

Asian American
Legal Defense and
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United States Commission on Civil Rights
1331 Pennsylvania Avenue NW, Suite 1150
Washington, DC 20425

Re: Public Hearing on the Federal Government's Response to Anti-Asian
Racism in the United States

Dear Commissioners:

Since its founding nearly fifty years ago, the Asian American Legal Defense and Education Fund (AALDEF) has combined litigation, advocacy, education, and organizing to secure human rights for all. Throughout our history, we have supported Asian American communities facing racial violence, from fighting extremist hate groups, organizing against police brutality, responding to vigilante violence, and defending individuals subject to state-sanctioned discrimination and surveillance. In the past three years, we have also increased our services to Asian Americans facing racial violence and harassment.

We thank the Commission for bringing attention to anti-Asian racism. The pandemic has brought unprecedented challenges, grief, and losses for everyone. For Asian Americans, the pandemic also brought a painful reminder that our sense of belonging is provisional, adding another chapter to a history of being racialized as a foreign peril and threat. In response to the surge of violence we are experiencing, many in our communities have mobilized to help keep each other safe from harm. The federal government has also made efforts to address anti-Asian racism, including increased enforcement and investigation of hate crimes, which is the present issue before the Commission. AALDEF submits this letter to highlight limitations of the hate crimes approach and propose additional federal government action for addressing racial violence and anti-Asian sentiment.

The Hate Crimes Framework Provides an Incomplete Picture of Anti-Asian Racism

Hate crimes have become synonymous with anti-Asian racism. During the pandemic, the media increased its coverage of violence against Asian Americans, with countless brutal, unprovoked attacks shown regularly on television. Asian Americans reported feeling unsafe and fearful of going out in public, and community accompaniment and ally programs were established. But the scope of the problem was difficult to measure.

Now with the benefit of self-reported data, we have a clearer picture of the universe of anti-Asian incidents.

According to Stop AAPI Hate, which has collected the largest national dataset on anti-Asian racism during this period, the majority of reported incidents (63%) involved verbal hate speech and/or harassment.¹ Seventeen percent of incidents involved physical violence, followed by shunning and avoidance (16%), and civil rights violations (12%).²

While Stop AAPI Hate's incident categories and statutory hate crime definitions do not perfectly overlap, only a small subset of the 17% of incidents involving physical violence would rise to the level of triggering a law enforcement investigation. Fewer still would involve the requisite evidence of bias motivation for a hate crime conviction. Police officers and prosecutors have reported that finding clear-cut evidence of hate is difficult, even with substantial investigative resources.³ When a suspect has a track record of hate or bigotry, prosecutors still must prove that an individual's motive on the actual day of the incident was based on bias. Prosecutors also report that when a defendant is already facing a long sentence for a serious offense, there is no practical reason to bring hate crime charges because the penalty is not a meaningful increase.⁴ In addition, a 2016 National Institute of Justice Report found that laws designed to deter crime by focusing on increasing the severity of punishment are ineffective, and that prisons may exacerbate recidivism.⁵

Hate crime prosecution also replicates racial inequalities found throughout the criminal legal and prison systems. The role of implicit racial bias in prosecutorial decision making is well-documented⁶ and hate crimes are not immune to this feature of the system. According to the FBI's updated hate crimes data, released earlier this month, the majority of hate crime offenders are white (56.1%).⁷ However, Black people are still disproportionately criminalized for hate crimes, being prosecuted in 21.3% of cases⁸ while comprising 13% of the population. Hate crime laws are intended to protect marginalized groups but have the paradoxical consequence of perpetuating racial inequality.

It is also unclear whether enhanced hate crime prosecution meaningfully reduces violence. The FBI's Uniform Crime Reporting data on hate crimes has many gaps and inconsistencies, which the COVID-19 Hate Crimes Act aims to improve. But over a decade after the Matthew Shepard Hate Crimes Prevention Act was passed, LGBT

¹ StopAAPIHate, *Two Years and Thousands of Voices: What Community-Generated Data Tells Us About Anti-Asian Hate*, 10 (Jul. 20, 2022), <https://stopaapihate.org/wp-content/uploads/2022/07/Stop-AAPI-Hate-Year-2-Report.pdf>.

² *Id.* at 4.

³ Kiara Alfonseca, *Hate Crimes are Hard to Prosecute, But Why?*, ABC News (Apr. 13, 2021), <https://abcnews.go.com/US/hate-crimes-hard-prosecute/story?id=76926458>.

⁴ Avlana Eisenberg, *Hate-Crime Laws Don't Work as Their Supporters Intended*, The Atlantic (Jun. 22, 2021), <https://www.theatlantic.com/ideas/archive/2021/06/hate-crimes-not-used-prosecutors/619179/>.

⁵ Nat'l Inst. of Justice, *Five Things about Deterrence*, 2 (May 2016), <https://perma.cc/2KJL-SAE8>.

⁶ Robert J. Smith and Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 Seattle U. L. Rev. 795 (2012).

⁷ U.S. Dep't of Justice, Uniform Crime Report: Hate Crime Statistics 2021 (Winter 2022), <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

⁸ *Id.*

people are still nine times more likely than non-LGBT people to be victims of violent hate crimes.⁹

AALDEF has supported many individuals who have had frustrating and harmful experiences with the criminal legal system in trying to address hate incidents. In one instance, a woman in the neighborhood hit a Vietnamese man with a car and called him racial slurs. When he asked the police to investigate, he was ignored. When he went to the prosecutor's office for help, they told him that there was no real case, despite video evidence of the altercation. In another instance, a police officer incessantly harassed and threatened his neighbor, a Chinese woman, also using explicit racial slurs. Earlier this year, a woman of Chinese descent called the police when she was attacked while grocery shopping, only to be berated by the responding officer, who told her it was a waste of time and threatened to arrest her for escalating the altercation. We have also worked with undocumented people and people with past criminal legal system contact who do not feel safe reporting attacks to the police at all, especially in towns and cities where local police collude with ICE.

These are some of the harms and challenges of enforcing hate crime laws, which has been the focus of the federal government's response to the current moment. But this is just a small piece of the bigger universe of anti-Asian incidents. Ultimately, crime control is not a solution to racism. But the hate crimes framework locates racism within individual acts of violence, which can obscure the cultural norms, discriminatory institutions, history, and ideology that inform individual prejudice and bias.

The Federal Government's Role: Foreign Policy and Rhetoric Fuels Anti-Asian Sentiment

Surging violence and discrimination run parallel to conflict, war, and rivalry with Asian countries throughout U.S. history. In the 1970s and 1980s, the growth of Japanese automakers and the loss of manufacturing jobs were connected to growing violence, including the murder of Vincent Chin and a mass shooting of primarily Southeast Asian students at an elementary school in Stockton, California. During this same period, refugees from the Vietnam War were beaten and harassed where they resettled, their houses burned and vandalized.¹⁰ In 1989, Jim Loo was murdered by two brothers who blamed him for the deaths of U.S. soldiers in Vietnam as they took his life. The following year, skinheads murdered a Vietnamese teenager in Houston. Earlier periods of history are saturated with overt, state-sanctioned violence, notably the Japanese American incarceration during World War II, and the Page and Chinese Exclusion Acts, preceded and followed by massacres of Chinese immigrants.

In more recent history, the post-9/11 period exemplifies the dangerous effects of the failure to acknowledge the role of institutional and structural racism when specific groups are targeted. After 9/11, the federal government stated that it would do whatever is necessary to protect people in the United States and guaranteed that discrimination

⁹ Andrew R. Flores et al., *Hate Crimes against LGBT People: National Crime Victimization Survey, 2017-2019*, 17 PLoS ONE 12 (Dec. 21, 2022), <https://doi.org/10.1371/journal.pone.0279363>.

¹⁰ See, e.g., Elaine Song, *To Live in Peace...Responding to Anti-Asian Violence in Boston*, Asian American Resource Workshop (Oct. 1987), https://repository.library.northeastern.edu/downloads/neu:274096?datastream_id=content.

against Muslims and others would not be tolerated.¹¹ Despite this rhetoric, the Bush Administration engaged in two years of intense profiling of Muslims and other select groups of noncitizens through a state program of mass discrimination on the basis of religion and ethnicity.

While AALDEF responded to a spike in individual instances of Islamophobic harassment and violence, we also provided legal assistance to hundreds of immigrants whose lives were upended by the federal government's Special Registration and secret detention programs.¹² Special Registration required nearly 100,000 men from Muslim countries residing in the United States to report for fingerprinting and interrogation. Thousands were placed in immigration proceedings and deported, and tens of thousands were subject to continued surveillance. During this period, it was clear that through its own acts of violence against our communities, the federal government gave license to individual actors and hate groups to act in accordance, no matter how many times the Administration visited a local mosque or community leader.

The government response targeting the Asian American community in the period following 9/11 has troubling parallels to the present moment. The current and previous Presidential Administrations have made numerous public statements supporting Asian Americans and denouncing acts of racism. At the same time, foreign policy and rhetoric that center China as a threat to American interests and well-being has activated xenophobic and prejudiced views toward Asian people in America.

Former President Trump relentlessly blamed China for the pandemic and racialized the virus through rhetoric not worth repeating here. At the same time, even prior to the pandemic, U.S. foreign policy had increasingly centered China as a rival power. As the current President stated in his State of Union Address, "If China threatens our sovereignty, we will act to protect our country," in reference to the Chinese spy balloon that was shot down over the Atlantic Ocean in February.¹³ Negative public opinion toward China has escalated accordingly. Pew has measured a steady increase in public perception that China is a major threat to the United States.¹⁴ 82% of the American public have unfavorable views of China, including 40% who have very unfavorable views of China.¹⁵

As negative attitudes toward China harden, and the relationship with China toggles between competition and conflict, the implications for the safety, stability, and rights of Asians in America are troubling. Numerous academic studies have established a link between increased xenophobic attitudes and fear of COVID-19. One recent study in

¹¹ U.S. Dep't of Justice, Div. of Civil Rights, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later*, 5 (Oct. 19, 2011),

https://www.justice.gov/sites/default/files/crt/legacy/2012/04/16/post911summit_report_2012-04.pdf.

¹² See generally, Saurav Sarkar & Sin Yen Ling, Asian American Legal Def. & Educ. Fund, *Special Registration: Discrimination & Xenophobia as Government Policy* (Jan. 2004),

<https://www.aaldef.org/uploads/pdf/AALDEF-Special-Registration-2004.pdf>.

¹³ President Joe Biden, State of the Union Address (Feb. 7, 2023), transcript available at

<https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/>.

¹⁴ Christine Huang, Laura Silver & Laura Clancy, *Report: China's Partnership with Russia Seen as a Serious Problem for the U.S.*, 4, Pew Res. Center (Apr. 28, 2022),

<https://www.pewresearch.org/global/2022/04/28/chinas-partnership-with-russia-seen-as-serious-problem-for-the-us/>.

¹⁵ *Id.* at 5.

Nature found that the COVID-19 pandemic had a role in activating latent anti-Asian sentiments.¹⁶ Notably, the survey results showed that 56% of Trump voters blamed Chinese people for the pandemic and 27% blamed Asians as a whole.¹⁷ These attitudes were associated with an 18.4% decrease in traffic to Chinese and 25% decrease to non-Chinese Asian restaurants, at a considerable loss of revenue to the community.¹⁸ Research also shows that Americans who perceive China as more threatening to America's national interests assess Chinese people more negatively, suggesting that a perceived threat by China propels negative stereotypes.¹⁹

Unsurprisingly, similar to the period post-9/11, the legal rights of Asian people in America have also come under attack in the name of national security. Legislators in numerous states have introduced legislation that prohibits citizens of China and other countries perceived as threats such as Syria, North Korea, and Russia, from owning property.²⁰ A Texas legislator recently introduced a bill that bans undocumented students, and students from China, North Korea, Russia, and Iran from enrolling in state universities and colleges.²¹ Senator Tom Cotton has introduced a bill to ban Chinese students from graduate studies in STEM fields.²²

To be sure, there are legitimate criticisms of China, including the well-documented human rights abuses against its own people. However, the federal government has refused to recognize the evidence that foreign policy and rhetoric toward China impacts Asian Americans and feeds racial bias. A serious reckoning with the discriminatory impacts of federal and local policy is required to address the community's continued experiences of racism, violence, and the erosion of rights.

Areas for Further Investment in Public Safety Strategies

In 2023, numerous tragic incidents of racial violence against Asian Americans have already been documented. In Indiana, a teenage girl was stabbed while riding the bus.²³ In Cincinnati, a man fired gunshots into an Asian grocery store.²⁴ In New York City, a

¹⁶ See Justin T. Huang *et al.*, *The Cost of Anti-Asian Racism during The COVID-19 Pandemic*, *Nature Human Behavior* (Jan. 19, 2023), <https://doi.org/10.1038/s41562-022-01493-6>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Qian He and Yu Xie, *The Moral Filter of Patriotic Prejudice: How Americans View Chinese in the COVID-19 Era*, "Proceedings of the Nat'l Acad. of Sci.," <https://www.pnas.org/doi/abs/10.1073/pnas.2212183119>.

²⁰ There are at least eleven states where such legislation has been introduced. See Matthew Brown & Sam Metz, *States Consider Restricting Land Ownership for Foreign Nationals after Chinese Balloon Sparks National Security Debate*, Associated Press (Feb. 8, 2023), <https://www.pbs.org/newshour/nation/states-consider-restricting-land-ownership-for-foreign-nationals-after-chinese-balloon-sparks-national-security-debate>.

²¹ Cayla Harris, *Bill Would Ban Students in U.S. Illegally, Those from China, Other Nations from Texas Universities*, *Hous. Chron.* (Mar. 10, 2023), <https://www.houstonchronicle.com/politics/texas/article/bill-ban-undocumented-students-texas-universities-17832974.php>.

²² Press Release: Cotton, Colleagues Introduce Bill to Restrict Chinese STEM Graduate Student Visas, Office of Sen. Tom Cotton (Apr. 22, 2021), <https://www.cotton.senate.gov/news/press-releases/cotton-colleagues-introduce-bill-to-restrict-chinese-stem-graduate-student-visas>.

²³ Jesus Jiménez, *Indiana University Student Stabbed in 'Racially Motivated' Attack, School Says*, *N.Y. Times* (Jan. 15, 2023), <https://www.nytimes.com/2023/01/15/us/indiana-university-student-stabbed.html>.

²⁴ Christian LeDuc, *Fundraiser Created to Help Asian-American Business Owners After Shots were Fired into Their Evendale Store*, *WCPO 9 ABC* (Jan. 23, 2023), <https://www.wcpo.com/news/local->

mother and her son were beaten on the street by strangers.²⁵ In Massachusetts, a man was run over by a car.²⁶ Charges have been brought in all of these cases, and some are being prosecuted as hate crimes. However, a range of issues remain. Victims and their families often are too scared to leave their homes. Mental health consequences are unfortunately the norm in these cases. Health care and other bills pile up. Additionally, the broader community continues to fear the violence and harassment that racism spurs. More focus and funding should go toward addressing the root causes of violence and unmet needs, particularly in the working class, queer, and other further marginalized groups within our community.

Public and K-12 education on the history of colonialism, immigration exclusion, genocide against indigenous people, and slavery can fight misinformation and contextualize the current moment within a longer history of inequality. The attacks on K-12 education on race and Black history should be condemned and curriculum introduced to counter this censorship and erasure of U.S. history. Asian American history must be understood alongside Black, indigenous, and Latinx history to better understand how racial groups have formed in relation to one another, and how rights and privileges have been distributed among them.

Expansion of healthcare coverage has a positive effect on both preventing violence and ensuring competent care following an act of violence or harassment. Healthcare is one of the primary costs borne by Americans, and it is consistently one of the top issues that Asian American voters prioritize in elections, according to AALDEF's exit polls.²⁷ Working class and low-income victims cannot foot the bill for an emergency room visit following an attack when they are struggling to pay rent and buy groceries. Culturally competent mental health support is also unaffordable and inaccessible. Victims' compensation funds are meant to fill this gap, but in many states, these funds are not available to people who do not report the incident to police, have difficulty documenting the exhaustion of insurance policies, and have past contact with the criminal legal system. Investments in healthcare and inclusive policies that cover the cost of victimization should be a key part of any public safety strategy.

Housing is also an issue for victims who are harmed by their neighbors. For example, we worked with an elderly woman who was attacked in her neighborhood and did not feel safe, but she did not have the means to relocate from her apartment in public housing. In another instance, a family was harassed by their neighbors but could not temporarily relocate and rent out their home without losing their disability benefits.

[news/hamilton-county/evendale/court-documents-man-claims-hes-the-president-of-tokyo-while-firing-shots-into-asian-restaurant-in-evendale.](https://www.cbsnews.com/news/hamilton-county/evendale/court-documents-man-claims-hes-the-president-of-tokyo-while-firing-shots-into-asian-restaurant-in-evendale/)

²⁵ Lucy Yang, *Asian Woman Speaks Out after She And Her Son Physically, Verbally Attacked in Queens*, ABC 7, <https://abc7ny.com/nyc-crime-hate-asian-woman-attacked-queens/12922975/>.

²⁶ Emily Mae Czachor, *Massachusetts Driver Accused of Intentionally Running Down Man with Car Indicted on Federal Hate Crime Charge*, CBS News (Feb. 16, 2023), <https://www.cbsnews.com/news/john-sullivan-george-ngo-hitting-man-with-car-racist-attack-hate-crime-charge-massachusetts/>.

²⁷ Press Release: AALDEF Releases Preliminary Asian American Exit Poll Results for 2022 Midterm Elections, Asian American Legal Def. & Educ. Fund (Nov. 9, 2022), <https://www.aaldef.org/press-release/aaldef-releases-preliminary-asian-american-exit-poll-results-for-2022-midterm-elections/>.

Policies that allow victims to leave a lease without penalty and relocation assistance funding are necessary to ensure well-being and safety.

Many people are harassed at work, whether by customers, clients, or colleagues. We support massage parlor workers who are criminalized, stolen from, and assaulted by police and do not feel safe reporting sexual assaults by clients. Workplace raids and criminalization foreclose the ability to formalize workplaces and access labor rights. Other community members have reported the failure of employers to address harassment by co-workers. Strengthened civil rights enforcement against employers can make workplaces safer, and culturally competent restorative justice and mediation services should be well-funded and accessible.

The Department of Justice and Department of Health and Human Services have flagged several of these strategies in their 2022 guidance, *Raising Awareness*, such as effective and targeted public health resources and social services, education about bias and discrimination, and research, study, and sociological perspectives on the causes and trends of hate acts.²⁸ However, federal funding has been put toward law enforcement agencies, instead of directly to community partners and strategies aimed at addressing the root cause of violence. This is a missed opportunity to address the immediate needs of those who continue to experience racial violence and harm. Funding and implementation of these strategies is a clear next step toward increasing public safety for all.

Thank you for the opportunity to submit this comment to the Commission.

Sincerely,

A handwritten signature in black ink that reads "Margaret Fung". The signature is written in a cursive style with a long, sweeping tail on the letter "g".

Margaret Fung
Executive Director

Jane Shim
Director, Stop Asian Hate Project

²⁸ U.S. Dep't of Justice & U.S. Dep't of Health and Human Serv., *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, 9, <https://www.justice.gov/file/1507346/download>.