STOPPING ANTI-ASIAN HATE: LOCAL SOLUTIONS TO A NATIONAL PROBLEM

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INTRODUCTION

The Novel Coronavirus (COVID-19) pandemic has been a worldwide public health crisis and economic crisis. In December 2019, the first cases of COVID-19 were reported in the city of Wuhan in the Hubei Province of China. The disease developed into a worldwide pandemic over the next month, causing the World Health Organization to declare a global health emergency for only the sixth time in history. Three days later, President Donald Trump declared a public health emergency in the United States. In March 2020, President Trump declared the COVID-19 pandemic a national emergency, and soon thereafter individual states began imposing stay-at-home orders. Throughout the pandemic, President Trump repeatedly employed racially hostile language when referring to COVID-19, calling it the “Wuhan virus,” the “Chinese virus,” the “China plague,” and the “kung flu.”1 In fact, the president went out of

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his way to attach ethnicity to COVID-19. For example, he purposefully edited his speech to avoid the Centers for Disease Control (CDC) guideline to refer to the disease in neutral terms, and instead referred to it specifically as Chinese.\textsuperscript{2} Though it is unclear whether there is a direct correlation, the president’s inflammatory discourse coincided with a rise in racially motivated violence against Asian and Pacific Islander (API) groups in the United States.\textsuperscript{3} Congresswoman Judy Chu, however, directly blamed the president’s purposeful scapegoating of API populations for the spike, saying

The CDC and the World Health Organization said that we should all use the official term, COVID-19, in order to make sure that this disease is not associated with a particular geographical location or ethnicity due to the stigma it causes. And President Trump refused to acknowledge that. Instead he used these terms—China virus, Wuhan virus, and even Kung Flu—and as a result the anti-Asian hate crimes and incidents increased exponentially.\textsuperscript{4}

As hates crimes against API individuals rose across the country over the next year, they were generally treated as a footnote of local news until the issue suddenly gained national attention with a mass shooting in Atlanta, Georgia. On March 16, 2021, gunman Robert Aaron Long targeted three Asian massage parlors in Atlanta and murdered eight women, six of whom were of Asian descent.\textsuperscript{5} Following his arrest, he claimed that the shootings were not racially motivated, but took place because he blamed the massage parlors for his sex addiction.\textsuperscript{6} The Atlanta shootings brought anti-Asian hate to the foreground of national conversation and brought about passage of the COVID-19 Hate Crimes Act (COVID-19 Act), as well as a slew of responsive legislation at the state level. This Essay will consider the history of anti-Asian hate in the United States, will examine the ways in which the COVID-19 Act seeks to address this


\textsuperscript{3} Goodwinn & Chemerinsky, supra note 1, at 318–19 ("Commentators may debate whether the rise in anti-Asian hate crimes in the wake of COVID-19 relates to Trump’s racist pandering, but the cases of threats, children being bullied, and physical attacks (people spat upon, assaulted with harmful chemicals, and stabbed) raise serious alarm.").


history, and will look to remaining barriers that need to be overcome at the local level in order to effect the change envisioned by the COVID-19 Act.

I. ANTI-ASIAN ANIMUS IN THE UNITED STATES: HOW WE GOT HERE

Anti-Asian hate is nothing new. API groups have experienced xenophobia, racism, and violence ever since they first began arriving in the United States in the middle of the nineteenth century, and the United States has a long history of enacting discriminatory laws against APIs. Nor is this the first time that the perceived threat of disease and contagion has been used to justify anti-Asian sentiment.

The Chinese were the first API group to arrive in large numbers in the United States in the middle of the nineteenth century. First drawn to California with the discovery of gold at Sutter’s Mill, they soon were also recruited for other projects requiring cheap, unskilled labor, particularly the construction of the transcontinental railroad. However, the domestic workforce viewed them as competition and as a threat to domestic wages. Anti-Asian sentiment continually rose in the West coast, especially after the completion of the railroad created a glut of excess Chinese workers and the nation was struggling economically during the Long Depression. Throughout the late nineteenth century, Chinese immigrants were targeted for violence by primarily white mobs, such as the Chinese Massacre of 1871 in Los Angeles, the San Francisco Riot of 1877, the Tacoma Riot of 1885, the Seattle Riot of 1886, and the San Jose Riot of 1887. In general, the Chinese residents had little recourse to the violence against them, as they were prohibited from testifying in court against white persons, as affirmed in People v. Hall and again in People v. Brady.

Indeed, the Chinese not only needed to contend with the racist actions of private actors, but also with structural racism as well. Throughout the nineteenth century the California legislature enacted legislation discriminating against the Chinese, specifically in hope of dissuading their further immigration. In 1850, the California legislature created a Foreign Miners’ Tax, imposing a $20/month tax on all foreign miners who were ineligible for citizenship. In 1855, California enacted “An Act to Prevent the Further Immigration of

8 Id. at 30.
10 People v. Hall, 4 Cal. 399, 399 (1854).
11 People v. Brady, 40 Cal. 198, 199 (1870).
Chinese or Mongolians to this State,” which made the immigration of Chinese persons punishable by a fine or imprisonment from three months to a year.\textsuperscript{13} In 1858, the California legislature passed “An Act to Protect Free White Labor Against Competition with Chinese Coolie Labor, and to Discourage the Immigration of the Chinese into the State of California,” which created a “Chinese police tax” that required any person “of the Mongolian race” pay a monthly tax of $2.50 per month.\textsuperscript{14} These discriminatory taxes were struck down as an impermissible state incursion on the power of the federal government to regulate international commerce and foreign relations in \textit{People v. Downer}\textsuperscript{15} and \textit{Lin Sing v. Washburn},\textsuperscript{16} which then caused a shift in the strategy of anti-Chinese agitators towards making Chinese migration an issue of public health, welfare, and morality.\textsuperscript{17}

California turned to the issue of Chinese prostitution to advocate for the eventual exclusion of all Chinese. In March 1866, the California legislature passed “An Act for the Suppression of Chinese Houses of Ill Fame.”\textsuperscript{18} In March 1870, the legislature followed up with “An Act to Prevent the Kidnapping and Importation of Mongolian, Chinese and Japanese Females, for Criminal or Demoralizing Purposes.”\textsuperscript{19} Under the 1870 Act, if a passenger of a vessel was an Asian female, and she was unable to produce evidence demonstrating that she was a “good person of correct habits and good character,” the captain of the vessel carrying her could be charged with a misdemeanor.\textsuperscript{20} During the 1873–74 legislative session, this Act was merged into Section 2952 of Chapter 1, Article 7, of the Political Code of California, which dealt with immigration, and added lewd or debauched women as additional classifications of individuals to whom monetary bonds could be attached to prior to disembarkation.\textsuperscript{21} This law came under challenge in two cases, \textit{In re Ah Fong} and \textit{Chy Lung v. Freeman}, and was struck down for the same reasons cited in \textit{People v. Downer} and \textit{Lin Sing v. Washburn}—that the law was an overly broad use of state police power that infringed upon the federal power over foreign trade and foreign relations.\textsuperscript{22} However, in \textit{In re Ah Fong}, Justice Field, riding circuit in San Franci-
co, left open the possibility that the federal government had the power to enact such a regulation.23

The federal government responded in kind. A few short months after the In re Ah Fong decision, the United States Congress passed the Page Act of 1875, which was the first federal immigration law ever enacted.24 The Page Act barred immigration of women from China unless they could prove that they were not prostitutes and was applied to effectively bar all Chinese women from entering the United States.25 As the words of Robert Aaron Long would echo a century and a half later, Chinese prostitutes were demonized as alluring white men to their bedrooms and infecting them with disease, which would then threaten the integrity of white families and thus needed to be excluded.26 This law was not opposed in the courts, and eventually led the way to the exclusion of all Chinese. All Chinese people, not just women, were stigmatized as disease-ridden members of an insolently foreign culture who refused to assimilate to American values, and thus required exclusion for the good of public health, welfare, and morality. Thus, Congress passed the Chinese Exclusion Act of 1882, which prohibited the entry of almost all Chinese individuals from entering the United States, with exceptions for diplomats, teachers, students, merchants, and travelers.27 It was the first law to prevent immigration of a group of people based on their race and ethnicity. The Chinese Exclusion Act was renewed in 1884, 1888, and finally made permanent in 1892.28 In Chae Chan Ping v. United States, the Supreme Court affirmed that Congress had the power to effect such an exclusion, as it was within the plenary power of Congress over immigration, which was connected to the power of sovereign nations to defend themselves against foreign invaders.29 Indeed, the immigration of Chinese was likened to an invasion: as the court declared, “[t]o preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character, or from vast hordes of its people crowding in upon us.”30

23 In re Ah Fong, 1 F. Cas. at 220 (C.C.D. Cal. 1874).
29 Ping v. United States, 130 U.S. 581, 605 (1889).
30 Id. at 606.
Even though the Chinese were excluded, other immigrant groups from Asia were allowed to enter for a short time. However, as with the Chinese, anti-immigrant sentiment turned public opinion against them, and nativists lobbied Congress for their exclusion at the start of the twentieth century. As a result, Congress enacted the 1917 Immigration Act that created the “Asiatic Barred Zone,” which banned immigration from virtually all parts of Asia except for Japan. The 1924 Immigration Act closed that small loophole by prohibiting entry of all aliens ineligible for citizenship, thereby barring all immigration from Asia. The 1934 Tydings-McDuffie Act reclassified Filipinos from being considered colonized nationals of the United States into foreign aliens, which placed them under the same restrictions as the 1924 Act once the Philippines became an independent nation. Even after the exclusionary laws were repealed, the national origins quota, which limited entry to 2% of the number of foreign-born persons of that nationality residing in the United States based on the census, severely limited the number of individuals who could immigrate from Asian countries. After the Magnuson Act repealed Chinese exclusion in 1843, entry of Chinese was limited to 105 individuals per year. The Luce-Cellar Act of 1946 repealed exclusion for Filipinos and Asian Indians, but set a quota of one hundred entries from each country per year.

During the same time, anti-Asian violence persisted throughout the twentieth century and was often linked to economic scapegoating of Asian immigrants. White labor leaders led a riot targeting South Asian migrant workers employed at lumber mills in the Bellingham Riot of 1907. The Bellingham Riot was one of a series of race riots that targeted Asians along the West coast, which became collectively known as the Pacific Coast Race Riots of 1907, and included the San Francisco Riot of 1907 that targeted Japanese immigrants and the Vancouver Riot of 1907 that targeted the Chinese and Japanese populations.

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35 The Immigration Act of 1924, supra note 33.


there. During the Great Depression and in the years leading up to World War II, white farmers targeted Japanese farmers in the West with violence, as, for instance, in Arizona’s Salt River Valley. In the Watsonville Riots of 1930, a white mob of about 500 attacked Filipino farmworkers after Filipino men were seen dancing with white women at a taxi dance hall.

World War II brought another wave of institutionalized racism with Executive Order 9066, which authorized the evacuation and internment of individuals of Japanese descent living in the United States, including citizens. Executive Order 9066 was upheld by the Supreme Court in Hirabayashi v. United States and Korematsu v. United States, which held that conditions of national security and national emergency in times of war justified the suspension of constitutional protections for individuals who could potentially be enemy combatants.

Though not a single person of Japanese ancestry was ever convicted of any serious crime of sabotage or espionage, the national sentiment at the time was that Japanese individuals, regardless of whether they were United States citizens, were disloyal. The discrimination was, however, as with the Chinese, likely economically motivated. After the war, a Commission on Wartime Relocation and Internment of Civilians concluded that an important motivator for internment was economic competition, finding “[i]n part the hostility was economic, emerging in various white American groups who began to feel competition, particularly in agriculture, the principal occupation of the immigrants.”

Though expediency of the executive in times of national emergency was used as the justification, internment had the economic effect of dispossessing thousands of Japanese Americans of their property and erasing the competitive position they had built for themselves in the farming industry on the American West coast.

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The Immigration and Nationality Act Amendments of 1965, which eliminated the discriminatory national origins quota, ushered in a new era of immigration for Asians to the United States to make them one of the fastest growing populations in the United States.\textsuperscript{46} Though they were recast as a model minority in the late-twentieth century, they were still targeted for violence, again, usually linked to labor competition and economic turmoil. The 1982 murder of Vincent Chin demonstrated for the API community that they were still seen as perpetual outsiders by the public at large and treated as second-class citizens by the justice system. Chin was a Chinese American man who was out celebrating for his bachelor party in Detroit, Michigan when he was confronted by two white men, Ronald Ebens and Michael Nitz, who thought he was Japanese, blamed him for the downturn in the American automobile industry, and blamed him for their loss of work.\textsuperscript{47} Ebens and Nitz beat Chin to death with a baseball bat.\textsuperscript{48} Ebens and Nitz were convicted of manslaughter, but were only sentenced to a $3,000 fine, $780 in court costs, and placed on probation for three years.\textsuperscript{49} According to Judge Charles Kauffman, who issued the sentence, “These aren’t the kind of men you send to jail...You don’t make the punishment fit the crime, you make the punishment fit the criminal.”\textsuperscript{50}

The terrorist attacks of September 11 brought on another wave of anti-Asian violence, this time aimed at South Asian and Sikh communities who were perceived as being Muslim.\textsuperscript{51} As in the case of Vincent Chin, who was misidentified as being Japanese, there is a tendency of anti-Asian hate crimes to regard Asians monolithically, without distinction to ethnicity or nationality. This rise in hate crimes in the wake of September 11, however, brought the API community together in solidarity with Muslim Americans. The Japanese American community noted the similarities between the shifts in policy that allowed ethnic profiling for the sake of national security with internment. Fred Korematsu, for example, writing an amicus brief in support of the release of detainees at Guantanamo Bay, pointed to his own story to demonstrate how “throughout history, the United States has unnecessarily restricted civil liberties in times of stated military crisis.”\textsuperscript{52}


\textsuperscript{48} Id.

\textsuperscript{49} Id.

\textsuperscript{50} Id.


September 11 also marked a significant shift in immigration policy, away from facilitating migration and towards bolstering national security and border control. The Homeland Security Act in 2002 dissolved the Immigration and Naturalization Service and transferred most immigration administration to three branches of the newly-formed Department of Homeland Security. With this came an emphasis on surveillance, detention, and control over immigrants suspected of being national security threats. However, as portended by the API groups who protested the systemic targeting of Muslim Americans as security threats, Asians have also come under constant scrutiny for disloyalty in the twenty-first century. A significant example of this occurred in the case of Dr. Wen Ho Lee who, despite being a naturalized United States citizen who was born in Taiwan, was detained on suspicion of being a Chinese spy. Though ultimately there was no proof that he sold information about the United States nuclear program to the Chinese government, he was presumed to have loyalties to China simply because of his ethnicity. Similar cases followed, such as Dr. Xiaoxing Xi, a Temple University physicist who was accused of sending trade secrets to China, but all the charges were later dropped, and Sherry Chen, a hydrologist working for the National Weather Service who was accused of sending government data to a former colleague in China, but all charges against her were also dropped. These cases demonstrate again that regardless of United States citizenship status, APIs are never “American enough” and consistently thought of as unassimilable foreigners.

The linkage between the amplified national security response to the September 11 attacks and the history of anti-Asian xenophobia intersected again with the Trump presidency and his use of Section 212(f) of the Immigration and Nationality Act to accomplish his brand of xenophobic immigration policy. Section 212(f) provides that “Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.” Using this authority, President Trump issued a series of executive orders, collectively known as the Muslim Ban, which barred foreign nationals from predominantly Muslim countries.

from visiting the United States for ninety days. His actions under 212(f) were upheld by the Supreme Court in *Trump v. Hawaii*, which found that 212(f) grants the president broad discretion to exclude aliens so long as he finds that they are detrimental to the interests of the United States, and that the President Trump had fulfilled that requirement in the case of the Muslim Ban.\(^{59}\) Again, national security was vaulted as absolute, and according to Justice Roberts, “the Executive’s evaluation of the underlying facts is entitled to appropriate weight, particularly in the context of litigation involving ‘sensitive and weighty interests of national security and foreign affairs.’”\(^{55}\)

Emboldened by the Supreme Court ruling in his favor, President Trump continued to use 212(f) in the midst of the COVID-19 pandemic, in a manner that has been testing the limits of what qualifies as making a foreign alien “detrimental to the interests of the United States.” Citing public health concerns, President Trump used 212(f) to exclude aliens who have been in foreign countries where there have been COVID-19 outbreaks, such as China, Iran, the Schengen area of Europe, the United Kingdom, and Brazil.\(^{62}\) However, apart from the region-specific prohibitions, he also invoked 212(f) in order to protect American labor interests by placing a ban on work-related visas, with Presidential Proclamation 10052, which he entitled “Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak.”\(^{63}\) He also used his authority under 212(f) to issue Proclamation 10043,\(^{64}\) which restricted the entry of graduate students and postdoctoral researchers from China, citing misappropriations of United States technologies and intellectual property by China.\(^{65}\) Though a study by the Johns Hopkins University Applied Physics Laboratory found that there is “insufficient evidence that academic/economic espionage by Chinese nationals is a widespread problem at US universities,”\(^{66}\) this prohibition is still in effect as of the writing of this Essay, and is one of the few uses of 212(f) by the Trump administration that has not been repealed by the Biden administration.\(^{67}\) This demonstrates that

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\(^{61}\) *Id.* at 2422 (citing Holder v. Humanitarian Law Project, 561 U.S. 1, 33–34 (2010)).


\(^{65}\) *Id.*


yet again, as in the cases of Japanese internment and Dr. Wen Ho Lee, despite a lack of evidence showing any sort of disloyalty, and regardless of United States citizenship status, API individuals are constantly distrusted and suspected of being disloyal.

As stated at the start of this Essay, President Trump has blamed COVID-19 on China, leading to a spike in anti-Asian sentiment across the nation. Yet again, this is not anything new. President Trump has targeted China from the beginning of, and even before the start of, his administration. Trump centered his 2016 presidential campaign on a “Make America Great Again” platform that fiercely criticized American foreign trade relations with China, where he repeatedly attacked China as a foreign competitor. He began his campaign by complaining how much China was “ripping us,” and continued to lambast China on the campaign trail, writing an opinion piece in the Wall Street Journal, entitled “Ending China’s Currency Manipulation,” and making China a central focus of his first debate with Hillary Clinton. During another campaign rally, he used the analogy of crime, stating “We can’t continue to allow China to rape our country and that’s what they’re doing. It’s the greatest theft in the history of the world.” After he became president, he continued scapegoating China for the United States’ economic problems in the rhetoric he used during the trade war that he started with China. He called the trade war with China an emergency, saying “I could declare a national emergency, I think when they steal and take out and intellectual property theft anywhere from $300 billion to $500 billion a year and when we have a total lost [sic] of almost a trillion dollars a year for many years.” Thus, President Trump’s scapegoating of China did not start with COVID-19, but is in line with his inflammatory economic rhetoric that has been aimed at China from the beginning.

His racially inflammatory descriptions of COVID-19 as a Chinese disease appears to be correlated with the rise in anti-Asian hate crimes across the country. Police data indicate that anti-Asian hate crimes rose by 145% in sixteen of America’s largest cities in 2020 compared to 2019, according to an analysis done by the Center for the Study of Hate and Extremism at California State University, San Bernardino. This spike occurred despite a 6% decline in hate crimes overall in those same sixteen cities due to social distancing during the pandemic. The rise also began in March 2020, which coincided with the time that COVID-19 began affecting the United States and President Trump started using ethnically-charged rhetoric to refer to the disease. Anti-Asian hate crimes continued to surge in 2021, with a 164% increase in the first quarter of 2021 overall, compared to the same period in 2020. Public attention to the rise in hate crimes, however, culminated with the Atlanta shootings in March 2021.

II. FEDERAL, STATE, AND LOCAL RESPONSES TO ANTI-ASIAN HATE: WHERE WE GO FROM HERE

In response to the Atlanta shootings and to the surge in attacks against people of Asian ancestry, Representative Grace Meng and Senator Mazie Hirono introduced the COVID-19 Hate Crimes Act, which passed both chambers of Congress with overwhelming bipartisan support and was signed into law by President Biden on May 20, 2021. The COVID-19 Act requires a designated officer or employee of the Department of Justice (DOJ) “to facilitate the expeditious review of hate crimes” and reports of hate crimes. It charges the DOJ to issue guidance for state, local, and tribal law enforcement agencies on how to establish online hate crime reporting processes, collect data disaggregated by protected characteristics such as race or national origin, and expand education campaigns on hate crimes. It further charges the DOJ and the Department of Health and Human Services to issue guidance aimed at raising awareness of hate crimes during the COVID-19 pandemic. The COVID-19 Act authorizes grants to state and local governments to create hate crime reporting hotlines, to

75 Id.
78 Id.
implement the National Incident-Based Reporting System, and to conduct law enforcement programs to prevent, address, or respond to hate crimes.\textsuperscript{81} Lastly, when an individual is convicted of a hate crime offense and placed on supervised release, the bill allows a court to order that the individual participate in educational classes or community service as a condition of their supervised release.\textsuperscript{82}

In tandem with the national attention being given to anti-Asian hate crimes and the COVID-19 Hate Crimes bill that was being discussed at the federal level, several states introduced and passed bills condemning crimes against Asian Americans. For example, Alabama,\textsuperscript{83} the District of Columbia,\textsuperscript{84} California, Delaware, Hawaii, Indiana, Massachusetts, Michigan, New Jersey, Oklahoma, Texas, and Vermont all have passed or are considering resolutions denouncing hate crimes targeting API individuals. However, many of these bills are primarily symbolic in nature and do not engage in more substantive measures to decrease the incidence of hate crimes against API or other individuals.

However, some states have additionally engaged in more substantive measures to address hate crimes, with a particular focus on information gathering and record-keeping reforms suggested in the COVID-19 Act. In Hawaii, along with the more symbolic House Concurrent Resolutions 154 and 168 (HCR154 and HCR168), Senate Resolution 48 and Senate Concurrent Resolution 66 (SR48 and SCR66) are also under consideration, which charge the Hawaii Civil Rights Commission to analyze and report on anti-Asian sentiment and acts in the state.\textsuperscript{85} California similarly passed not only Senate Resolution 12 (SR12), which symbolically denounces hate crimes against APIs, but also Assembly Bill 57 (AB57), which updates hate crime policies and training programs for law enforcement agencies, and Assembly Bill 1126 (AB1126), which establishes a Commission on the State of Hate.\textsuperscript{86} AB57 charges the Commission on Peace Officer Standards and Training (POST) to immediately update and then periodically update its training materials on hate crimes, and it requires police officers to take the course within one year of the immediate update and then every six years thereafter.\textsuperscript{87} AB1126 creates a statewide Commission on the State of Hate that is tasked with monitoring, collecting, and analyzing data on hate crimes across the state and submitting their findings and

\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{84} Res. 24-81, 2021 Leg., 24th Council (D.C. 2021).
policy recommendations in an annual report. Vermont passed Senate Resolution 10 (SR10), which condemns anti-API hate and recognizes May 2021 as Asian American, Native Hawaiian, and Pacific Islander Heritage month, but it additionally passed House Bill 428 (H428), which would make it easier to classify a crime as a hate crime by clarifying that the victim’s actual or perceived protected category need not be the predominant reason for the defendant’s conduct to be classified as a hate crime. Massachusetts passed House Resolution 4003, establishing a Hate Crimes Task Force as an emergency measure. Among its duties, the task force is charged with assisting law enforcement agencies with the gathering, analyzing, and publishing of hate crimes reports. Nevada has also revised its hate crimes statute to bolster its record keeping on hate crimes in the state with Senate Bill 148 (SB148).

Information gathering is a critical step in reforming the state of current hate crimes policies across the nation. In 2019, a massive 86% of law enforcement agencies participating in information sharing with the FBI did not report any hate crime incidents; despite the marked rise in anti-API hate crimes in connection with COVID-19 in 2020, hate crime reporting and information gathering remains a problem. This data included reports from seventy-one cities with populations over 100,000. These figures indicate that hate crimes against API individuals are being severely underreported. A survey conducted by AAPI Data, a nonprofit policy and data center founded by public policy professor Kartick Ramakrishnan, shows that APIs are the least likely to report hate crimes in part due to lack of access, fear of retaliation, or concern whether justice will be served. Thus, even though state governments are starting to focus on the issue of information gathering in order to combat the rise in anti-API hate crimes, there are a few barriers that need to be overcome in order to achieve the desired results.

91 Id.
94 ADL Calls for Improved Hate Crime Reporting in Response to New FBI Data, supra note 93.
A. Limited English Proficiency

Language access is one of the most significant barriers to reporting. Two-thirds of the Asian American population in the United States are immigrants, which means they are foreign born.96 Fifty-two percent of the foreign-born Asian American population, which is about five million people, is Limited English Proficient.97 This means that over a third of the API population is Limited English Proficient.98 Being Limited English Proficient means that English is not their primary language and that they have difficulty communicating effectively in English. Furthermore, 21% of Asian American households are linguistically isolated, meaning that all household members aged fourteen and older are Limited English Proficient.99 If local law enforcement is not equipped with bilingual officers and staff, they are substantially less effective in assisting Limited English Proficient victims of crime. When victims of crime are not given adequate assistance when they report crimes, their trust in law enforcement is eroded, which disincentivizes the community from reporting.100

Local law enforcement agencies should establish comprehensive language access policies and procedures for interacting with Limited English Proficient individuals. Guidance on implementing such policies and procedures was provided by the Department of Justice pursuant to Executive Order 13166, which was instituted to improve access to services for Limited English Proficient populations.101 Such protocols formalize procedures to guide officers and civilian staff on how and when to utilize language services when interacting with Limited English Proficient individuals, such as when responding to requests for assistance, making enforcement stops, conducting field investigations, interviewing witnesses, conducting arrests, and interrogating suspects.102 Staff should be provided with resources to carry into the field, such as translations of the Miranda warning and instructions on how to utilize telephonic interpreting services. From 911 dispatchers to officers, all personnel in the agency should be trained on situations in which an interpreter is needed, and whether enlisting a bilingual officer, a civilian interpreter, or a telephonic interpreter is the best way to proceed. Furthermore, these protocols should contain a procedure for

96 AM. IMMIGR. COUNCIL, ASIANS IN AMERICA: A DEMOGRAPHIC OVERVIEW 3 (2012).
100 Leslie E. Orloff et al., Battered Immigrant Women’s Willingness to Call for Help and Police Response, 13 UCLA WOMEN’S L.J. 45, 75 (2003).
102 Id. at 2–5.
how the public will be notified about the agency’s language assistance services, especially since Limited English Proficient residents are likely to be unaware of the existence of language assistance services.

Although a growing number of jurisdictions have been implementing language access policies, the number of the languages available have been limited. Over time, there has been better success at creating more bilingual services in Spanish. For example, in Clark County, Nevada, the Las Vegas Metropolitan Police Department has implemented a Hispanic Interpreter Services Program (HISP) to recruit and train civilians to become interpreters in the field. This has allowed Clark County to significantly bolster its access to services for Latinx residents, who make up 25% of the population. However, whereas in Clark County there are a reported 204 certified Spanish-speaking officers and eighty-four certified Spanish-speaking civilian staff, there is no one certified in other languages. Thus, even though APIs make up 10 to 11% of the population in Clark County, it is more difficult to provide language access to monolingual residents in that demographic. Currently, in Las Vegas, the Asian Community Development Council is fundraising for an In-Language Client Success Advocacy Program in order to train a team of in-language specialists to Assist Limited English Proficient API residents in accessing social services. However, in order to fully guarantee access to justice, state and local governments cannot only rely entirely on local nonprofit social service agencies to provide language services.

A particular challenge of providing language access to the API population is the sheer number of languages and dialects that are spoken by the different API populations. Though APIs are targeted as a monolithic group, there is a rich diversity of nationalities, ethnicities, and cultures that make up the API population. For example, there are eight major dialects spoken in China, and eight major dialects spoken in the Philippines, and one dialect will often be completely unintelligible to a speaker of another. Thus, it is crucial for local law enforcement to build coalitions with ethnic advocacy groups in the area to understand the ethnic enclaves present in their jurisdictions and to strategize on how best to reach them.

\textsuperscript{103} SUSAN SHAH ET AL., OVERCOMING LANGUAGE BARRIERS: SOLUTIONS FOR LAW ENFORCEMENT 12 (2007).
\textsuperscript{104} Id. at 7.
\textsuperscript{105} Id.
\textsuperscript{106} Id.
\textsuperscript{108} YIP PO-CHING & DON RENNINGTON, CHINESE: AN ESSENTIAL GRAMMAR 1 (2d ed. 2006).
B. Immigration Status

Immigration status of victims of hate crimes is another barrier to reporting. Undocumented immigrants are often dissuaded from reporting crimes because of their unlawful immigration status and because they live in constant fear of deportation.\textsuperscript{110} Though APIs are not typically associated with the undocumented population, there is still a significant number of APIs living in the United States who are undocumented. One out of seven Asian immigrants is undocumented.\textsuperscript{111} Most Asian immigrants become undocumented because of visa overstays, when they may have initially entered under a temporary work, tourist, or student visa, but that visa lapsed or expired.\textsuperscript{112} Thus, they are unlawfully present in the United States and are subject to deportation.

One significant barrier for reporting among undocumented immigrants is cooperation between local law enforcement and federal immigration authorities. Many local jurisdictions have 287(g) agreements in place with Immigration and Customs Enforcement (ICE), which delegate federal immigration powers to local law enforcement officers.\textsuperscript{113} Officers are then permitted to arrest and process individuals for immigration violations, interrogate detainees about their immigration status, and turn detainees over to the custody of ICE.\textsuperscript{114} Perhaps most significantly, these agreements allow ICE to obtain information about, and access, detainees who have been arrested by local law enforcement.\textsuperscript{115}

Though 287(g) agreements were authorized under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the first agreements were not signed until 2002, following the September 11 attacks.\textsuperscript{116} The 287(g) program flourished during the Bush administration in the wake of the September 11 attacks and the increasing shift of the federal government’s stance on immigration away from admission and towards border control and national security, but it somewhat protracted during the Obama administration. However, the Trump administration aggressively sought to revitalize the 287(g) program, announcing plans to expand the program as one of President Trump’s first Executive Orders once he assumed office.\textsuperscript{117} The administration signed

\textsuperscript{113} Huyen Pham, \textit{287(g) Agreements in the Trump Era}, 75 WASH. & LEE L. REV. 1253, 1257, 1269–70 (2018).
\textsuperscript{114} Id. at 1259.
\textsuperscript{115} Id. at 1258.
\textsuperscript{116} Id. at 1257, 1262.
twenty-five new 287(g) agreements in 2017 alone. In addition, under the Secure Communities program, which was established during the Bush administration, temporarily abandoned during the Obama administration, but resurrected again under the Trump administration, law enforcement agencies are able to cross-reference fingerprints of immigrants who are arrested with a federal immigration database, and are asked to detain immigrants until ICE is able to take them into custody and place them in removal proceedings. Although the resurrection of Secure Communities was revoked by President Biden, there are still 142 active 287(g) agreements in place. Though some local jurisdictions, like Las Vegas, have heeded the calls of immigration and civil rights groups to terminate their 287(g) agreements with ICE, these actions are not enough to facilitate trust among victims who fear reporting because of their undocumented immigration status.

Instead, state and local governments need to adopt sanctuary policies. Sanctuary policies are directives to local law enforcement to limit inquiries about a person’s immigration status unless necessary to an investigation, to limit arrests and detentions purely for violations of immigration laws, and to not report a person’s immigration status information to federal authorities. Several cities across the United States have adopted sanctuary policies, including Baltimore, Chicago, Denver, Detroit, the District of Columbia, Houston, Los Angeles, Minneapolis, New York City, Philadelphia, San Francisco, and Seattle. Such sanctuary policies can assuage fears among undocumented victims that calling the police could potentially lead to their deportation. In the same way that there needs to be a comprehensive plan for outreach on the availability of language access programs, there also needs to be concerted outreach to inform immigrant residents of local sanctuary policies as well.

118 Pham, supra note 113, at 1274.
120 Exec. Order No. 13,993, 86 Fed. Reg. 7051 (Jan. 20, 2021); Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, IMMIGR. & CUSTOMS ENF’T (Mar. 4, 2022), https://www.ice.gov/identify-and-arrest/287g [https://perma.cc/754S-JUS6] ("As of November 2021, ICE has 287(g) JEM agreements with 66 law enforcement agencies in 19 states. ICE also has 287(g) WSO agreements with 76 law enforcement agencies in 11 states.")
123 Id.
In addition, undocumented victims of certain crimes, including felonious assault, are eligible to apply for U-visas to gain lawful immigration status. In order to qualify for a U-visa, victims of qualifying crimes must obtain certifications from law enforcement agencies that they possessed information about the crime they were victims of and that they cooperated with the investigation or prosecution of the crimes. Though officers and prosecutors are authorized to issue the certifications, their willingness to do so varies from jurisdiction to jurisdiction, largely due to lack of information about the U-visa. Thus, in addition to adopting sanctuary policies, law enforcement agencies and prosecutors should be trained in the availability of U-visas for undocumented victims of crimes. Similarly, there is also a need for outreach in the community to inform undocumented immigrants living in the community about the availability of U-visas.

C. Distrust of Law Enforcement

In addition to equating law enforcement with immigration enforcement, there is a general distrust among API communities that they will be able to find justice if they do report crimes against them. Half of Asian American respondents questioned in an exit poll conducted by the Asian American Legal Defense and Education Fund indicated that they did not believe that police departments treat racial and ethnic groups equally. The source of this distrust is varied. Some API immigrants come from countries with rampant corruption in government and law enforcement and expect the same in the United States, but a good portion of this distrust occurs because of police insensitivity and misconduct towards API individuals in the past, including brutal treatment of innocent API individuals, the profiling of API youths suspected of being in ethnic street gangs, and the use of Asian facebook by police departments. As already accounted, there is also a long history of systemic racism and government hostility to API groups that dissuaded them from seeking protection from law enforcement in the past, such as their inability to testify against white persons and

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128 Karin Wang, Battered Asian American Women: Community Responses from the Battered Women's Movement and the Asian American Community, 3 Asian L.J. 151, 172 (1996); see also Hipolito, supra note 127, at 160.
the continued profiling of API individuals as potentially disloyal foreign enemies.\textsuperscript{129}

There are also more recent examples of the failure of law enforcement to protect API groups, such as, for instance, the inadequate sentencing of Vincent Chin’s murderers, which sent a message to the API community that the life of an API victim was not worth ruining the life of a white perpetrator by sending him to prison.\textsuperscript{130} The sense that law enforcement was not invested in protecting the API population was further solidified just a few short years after the Chin murder, during the 1992 Los Angeles uprising, when law enforcement purposefully withdrew from certain ethnic areas of the city, leaving, in particular, the Korean American community to fend for itself against looting and destruction of their businesses.\textsuperscript{131} Furthermore, what started as an uprising protesting police brutality against an African American victim, was quickly spun into a racial conflict between Korean Americans and African Americans due to the strategic withdrawal of law enforcement from Koreatown.\textsuperscript{132} What the Los Angeles uprising demonstrated to the API population was that law enforcement existed to protect white individuals and white property, not APIs and other ethnic groups.

There is a growing concern among leaders in the API community that the same phenomenon is occurring with the current spike in anti-API hate crimes due to COVID-19. Media attention has focused on several instances of anti-API hate crime where the perpetrators are black, so that “some Asian Americans have responded with stereotypes of their own, blaming supposed anti-Asian sentiment from the Black community for the crimes.”\textsuperscript{133} This narrative, which has not been supported by evidence, has nevertheless shoved a new wedge into age-old cracks between Black and Asian immigrant communities in the US.”\textsuperscript{134} Indeed, apart from the Los Angeles uprising, the API population has been pitted against the African American community in several instances. Though they are still stereotyped as being perpetually foreign, APIs are also stereotyped as a “model minority,” a stereotype that is used as a point of comparison against other minorities. The myth insinuates that APIs, despite being a racial minority


\textsuperscript{132} Id.


\textsuperscript{134} Id.
who had been discriminated against, were quickly able to become economically successful without special assistance or complaints, but through perseverance and hard work. The success of APIs as a model minority was deployed to suggest that America is indeed a meritocracy where structural inequalities no longer exist, and that other ethnic groups, such as African Americans, should similarly be able to achieve success if they apply themselves in the same way. Recently, the stereotype of APIs as a model minority has reemerged in order to challenge the continued necessity of affirmative action programs.  \(^{135}\)

Some API leaders are concerned that law enforcement reforms that are spurred by the rise in anti-API hate crimes will only result in more policing of already overpoliced minority groups, rather than unroot the underlying causes of xenophobia and white supremacy.  \(^{136}\) In this respect, some API leaders view the Stop Asian Hate movement as connected to the Black Lives Matter movement, in that both recognize the failure of law enforcement to protect minority lives and rights, and rather have become a tool for continued oppression of minority groups.  \(^{137}\) Thus, some API leaders do not believe that expanding and investing more resources into law enforcement is the correct approach. Rather, they view redirecting resources to social services programs such as language access and victim’s compensation as potentially superior alternatives.

CONCLUSION

Though anti-API violence has spurred a move to some reform, deeper underlying structural problems must first be eliminated and much of this work must be accomplished at the state and local levels. First and foremost, there needs to be a shift away from policies based on the same xenophobia, racism, and nationalism that led to discriminatory laws targeting API groups that lasted nearly a century. As a result of this history, API groups are hesitant to trust the American justice system and law enforcement for their protection. State and local governments can stand against the nationalistic rhetoric that infected national politics for the last four years by instituting sanctuary policies to protect not only API immigrants, but immigrants from all ethnic groups. Furthermore, if more resources are to be devoted to law enforcement, it should be dedicated not to increasing surveillance and prosecution of crimes, but rather to better meeting the needs of potentially vulnerable victims, such as programs geared at improving language access. Most importantly, in order to combat anti-API hate, all levels of government need to commit fundamentally to the elimination of white supremacy, which is ultimately the root cause of anti-API hate crimes.


\(^{137}\) Id.