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Stopping AAPI Hate: COVID-19 Related Racism and Discrimination Against Asian Americans and Pacific Islanders, Its Origins, Our History and Avenues for Redress

Manjusha P. Kulkarni, Esq.

ABSTRACT

Between March 2020 and March 2022, Stop AAPI Hate received over eleven thousand reports of anti-Asian hate and discrimination. Analysis of the data indicates that 67% of incidents involve harassment, 17% involve physical assault and 12% involve civil rights violations, including refusal of service, vandalism and discrimination in housing and the workplace. Impacts on community members have been significant. Many have turned to criminal law enforcement as the answer. Given that a significant majority of incidents reported to Stop AAPI Hate are not hate crimes, more appropriate means of addressing the harm include prevention and non-carceral approaches, such as civil rights enforcement, community safety, and education equity. Toward that end, Stop AAPI Hate focused its efforts in California on the No Place for Hate CA Campaign that resulted in the enactment of two bills, SB 1161 and AB 2448, to address harassment in public transit and discrimination in retail. Stopping anti-Asian hate and preventing it from happening in the future can only be achieved through a comprehensive framework which includes providing redress and resources to victims through civil rights enforcement, ensuring long term community safety through strong wages and safe, affordable housing, and guaranteeing education equity by teaching ethnic studies in K-12 schools.

ABOUT THE AUTHOR

Manjusha P. Kulkarni (Manju) is Executive Director of AAPI Equity Alliance, which serves and represents the 1.6 million Asian Americans and Pacific Islanders in Los Angeles County. In March 2020, Manju co-founded Stop AAPI Hate, the nation's leading aggregator of COVID-19-related hate incidents against AAPIs. Alongside fellow Stop AAPI Hate co-founders Cynthia Choi and Russell Jeung, Manju has been recognized as an honoree of

the prestigious TIME100 Most Influential People and Bloomberg 50 lists and received the 2021 Webby Social Movement of the Year award. More recently, she was awarded a spot on the 2022 Forbes 50 Over 50 list for her leadership in advancing the Stop AAPI Hate movement. Manju’s work has been featured in the New York Times, and on NPR and CNN, as well as in numerous local and ethnic media outlets. As part of her advocacy work on behalf of AAPI communities, Manju has shared her expertise with countless individuals and entities including the Aspen Institute, the World Bank, and the United Nations.

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INTRODUCTION

I was waiting in line at an [home improvement store]. A man cut in front of me, so I mentioned that there’s a line and pointed to the line of people behind me. He blew up and started verbally harassing me by yelling “stupid f—king Chink. Go back to the country you can from. Do you f—king speak English” in his English (that was obviously not his first language). (Los Angeles, CA).

I was standing in front of my workplace when a couple walked by, and the man started yelling “Ch-ng!” I asked him to stop, and we began arguing. His female companion stood to my right and also began yelling, “Ch-ng” at me then sprayed pepper spray into my eyes. (New York, NY).

I walked into a car rental where me and my friend were refused service to even get a quote to rent a car for a few days because we were Asian. The guy said, “we don’t want your COVID on our cars,” and asked us to leave. Then he followed us outside and made sure we didn’t touch any of the cars. (Los Angeles, CA).

A colleague hit my face with her cellphone after seeing that I was wearing a face mask. She said, “all Chinese are sick.” I was in shock and left with a bleeding lip. (Chicago, IL).

I. COVID-19-RELATED HATE AGAINST ASIAN AMERICANS AND PACIFIC ISLANDERS AND THE ORIGINS OF STOP AAPI HATE

On February 4, 2020, a twelve-year-old child was physically attacked and verbally assaulted on a schoolyard in Los Angeles.¹ Another middle schooler approached him, accused him of being a COVID-19 carrier and told him to go back to China. When the child responded that he was not Chinese, he was punched in the face and head twenty times. Within a week of the incident on the schoolyard, AAPI Equity Alliance, then known as Asian Pacific Policy and Planning Council (A3PCON), held a press conference with local officials to make clear that such attacks would not be tolerated.² Joining me were Los Angeles County Supervisor Hilda Solis (2nd District), Superintendent of Los Angeles County Office of Education Debra Duardo, Director of LA County's Commission on Human Relations Robin Toma and LA County Department of Public Health Director of Communicable Disease Control and Prevention Sharon Balter, as well as Herb Hatanaka, Executive Director of Special Service for Groups, and Peter Ng, Executive Director of Chinatown Service Center.³

In addition to hosting this press conference, which received both local as well as national news coverage, AAPI Equity Alliance aided the family in working with Los Angeles Unified School District to meet their needs. AAPI Equity Alliance also created a rudimentary reporting form using Google Forms and distributed it to executive directors of its over forty member organizations.⁴ In ten days' time, twelve individuals reported incidents of anti-Asian hate that took place in Los Angeles County.⁵ These primarily involved acts of verbal harassment and accusations that Asian Americans were spreading COVID-19.⁶

Meanwhile, Chinese for Affirmative Action (CAA) fielded requests from community members and local business owners who were growing

1. See Christina Capatides, *Bullies Attack Asian American Teen at School, Accusing Him of Having Coronavirus*, CBS NEWS (Feb. 14, 2020, 1:53 PM), <https://www.cbsnews.com/news/coronavirus-bullies-attack-asian-teen-los-angeles-accusing-him-of-having-coronavirus> [<https://perma.cc/ZJ29-EF2Q>]; Carla Herreria Russo, *L.A. Officials Say Asian Teen Was Assaulted, Bullied Over Coronavirus Fears*, HUFFPOST, https://www.huffpost.com/entry/la-teen-student-assaulted-bullied-coronavirus_n_5e4749f4c5b64ba2974faf29 [<https://perma.cc/88T8-TXFX>] (Feb 20, 2020) (clarifying the teen was not sixteen, and that his age was being kept private during the aftermath of the attack).

2. Press Release, A3PCON, LA Leaders Stand with Asian American Pacific Islander Angelenos Against Racism Related to Coronavirus (Feb. 13, 2020), <http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/press-release-coronavirus-backlash-2.13.20.pdf> [<https://perma.cc/S2NJ-ATRR>].

3. Los Angeles County Public Health, *Public Health Statement About the Facts of Coronavirus*, YOUTUBE (Feb 13, 2020), <https://youtu.be/aMGTKxC8qys?t=25> [<https://perma.cc/34AE-ELR9>].

4. On file with Author.

5. On file with Author.

6. On file with Author.

anxious about a recent decline in business.⁷ Russell Jeung, Professor of Sociology of the Asian American Studies Center at San Francisco State University (SFSU), was compiling news reports from around the globe that included accounts of anti-Asian hate.⁸

Within a few days of the press conference, I was contacted by Russell. He and Cynthia Choi, Co-Executive Director of CAA, sought to ask California Attorney General Xavier Becerra if the California Department of Justice would investigate the growing number of incidents experienced by Asian Americans and Pacific Islanders. The letter, with ninety signatories, including several AAPI Equity Alliance member organizations, was sent on February 26, 2020.⁹ Within a few days, Becerra's office responded by saying that the Attorney General's office did not investigate such cases itself, but instead relied on local law enforcement to do so.¹⁰

In February and early March 2020, additional incidents of anti-Asian hate began to surface in mainstream media and social media outlets. While awaiting the decision, Russell, Cynthia and I decided that action needed to be taken. Initially, we determined that a public education campaign would be appropriate. Soon, we realized that what was needed was a reporting form to gather information about community members' experiences, especially after the CA Attorney General indicated that his office would not collect the data. We began our work to create an online reporting site, modeled after the one by Southern Poverty Law Center.¹¹

On March 19, 2020, Stop AAPI Hate, a collaborative of AAPI Equity Alliance, CAA and SFSU,¹² went live as a page on A3PCON's website. Within one week, over six hundred individuals completed the form, sharing their experience involving anti-Asian hate.¹³ Russell, Cynthia, and I were surprised at the extremely high number of reported experiences given COVID's only recent arrival on America's shores. On top of that, little to no publicity was

7. On file with Author.

8. On file with Author.

9. On file with Author.

10. On file with Author.

11. *Report Hate*, S. POVERTY L. CTR., <https://www.splcenter.org/reporhate> [<https://perma.cc/NZP8-DXD4>].

12. AAPI Equity Alliance is a coalition of more than forty community-based organizations that serve and represent the 1.6 million Asian American and Pacific Islanders in Los Angeles County, with a particular focus on low-income, immigrant, refugee, and other vulnerable populations. Chinese for Affirmative Action was founded in 1969 to protect the civil and political rights of Chinese Americans and to advance multiracial democracy in the United States. CAA advocates for systemic change that protects immigrant rights, promotes language diversity and remedies racial and social injustice. San Francisco State University Asian American Studies Department launched in 1968 to provide interdisciplinary approaches in teaching, community service and research to address the forces that shape the lives of Asian Americans.

13. *Week 1 Report*, STOP AAPI HATE (Mar. 25, 2020), <https://stopaapihate.org/week-1-report> [<https://perma.cc/TY37-QNHN>].

done to promote the site, but somehow AAPI community members found it and were willing to share their stories.

We realized right away that we needed and wanted to make the form available in multiple Asian and Pacific Islander languages. Cynthia was able to have it translated into Simplified and Traditional Chinese, as well as Vietnamese given the linguistic abilities of CAA's staff. I reached out to executive directors and senior staff of our member organizations, most notably Erich Nakano and Grant Sunoo of Little Tokyo Service Center, Chancee Martorell of Thai Community Development Center, Shikha Bhatnagar of South Asian Network, Mariko Kahn of Pacific Asian Counseling Services, Steve Kang of Koreatown Youth and Community Center to obtain translation in Japanese, Thai, Hindi, Punjabi, Khmer and Korean. Further, we received Tagalog and Hmong translation from a few volunteers in the community.

Within one month, Stop AAPI Hate received 1,497 incident reports.¹⁴ These reports came from 45 states.¹⁵ By May 2020, the issue was beginning to draw significant media attention as the number of incidents continued to climb.¹⁶ The escalation in hate incidents in some ways tracked the increase in cases of COVID-19 in the U.S.¹⁷ Following the sharp rise in COVID contractions and deaths, the virus was beginning to have a profound impact. In New York and Los Angeles, the two largest metropolitan areas in the country, Mayors Bill DeBlasio and Eric Garcetti ordered residents to shelter-in-place in mid-March.¹⁸ Other major cities followed in quick succession and by the end of April, most Americans no longer left their homes for school or work

14. *1-Month Report*, STOP AAPI HATE (Apr. 23, 2020), <https://stopaapihate.org/1-month-report> [<https://perma.cc/WSD4-T6SY>].

15. *Id.*

16. See, e.g., Craig Timberg & Allyson Chiu, *As the Coronavirus Spreads, So Does Online Racism Targeting Asians*, *New Research Shows*, WASH. POST (Apr. 8, 2020), <https://www.washingtonpost.com/technology/2020/04/08/coronavirus-spreads-so-does-online-racism-targeting-asians-new-research-shows> [<https://perma.cc/9UA3-HBWC>]; Matt Loffman, *Asian Americans Describe 'Gut Punch' of Racist Attacks During Coronavirus Pandemic*, PBS NEWSHOUR (Apr. 7, 2020), <https://www.pbs.org/newshour/nation/asian-americans-describe-gut-punch-of-racist-attacks-during-coronavirus-pandemic> [<https://perma.cc/C2UY-Y4QZ>]; Christine Ro, *Coronavirus: Why Some Racial Groups Are More Vulnerable*, BBC: FUTURE (Apr. 20, 2020), <https://www.bbc.com/future/article/20200420-coronavirus-why-some-racial-groups-are-more-vulnerable> [<https://perma.cc/GHG4-J2Z4>].

17. See Sungil Han, Jordan R. Riddell, & Alex R. Piquero, *Anti-Asian American Hate Crimes Spike During the Early Stages of the COVID-19 Pandemic*, J. INTERPERSONAL VIOLENCE, Jun. 2022, at 1, 13.

18. See Press Release, Mayor Eric Garcetti, City of Los Angeles, Mayor Garcetti: Angelenos Are 'Safer at Home' New Emergency Order Stops Non-Essential Activities Outside of Residences in Response to Covid-19 (Mar. 19, 2020), <https://www.lamayor.org/mayor-garcetti-angelenos-are-safer-home-new-emergency-order-stops-non-essential-activities-outside> [<https://perma.cc/MM2H-Q39Q>]; *Mayor de Blasio Issues New Guidance to New Yorkers*, OFF. WEBSITE OF N.Y.C. (Mar. 20, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/173-20/mayor-de-blasio-issues-new-guidance-new-yorkers> [<https://perma.cc/2UK2-FYXD>].

and limited outside activities to infrequent trips to the grocery store, pharmacy, or big box retail.¹⁹

As deaths from COVID-19 grew, racist rhetoric around COVID-19 also rose. The climate felt similar to the early 2000s and the rise of racial animosity in response to 9/11 and the SARS outbreak. President Trump began using the term “Chinese virus” on March 16, 2020.²⁰ Within days, he began using additional terms, such as “Wuhan virus” and “Kung Flu.”²¹ Remarks tying the virus to China and by implication individuals of Chinese origin were not limited to the President.²² Secretary of State Mike Pompeo along with members of Congress, including House Minority Leader Kevin McCarthy and U.S. Representative Paul Gosar, made similar comments.²³ Additionally, a Republican Party memo connecting the virus explicitly to China and explaining how GOP candidates could use the language in their campaigns was leaked.²⁴

On May 25, 2020, George Floyd was killed by Milwaukee Officer Derek Chauvin.²⁵ The video of the killing, taken by Darnella Frazier, showed in graphic detail the 8:43 minutes Chauvin’s knee was placed on Floyd’s neck, all while Floyd plead for his life.²⁶ Within a few weeks, mass protests, across 140 cities, were held to demonstrate anger over not only his death, but over numerous acts of police violence against African American men.²⁷

19. See Sarah Mervosh, Denise Lu & Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES (Apr. 20, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> [<https://perma.cc/MXB7-WPFY>].

20. Kimmy Yam, *Trump Tweets About Coronavirus Using Term Chinese Virus*, NBC NEWS, <https://www.nbcnews.com/news/asian-america/trump-tweets-about-coronavirus-using-term-chinese-virus-n1161161> [<https://perma.cc/KYE4-73BC>] (Mar. 17, 2020, 2:56 PM).

21. Katie Rogers, Lara Jakes & Ana Swanson, *Trump Defends Using ‘Chinese Virus’ Label, Ignoring Growing Criticism*, N.Y. TIMES (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/us/politics/china-virus.html> [<https://perma.cc/T8GN-6QJ9>].

22. MELISSA BORJA & JACOB GIBSON, THE VIRULENT HATE PROJECT, U. MICH., ANTI-ASIAN RACISM IN 2020, at 9–12 (2021), <https://virulenthate.org/wp-content/uploads/2021/05/Virulent-Hate-Anti-Asian-Racism-In-2020-5.1721.pdf> [<https://perma.cc/W4KF-3DEJ>].

23. See Deb Reichmann, *Trump Officials Emphasize that Coronavirus ‘Made in China’*, AP NEWS (Mar. 12, 2020), <https://apnews.com/article/united-nations-donald-trump-ap-top-news-robert-obrien-virus-outbreak-5866bf32d5723402d2df32baa844fff3> [<https://perma.cc/C4U4-N34M>].

24. See Alex Isenstadt, *GOP Memo Urges Anti-China Assault over Coronavirus*, POLITICO (Apr. 24, 2020, 4:41 PM), <https://www.politico.com/news/2020/04/24/gop-memo-anti-china-coronavirus-207244> [<https://perma.cc/XU2W-QX2G>].

25. See Evan Hill, et al., *How George Floyd Was Killed in Police Custody*, NY TIMES, <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [<https://perma.cc/65DD-7ZX6>] (Jan. 24, 2022).

26. See *id.*; Rachel Triesman, *Darnella Frazier, Teen Who Filmed Floyd’s Murder, Praised for Making Verdict Possible*, NPR (Apr. 21, 2021, 11:15 AM), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/21/989480867/darnella-frazier-teen-who-filmed-floyds-murder-praised-for-making-verdict-possib> [<https://perma.cc/Z5QC-YARF>].

27. See Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, NY TIMES (Nov. 5, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [<https://perma.cc/>].

On January 26, 2021, six days after President Biden was sworn in as the United States' 46th president, he signed an executive memo denouncing hate and discrimination against Asian Americans and Pacific Islanders.²⁸ The memorandum also issued guidance to the U.S. Department of Justice on how to better collect data and provide assistance in the reporting of anti-Asian hate incidents.²⁹

Beginning in 2021, several high-profile attacks against Asian Americans began to take place. Notably, on January 28, 2021, Thai American, Vicha Ratanapakdee, was physically attacked while walking in his Oakland neighborhood of Anza Vista.³⁰ Two days later, the 84-year-old died of the injuries.³¹ On March 16, 2021, six Asian women were among the eight shot to death at three Atlanta area salons.³² The following day, Captain Jay Baker of the Cherokee County Sheriff's Office said at the press conference that the alleged perpetrator, Richard Long, told him that he, Richard, was not racist, but simply having "a really bad day."³³ Baker made additional remarks that seemed to exonerate the perpetrator.³⁴ Following the attack, FBI Director Christopher Wray indicated that the FBI did not believe the incident to be a hate crime.³⁵

On April 15, 2021, four Sikh Americans, employees of the FedEx facility in Indianapolis, Indiana, were killed by their former co-worker, Brandon Scott Hole.³⁶ Immediately, law enforcement officials deemed the incident not to be a hate crime.³⁷

cc/6F5H-BXRS].

28. See *Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States*, 86 Fed. Reg. 7485 (Jan. 29, 2021).

29. See *id.*

30. See Thomas Fuller, *He Came From Thailand to Care For Family. Then Came a Brutal Attack*, N.Y. TIMES (Feb. 27, 2021), <https://www.nytimes.com/2021/02/27/us/asian-american-hate-crimes.html> [<https://perma.cc/D5ZY-4BKH>].

31. See *id.*

32. See Hannah Knowles, et al., *Eight Killed, Including Six Asian Women, In Atlanta-Area Spa Shootings; Suspect Arrested After Manhunt*, WASH. POST (Mar. 17, 2021, 10:47 AM), <https://www.washingtonpost.com/nation/2021/03/16/atlanta-spa-shootings> [<https://perma.cc/8H2S-TFUR>].

33. See Meryl Kornfield & Hannah Knowles, *Captain Who Said Spa Shootings Suspect Had 'Bad Day' No Longer a Spokesman on Case, Official Says*, WASH. POST (Mar. 18, 2021, 8:33 PM), <https://www.washingtonpost.com/nation/2021/03/17/jay-baker-bad-day> [<https://perma.cc/E9FN-HZDG>].

34. See *id.*

35. See Carrie Johnson, *'We're Going to Keep Digging,' FBI Director Wray Says of Capitol Siege*, NPR (Mar. 18, 2021, 5:01 PM), <https://www.npr.org/2021/03/18/978193998/were-going-to-keep-digging-fbi-director-wray-says-of-capitol-siege> [<https://perma.cc/2F4K-Q9FX>].

36. See *Indianapolis FedEx Shooter Who Killed 4 Sikhs Was Not Racially Motivated, Police Say*, NPR (July 28, 2021 5:59 PM), <https://www.npr.org/2021/07/28/1021935687/indianapolis-fedex-shooting-sikhs-not-racially-motivated-police-say> [<https://perma.cc/YYB9-HEGM>].

37. See *id.*

In early 2022, two young Asian American women were killed in New York City. On January 15, Michelle Alyssa Go, age forty, was pushed in front of a subway car in Manhattan.³⁸ Just a month later, on February 13, Christina Yuna Lee was stabbed over 40 times by a man who followed her into her sixth-floor walkup.³⁹ While investigations are ongoing, individuals in the AAPI community, especially women, continue to experience fear and anxiety in going through their days.⁴⁰

II. STOP AAPI HATE DATA ANALYSIS

From analysis of the 11,467 incidents, the following trends have emerged: 67% of incidents involve harassment, 17% involve physical assault and 12% involve civil rights violations, including refusal of service, vandalism and discrimination in housing and the workplace.⁴¹ These categories are not mutually exclusive as reporters of incidents are allowed to select multiple categories.⁴² As verbal harassment, civil rights violations and shunning do not constitute federal or state crimes, it is clear that the vast majority of incidents reported to Stop AAPI Hate are not crimes and, therefore, not hate crimes.

Places open to the public make up a significant portion of the venues where these incidents take place.⁴³ Of all incidents, 40% took place on public streets and in public parks.⁴⁴ This is followed by businesses, including grocery stores, pharmacies and retail, where 27% of incidents have occurred.⁴⁵ These figures give credence to the anxiety felt by AAPIs that purchasing food, refilling prescriptions, or simply going on a walk might leave them vulnerable to being attacked.⁴⁶

38. See Troy Closson & Andy Newman, *Woman Dies After Being Pushed onto Subway Tracks in Times Square*, N.Y. TIMES, <https://www.nytimes.com/2022/01/15/nyregion/woman-pushed-on-train-death.html> [<https://perma.cc/MWU4-PBM6>] (Feb. 11, 2022).

39. See Precious Fondren & Ashley Southall, *Woman Followed and Fatally Stabbed in Her Chinatown Apartment*, NY TIMES (Feb. 13, 2022), <https://www.nytimes.com/2022/02/13/nyregion/murder-chinatown-nyc.html> [<https://perma.cc/K5D8-ZEXP>].

40. See, e.g., Jiyang Fan, *Asian American Women Fight Back*, NEW YORKER (Mar. 25, 2022), <https://www.newyorker.com/culture/photo-booth/asian-american-women-fight-back> [<https://perma.cc/KN2T-X2XC>] (collection of interviews of Asian American women in New York's Chinatown in March 2022).

41. AGGIE J. YELLOW HORSE, THERESA CHEN, STOP AAPI HATE, TWO YEARS AND THOUSANDS OF VOICES: NATIONAL REPORT 3–4 (2022), <https://stopaaphate.org/wp-content/uploads/2022/07/Stop-AAPI-Hate-Year-2-Report.pdf> [hereinafter National Report Through Mar. 2022].

42. *Id.* at 4, 10.

43. *Id.* at 4, 11.

44. *Id.*

45. *Id.*

46. See *id.* at 6; see also Neil G. Ruiz, Khadijah Edwards & Mark Hugo Lopez, *One-Third of Asian Americans Fear Threats, Physical Attacks and Most Say Violence Against Them is Rising*, PEW RSCH. CTR. (Apr. 21, 2021), <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising> [<https://perma.cc/K98J-ERWN>].

Stop AAPI Hate data indicates that vulnerable populations, including women, youth, and seniors, have reported experiencing anti-Asian hate incidents at significant rates.⁴⁷ Specifically, women have reported 60% of the incidents.⁴⁸ Considering the intersectionality of race and gender, our data reinforces the notion that AAPI women face racism on top of sexism in their daily lives.

Stop AAPI Hate data indicates a possible correlation between the rhetoric of politicians and elected officials and the rise of hate incidents. Since March 19, 2020, Stop AAPI Hate has recorded 2,255 incidents with language that scapegoats Asians and Asian Americans—wrongfully blaming them for COVID-19, espionage on behalf of the Chinese Communist Party, or economic insecurity.⁴⁹ These incidents represent one in five (20%) of the 11,467 hate incidents targeting Asian Americans and Pacific Islanders (AAPIs) submitted to our reporting system.⁵⁰ Between March 19 and August 5, 2020, over thirty percent of the incidents included a perpetrator using anti-Chinese language similar to President Trump’s, like “Wuhan virus,” “Chinese Virus,” and “Kung Flu.”⁵¹ The terms employed by the President racialized the disease so that it was not simply a biological phenomenon, but one that was ethnically based, and served to stigmatize Chinese Americans and depict them as disease carriers. In addition to the scapegoating of China and racist characterizations of the Chinese, the rhetoric included in the incidents involved virulent animosity, anti-immigrant nativism, or racial slurs.⁵²

While the 11,467 incidents reported to Stop AAPI Hate represents a significant number, it appears to be the tip of the iceberg in terms of prevalence.⁵³ In April 2021, AAPI Data with SurveyMonkey found that 12% of Asian Americans and 10% of Pacific Islanders had experienced hate crimes or incidents in the past year.⁵⁴ Pew Research Center in April 2021 reported that 45% of AAPIs had experienced at least one of the five incidents: fear that someone might threaten or physically attack them, people acting as if

47. National Report Through Mar. 2022, *supra* note 41, At 14.

48. *Id.*

49. THERESA CHEN, STOP AAPI HATE, THE BLAME GAME: HOW POLITICAL RHETORIC INFLAMES ANTI-ASIAN SCAPEGOATING 3 (2022), <https://stopaapihate.org/wp-content/uploads/2022/10/Stop-AAPI-Hate-Scapegoating-Report.pdf> [https://perma.cc/37PG-DC3P].

50. *Id.*

51. RUSSELL JEUNG, TARA POPOVIC, RICHARD LIM & NELSON LIN, STOP AAPI HATE, ANTI-CHINESE RHETORIC EMPLOYED BY PERPETRATORS OF ANTI-ASIAN HATE 1 (2020), <https://stopaapihate-production.mystagingwebsite.com/wp-content/uploads/2021/04/Stop-AAPI-Hate-Report-Anti-China-201011.pdf> [https://perma.cc/PNK9-GX79]; Rogers, Jakes & Swanson, *supra* note 21.

52. JEUNG, POPOVIC, LIM & LIN, STOP AAPI HATE, ANTI-CHINESE RHETORIC EMPLOYED BY PERPETRATORS OF ANTI-ASIAN HATE, *supra* note 51, at 1–2.

53. Karthick Ramakrishnan, Janelle Wong, Jennifer Lee, Sara Sadhwani & Sunny Shao, *Tip of the Iceberg: Estimates of AAPI Hate Incidents Far More Extensive than Reported*, STOP AAPI HATE: DATA BITS (Mar. 30, 2021), <http://aapidata.com/blog/tip-iceberg-march2021-survey> [https://perma.cc/B4QT-BXPE].

54. *Id.*

they were uncomfortable around them, being subject to racial slurs or jokes, someone making a remark that they should go back to their home country, and someone making a remark that they are to blame for the coronavirus outbreak since the pandemic began.⁵⁵ Stop AAPI Hate, in a survey done by the Edelman Data & Intelligence, estimates that nearly one in five AAPIs had faced discrimination.⁵⁶ In March 2022, National Asian Pacific American Women's Forum (NAPAFW) released its survey showing that 74% of Asian American and Pacific Islander women experienced racism and discrimination over the past year.⁵⁷ Additionally, according to the 2021 Asian American Bullying Survey Report, 80% of Asian American teens have experienced bullying in-person or online.⁵⁸ Of those, 40% of survey respondents experienced bullying both in-person and online and 70% of respondents reported experiencing or witnessing an increase in cyberbullying during the pandemic.⁵⁹

III. IMPACT OF HATE ON AAPIs

COVID-19 and the accompanying racism over the past three years has produced a significant impact on Asian Americans and their mental health. In surveying individuals who reported to Stop AAPI Hate, researchers found that one in five Asian Americans who experienced racism displayed racial trauma, as defined as the psychological or emotional harm caused by racism, with characteristics similar to post-traumatic stress disorder (PTSD).⁶⁰ Responses to racism include, but are not limited to depression, intrusive thoughts, anger, hypervigilance, decreased self-esteem, avoidance as well as somatic symptoms and physiological reactivity.⁶¹ Furthermore, 71.7% of these individuals claimed that anti-Asian discrimination was their greatest source of stress.⁶² And 28% also stated that a reduction in symptoms of racial trauma after simply reporting to Stop AAPI Hate.⁶³

55. See Ruiz, Edwards & Lopez, *supra* note 46.

56. See AGGIE J. YELLOW HORSE, RUSSEL JEUNG & RONAE MARIANO, STOP AAPI HATE, STOP AAPI HATE NATIONAL REPORT 1 (2021) <https://stopaapihate.org/wp-content/uploads/2021/11/Nov-2021-Stop-AAPI-Hate-National-Report-2021-11-11.docx.pdf> [<https://perma.cc/454T-8RD3>] [hereinafter National Report Through Sept. 2021].

57. Drishti Pillai & Alyssa Lindsey, *The State of Safety for Asian American, Native Hawaiian, and Pacific Islander Women*, NAT'L ASIAN PAC. AM. WOMEN'S F. (Mar. 2022), <https://www.napawf.org/our-work/march-2022/state-of-safety> [<https://perma.cc/MJ9S-UNH2>].

58. ACT TO CHANGE, ADMERASIA & NEXTSHARK, 2021 ASIAN AMERICAN BULLYING SURVEY REPORT (2021), https://acttochange.org/wp-content/uploads/2021/09/20210506-Asian-American-Bullying-Report-v5_A.pptx.pdf [<https://perma.cc/32WS-ZJLU>].

59. *Id.*

60. ANNE SAW, AGGIE J. YELLOW HORSE & RUSSELL JEUNG, STOP AAPI HATE, STOP AAPI HATE MENTAL HEALTH REPORT 1, May (2021), available at <https://stopaapihate.org/wp-content/uploads/2021/05/Stop-AAPI-Hate-Mental-Health-Report-210527.pdf> [<https://perma.cc/4TX6-FQ9X>].

61. *Id.* at 3.

62. *Id.* at 4.

63. *Id.* at 3.

IV. HISTORY OF ANTI-ASIAN HATE IN AMERICA

Hate aimed at Asian Americans and Pacific Islanders is nothing new, with notable attacks against Chinese and Indian communities beginning as early as the late nineteenth century and early 20th century. In 1871, 500 white and Hispanic men robbed, beat, lynched and murdered twenty Chinese men in the Chinatown neighborhood in Los Angeles;⁶⁴ similar killings of Chinese Americans happened in other cities, including Denver.⁶⁵ In 1887, 34 Chinese men were killed in what became known as the Snake River Massacre in Oregon.⁶⁶ In 1907, 600 white men in Bellingham, Washington severely beat and drove out Indian American men working at the local lumber mill.⁶⁷

Seventy-five years later, Vincent Chin was brutally killed in what is perhaps the most well-known act of anti-Asian hate. The evening before his wedding, on June 19, 1982, Chin was severely beaten with a baseball bat by two white automotive workers, who mistook Chin for Japanese American and blamed their unemployment on the success of Japanese automakers in the United States.⁶⁸ Chin died of his injuries four days later.⁶⁹ The judge sentenced Robert Ebens and Michael Nitz to three years' probation and a \$3,000 fine, with no jail time.⁷⁰ Outraged by the inadequate penalty for the homicide, Asian Americans across the country protested and inspired an Asian American movement.⁷¹

In less than two decades after Chin's death, three South Asian Americans—one Sikh, one Muslim, and one Hindu—were killed in acts of hate following 9/11.⁷² The first was Balbir Singh Sodhi, a forty-nine-year-old Sikh man who was shot on September 15 while planting flowers at his gas

64. See Shelby Grad, *The Racist Massacre That Killed 10% of L.A.'s Chinese Population and Brought Shame to the City*, L.A. TIMES (Mar. 18, 2021), <https://www.latimes.com/california/story/2021-03-18/reflecting-los-angeles-chinatown-massacre-after-atlanta-shootings> [<https://perma.cc/KX4Q-TJRB>].

65. See Michelle P. Fulcher, *On Halloween Nearly 150 Years Ago, An Anti-Chinese Riot Broke out in Denver. It Was the City's First Race Riot*, CPR NEWS (Sept. 2, 2019, 4:00 AM), <https://www.cpr.org/2019/09/02/on-halloween-nearly-150-years-ago-an-anti-chinese-riot-broke-out-in-denver> [<https://perma.cc/5V89-4U8Q>].

66. See Greg Nokes, *Chinese Massacre at Deep Creek, OR*, ENCYCLOPEDIA (Mar. 23, 2022), https://www.oregonencyclopedia.org/articles/chinese_massacre_at_deep_creek/#.Yl4maprMLfY [<https://perma.cc/GQL7-PSXC>].

67. See Werter D. Dodd, *The Hindu in the Northwest*, WORLD TODAY (1907), available at <https://www.saada.org/item/20110714-238> [<https://perma.cc/JJC2-56FS>].

68. See *United States v. Ebens*, 800 F.2d 1422, 1427 (6th Cir. 1986), *abrogated by* *Huddleston v. United States*, 485 U.S. 681 (1988).

69. *Ebens*, 800 F.2d at 1427.

70. *Id.* at 1425.

71. See Frances Kai-Hwa Wang, *Who Is Vincent Chin? The History and Relevance of a 1982 Killing*, NBC NEWS, <https://www.nbcnews.com/news/asian-america/who-vincent-chin-history-relevance-1982-killing-n771291> [<https://perma.cc/GD78-Q8VW>] (June 15, 2017, 5:43 AM).

72. See SOUTH ASIAN AMERICANS LEADING TOGETHER, COMMUNITY RESILIENCE 5 (2011), <https://saalt.org/wp-content/uploads/2012/09/Community-Resilience-September-2011.pdf> [<https://perma.cc/42EB-VL3P>].

station in Mesa, Arizona.⁷³ Waqar Hasan, a forty-six year old Muslim, was killed the next day while working at his grocery store outside of Dallas, and Vasudev Patel, a forty-nine year old Hindu was shot to death in Mesquite, Texas on October 4.⁷⁴ In 2001 alone, the Federal Bureau of Investigations (FBI) reported a 1,600% increase in hate crimes against Muslims.⁷⁵ With the U.S. Attorney's Office and Civil Rights Division of the U.S. Department of Justice, the FBI investigated more than 800 incidents of violence against Arabs, Muslims, South Asians, and Sikhs between September 11, 2001 and March 2007.⁷⁶ These included vandalism, arson, and threats, as well as assaults, battery and homicide.

On February 22, 2017, Indian American tech engineer, Srinivas Kuchibhotla, was killed while having drinks with a friend at a bar in Olathe, Kansas.⁷⁷ Before shooting Kuchibhotla and his friend Alok Madasani, the perpetrator Adam Purinton yelled, "Get out of my country!"⁷⁸ Unlike Chin's killers, Purinton pled guilty and was sentenced to life in prison for first degree murder and two counts of attempted first degree murder, as well as a federal hate crimes charge and firearms charge.⁷⁹

Hate against Asian Americans was not simply limited to interpersonal acts of violence. Anti-Asian animus was also evident in American immigration and naturalization policies of much of the nineteenth and twentieth centuries that sought to prevent the supposed harms of the "yellow peril" and "dusky peril."⁸⁰ While many are familiar with the Chinese Exclusion Act of 1882,⁸¹ few know about Page Act of 1875,⁸² which prevented the entry of Chinese women to the U.S. on grounds that they would be coming to be

73. *See id.*

74. *See id.*

75. *See id.*

76. *See id.*

77. Office of Public Affairs, *Kansas Man Pleads Guilty to Hate Crime and Firearm Offenses in Shooting Two Indian Nationals and Third Man at a Bar*, U.S. DEPT. OF JUST.: JUST. NEWS (May 21, 2018), <https://www.justice.gov/opa/pr/kansas-man-pleads-guilty-hate-crime-and-firearm-offenses-shooting-two-indian-nationals-and> [<https://perma.cc/2CJN-5QNF>].

78. *Id.*

79. *See id.*

80. *See* John Kuo Wei TChen & Dylan Yeats, *Yellow Peril: 19th-Century Scapegoating*, ASIAN AMERICAN WRITERS WORKSHOP: THE MARGIN (Mar. 5, 2014), <https://aaww.org/yellow-peril-scapegoating> [<https://perma.cc/Y79G-D57E>]; *Have We a Dusky Peril*, PUGET SOUND AM. (Sept. 16, 1906), <https://s3.amazonaws.com/saada-online/objects/2012-00/item-dusky-peril-001.jpg> [<https://perma.cc/HZB7-RRAK>]; *Asian Immigration: The Yellow Peril*, BOWLING GREEN ST. U.: RACE IN AMERICA, <https://digitalgallery.bgsu.edu/student/exhibits/show/race-in-us/asian-americans/asian-immigration-and-the--yel> [<https://perma.cc/8DMA-SYQT>].

81. Pub. L. 47-126, 22 Stat. 58 (1882).

82. Pub. L. 43-141, 18 Stat. 477 (1875).

sex workers.⁸³ The Immigration Acts of 1917⁸⁴ and 1924⁸⁵ went even further, forbidding the immigration of almost all individuals from Asia.⁸⁶ In fact, Asians were largely excluded from entry between 1917 and 1965, the year when the Immigration and Nationality Act⁸⁷ ended race-based preferences for European immigrants.⁸⁸

In 1913, California passed the Alien Land Act that prevented “aliens ineligible for citizenship” from owning agricultural land and limited their lease term to three years.⁸⁹ Fueled by racial animus first against Chinese Americans and later against Japanese American farmers, the bill prohibited ownership by Asian landholders who were not U.S. citizens, causing several thousand to lose valuable assets and income they derived from it.⁹⁰ Several other states followed suit, enacting similar bills that limited land ownership or limited lease terms.⁹¹

In terms of the ability to become U.S. citizens, Asian Americans were largely restricted from naturalizing during the 1700–1800s by multiple U.S. laws that allowed only “free white persons” to naturalize.⁹² Takao Ozawa, a Japanese immigrant, and Bhagat Singh Thind, an Indian immigrant, sought to challenge the Naturalization Act of 1906, which, like its predecessors, limited naturalization to “free white persons” and “aliens of African nativity and to persons of African descent.”⁹³ Both men claimed to qualify as “free white persons.”⁹⁴ In *Ozawa* in 1922 and *Thind*, decided only a few months later in 1923, the U.S. Supreme Court determined that neither man met the definition.⁹⁵

The most significant example of anti-Asian policies is the removal and incarceration of 120,000 Japanese Americans by President Roosevelt through

83. *See id.*

84. Pub. Law 64–301, 39 Stat. 874 (1917).

85. Pub. Law 68–139, 43 Stat. 153 (1924).

86. *See* Pub. Law 64–301, 39 Stat. 874 (1917); Pub. Law 68–139, 43 Stat. 153 (1924).

87. *See* Immigration and Nationality Act of 1965, Pub. L. 89–236, 79 Stat. 911 (1965).

88. *See id.* *But see* Luce Celler Act of 1946, Pub. L. 79–483, 60 Stat. 416 (allowing for the entry of 100 Indians and Filipinos each year); The Immigration and Nationality Act of 1952 (McCarran-Walter Act), Pub. L. 82–414, 66 Stat. 163 (1952) (permitting the entry of 100 individuals each from other nations within the Asiatic Barred Zone, as defined by the Immigration Act of 1917).

89. *See Alien Land Laws in California (1913–1920)*, IMMIGRATION HIST. (2019), <https://immigrationhistory.org/item/alien-land-laws-in-california-1913-1920> [<https://perma.cc/AJD8-46D7>]

90. *See Alien Land Laws*, Densho Encyclopedia (Oct. 8, 2020, 5:01 PM), <https://encyclopedia.densho.org/Alien%20land%20laws> [<https://perma.cc/QZV5-HSRZ>].

91. *See id.*

92. *See* Naturalization Act of 1790, Pub. L. 1–3, 1 Stat. 103 (1790); Naturalization Act of 1870, Pub. L. 41–254, 16 Stat. 254 (1870); Naturalization Act of 1906, Pub. L. 59–338, 34 Stat. 596 (1906).

93. *See Ozawa v. United States*, 260 U.S. 178, 189–90 (1922); *United States v. Thind*, 261 U.S. 204, 205–06 (1923).

94. *Id.*

95. *Ozawa*, 260 U.S. at 198S. Ct.; *Thind*, 261 U.S. at 214–15.

Executive Order 9066, issued on February 19, 1942.⁹⁶ These individuals, nearly 70,000 of whom were U.S. citizens, were placed in camps across California, Arizona, Wyoming, Colorado, Utah, and Arkansas until January 1945.⁹⁷

More recently, post-9/11 actions by the federal government sought to profile and surveil thousands of Muslims in America. Specifically, the National Security Entry-Exit Registration System (NSEERS), known as Special Registration, required over 90,000 males over the age of sixteen who originated from one of twenty-five countries, twenty-four of which were Muslim-majority nations, to register with local immigration authorities.⁹⁸ Thousands were interrogated, detained, and placed in deportation proceedings for failure to comply.⁹⁹ Not a single case of suspected terrorism was found.¹⁰⁰

In a similar vein, the U.S. Department of Justice created the China Initiative in 2018, ostensibly to investigate and prosecute economic espionage and the theft of trade secrets.¹⁰¹ Under the pretense of national security, it has subjected Chinese American scientists and others to racial profiling, surveillance, and wrongful prosecutions, where little to no evidence of such espionage or trade secret theft exists.¹⁰²

V. HATE CRIMES ENFORCEMENT

In terms of anti-Asian hate, much attention has been paid to violent attacks and reports of anti-Asian hate crimes. But, as mentioned earlier, only a minority of incidents reported to Stop AAPI Hate involved physical attacks (17%) or theft or destruction of property (4%), both of which may constitute a crime.¹⁰³ Additionally, as Professor Janelle Wong noted, similar patterns

96. See Exec. Order No. 9066, (1942), available at <https://www.archives.gov/milestone-documents/executive-order-9066> [<https://perma.cc/M7X5-98BB>]; *Japanese-American Incarceration During World War II*, NAT'L ARCHIVES, <https://www.archives.gov/education/lessons/japanese-relocation> [<https://perma.cc/9QEV-CWS4>].

97. NAT'L ARCHIVES, *supra* note 96.

98. *National Security Entry-Exit Registration System (NSEERS) Freedom of Information Act (FOIA) Request*, CTR. FOR CONST. RTS., <https://ccrjustice.org/home/what-we-do/our-cases/national-security-entry-exit-registration-system-nseers-freedom> [<https://perma.cc/R6S2-X48R>]; See also Registration and Monitoring of Certain Nonimmigrants, 67 Fed. Reg. 52583 (Aug. 12, 2002). Note that NSEERS was dismantled in 2011 by the Obama Administration. Removing Designated Countries from National Security Entry-Exit Registration System (NSEERS), 76 Fed. Reg. 23830 (Apr. 8, 2011).

99. See CTR. FOR CONST. RTS., *supra* note 98.

100. See *id.*

101. See *Information about the Department of Justice's China Initiative and a Compilation of China-Related Prosecutions Since 2018*, U.S. Dept. of Just. Archives, <https://www.justice.gov/archives/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>. [<https://perma.cc/55HB-9CA3>] (Nov. 21, 2021).

102. See Sheridan Prasso, *China Initiative Sought Out to Catch Spies. It Didn't Find Many*, BLOOMBERG: BUSINESSWEEK (Dec. 14, 2021), <https://www.bloomberg.com/news/features/2021-12-14/doj-china-initiative-to-catch-spies-prompts-fbi-misconduct-racism-claims>. [<https://perma.cc/BVD6-R89U>].

103. See National Report Through Mar. 2022, *supra* note 41, at 10.

were reported by the Virulent Hate Project at University of Michigan; it found that only 17% of incidents involved physical harassment.¹⁰⁴

A number of law enforcement agencies have reported significant increases in anti-Asian hate. The FBI reported that 279 anti-Asian hate crimes took place in the United States; the number represented 3.4% of all hate crimes reported by local law enforcement.¹⁰⁵ The Center for the Study of Hate & Extremism at Cal State University San Bernardino compiled and analyzed official preliminary police data for sixteen of the largest cities in America.¹⁰⁶ According to the Center's *Report to the Nation: Anti-Asian Prejudice & Hate Crime*, anti-Asian hate crimes increased 164% in 2020 across those 16 cities.¹⁰⁷ While the percentage increase is, no doubt, alarming, the actual number of hate crimes against Asian Americans in those sixteen cities was only in the single digits in 2019 and under 30 total for any city.¹⁰⁸ And, as Professor Janelle Wong points out, the percentage of hate crimes experienced by Asian Americans is smaller than the population percentage of Asian Americans in those cities.¹⁰⁹ She notes that while hate crimes in New York City increased by 833%, the 2020 percentage that were directed at Asian Americans is 11% and lower than the percentage of the population Asian Americans make up in New York City, 14%.¹¹⁰ Moreover, African Americans continue to be the most targeted racial group for hate crimes, at 58% in 2019; following the African American community, Latinx community members experience 14% of all hate crimes according to the 2019 data.¹¹¹

Given the horrific nature of some of the physical attacks, including the Atlanta and Indianapolis shootings, and the media attention on those incidents, federal and state lawmakers have sought solutions aimed at speeding up review and action taken by federal law enforcement agencies and increasing hate crimes penalty enhancements. The COVID-19 Hate Crimes Act,¹¹² signed into law by President Biden on May 20, 2021, requires the Attorney General to put a Justice Department official in charge of reviewing reports

104. Janelle Wong, *What the Media Gets Wrong About Anti-Asian Hate*, MEDIUM, (June 23, 2021), <https://stopasianhate.medium.com/what-the-media-gets-wrong-about-anti-asian-hate-369656a98684> [<https://perma.cc/UMR3-ZNPN>].

105. See Crime Explorer Data, FED. BUREAU OF INVESTIGATIONS, <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/hate-crime> [<https://perma.cc/4V4L-V7W7>] (279 Anti-Asian hate crimes were reported out of 8,263 total reported in 2020). Note that the 2020 FBI Hate Crime statistics for the nation are based on data received from 15,138 of 18,625 law enforcement agencies in the country that year. *Id.*

106. BRIAN LEVIN, CTR. ON EXTREMISM & HATE, REPORT TO THE NATION: ANTI-ASIAN PREJUDICE & HATE CRIME 2 (2021), <https://www.csusb.edu/sites/default/files/Report%20to%20the%20Nation%20-%20Anti-Asian%20Hate%202020%20Final%20Draft%20-%20As%20of%20Apr%2030%202021%206%20PM%20corrected.pdf> [<https://perma.cc/YL9V-5PZN>].

107. See *id.*

108. See *id.*

109. Wong, *supra* note 104.

110. See *id.*

111. See *id.*

112. Pub. L. 117-13, 135 Stat. 265 (2021).

of COVID-19-related hate crimes for at least one year and mandates that the Justice Department issue guidance to state and local law enforcement agencies on how to establish an online hate crime reporting system in multiple languages, expand public education campaigns to encourage reporting of cases, and provide guidance on how to mitigate racially discriminatory language in descriptions of the pandemic.¹¹³

While the legislation demonstrates the federal government's recognition of the devastating impact of pandemic-related racism and discrimination AAPIs face, its sole focus on criminal law enforcement solutions strongly suggests that it will not address the overwhelming majority of incidents targeting AAPI communities, which do not involve a criminal act, let alone a hate crime.¹¹⁴

The FBI, which is charged with compiling hate crimes statistics and investigating violations, defines hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity."¹¹⁵ State definitions of a hate crime vary¹¹⁶ as does their approach to causation. Generally, a hate crime must include an underlying crime with evidence of a motivating factor that seeks to target an individual or group's protected characteristic; this typically includes race, religion, and gender, but not always sexual orientation.¹¹⁷

Forty-five states have hate crimes statutes creating independent criminal offenses or sentencing enhancements for the commission of hate-related criminal acts.¹¹⁸ States have developed and implemented one of three approaches to define the defendant's state of mind in the commission of a hate crime.¹¹⁹ The "racial animus" model requires the crime to have been motivated by bias, hatred or bigotry.¹²⁰ Under the "discriminatory selection" model, a perpetrator must select the victim because of certain characteristics.¹²¹ And the third approach requires that the defendant committed the crime itself "because of" or "by reason of" the victim's characteristics.¹²² Each of these present different challenges to the prosecuting attorney seeking to

113. *See id.* at Pub. L. 117-38, § 3, 135 Stat. at 266.

114. National Report Through Mar. 2022, *supra* note 41, at 3, 10.

115. *Hate Crimes*, FBI, <https://www.fbi.gov/investigate/civil-rights/hate-crimes> [<https://perma.cc/GGD6-PA67>].

116. *See State Hate Crimes Statutes*, BRENNAN CTR., <https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes> [<https://perma.cc/3LCU-UQM2>] (July 2, 2020).

117. *See id.*

118. *See id.*

119. Karl Menninger, *Hate Crimes and Liability for Bias-Motivated Acts*, 57 Am. Jur. 3d *Proof of Facts* 1 (2022).

120. *Id.*; *See, e.g.*, FLA. STAT. ANN. § 775.085.

121. *See, e.g.*, TEX. PENAL CODE ANN. § 12.47 (enforcing an enhanced penalty where there is a finding of bias under TEX. CODE CRIM. PROC. ANN. ART. 42.014).

122. *See, e.g.*, N.Y. PENAL LAW § 485.10; N.Y. PENAL LAW § 240.31; N.Y. PENAL LAW § 485.05.

prove the elements of the case. Under the racial animus approach, the prosecutors must show that the defendant's motivation for committing the crime was his bias toward or hatred of a defendant's characteristics. With the discriminatory selection approach, the prosecutor must prove the defendant selected the victim because of certain characteristics and his motivation is not at issue. While broader and perhaps more accommodating than the other two, the because of approach still requires that the defendant committed the crime "because of" the victim's characteristics.¹²³

Federal hate crimes statutes criminalize behavior in which a defendant acts "because of" actual or perceived characteristics of the victim, similar to the standard in some states.¹²⁴ The current standard has been interpreted to mean that individuals can only be found guilty if the protected characteristic of a victim or target is the sole factor in the willfully causing bodily injury.¹²⁵ The requirement is a steep one even though it was met in the successful prosecution in February 2021 of Greg McMichael, Travis McMichael, and William "Roddie" Bryan, all found guilty of killing Ahmaud Arbery.¹²⁶ Congressman Ted Lieu authored the Stop Hate Crimes Act to address the high bar.¹²⁷ The bill lowers the statutory burden of proof for federal hate crimes, allowing the protected characteristic to be "a contributory motivating factor" rather than the only factor.¹²⁸

Whether the enforcement takes place at the state or federal level, the vast majority of hate crimes are not prosecuted. On average, U.S. residents experienced approximately 246,900 hate crime victimizations each year between 2005 and 2019, with a low of 173,600 in 2016 and a high of 305,390 in 2019, according to the Bureau of Justice Statistics' National Crime Victimization

123. See Cal. Penal Code § 422.55.

124. See 18 U.S.C. § 245(b.); 18 U.S.C. § 249(a)(1); 42 U.S.C. § 3631.

125. Causation in federal hate crime law is not well settled law. CONG. RSCH. SERV., OVERVIEW OF FEDERAL HATE CRIME LAWS 4 (2022), <https://sgp.fas.org/crs/misc/R47060.pdf> [<https://perma.cc/QA3X-2T8F>]. According to a 2022 report by Congressional Research Service, "[t]he exact definition of 'because of' in the hate crime context is unresolved." *Id.* The current but-for "standard" comes from *Burrage v. United States*, in which the Supreme Court analyzed a different phrase: "results from." See *id.* at 4–5; *Burrage v. United States*, 571 U.S. 204, 210–11 (2014). Although the Court ultimately held that "results from" requires but-for causation in the federal criminal context, the Court did not opine on "because of." *Burrage*, 571 U.S. at 212. So, the Congressional Report points out that "it is at least possible that a federal court might" come out differently and "interpret 'because of' . . . as referring to *motive* in the context of federal hate crime statutes, as opposed to causation." CONG. RSCH. SERV., OVERVIEW, *supra* at 7. Despite this possibility, the similarities between "results from" and "because of" make it more likely that future courts will extend the reasoning in *Burrage* and apply but-for causation to "because of" in the federal criminal context, including in federal hate crime law.

126. Merrit Kennedy & Jaclyn Diaz, *3 White Men Are Found Guilty of Murder in the Killing of Ahmaud Arbery*, NPR, <https://www.npr.org/2021/11/24/1058240388/ahmaud-arbery-murder-trial-verdict-travis-greg-mcmichael> [<https://perma.cc/C2QP-BS7C>] (Nov. 24, 2021, 3:23 PM).

127. See Stop Hate Crimes Act, H.R. 2416, 117th Cong. (2021).

128. *Id.*

Survey.¹²⁹ In that period, 42% of hate crime victimizations were not reported to police.¹³⁰ The most common reason for not reporting, which 38% of victims cited, was because victims sought help from non-law enforcement officials or through private means.¹³¹ Just under a quarter of victims who did not report to police said they believed that police could not or would not help them.¹³² Sixteen percent of victims stated that the incident was not important enough to report to police and five percent said they feared reprisals from police.¹³³ This is especially true for undocumented individuals and those who live in mixed-status families.¹³⁴ Advocates working with immigrant Asian populations, including the staff at AAPI Equity Alliance member organizations and Chinese for Affirmative Action, have reported that language barriers also present an obstacle for limited English-proficient community members; few police departments have officers who are fluent speakers of Asian languages, even in large metropolitan areas with high numbers of AAPIs.¹³⁵

According to FBI statistics submitted through the Uniform Crime Reporting (UCR) program, 8,263 hate crime incidents involving 11,129 offenses actually took place in the United States in 2020, 61.8% of which were based upon race.¹³⁶ These involve reports specifically brought to the attention of law enforcement and shared by the 15,138 law enforcement agencies which report their data to the FBI.¹³⁷ While 80% of law enforcement agencies claim to participate in the program, only a small minority report a single hate crime within their jurisdiction.¹³⁸

129. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: HATE CRIME VICTIMIZATION 2005–2019 (2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf [<https://perma.cc/3DQ4-NKDE>].

130. *Id.* at 6.

131. *Id.*

132. *Id.*

133. *Id.*

134. See generally Melissa Alsan & Crystal Yang, *Fear and Safety Net: Evidence of Secure Communities* 5 (Nat'l Bureau of Eco. Rsch., Working Paper No. 24731, 2019) https://www.nber.org/system/files/working_papers/w24731/w24731.pdf [<https://perma.cc/94AA-C7PH>] (showing fears of deportation and retaliation limit uptake of social programs by Hispanic and mix documentation families). See also ACLU Statement on Secure Communities, ACLU, <https://www.aclu.org/other/aclu-statement-secure-communities> [<https://perma.cc/JW46-HSFL>].

135. See SUSAN SHAH, INSHA RAHMAN, & ANITA KHASHU, VERA INST. FOR JUST., OVERCOMING LANGUAGE BARRIERS: SOLUTIONS FOR LAW ENFORCEMENT at 7–9 (2007), https://www.lep.gov/sites/lep/files/resources/vera_translating_justice_final.pdf [<https://perma.cc/7WXW-YRCX>].

136. See *FBI Releases 2020 Hate Crime Statistics*, U.S. DEPT. OF JUST., available at <https://www.justice.gov/hatecrimes/hate-crime-statistics> [<https://perma.cc/2DQ5-Y3MV>].

137. See *id.*

138. See *2018 Hate Crime Statistics: Incidents and Offenses*, FBI (Nov. 12, 2019), <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses> [<https://perma.cc/WRC4-KJ76>] (reporting that only 2,026 of 16,039 law enforcement agencies participating in the Hate Crime Statistics program reported a hate crime incident in 2018).

Of the 66,642 hate crimes reported to law enforcement from 2010 to 2019, only 1,217 suspects were investigated by U.S. attorneys in matters involving violations of federal hate crime statutes, for an average of 122 per year.¹³⁹ Of that figure, U.S. Justice Department attorneys only referred 17.2%, or 208, for prosecution.¹⁴⁰ More than half (58.4%) were not prosecuted because of insufficient evidence, making it the most prevalent reason for lack of prosecution; the second most common reason (15.5%) for declining to prosecute was due to prioritization of federal resources and the third and fourth most common were because the suspect was subject to another jurisdiction's authority (11.4%) or because the federal government lacked legal jurisdiction to file charges (8.9%).¹⁴¹

The lack of robust enforcement of hate crimes law may be a problem at the state level as well. In the largest state, California, the State Auditor in a 2018 report identified three significant gaps in the enforcing hate crimes statutes and punishing perpetrators in the state; these included the failure of police officers to properly identify hate crimes, the underreporting by local law enforcement agencies to the state department of justice and the difficulty in successfully prosecuting hate crimes.¹⁴² Reviewing four large law enforcement agencies- Los Angeles Police Department (LA Police), San Francisco State University Police Department (SFSU Police), Orange County Sheriff's Department (OC Sheriff) and Stanislaus County Sheriff's Department (Stanislaus County Sheriff), the State Auditor found that LA Police failed to properly identify 20% of cases reviewed by the State Auditor as hate crimes and SFSU failed to identify 53%.¹⁴³ The lack of identification was due, in some part, to the failure to have adequate policies and methods in place.¹⁴⁴ The State Auditor noted that SFSU Police's hate crime policy is outdated and does not conform with current hate crimes law and the Stanislaus County Sheriff and OC Sheriff fail to use a supplemental hate crime form that enables officers to easily identify elements of a hate crime.¹⁴⁵ Finally, between 2007 and 2016, district attorneys throughout the state were only able to obtain conviction rates in 40–51% of hate crimes compared with 84% of all felonies during that decade due to lack of identified suspects or high standard of proof.¹⁴⁶ Given the evidence, the State Auditor noted that “although reported hate crimes have increased by more than 20 percent from 2014 to 2016, law enforcement has not been doing enough to identify, report and

139. See Federal Bureau of Investigation Crime Data Explorer, FBI, <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime> [<https://perma.cc/3987-7WPE>].

140. *Id.* at 5 tbl.4.

141. *Id.* at 6 tbl.5.

142. See ELAINE M. HOWLE, CALIFORNIA STATE AUDITOR, HATE CRIMES IN CALIFORNIA iii (2018), <https://www.auditor.ca.gov/pdfs/reports/2017-131.pdf> [<https://perma.cc/K42J-2MZE>].

143. See *id.* at 1.

144. See *id.* at 2.

145. See *id.*

146. See *id.*

respond to these crimes.”¹⁴⁷ These challenges are not unique to California law enforcement agencies. The lack of uniformity and consistency pertaining to the identification and reporting of hate crimes by local enforcement agencies and varying levels of trainings of law enforcement officers on hate crimes means that they will likely continue to go unprosecuted.¹⁴⁸

Beyond the aforementioned challenges, perhaps the most significant reason that the AAPI community should not rely solely on hate crimes enforcement to address anti-Asian hate is the lack of evidence of its efficacy.¹⁴⁹ Little research has been done to show that prosecution of hate crimes or the sentencing enhancements they provide serve as a deterrent to prevent recidivism among perpetrators or future crimes by other actors.¹⁵⁰ While signaling a repudiation of hate based upon protected characteristics and incapacitating convicted offenders, prosecution and incarceration do nothing to promote healing of victims and community members.¹⁵¹

VI. CIVIL LAW ENFORCEMENT APPROACHES

Of the nearly 11,500 hate incidents reported to Stop AAPI Hate through March 2022, 12% involve civil rights violations.¹⁵² Given these numbers, it is critical to look beyond criminal law enforcement and prosecution of hate crimes toward civil rights enforcement and the civil mechanisms that offer a possibility for redress of anti-Asian American hate and discrimination.

Numerous federal and state statutes address racial discrimination that takes place in the workplace and in public accommodations. At the federal level, this includes the Civil Rights Act of 1964,¹⁵³ which prohibits race and national origin discrimination in employment and public accommodations.¹⁵⁴

147. *See id.* at iii.

148. *See* A.C. Thompson, Rohan Naik & Ken Schwencke, *Hate Crimes Training is Often Inadequate, Sometimes Nonexistent*, PROPUBLICA (Nov. 29, 2017, 8:00 AM), <https://www.propublica.org/article/hate-crime-training-for-police-is-often-inadequate-sometimes-nonexistent> [<https://perma.cc/RUY7-8QXB>].

149. *See generally* Brianna Alongi, *The Negative Ramifications of Hate Crime Legislation: It's Time to Reevaluate Whether Hate Crimes Laws Are Beneficial to Society*, 37 Pace Law Review 326 (2017) (evaluating the effectiveness of hate crime legislation). *See also* James Doubek, *How Well Do Hate Crimes Laws Really Work?*, NPR (June 28, 2015, 7:03 AM), <https://www.npr.org/sections/itsallpolitics/2015/06/28/417231920/how-well-do-hate-crime-laws-really-work> [<https://perma.cc/374K-2MAE>].

150. *See generally* STANFORD LAW SCHOOL POLICY LAB ON ASSESSING ALTERNATIVE RESPONSES TO HATE CRIMES & THE BRENNAN CENTER FOR JUSTICE, *EXPLORING ALTERNATIVE APPROACHES TO HATE CRIMES* (2021), https://www-cdn.law.stanford.edu/wp-content/uploads/2021/06/Alternative-to-Hate-Crimes-Report_v09-final.pdf [<https://perma.cc/VA3L-52UA>]. *See also* Joan O’C. Hamilton, *Hate Crimes: Informing Policy to Deter and Heal*, STANFORD LAWYER (June 25, 2020), <https://law.stanford.edu/stanford-lawyer/articles/hate-crimes> [<https://perma.cc/X9FH-LHVQ>].

151. *See* sources cited, *supra* note 150.

152. National Report Through Mar. 2022, *supra* note 41, at 4.

153. Pub. L. 88–352, 78 Stat. 241.

154. *See id.* at § 202.

In the employment context, enforcement to address discrimination in the workplace is undertaken by the Equal Employment Opportunity Commission as well the U.S. Department of Justice. The law forbids employers from discrimination against employees in relation to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.¹⁵⁵ Additionally, it is unlawful to harass a person because of that person's race or color.¹⁵⁶ Harassment can include "racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols."¹⁵⁷ While the law does not "prohibit simple teasing, offhand comments, or isolated incidents that are not deemed to be serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision" (including a demotion or termination).¹⁵⁸ Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, age, disability or sex.¹⁵⁹

The EEOC typically investigates alleged violations of federal law in the employment context in individual cases.¹⁶⁰ The Employment Litigation Section (Section) of the U.S. Department of Justice will file suit against a state or local government employer based upon an individual charge of discrimination when referred by the EEOC with a determination that the charge has merit and the efforts for voluntary compliance were unsuccessful.¹⁶¹ In those cases where the Section decides not to file a lawsuit, it will issue a notice of the right to sue to the charging party so that they may bring their own lawsuit.¹⁶² The Department of Justice also has authority to initiate investigations and prosecute enforcement actions against state and local government employers where it has reason to believe that a "pattern or practice" of employment discrimination exists.¹⁶³

In the arena of public accommodations, Title II of the Civil Rights Act provides protection to individuals who have experienced discrimination at inns/hotels, restaurants, entertainment venues, sports stadiums, concert halls, and any place that is located within one of these covered establishments

155. *See id.* at §§ 703–716. This applies to private employers with fifteen or more employees, federal and state governments, labor organizations, employment agencies, and joint labor-management agencies. 42 U.S.C. § 2000e(b). Individuals must file charges of discrimination with the EEOC within a timely manner. *Id.*

156. *See id.* § 703.

157. *Race/Color Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/racecolor-discrimination> [<https://perma.cc/43YZ-7KLR>].

158. *Id.*

159. *Id.*

160. *See C.R. Div., Overview of Employment Litigation*, U.S. DEPT. JUST., <https://www.justice.gov/crt/overview-employment-litigation> [<https://perma.cc/C26Z-TPGD>].

161. *See id.*

162. *See id.*

163. *See id.*

or holds itself out to serving patrons of those establishments.¹⁶⁴ Protected classes under Title II are limited to race, color, religion and national origin.¹⁶⁵

There are some limitations in using Title II to address anti-AAPI hate, most notably, that public accommodations, according to the U.S. Justice Department, is defined narrowly to include only inns and hotels, restaurants, entertainment venues.¹⁶⁶ “Public accommodations” does not include retail shops not serving food, which is where much of the anti-AAPI discrimination takes place.¹⁶⁷ Moreover, the Housing and Civil Enforcement of the Department of Justice is only involved when there is a “pattern and practice of discrimination,” leaving those who experience a solitary incident without the aid of the federal government.¹⁶⁸ Individuals who seek to challenge the discrimination on their own may pursue a private right of action.¹⁶⁹ Note that the statute allows federal courts in such matters to refer them to Community Relations Service if there is a reasonable possibility for voluntary compliance.¹⁷⁰

States vary in their avenues of providing redress for racial discrimination in public accommodations and retail.¹⁷¹ Most allow individuals to file a complaint with their civil rights, human rights or relations commissions, which investigate the claim, issue a finding and resulting fines or penalties if a claim is properly substantiated.¹⁷² Many also offer a private right of action to enable individuals to bring their own lawsuits.¹⁷³ Note that few states have

164. 42 U.S.C. § 2000a(b).

165. *Id.* at § 2000a(a).

166. *See* 42 U.S.C. § 2000a(b).

167. *See* 42 U.S.C. § 2000a(b)(2).

168. C.R. Div., *A Pattern or Practice of Discrimination*, U.S. DEPT. JUST., <https://www.justice.gov/crt/pattern-or-practice-discrimination> [<https://perma.cc/Y8PL-JE47>].

169. *See* CONGRESSIONAL RESEARCH SERVICE, *THE CIVIL RIGHTS ACT OF 1964: AN OVERVIEW* 22 (2020), <https://sgp.fas.org/crs/misc/R46534.pdf> [<https://perma.cc/5YRU-VJFW>]. It notes that “[b]efore filing a civil action under Title II, a plaintiff must satisfy certain procedural prerequisites if the locality or state in which the conduct occurred also has public accommodation antidiscrimination laws.” *Id.* (citing *Bilello v. Kum & Go, LLC*, 374 F.3d 656, 658 (2004) (“By its plain language, 42 U.S.C. § 2000a–3(c) requires notice to the state or local authority as a prerequisite to filing a civil action when a state or local law prohibits discrimination in public accommodations and provides a remedy for such practice”)).

170. *Id.* at 23–24 (citing 42 U.S.C. § 2000a-3(d) (providing that “the court may refer the matter to the Community Relations Service . . . for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance”)).

171. *See generally* STOP AAPI HATE, *SURVEY OF FEDERAL AND STATE LAWS: UNDERSTANDING YOUR RIGHT TO BE TREATED FAIRLY AND WITHOUT DISCRIMINATION IN RESTAURANTS, STORES AND OTHER BUSINESSES* (2020), <https://stopaapihate.org/wp-content/uploads/2021/04/Stop-AAPI-Hate-Public-Accommodations-Law-Survey-200920.pdf> [<https://perma.cc/3FYP-DUXZ>] (overviewing state public accommodations laws).

172. *See id.* *See, e.g., Complaint Process*, CAL. DEPT. OF FAIR HOUS. AND EMP., <https://www.dfeh.ca.gov/ComplaintProcess/#fileComplaintBody> [<https://perma.cc/B6K3-7EET>]; *File a Complaint*, STATE OF MD. COMM. ON CIV. RTS., <https://mccr.maryland.gov/Pages/Intake.aspx> [<https://perma.cc/56BG-RAP3>].

173. *See* STOP AAPI HATE, *SURVEY OF FEDERAL AND STATE LAWS*, *supra* note 171.

forms translated into Asian languages, limiting individuals who are limited English proficient from gaining access to those mechanisms.¹⁷⁴

Key to a civil and civil rights approach is the fact that it holds institutions, both public and private, accountable for discriminatory acts committed against employees, tenants, students, and customers. A central remedy in such actions is injunctive relief—ending the racial discrimination. With it can come financial penalties, which offer some level of accountability from the perpetrating institution along with restitution to the victim or victims.

Unlike with hate crimes, in which the federal government compiles data and provides regular reports, there is no comprehensive, regular reporting across the numerous federal, state and local enforcement agencies tasked with civil rights enforcement.¹⁷⁵ The EEOC compiles statistics on alleged violations that are reported to them but does not do the same for cases of discrimination reported to state and local authorities.¹⁷⁶ Similarly, there is no federal mechanism for making public the statistics of discriminatory incidents that take place in public accommodations or retail spaces when reported to and potentially investigated by federal, state and local prosecutors.

VII. STATE AND LOCAL INVESTMENTS AND INFRASTRUCTURE TO ADDRESS HATE

In addition to enabling marginalized community members to seek redress for discrimination they have faced at the hands of individual or institutional perpetrators, a few states, including California and New York, have begun to fund programming to address hate in systemic ways. In California, Governor Gavin Newsom signed into law a set of provisions, together called the API Equity Budget, which authorized \$156 million in state funding to communities impacted by hate, including AAPI communities.¹⁷⁷ A historic investment, the funds go specifically toward victim services and prevention, ethnic media outlets, data collection and equity, the tracking, response and prevention of hate incidents, a peer social media network project and resources for a workgroup to address higher education attainment.¹⁷⁸ Lawmakers in New York, in April, passed a similar measure at the \$20 million level.¹⁷⁹

174. *See id.*

175. *See* 28 U.S.C. § 534(a).

176. *See Enforcement and Litigation Statistics*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0>.

177. Claire Wang, 'Historic investment': California Allocates Millions to Fight Anti-Asian Hate, NBC NEWS ASIAN AM. (July 13, 2021 12:12 PM), <https://www.nbcnews.com/news/asian-america/historic-investment-california-allocates-millions-fight-anti-asian-hat-rcna1312> [<https://perma.cc/9KWE-VQWA>].

178. *See* S.B. 129, 2021, Reg. Sess. (Cal. 2021), §§ 158, 176, 215–216, 220, and 257; A.B. 130, 2021, Reg. Sess. (Cal. 2021), § 69.

179. Ethan Marshall, *AAPI Coalition Celebrates \$20 million in Funding*, POLITICSNY (Apr. 29, 2022), <https://politicsny.com/2022/04/29/aapi-coalition-celebrates-20-million-in-funding> [<https://perma.cc/8DL2-5874>].

At local levels, major metropolitan areas such as Los Angeles and New York have developed mechanisms for reporting and addressing hate against many different marginalized communities. The Los Angeles County program, called LA vs Hate, includes a 211 hate reporting mechanism and Rapid Response Network, developed through a collaboration of Special Service for Groups and the Los Angeles County Commission on Human Relations (Commission).¹⁸⁰ Victims can report bias-motivated behavior and receive case management services through client care coordinators; individuals can report non-criminal hate incidents online or by calling 211-LA 24 hours a day, 7 days a week and in over 150 languages.¹⁸¹ The client care coordinators then direct the victims of hate to a network of culturally and linguistically competent providers with specific expertise in serving discrete communities who provide prevention and intervention services and resources, including, but not limited to, mental health support with grief and trauma, legal and housing assistance and mediation.¹⁸² LA vs Hate also includes a public education and marking campaign, which utilizes digital artwork and cultural events to promote anti-hate messages across Los Angeles County. Additionally, the Civil + Human Rights and Equity Department will soon be launching a discrimination enforcement program through which Los Angeles City residents can file a complaint against a private sector company alleging discrimination.¹⁸³

New York City's Commission on Human Rights has developed its own online reporting form for individuals to report discrimination.¹⁸⁴ Members of the public may file a report of discrimination with the Law Enforcement Bureau (Bureau) or may hire an attorney to do so.¹⁸⁵ The Bureau is tasked with intake, investigation, and prosecution of complaints of violations of New York City's Human Rights Law.¹⁸⁶ Its Community Relations Bureau administers a public education campaign, educating individuals who live and work in New York City on the City Human Rights Law and working to combat discrimination by fostering dialogue and engagement between communities.¹⁸⁷

180. In 2018, the Los Angeles Board of Supervisors charged the Commission with creating and implementing a response to the increase in hate violence throughout the county, which was believed to be a result of growing national rhetoric targeting people of color, immigrants, LGBTQ communities and religious minorities. See LA vs HATE, *About the Program*, <https://www.lavshate.org/about> [<https://perma.cc/7FQJ-7PRK>].

181. *Reporting Hate With 211 LA County*, LA vs HATE, <https://www.lavshate.org/report> [<https://perma.cc/68K8-BZXS>].

182. Letter to A3PCON from Herb Hatanaka, Executive Director of Special Service for Groups, May 17, 2019 (On File with Author). See *211 Support Services Flyer*, 211LA, <https://211la.org/anti-hate-program-materials> [<https://perma.cc/9QZK-PKTF>].

183. See *Discrimination Enforcement*, L.A. CIV. + HUM. RTS. AND EQUITY DEPT., <https://civilandhumanrights.lacity.org/our-programs/discrimination-enforcement> [<https://perma.cc/V8CD-Z7AJ>].

184. See *Report Discrimination*, NYC COMM. ON HUM. RTS., <https://www1.nyc.gov/site/cchr/about/report-discrimination.page> [<https://perma.cc/DV35-7DEJ>].

185. See *id.*

186. See *Enforcement*, NYC COMM. ON HUM. RTS., <https://www1.nyc.gov/site/cchr/enforcement/enforcement.page> [<https://perma.cc/D8CB-K7WY>].

187. See *Community*, NYC COMM. ON HUM. RTS., <https://www1.nyc.gov/site/cchr/>

VIII. STOP AAPI HATE SOLUTIONS

What does it mean to stop AAPI hate? While policymakers often focus on punishing individual offenders who commit the most widely publicized attacks, the coalition has determined that truly addressing and preventing hate requires comprehensive solutions. Hate appears in many forms and racism, as demonstrated above, involves not simply interpersonal attacks, but structural inequities. Accountability, therefore, requires not only changes in individual behavior, but also transformation of public institutions.

The first step to transforming public institutions is a collective agreement that racism and discrimination are abhorrent and must be challenged. Toward that end, Stop AAPI Hate has proposed a resolution template for adoption by city councils, county boards of supervisors, and other local entities across the country.¹⁸⁸ The template empowers AAPI community members and activists in advocating with local leaders to speak out against hate.¹⁸⁹ It is a starting point for dialogue and for solidarity. Although community members need not wait for their local government to adopt an anti-hate resolution in order to seek substantive solutions, a resolution like this can serve as an organizing tool and springboard for meaningful changes.

Substantive solutions require engaging our public health systems and enhancing our civil rights infrastructure, not simply relying upon our criminal justice system to mete out justice to individual perpetrators. And we must ensure that the solutions we seek address issues of intersectionality as many who have been harmed do not simply identify not only as AAPI, but also as women, LGBTQ+, low-income, disabled and immigrant. Most importantly, the measures to address hate and discrimination must benefit all communities of color, whose experiences with interpersonal violence as well as well as institutional inequities are like those of our Asian American and Pacific Islander siblings.

Stop AAPI Hate's overarching objective is to address anti-AAPI discrimination and violence with community-centered, comprehensive, and long-term strategies. These align with what AAPI communities believe are the most effective solutions to racism: (1) ethnic studies for educational equity, (2) community-based safety solutions, and (3) civil rights legislation and enforcement.¹⁹⁰ Additionally, they address both institutional and interpersonal forms of racism and prioritize racial solidarity and non-carceral approaches to justice. Broadly speaking, these recommendations at the local, state, and federal levels include:

- Strengthening civil rights laws to address discrimination in public accommodations

community/community.page [https://perma.cc/7FDB-CU9E].

188. See *Resolution*, STOP AAPI HATE, <https://stopaapihate.org/wp-content/uploads/2021/08/Template-Resolution-Condemning-AAPI-Hate-210831.pdf> [https://perma.cc/4EWN-3JF3].

189. See *id.*

190. See National Report Through Sept. 2021, *supra* note 56, at 4.

- Building a strong civil rights infrastructure which involves federal funding of state and local governments to contract with community-based organizations and public agencies to respond to incidents of hate.
- Dedicating resources to local communities, including community safety programs and in-language supports for those in need of mental health, legal and immigration services.
- Expanding ethnic studies programs at the K-12 level to increase exposure to the voices and histories of all communities.

Efforts are being made by the Stop AAPI Hate team to implement these recommendations. Members of our staff are pursuing administrative and legislative advocacy with local, state, and federal lawmakers to determine what opportunities there might be to operationalize the strategies across the nation.

Specifically in California, Stop AAPI Hate has sought to address through legislation some of the most common examples of hate and discrimination: harassment on streets and sidewalks, in public transit and in retail and public accommodations. A majority of incidents reported to Stop AAPI Hate take place in person and in public and involve conduct that is not criminal, including the utterance of racist and/or sexist slurs, accusations about spreading COVID-19 and obscenities.¹⁹¹ While these incidents may not pose an imminent or obvious threat to safety, their impact is real and immediate. They have a profound impact on an individual's feeling of safety, their freedom of movement and physical and mental well-being, shattering their sense of safety, belonging and normalcy.

When experiencing hate incidents that are not crimes, individuals often do not know where to turn and how to obtain accountability for what happened. Collective responsibility for community safety requires more than just a criminal justice response. For that reason, we have chosen to focus our efforts on a public health response to street harassment, a non-carceral approach to rider safety on public transit, and a civil rights framework to address hate and discrimination in retail. Stop AAPI Hate, with authorship by three members of the California AAPI Legislative Caucus and two women legislators of color, introduced three bills into the California legislature 2021-2022 term.¹⁹²

To end street harassment, California Assembly Bill 2549, authored jointly by Assemblymembers Mia Bonta, Al Muratsuchi, and Dr. Akilah Weber, was intended to do the following: (1) create a multi-year and state-wide public education campaign to raise awareness about street harassment; (2) study street harassment as a public health issue; and (3) define street harassment within a public health, not criminal, context.¹⁹³

191. National Report Through Mar. 2022, *supra* note 41, at 3.

192. CHINESE FOR AFFIRMATIVE ACTION, *The No Place for Hate Agenda Continues to Pick up Momentum* (Mar. 31, 2022), <https://caasf.org/2022/03/no-place-for-hate-california-momentum> [<https://perma.cc/WA3K-HXYH>].

193. A.B. 2549, 2022, Reg. Sess. (Cal. 2022).

Senate Bill 1161, authored by Senator Dave Min, sought to promote safe ridership by requiring the top ten transit districts to (1) recognize street harassment as a safety concern in the public transit systems; (2) gather and analyze qualitative and quantitative ridership data regarding street harassment as riders travel to and from transit stops, wait at transit stops, and ride transit vehicles.¹⁹⁴

Assembly Bill 2448, authored by Assemblymember Phil Ting, sought to mandate that California Department of Fair Employment and Housing (DFEH) to develop resources for businesses to (1) train employees on how to recognize, report and respond to discrimination and harassment against customers, (2) put up signage notifying customers of their rights to be free from discrimination and harassment, and requires that DFEH develop a pilot program that publicly recognizes businesses that take tangible steps to create a safe and welcoming environment for customers.¹⁹⁵ On September 13, 2022, Governor Newsom signed A.B. 2448 and S.B. 1161 into law.¹⁹⁶

These bills meaningfully address the harassment and discrimination that AAPI individuals in California, especially women, are experiencing daily. Moreover, the legislative efforts do so in a way that protects all marginalized communities without overreliance on the criminal justice system, which cannot and should not be expected to provide accountability for non-criminal actions.

CONCLUSION

In 2023, Asian Americans and Pacific Islanders are living in fear, concerned about their safety not unlike AAPIs before them who experienced interpersonal hate incidents and institutional racism. Mainstream media coverage misrepresents the majority of hate incidents as hate crimes, and dangerous, often life-threatening ones at that; this framing suggests hate crimes prosecution offers the sole means of addressing such crimes. Successful criminal prosecution of most hate crimes appears elusive due to a variety of factors and fails to address most of what AAPIs are experiencing: non-violent hate incidents. As such, alternatives to hate crime prosecution such as civil rights prosecution and victim services need to be prioritized as they can provide redress and restitution. Solutions that invoke a public health, community-based approach along with public education campaigns and more

194. S.B. 1161, 2022, Reg. Sess. (Cal. 2022).

195. A.B. 2448, 2022, Reg. Sess. (Cal. 2022).

196. *Governor Newsom Strengthens State's Commitment to a California for All*, OFF. GOV. GAVIN NEWSOM (Sep 13, 2022), <https://www.gov.ca.gov/2022/09/13/governor-newsom-strengthens-states-commitment-to-a-california-for-all> [<https://perma.cc/XK6R-DYGH>]. In their final form, SB 1161 creates a community survey for public transit operators in California to use, a critical first step toward better understanding rider experiences and meeting their safety needs and AB 2448 directs the state's Civil Rights Department to create a first-of-its-kind program that would incentivize businesses to create safe and welcoming environments, protecting customers' civil rights to be free from harassment and discrimination. *Id.*

robust civil rights enforcement offer a more comprehensive alternative to simple incarceration. Moving forward, such avenues – and the opportunity they provide to establish a permanent civil rights infrastructure – provide hope that hate directed against Asian Americans and Pacific Islanders as well as other marginalized communities comes to an end and that AAPIs alongside other Americans can experience safety, well-being and self-actualization.