

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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February 12, 2020

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Wray:

Thank you for your recent testimony before the House Judiciary Committee. I am writing to follow up on our exchange about flaws in our system of collecting and reporting hate crimes statistics. The Subcommittee on Civil Rights and Civil Liberties is seeking information from the Federal Bureau of Investigation (FBI) regarding your plan for improving your process for collecting and reporting hate crime statistics.

According to a November 2019 report from the Commission on Civil Rights (USCCR), there are serious flaws with the FBI's hate crime statistics reporting.¹ There is a notable discrepancy between the FBI's data and that of the National Crime Victimization Survey (NCVS). The NCVS, produced by the Bureau of Justice Statistics at the Department of Justice (DOJ), reports that from 2004 to 2015, U.S. residents experienced an average of 250,000 hate crime victimizations, which is "25 times higher than the reported FBI numbers for those years."²

USCCR also highlighted the persistent problem of law enforcement agencies not participating in the Uniform Crime Reporting Program. Jurisdictions that do not report hate crime numbers to the FBI include "some of the country's largest most populous cities of over 250,000 residents." According to USCCR, law enforcement officers are "not being well trained in how to investigate or report possible hate crimes."³

¹ United States Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes* (Nov. 13, 2019) (online at www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf).

² *Id.*; Bureau of Justice Statistics, *Hate Crime Victimization, 2004-2015* (June 29, 2017) (online at www.bjs.gov/index.cfm?ty=pbdetail&iid=5967).

³ United States Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes* (Nov. 13, 2019) (online at www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf).

USCCR's findings are consistent with evidence presented at the Subcommittee's hearings on the rise of violent white supremacy. At these hearings, there was widespread consensus among Members and expert witnesses that the FBI's Hate Crimes Statistics do not adequately capture incidents of hate in the United States. Former DOJ attorney Roy Austin testified that "we have never known" how many hate crimes occur in the United States, and that "the numbers kept by the FBI are largely useless."⁴ Congresswoman Eleanor Holmes Norton was able to name three egregious examples of hate crimes that were not reflected in the FBI's data:

[A] gay high school student was beaten so badly that he had to have reconstructive surgery, ... [A] man ... yelled 'get out of my country' as he murdered an Indian American man. ... And, of course, we know that Heather Heyer's murder in Charlottesville, VA was also omitted from those statistics, as were the attacks on others on that same day.⁵

At our June 4, 2019, hearing, Calvin Shivers, Deputy Assistant Director for Criminal Investigations at the FBI, testified that the FBI is in the process of transitioning away from the Uniform Crime Report (UCR) to the National Incident-Based Reporting System (NIBRS), which is allegedly a "more effective tool" than the UCR.⁶ However, given that the new system still relies on voluntary submission of data, the Subcommittee continues to have concerns that this will not do enough to solve the issues with the FBI's hate crime reporting.

As Heather Heyer's mother, Susan Bro, testified, a "doctor cannot diagnose a patient without knowing the full set of symptoms." Congress and federal law enforcement need an accurate accounting of hate crimes in order to fully understand the scope of the problem and determine the proper solutions and allocation of resources.

Considering the above concerns, we request that you provide the following documents to the Subcommittee:

1. All documents used for training federal, state, or local law enforcement agencies about reporting hate crime data;
2. All communications from the FBI to federal, state, or local law enforcement agencies encouraging the reporting of hate crime data;
3. A list of the data that is collected by the UCR; and
4. A list of the data that is collected by NIBRS.

⁴ Committee on Oversight and Reform, Written Statement of Roy L. Austin, Jr., Partner, Harris, Wiltshire & Grannis, LLP, *Hearing on Confronting White Supremacy (Part I): The Consequences of Inaction* (May 15, 2019) (online at <https://docs.house.gov/meetings/GO/GO02/20190515/109478/HHRG-116-GO02-Wstate-AustinR-20190515.pdf>).

⁵ Committee on Oversight and Reform, *Hearing on Confronting White Supremacy (Part I): The Consequences of Inaction* (May 15, 2019) (online at <https://docs.house.gov/meetings/GO/GO02/20190515/109478/HHRG-116-GO02-Transcript-20190515.pdf>).

⁶ *Id.*

In addition, we request that you explain in writing any plans the FBI has to improve data collection and address concerns about the accuracy of the data, including but not limited to:

1. Variations in reporting from different jurisdictions because of a lack of mandatory reporting, variations in the existence of hate crime statutes, and which protected classes are covered by these statutes;⁷
2. A lack of training for law enforcement officers in investigating or reporting possible hate crimes;⁸
3. Victims' reluctance to report hate crimes because of confusion about whether to report them, fear of retaliation, fear of deportation, or other reasons;⁹
4. Failure of federal law enforcement agencies to report hate crime data to the FBI;¹⁰
5. The missing link between law enforcement agencies and the FBI that allowed for incidents such as the killing of Heather Heyer and the shooting of Khalid Jabara not to be included in the FBI's annual hate crimes statistics report;¹¹
6. The absence of a quality assurance protocol that allowed for these incidents not to be included by the FBI;
7. How the transition from UCR to NIBRS will improve data collection, including preventing incidents like Heather Heyer's death from being omitted;¹² and
8. Whether the transition to NIBRS will do anything to mitigate any of the other concerns listed above.

Please provide the requested documents and information by February 26, 2020. The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

⁷ United States Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes* (Nov. 13, 2019) (online at www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Hate Crimes, Explained*, Southern Poverty Law Center (Apr. 15, 2018) (online at www.splcenter.org/20180415/hate-crimes-explained#failures).

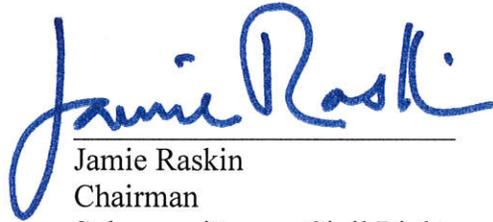
¹¹ *FBI Reports Dip in Hate Crimes, But Rise in Violence*, National Public Radio (Nov. 12, 2019) (online at www.npr.org/2019/11/12/778542614/fbi-reports-dip-in-hate-crimes-but-rise-in-violence).

¹² Committee on Oversight and Reform, *Hearing on Confronting White Supremacy (Part II): Adequacy of the Federal Response* (June 4, 2019) (H. Rept. 116-32).

The Honorable Christopher Wray
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An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties

Enclosure

cc: The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.