON (Dec. 29, 2007), <http://www.chron.com/news/houston-texas/article/Hate-crimes-fall-in-Houston-and-Texas-1801444.php>.

<sup>42</sup> SHIVELY, *supra* note 38, at ii-iii.

<sup>43</sup> AMERICAN PSYCHOLOGY ASSOCIATION, *supra* note 16, at 2.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> BILL LOCKYER (ATTORNEY GENERAL OF CALIFORNIA), REPORTING HATE CRIMES: THE CALIFORNIA GENERAL'S CIVIL RIGHTS COMMISSION ON HATE CRIMES, FINAL REPORT 11 <http://oag.ca.gov/sites/all/files/pdfs/publications/civilrights/reportingHC.pdf>.

<sup>46</sup> *Id.*; BUREAU OF JUSTICE ASSISTANCE, A POLICYMAKER'S GUIDE TO HATE CRIMES xii (1997), <https://www.ncjrs.gov/pdffiles1/bja/162304.pdf>.

<sup>47</sup> Horswell, *supra* note 41; SHIVELY, *supra* note 38, at iii; LOCKYER, *supra* note 45, at 11.

<sup>48</sup> LOCKYER, *supra* note 45, at 12.

- Belief that law enforcement could not or would not help them;<sup>49</sup>
- Shame or embarrassment for being a victim of any crime, especially a hate crime;<sup>50</sup>
- Cultural beliefs about not complaining;<sup>51</sup>
- Fear of being exposed as being part of the LGBT community to one's family, employer, friends, or the general public;<sup>52</sup> and
- Fear of retaliation on the part of the elderly or persons with disabilities who have strong dependencies.<sup>53</sup>

These factors contribute to an astounding 65% of hate crimes cases being unreported. The government plays an important role in ameliorating the conditions that contribute to underreporting, including the level of distrust between law enforcement and the community. For example, the non-passage of ERPA has forestalled progress towards bridging the trust gap because communities are still being disproportionately surveilled (Muslims/ Arabs), stop and frisked (Latinos, Blacks), and profiled at airports by being secondarily searched 100% of the time (Sikhs).<sup>54</sup> When two-thirds of hate crimes go unreported, it is not merely a statistical aberration, it is a structural failure that the government has a responsibility to address.

### 3. Reasons for Underreporting by Law Enforcement to the FBI's UCR Program

The National Institute of Justice outlines reasons for why quality data collection by law enforcement on hate crimes remains elusive. Mainly, the differences in: 1) data collection efforts across jurisdictions;<sup>55</sup> 2) varying state definitions of hate crimes;<sup>56</sup> 3) law enforcement training;<sup>57</sup>

<sup>49</sup> SANDHOLTZ, *supra* note 18, at 6 (24% of victims, in a 2007-2011 survey by BJS, believe law enforcement "could not or would not help"); LOCKYER, *supra* note 45, at 11.

<sup>50</sup> LOCKYER, *supra* note 45, at 11.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Adelle M. Banks, *Sikhs Call Airport Screening for Turbans 'Security Theater'*, HUFFPOST RELIGION (Nov. 8, 2010), [http://www.huffingtonpost.com/2010/11/08/sikhs-call-airport-screen\\_n\\_780584.html](http://www.huffingtonpost.com/2010/11/08/sikhs-call-airport-screen_n_780584.html).

<sup>55</sup> See ALISON M. SMITH, STATE STATUTES GOVERNING HATE CRIMES, CONGRESSIONAL RESEARCH SERVICE (Sept. 28, 2010), <http://www.fas.org/sgp/crs/misc/RL33099.pdf>; ANTI-DEFAMATION LEAGUE (ADL), ANTI-DEFAMATION LEAGUE STATE HATE CRIME STATUTORY PROVISIONS (updated Mar. 2013), [http://www.adl.org/assets/pdf/combating-hate/state\\_hate\\_crime\\_laws\\_march\\_2013.pdf](http://www.adl.org/assets/pdf/combating-hate/state_hate_crime_laws_march_2013.pdf).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* (According to ADL, 37 of 50 states do not mandate training on hate crimes for police officers).

4) statistical reporting provisions; and 5) questions over whether viewing hate crimes as a separate class of crimes is legitimate.<sup>58</sup>

Similarly, a Report by the Criminal Justice Statistical Analysis Center (“CJSAC”) notes that in large scale data collection, errors may occur for many reasons, “including inaccurate interpretation of UCR definitions, reliance on criminal rather than statistical definitions, record automation issues, and even purposive actions in an attempt to downgrade crime.”<sup>59</sup> Yet, these are only some of the reasons such a wide disparity between two federal agencies exists. We focus on two key reasons: voluntariness of reporting and law enforcement agencies creating a climate that intentionally disfavors the reporting of hate crimes.

**a) *Voluntary reporting of hate crimes by law enforcement***

A significant part of underreporting of hate crimes by law enforcement arises from the voluntary nature of local law enforcement compliance with the FBI’s request for hate crime data.<sup>60</sup> No federal laws require participation in the UCR program nor do they require agencies provide a full year’s worth of data.<sup>61</sup> To deal with this data gap, the FBI has developed an entire methodology around estimating missing data, which can produce significant errors.<sup>62</sup>

Some police departments “cook the books” by underreporting the number of crimes reported to them by victims . . . or may be recorded as less serious crimes. For the most part, the FBI cannot determine when this occurs . . . except when newspapers uncover them.<sup>63</sup>

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<sup>58</sup> NATIONAL INSTITUTE OF JUSTICE, HATE CRIME PREVALENCE AND VICTIMIZATION, <http://www.nij.gov/topics/crime/hate-crime/prevalence-victimization.htm>.

<sup>59</sup> HAAS, *supra* note 19, at 1.

<sup>60</sup> Human Rights First (HRF), in filing a report during the U.S.’s Universal Periodic Review, noted that a voluntary system of documenting hate crimes at the local level, produced few jurisdictions that were reporting these incidents. *See generally* HUMAN RIGHTS FIRST, FIRST SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, UNIVERSAL PERIODIC REVIEW: UNITED STATES OF AMERICA (November 26, 2010), [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/HRF\\_HumanRightsFirst.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/HRF_HumanRightsFirst.pdf). (stating that the “Underreporting of hate crimes to law enforcement agencies remains a serious problem”); Nicole Krasavage et. al., *Are Victims Falling Through America’s Hate Crime Data Gap?*, CNN (March 23, 2013), <http://www.cnn.com/2013/03/15/justice/hate-crime-statistics>.

<sup>61</sup> LYNCH, *supra* note 15, at 68-69.

<sup>62</sup> *Id.* at 270.

<sup>63</sup> *Id.*

Voluntary participation by police departments began in 1992 nationally and the number of participating agencies grew rapidly in the following 10 year period.<sup>64</sup> Unfortunately, participation has not translated into reporting of hate crimes to the FBI. Commenting on the FBI UCR data that showed zero hate crime incidents reported in the state of Mississippi in 2005, 2006, and 2007, Heidi Beirich of the Southern Poverty Law Center notes, “Hate crime data as the FBI reports is underreported by an ungodly amount . . . States like California have thousands of hate crimes, and the state of Mississippi with its record of racial animus has none? . . . It's ridiculous.”<sup>65</sup> Currently, only 32 of 50 states have legislation mandating hate crimes data collection.<sup>66</sup>

The failure of proper data collection because of its voluntary nature has downstream effects. For example, relevant law enforcement agencies don't have enough information to identify crime patterns and make sound decisions about how to allocate limited resources to prevent, prosecute, and protect communities from hate crimes.<sup>67</sup> Despite decade-long calls from the Bureau of Justice Assistance (BJA) to mandate all law enforcement agencies to collect hate crimes data, the federal government has yet to mandate this type of comprehensive data collection.<sup>68</sup>

***b) Police department culture<sup>69</sup> and training plays a vital role in whether hate crimes are properly documented***

The Department of Justice in 2005 made an observation that some law enforcement agencies “prefer[] not to acknowledge the role of hate in certain offenses.”<sup>70</sup> This point underscores how law enforcement officials allow bias to infiltrate and impact how they document hate crimes. The CJSAC Report which did a pilot study on hate crimes documentation at the local agency level supports this observation by finding that “some officers did not believe in enforcing bias crimes

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<sup>64</sup> HAAS, *supra* note 19, at 2.

<sup>65</sup> Krasavage, *supra* note 60.

<sup>66</sup> ADL, *supra* note 55.

<sup>67</sup> See Ryan Jacobs, *Just Like in “The Wire,” Real FBI Crime Stats are “Juked”*, MOTHER JONES (June 19, 2012), <http://www.motherjones.com/mojo/2012/06/fbi-crime-stats-fudged-the-wire-nypd>.

<sup>68</sup> See BUREAU OF JUSTICE ASSISTANCE, A POLICYMAKER'S GUIDE TO HATE CRIMES 15 (1997), <https://www.ncjrs.gov/pdffiles1/bja/162304.pdf>.

<sup>69</sup> A seminal work of scholarly research found the vital role of culture in police departments in shaping young recruits. John Van Maanen, *Police Socialization: A Longitudinal Examination of Job Attitudes in an Urban Police Department*, ADMINISTRATIVE SCIENCE QUARTERLY, Vol. 20, No. 2 (June 1975).

<sup>70</sup> SHIVELY, *supra* note 38, at iii.



against white offenders . . . [giving] those officers the authority to effectively nullify hate crime law.”<sup>71</sup>

Moreover, the Report found that police department culture is one of the strongest determinants of officer behavior, and consequently, whether they feel incentivized or disincentivized to document hate crimes. The culture in a police department had an overwhelming effect on the thoroughness of hate crimes reporting.<sup>72</sup> For example, agencies that infrequently reported hate crimes were likely to have a culture of “discouragers” in leadership positions and perpetuate the notion that “reporting hate crimes results in negative publicity [and] . . . supports the agendas of gay and minority groups.”<sup>73</sup>

Through focus groups, the CJSAC Report further illuminated that officers need further training in identifying “indicators of bias”<sup>74</sup> and that a vast majority of undercounting of hate crimes, 67.35% in the pilot study conducted, can be attributed to insufficiently understanding that hate crimes are not only national headline or “clear-cut cases.”<sup>75</sup> It is no surprise then that hate crime data collection efforts “lag[] behind data regarding most other types of crime.”<sup>76</sup>

#### **4. Ways to Improve Hate Crimes Documentation**

##### **a) *NYPD Hate Crimes Task Force: A Model for Community Engagement***

The Crime Victims' Institute (CVI) points to the Hate Crimes Task Force (HCTF) of New York City as a model to overcome some of the failures that lead to underreporting and mistrust between the local community and law enforcement.<sup>77</sup> For instance, while the National Crime Victimization Survey (NCVS) provides that “only 19.2% of the hate crime incidents reported by victims were determined by local authorities to be bias-related,”<sup>78</sup> and “examination of the police

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<sup>71</sup> HAAS, *supra* note 19, at 8.

<sup>72</sup> *Id.* 6-8.

<sup>73</sup> *Id.* at 7.

<sup>74</sup> *Id.* at 21.

<sup>75</sup> *Id.* at 18 (The consensus in the CJSAC study was “when you do see a hate crime, it is the type that makes national headlines”).

<sup>76</sup> SHIVELY, *supra* note 38, at iv.

<sup>77</sup> GLEN KERCHER ET. AL, *HATE CRIMES*, CRIME VICTIMS INSTITUTE (“CVI”) 16-21 (Aug. 2008) <http://www.crimevictimsinstitute.org/documents/Hate%20Crimes%20Final.pdf>.

<sup>78</sup> *Id.* at 16.



response in New York from 1996-2005 shows that the Hate Crime Task Force of the New York Police Department (HCTF) confirmed as hate crimes almost 91% of victim reports.”<sup>79</sup> CVI explained that this disparity existed not because victims were any more or less truthful in other jurisdictions, but because unlike many jurisdictions, HCTF engages in proper law enforcement training, engagement with NGOs and the affected communities, and oversight over hate crimes documentation.<sup>80</sup> The HCTF’s efforts have led to a better understanding of the scope of the problem in New York City, and have led to further outreach into affected communities and more resources devoted to stopping bias-motivated crimes.

Conversely, the failure to document hate crimes by law enforcement causes affected communities to feel further alienated and prevents public officials from properly apportioning resources to address crimes targeting vulnerable communities.<sup>81</sup> The failure to investigate and accurately report hate crimes leads law enforcement officials to treat hate-motivated crimes directed towards particularly vulnerable communities as isolated events, rather as part of a larger trend of hate and violence.<sup>82</sup> A few examples of the kinds of resources that government could provide include: monitoring hate groups who have increasingly targeted minority communities; increased police patrols of property that are likely to be targeted (e.g. houses of worship, community centers etc.); training officers to follow set procedures when investigating and questioning victims, witnesses, or perpetrators in potential bias related incidents; funding for the installation of protective boundaries; press conferences standing in solidarity with the community; public education events; and training by agencies, like the FBI, on measures the community can take to better protect itself.

The government’s failure to support and protect minority communities deepens and reinforces their lack of trust in law enforcement, especially among immigrant and lower-income families,

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<sup>79</sup> *Id.*

<sup>80</sup> *See id.* at 16-18.

<sup>81</sup> *See* Maria Cramer, *Statistics on hate Crimes are Sparse*, BOSTON.COM (Dec. 13, 2010), [http://www.boston.com/news/local/massachusetts/articles/2010/12/13/statistics\\_on\\_hate\\_crimes\\_are\\_sparse/](http://www.boston.com/news/local/massachusetts/articles/2010/12/13/statistics_on_hate_crimes_are_sparse/). There are many resources, including federal funds to improve security of facilities that may be threatened, and other funds allocated for preparedness available to communities that can display a need for protection through statistics. *See* Jack Jenkins & Aaron Shapiro, *Sikhs Argue for ‘The Dignity of Being A Statistic’ At Senate Hearing*, THINKPROGRESS (Sept. 21, 2012), <http://thinkprogress.org/politics/2012/09/21/892871/sikhs-argue-for-the-dignity-of-being-a-statistic-at-senate-hearing/?mobile=nc>.

<sup>82</sup> Indeed, the Hate Crime Statistics Act’s “purpose was to establish a national data collection system on crimes motivated by hate so that federal and local law enforcement authorities could determine whether hate crimes were isolated events or a more pervasive problem, and whether any particular groups were more likely to be targeted than others.” Becker, *supra* note 18, at 250.

leading people to believe that reporting crimes to the police is ineffective.<sup>83</sup> Thus, non-reporting and the failure to adequately document these crimes can effectively silence and further marginalize communities experiencing repeated hate motivated violence.

**b) *Hate Crimes Task Force: NGO and Local Community Collaboration Must be Revitalized***

In 1997, then Attorney General Janet Reno pushed forth a comprehensive Hate Crimes Initiative to be deployed throughout the nation. However, the Initiative went beyond law enforcement and recognized the need to draw “on local people to craft solutions that are tailored to the particular problems of the local community.” Thus, “the centerpiece of the Department's initiative [was] the formation in each U.S. Attorney's District of a working group consisting of federal, state, and local law enforcement, as well as local community leaders and educators, to develop a comprehensive approach to hate crimes.”<sup>84</sup>

Additional mandates also emphasized the “use [of] community outreach to help ensure effective reporting, investigation, prosecution, and, ultimately, prevention of hate crime, as well as to heal wounds, in the community caused by hate crimes” and “to aggressively expand hate crime education and training to include a wide range of programs, including the training of federal, state, and local law enforcement in hate crime enforcement, classroom-based education programs targeted at young people, and others; and finally, *to improve data collection, so that with accurate statistics we can understand the full scope of the problem and effectively deploy our resources to combat it.*”<sup>85</sup>

Tracking of hate crimes requires an effort from all interested parties and local law enforcement and the FBI, should at a minimum, create provisions for integrating community and NGO documentation of hate crimes into the UCR program.

**c) *Patrol Guides Across the Country Should Include Bias-Motivated Incident Procedure***

The Patrol Guide is a procedural book issued to all law enforcement officers. In terms of procedure, the Patrol Guide is the controlling instrument that guides law enforcement conduct. Additionally, the Patrol Guide functions as a study guide for academy examinations; its mastery is essential for promotion, and following procedure helps officers avoid misconduct. Thus, it is a vital tool for ensuring police follow proper procedure when investigating a crime.

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<sup>83</sup> Having directly represented victims of hate crimes, one of the most common complaints of victims is that police reports inaccurately described the attack or failed to record pertinent information regarding bias motivation. Victims also often express a belief that the police will not do anything anyway. *See also* SHIVELY, *supra* note 38, at iii, 59, 82, which notes that after individuals reported hate crimes and observed a lack of action by police, many individuals choose not to report.

<sup>84</sup> U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, MEMORANDUM FOR ALL UNITED STATES ATTORNEYS: IMPLEMENTATION OF THE HATE CRIME INITIATIVE (Dec. 22, 1997), <http://www.justice.gov/ag/readingroom/hatecrimeinit.htm>.

<sup>85</sup> *Id.* (emphasis added).

Law enforcement agencies do not necessarily mandate training and inclusion of thorough guidelines on how to investigate and document bias-motivated incidents.<sup>86</sup> Fortunately, the 2012 NYPD Patrol Guide includes detailed guidelines on how to investigate and document hate crimes.<sup>87</sup> The inclusion of bias-motivated incident guidelines similar to one included in the NYPD Patrol Guide and a model hate crimes policy<sup>88</sup> created by the International Association of Chiefs of Police (IACP) create the proper environment for identification and documentation of hate crimes. Such guidelines should be included in Patrol Guides across the country.

## **B. Failure to Dedicate Adequate Resources to Monitoring Domestic Hate Groups Leaves Minority Communities Susceptible**

In a public meeting at a Gurdwara in Lawrenceville, NJ, Michael Ward, Special Agent in Charge of the Newark division, stated that if Wade Michael Page -- the perpetrator of the heinous attacks in Oak Creek, Wisconsin and a member of the Hammerskin Nation, one of the most violent white supremacist groups in the country -- was Muslim, law enforcement would have questioned and monitored him more, potentially preventing him from executing the deadly attack. The government dedicates a disproportionate amount of resources to tracking potential terroristic plots by Islamic extremists, rather than tracking potential plots based on intelligence that does not stem from profiling.<sup>89</sup>

Instead of taking the threat of domestic hate groups seriously, the government has chosen to ignore the threat.<sup>90</sup> In 2009, Daryl Johnson, a senior analyst in the U.S. Department of Homeland Security (DHS) authored a report, *Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment*, warning of the dangers of violent rightwing extremism in the United States. Following the publication of the Report and the political and media backlash that ensued, Mr. Johnson reported that “DHS made the decision

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<sup>86</sup> ADL, *supra* note 55 (32 of 50 states currently mandate reporting of hate crimes and 37 of 50 states **do not** mandate training for police officers on hate crimes).

<sup>87</sup> If occurrence is a bias-motivated incident, comply with P.G. 207-10, “Bias Motivated Incidents.” See NYPD Patrol Guide, Bias Motivated Incidents, at P.G. 207-10 (2012) (App can be purchased off iTunes).

<sup>88</sup> INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP), INVESTIGATION OF HATE CRIMES: MODEL POLICY [http://www.nychiefs.org/ModelPolicies/MPTC\\_Hate\\_Crimes\\_Model\\_Policy.pdf](http://www.nychiefs.org/ModelPolicies/MPTC_Hate_Crimes_Model_Policy.pdf).

<sup>89</sup> *The Benefits of Hindsight*, THE ECONOMIST (Aug. 18, 2012) (“According to the Extremist Crime Database (ECDB), published by the National Consortium for the Study of Terrorism and Responses to Terrorism, between 1990 and 2010 right-wing extremists carried out 145 murderous attacks, resulting in 348 deaths, 168 of which resulted from the Oklahoma City bombing. During that same time period Muslim extremists committed around 25 attacks, which killed over 3,000 people; but 9/11 accounted for 2,977 of these.”).

<sup>90</sup> Brian Levin, *U.S. Hate and Extremist Groups Hit Record Levels, New Report Says*, HUFFPOST POLITICS (Mar. 8, 2012), [http://www.huffingtonpost.com/brian-levin-jd/hate-groups-splc\\_b\\_1331318.html](http://www.huffingtonpost.com/brian-levin-jd/hate-groups-splc_b_1331318.html).

to cancel all of its domestic-terrorism-related reporting and training for law enforcement,”<sup>91</sup> and that “the Department not only decided to stop all of our work, but they also disbanded the unit, reassigned us to other areas within the office, and then made life increasingly difficult for us.”<sup>92</sup> Johnson's division of eight analysts was reduced to one analyst.<sup>93</sup>

On September 19, 2012, the U.S. Senate Judiciary Committee held a hearing titled, “Hate Crimes & the Threat of Domestic Extremism,” during which Daryl Johnson was one of the prominent experts testifying before the Senate Committee. During his testimony, Johnson identified that “domestic rightwing extremists trumped all other forms of ideologically motivated violence in the U.S. for number of deaths” since September 11, 2001.<sup>94</sup> Additionally, Johnson stated that the government was not using its resources to conduct Behavioral Threat Assessments (BTAs) to identify whether an individual poses a greater risk of acting violently, and thus, warrant greater governmental scrutiny.

By ignoring the rise in domestic extremism the government leaves minority communities susceptible to bias-motivated attacks and further undermines the fragile relationship it has tried to build with the Muslim community Post-9/11.<sup>95</sup> Ultimately, whether it is combating hate crimes or terrorism, law enforcement's ability to protect its citizens rests on the trust and relationships it has built over time with communities. If the federal government doesn't begin to shift its strategy and resources to focusing on domestic extremist groups and protecting minority communities, we are all as a nation left more vulnerable.

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<sup>91</sup> Daryl Johnson, *Daryl Johnson: I Tried to Warn Them*, SALON, [http://www.salon.com/2012/08/17/daryl\\_johnson\\_i\\_tried\\_to\\_warn\\_them/](http://www.salon.com/2012/08/17/daryl_johnson_i_tried_to_warn_them/).

<sup>92</sup> Amy Goodman, *Former DHS Analyst Daryl Johnson on How He Was Silenced for Warning of Far Right Militants in US*, DEMOCRACY NOW!, [http://www.democracynow.org/2012/8/9/former\\_dhs\\_analyst\\_daryl\\_johnson\\_on](http://www.democracynow.org/2012/8/9/former_dhs_analyst_daryl_johnson_on).

<sup>93</sup> Rania Khalek, *DHS's Right-Wing Terror Blind Spot*, SALON, 9 (Aug. 15, 2012), [http://www.salon.com/2012/08/15/dhss\\_right\\_wing\\_terror\\_blind\\_spot/](http://www.salon.com/2012/08/15/dhss_right_wing_terror_blind_spot/) (single analyst was left at DHS to monitor the entire spectrum of non-Islamic domestic extremism); See *Hate Crimes & the Threat of Domestic Extremism: Hearing Before the Senate Judiciary Subcomm. on the Constitution, Civil Rights and Human Rights*, 112th Cong., 8-13 (Sep. 19, 2012) (statement of Daryl Johnson, former Senior Terrorism Analyst at the U.S. Dept. of Homeland Security), *transcript available at* <http://judiciary.senate.gov/pdf/9-19-12JohnsonTestimony.pdf> [hereinafter “Johnson Testimony”].

<sup>94</sup> Johnson Testimony, *supra* note 93, at 2. See also THE ECONOMIST, *supra* note at 89.

<sup>95</sup> Colin Moynihan, *In Bay Area, a Fragile Relationship Between Muslims and the F.B.I.*, NEW YORK TIMES (Feb. 28, 2013).

### C. Government has Taken Steps to Protect Minority Communities from Hate Crimes

The federal government has taken steps to ameliorate bias-motivated crimes. We focus on four areas of tangible improvements.

First, Congress's passage of the 2009 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act marked an important step in protecting the voices of all vulnerable communities by expanding federal hate crimes laws to include, "crimes motivated by a victim's actual or perceived gender, disability, sexual orientation or gender identity."<sup>96</sup>

Second, after years of advocacy, on June 5, 2013 the FBI Advisory Policy Board (APB) changed their long held position and agreed to code Sikhs, Hindus, and Arabs on the Uniform Crime Reporting (UCR) forms.<sup>97</sup> For years, these particularly vulnerable communities, especially Post 9/11, did not have hate crimes against their communities coded in the UCR Form 1-699. Often, the crimes were categorized in catchall categories (i.e Anti-Other Religion), and therefore, masking the level of violence against these communities for over a decade. Recently, this move has prompted the FBI to include other faith based communities to the 1-699 form.<sup>98</sup> FBI outgoing Director, Robert Mueller, recently approved these recommendations, however, the changes do not go into effect until 2015.<sup>99</sup> The most encouraging part of this process was that the highest levels of the executive branch, including Attorney General Eric Holder, recommended the FBI amend its existing policies.

Third, the Department of Justice underwent a review of their law enforcement training protocols specifically for the Muslim, Arab, and Sikh community in 2012. Working directly with civil society, the partnership with the Department of Justice's Community Relations Services (DOJ CRS) resulted in the creation of a new law enforcement cultural competency training materials. ICAAD, and other civil rights organizations, helped develop the training module for law enforcement to interface with the Sikh community.<sup>100</sup> These are significant steps necessary to bridge the trust gap and we look forward to continually being involved as government takes the necessary actions to improve its relationships with minority communities.

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<sup>96</sup> See 18 U.S.C. 249.

<sup>97</sup> CAPAC, *supra* note 25.

<sup>98</sup> Jaweed Kaleem, *FBI to Start Tracking Hate Crimes Against Sikhs, Hindus, and Arabs*, HUFFPOST RELIGION (June 5, 2013), [http://www.huffingtonpost.com/2013/06/05/hate-crimes-sikhs-hindus-arabs-fbi\\_n\\_3392760.html](http://www.huffingtonpost.com/2013/06/05/hate-crimes-sikhs-hindus-arabs-fbi_n_3392760.html).

<sup>99</sup> CAPAC, *supra* note 25.

<sup>100</sup> Press Release, *Deputy Attorney General James M. Cole Speaks at the Community Relations Service Sikh Cultural Competency Training Preview*, DEPARTMENT OF JUSTICE (DOJ) (Sept. 19, 2012), <http://www.justice.gov/iso/opa/dag/speeches/2012/dag-speech-1209191.html>.

And finally, the DOJ has been extremely vigilant in pursuing hate crimes that fall within its jurisdiction. “In the past four fiscal years (2009-2012), the Department has prosecuted 29 percent more hate crime cases than were prosecuted in the previous three fiscal years (2005-2008), and charged 78 percent more hate crime defendants.”<sup>101</sup>

#### **D. Conclusion**

On December 19, 2008, LatinoJustice filed a petition with the Inter-American Commission for Human Rights (IACHR) alleging the U.S. government's failure to protect. The opening paragraph of the petition states:

The United States is failing to meet its obligation to ensure the security of Latinos who are residing in the United States. Latinos are being targeted, attacked, brutalized and murdered because of their race and ethnicity, and increasingly because of their perceived immigration status in incidents with rising frequency and severity throughout the United States. The United States is doing nothing to prevent these attacks or to protect Latinos from these incidents of hate.<sup>102</sup>

Although this statement focuses on the Latino community, it reflects the reality for all of the above mentioned minority groups in this Report. Although the U.S. federal government continues to take some steps in ameliorating the conditions that perpetuate discrimination for vulnerable communities, it often falls short and the ultimate consequence is brutal hate based attacks and murders throughout the nation. As a society, the reporting gap that currently exists is unconscionable. This disparity leaves policy makers and other interested parties paralyzed to act because the true scope of the problem and the patterns of bias-motivated violence remain permanently walled off from consideration.

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<sup>101</sup> *Accomplishments Under the Leadership of Attorney General Eric Holder*, DEPARTMENT OF JUSTICE (DOJ) (April 2013), <http://www.justice.gov/accomplishments/accomplishments.pdf>.

<sup>102</sup> LATINOJUSTICE, PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF LATINOS BY THE UNITED STATES OF AMERICA, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), [http://latinojustice.org/civil\\_rights/PETITION%20ALLEGING%20VIOLATIONS%20OF%20THE%20HUMAN%20RIGHTS%20OF%20LATINOS%20BY%20THE%20UNITED%20STATES%20OF%20AMERICA.pdf](http://latinojustice.org/civil_rights/PETITION%20ALLEGING%20VIOLATIONS%20OF%20THE%20HUMAN%20RIGHTS%20OF%20LATINOS%20BY%20THE%20UNITED%20STATES%20OF%20AMERICA.pdf).

## **II. RECOMMENDED QUESTIONS THE HUMAN RIGHTS COMMITTEE SHOULD ASK THE UNITED STATES**

- 1) In light of the federal government's own statistics revealing a failure to adequately document hate crimes in the U.S., what specific measure(s) is the federal government willing to take to ensure better data collection, and consequently, better law enforcement interventions to protect vulnerable communities?
- 2) In light of the recent decision to add Arabs, Hindus, and Sikhs to the UCR Form 1-699, does the government have the ability to disaggregate data Post 9/11 and identify how many hate crimes have been perpetrated against each community? If so, will they undertake a process of disaggregation and provide that data to civil society, which has been handcuffed to pursue specific policy recommendations to protect these communities because they have been denied this crucial data for over a decade?
- 3) Will the federal government be more aggressive in allocating funding to the states for training, centralizing their data collections systems, and will the federal government make funding to states contingent on mandatory reporting of hate crimes in all jurisdictions above a certain population threshold (i.e over 25,000) within the state?
- 4) Has the U.S. government begun to shift resources back to monitoring domestic extremist hate groups? Has the division within DHS that monitored domestic non-Islamic extremists (in 2009) been restored and how many analysts are working to prevent violence perpetrated by hate groups? If not, have those resources been shifted to other federal agencies, and if so, what department of the federal government should civil society engage with to ensure the protection of particularly vulnerable communities?

## **III. RECOMMENDATIONS TO THE UNITED STATES**

### **The U.S. federal government should:**

- Mandate reporting of hate crimes at the state level, so that local jurisdictions are compelled to accurately reflect the number of hate crimes in their jurisdiction;
- Require law enforcement agencies to provide both quarterly and full year data on hate crimes, rather than having the FBI apply estimation analysis UCR data;
- Mandate law enforcement training for all new recruits regarding investigating and reporting hate crimes. Follow up training should be conducted periodically;
- Allocate sufficient resources to states to provide comprehensive training for officers to identify bias indicators in crime and incorporate hate crimes investigation procedures in *Patrol Guides* used by law enforcement;

- “Support research assessing the prevalence, incidence, predictors, and outcomes of hate crimes, as well as the psychological impact of hate crimes on victims, their families, and the community.”<sup>103</sup>
- Encourage states to include voluntarily provided victim demographics including age, gender, race, ethnicity, sexual orientation, disability, and religion in hate crimes data collection efforts. Victims, should at a minimum, have the dignity to be counted and not excluded because the perpetrator(s) perceived target group is different than the victim's group;
- Revitalize collaboration between Hate Crimes Task Forces and civil society in every major city across the nation;
- Have the FBI and local law enforcement bridge the hate crimes documentation gap by working with a broad coalition of stakeholders, including civil society, to identify innovative solutions for more robust data collection; recognizing that combating hate crimes must be a shared burden;
- Strengthen DHS and FBI monitoring of non-Islamic extremist groups and keep vulnerable communities and civil society informed of potential threats;
- Use Behavioral Threat Assessments (BTAs) to identify individuals or groups who display supremacist ideology to prevent bias-motivated crimes against vulnerable communities;
- Ensure robust enforcement by having the DOJ file appropriate cases under HCPA; vigorously defend the constitutionality of the Act; and ensure continued education, outreach, and training to federal, state, and local law enforcement officials on HCPA and its requirements;
- Establish an interagency taskforce on hate crimes and domestic extremism, similar to President Clinton’s creation of a taskforce following the church arsons of the 1990s;
- Formalize a DOJ initiative to combat Post-9/11 discrimination by designating a Special Counsel with oversight over Post-9/11 discrimination that arise in the context of housing, employment, building of houses of worship, hate crimes, surveillance, and profiling;
- Pass the Congressional End Racial Profiling Act which prohibits profiling based on race, religion, ethnicity, or national origin by federal, state and local law enforcement; establishes requirements for law enforcement to collect data, provide anti-profiling trainings, and develop a complaint mechanism for affected individuals; allow DOJ to withhold grants to entities that fail to comply with the law and provide funding to those seeking to eliminate the practice; and allow affected individuals to seek redress in court.

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<sup>103</sup> AMERICAN PSYCHOLOGICAL ASSOCIATION, *supra* note 16, at 4.