



Department of Justice

STATEMENT OF

**ROY L. AUSTIN, JR.
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ENTITLED

“HATE CRIMES AND THE THREAT OF DOMESTIC EXTREMISM”

PRESENTED

SEPTEMBER 19, 2012

**Statement of
Roy L. Austin, Jr.
Deputy Assistant Attorney General
Civil Rights Division
United States Department of Justice
Before the
Subcommittee on the Constitution, Civil Rights, and Human Rights
Committee on the Judiciary
United States Senate
Entitled
“Hate Crimes and the Threat of Domestic Extremism”**

Presented on Wednesday, September 19, 2012

Good afternoon, Chairman Durbin, Ranking Member Graham, and members of the Subcommittee. I am honored to come before you to represent the Civil Rights Division of the Department of Justice and discuss one of the Department’s priorities – hate-crimes prevention and enforcement.

The various hate-crimes statutes passed by Congress since the late 1960s exemplify this Nation’s proud, bipartisan tradition of ensuring that all our citizens can live free from fear of being targeted because of the color of their skin, the religion that they practice, or who they love. From the passage of the first hate-crimes statute in 1968 (18 U.S.C. § 245) to the enactments of the Hate Crimes Statistics Act in 1990 (28 U.S.C. § 534), the Hate Crime Sentencing Enhancement Act of 1994 (28 U.S.C. § 994), the Church Arson Prevention Act in 1996 (18 U.S.C. § 247) and, most recently, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA or Act) in 2009 (18 U.S.C. § 249), a strong bipartisan consensus has emerged in Congress and in the Executive Branch that violent acts of intolerance have no place in our society. This is because hate crimes victimize not just individuals, but entire communities. Bias-motivated acts of violence divide our communities, intimidate our most vulnerable citizens, and damage our collective spirit. As President Obama said when he signed the HCPA into law,

“At root, this isn’t just about our laws; this is about who we are as a people. This is about whether we value one another — whether we embrace our differences, rather than allowing them to become a source of animus.”

When Attorney General Holder testified in support of the HCPA in 2009 before the Senate Judiciary Committee, he pledged that this critical legislation would help protect Americans from the most heinous bias-motivated violence. It undoubtedly has. Hate-crimes enforcement has been one of the long-standing responsibilities of the Civil Rights Division and the HCPA has strengthened our ability to prosecute bias-motivated violence. While we have made significant progress in addressing this critical issue, recent events, like the mass shooting at the Sikh Gurdwara in Oak Creek, Wisconsin, remind us all too vividly that there is significant work yet to be done. As Attorney General Holder observed at the memorial service for the victims of the Oak Creek shooting, that heinous crime “was not just an affront to the values of Sikhism. It was an attack on the values of America itself.” And it was an act of intolerance that undermines “who we are as a people.”

I can tell you firsthand that the devastation caused by a single act of hate can reverberate through families, through communities, and throughout the entire nation. I have personally visited with men and women victimized by hate crimes. Whenever a hate crime is committed, a whole community sleeps a little less easily at night, haunted by the fear that they too might be attacked simply because of the color of their skin, the place where they were born, the faith that sustains them, or who they love. That is why President Obama has said: “[H]ate crimes are crimes meant not only to break bones, but to break spirits — not only to inflict harm, but to instill fear.”

Cross burnings targeting racial minorities have been an unfortunate part of our history and, although it is surprising to some, these hate-fueled acts persist. Indeed, just last March, the Department prosecuted an Ohio man for burning a cross at a residence in Bennington Township, Ohio, that was home to an African-American family with three school-age children. A burning cross is a symbol of bigotry and hate and, the Civil Rights Division will continue to aggressively prosecute cross burnings conducted with the intent to intimidate.

Over the last four years, we have seen hate-crime violence manifest itself in many different forms. We have seen violent acts of intolerance that target Latino immigrants and, in some cases, such as the attack on Louis Ramirez in Shenandoah, Pennsylvania, the crimes have even led to the victim's death. We have seen places of worship continue to be victimized with arsons, bombings, and threats of violence, such as a bomb threat against the Murfreesboro (Tennessee) Mosque, which we are currently prosecuting. And we continue to prosecute cases where people are targeted and attacked because of their sexual orientation and gender identity. Just last month, a Detroit man pled guilty in federal court to a hate crime charge for assaulting a man because he believed the victim was gay, marking the second time the HCPA has been used to prosecute crimes motivated by the victims' sexual orientation. Finally, hate crimes on the Internet are an emerging problem. In 2010, an individual in Brick, New Jersey, who went by the internet pseudonym "Devilfish," pled guilty in federal court to multiple charges related to a series of threatening communications he sent to employees of five civil rights organizations that work to improve opportunities for, and challenge discrimination against, Latinos in the United States. These incidents have no place in our country, and they remind us of the civil rights challenges we still face today. We will continue to aggressively prosecute hate crimes of all kinds.

While we know that the numbers of hate crimes committed every year are far too many, we still do not know exactly how many hate crimes occur. I am glad to be joined on today's panel by my colleagues from the FBI and DHS, who partner with us to prevent and combat hate crimes. The FBI's Uniform Crime Reporting Program (or UCR) collects data from law enforcement agencies throughout the country on instances of hate crimes in their communities. In the most recent UCR Hate Crimes Statistics Report, from 2010, around 2,000 law enforcement agencies reported 6,628 hate-crime incidents. Of course, the FBI can track only those hate crimes that are reported to it. Approximately 13,000 law enforcement agencies reported that no hate crimes occurred in their jurisdictions in 2010 and another 3,000 that participate in the uniform crime report survey did not respond to the hate crime survey. The collection of accurate statistics is difficult because some local law enforcement agencies do not know to classify certain crimes as hate crimes or choose not to report to the FBI hate crimes of which they are aware.¹ In addition, for a variety of reasons, many victims of hate crimes do not report the crimes to their local law enforcement agency. The Bureau of Justice Statistics through the National Crime Victimization Survey (NCVS) estimates that there were approximately 195,000 hate crimes annually from 2003 through 2009, 54% of which were not reported to police.

¹ For example, the Anti-Defamation League's 2010 Hate Crimes Statistical Report establishes that the City of Honolulu, Hawaii did not respond to the Uniform Crime Report Survey between the years 2006 and 2010. However, the State of Hawaii's Annual Hate Crimes Report establishes that during that time period, 9 hate crimes reached final disposition in the City of Honolulu.

When we break down the more than 6,600 hate crime incidents reported to the FBI for the year 2010, we find some telling statistics. Almost half of these incidents, 47.3 percent, involved a defendant or defendants who were motivated by racial prejudice (*e.g.*, Asian). In 20 percent of the incidents, the perpetrators of the crime were motivated by religious bias (*e.g.*, Muslim). In 19.3 percent of the hate-crime incidents, the defendants were motivated by the actual or perceived sexual orientation of the victim. In 12.8 percent of the incidents, the defendant was motivated by an ethnicity or national-origin bias (*e.g.*, Arab or Middle Eastern). One thing is clear from these statistics: hate crime is not limited to just one group of victims or one type of motivation. We cannot rest until such crimes are prevented and until every perpetrator is brought to justice. The Department has been contacted by several Members of Congress and advocacy groups requesting that the FBI begin to collect data on hate crimes directed toward Sikh individuals. We have taken these requests seriously and are examining the issue carefully.

Since the beginning of Assistant Attorney General Tom Perez's tenure as the head of the Civil Rights Division, our Criminal Section, in partnership with United States Attorneys' offices across the country, has aggressively prosecuted all forms of civil rights violations. Thanks to the dedicated commitment of career prosecutors, we have seen a 15 percent increase in criminal civil-rights prosecutions in the past three fiscal years (FY 2009 - 2011), as compared to the previous three years (FY 2006 - FY 2008). This increase includes hate-crimes cases, law enforcement brutality cases, human trafficking prosecutions, and Freedom of Access to Clinic Entrances (FACE) Act violations. Turning specifically to the Department's hate-crime

prosecutions, the numbers are especially robust: In Fiscal Year 2011, the Department convicted more defendants on hate-crime charges than in any other year during the last decade.²

In my testimony today, I will share with you information about the Department's enforcement of the HCPA and other hate-crimes statutes, as well as our commitment to prosecuting "backlash" crimes against persons perceived to be Arab, Muslim, Middle Eastern, or South Asian descent.

A. Shepard-Byrd Hate Crimes Prevention Act (HCPA)

When Congress passed the HCPA, 18 U.S.C. § 249, in 2009 by a bipartisan vote of 281 to 146 in the House and 68 to 29 in the Senate, the Department's ability to prosecute hate crimes was greatly strengthened. Because the HCPA for the first time criminalizes violence motivated by sexual orientation, gender identity, gender, and disability, more hate-crime victims are now protected by federal law.

Moreover, in the past, the Department's hate-crime prosecution efforts were limited because preexisting federal hate-crime laws required that the government prove beyond a reasonable doubt not only that the defendant had a bias motivation, *but also* that the defendant intended to interfere with the victim's right to engage in some other federally protected activity. The HCPA contains no such requirement, removing a significant hurdle to federal prosecution. In short, under the new law, a defendant cannot escape responsibility for his crime simply by showing that he would have committed his crime regardless of whether or not the victim happened to be engaged in a federally protected activity identified in the statute at the time of the offense.

² This includes our prosecutions under the HCPA as well as under preexisting statutes—18 U.S.C. §§ 245 and 247 and 42 U.S.C. § 3631.

In addition, the HCPA enhances our ability to provide training for federal, state, and local law enforcement officials and to conduct outreach to communities affected by hate crimes. It has fostered cooperation between federal, state, and local authorities and the sharing of resources necessary to address these terrible crimes.

1. Constitutionality of the Shepard-Byrd Hate Crimes Prevention Act (HCPA)

When Attorney General Holder testified in support of the HCPA prior to its passage, members of the Senate Judiciary Committee asked whether this landmark legislation would be upheld by the courts. The Attorney General assured the Committee that the Department had examined the legislation and was confident that it fully comported with all constitutional requirements. I am pleased to report that the statute has been upheld by every court that has considered its constitutionality. The Eighth Circuit Court of Appeals, the first federal appellate court to opine upon the issue, upheld the law in *United States v. Maybee*,³ a case involving race, color, and national origin. And in *Glenn v. Holder*,⁴ the Sixth Circuit affirmed the dismissal of a claim that the statute interfered with the plaintiffs' right to preach against homosexuality; the Sixth Circuit determined that the group challenging the statute lacked standing to do so because the group had not made the requisite showing that its members intended to violate the statute or faced a credible threat of prosecution under it. The Sixth Circuit made it clear that the HCPA "prohibits violent acts; it does not prohibit constitutionally protected speech or conduct." In

³ 687 F.3d 1026 (8th Cir. 2012).

⁴ 2012 WL 3115683, No. 10-2273 (6th Cir. Aug. 2, 2012).

addition, four federal district courts across this country have likewise upheld the constitutionality of various provisions of the law.⁵

2. Federal Enforcement Actions

Since enactment of the HCPA, the Civil Rights Division has charged 13 cases against 37 defendants. While most of the prosecutions involved crimes motivated by racial or ethnic animus, these are by no means the only hate crimes investigated by the Department. In Cleveland, we are currently prosecuting defendants for hate crimes motivated by religious animus. And the Department recently obtained an indictment in a federal hate-crime case in Kentucky, in which a physical assault was motivated by the victim's sexual orientation.

Because the bare statistics do not paint the full picture of some of these heinous crimes, I have included summaries of some of the convictions that have been secured by the Department under the HCPA:

- *United States v. Avery*: Just last month, a defendant appeared in a federal court in Detroit and pled guilty to violating the HCPA by assaulting a victim inside a convenience store. The defendant's only motivation was that he believed the victim was gay. The defendant fractured the victim's eye socket and caused other facial injuries.
- *United States v. Maybee and Popejoy*: In the Western District of Arkansas, the defendants, who had stopped at a gas station, saw a group of five Latino men.

⁵ See *United States v. Mullet*, 2010 WL 2330905, No. 5:11 CR 594 (N.D. Ohio May 31, 2012); *United States v. Maybee*, 2011 WL 2784446, No. 11-30006 (W.D. Ark. July 15, 2011), *aff'd*, 687 F.3d 1026 (8th Cir. 2012), cert. denied; *United States v. Beebe*, 807 F. Supp. 2d 1045 (D.N.M. 2011) (appeal pending); *United States v. McLaughlin*, No. 4:12-cr-25 (S.D. Tex., Mar. 6, 2012) (unpublished) (denying a motion to dismiss which, among other things, argued that 18 U.S.C. § 249 was unconstitutional).

The defendants shouted taunts and anti-Latino slurs at the victims, who – instead of responding with hatred or violence – got into their car and drove away. The defendants pursued the victims in a truck. They caught up to the victims and used more threats and slurs. One of the defendants leaned out of a window brandishing a tire iron. The defendants then intentionally rammed their truck repeatedly into the victims’ car, causing it to run off the road, flip over, and burst into flames, injuring all the victims, two of them seriously. The defendants were convicted after a jury trial, and the Eighth Circuit recently affirmed.

- *United States v. Beebe, Sandford, and Hatch*: In the District of New Mexico, the defendants admitted that they used a hot wire hanger to brand a young Native American man who has a developmental disability. The victim was taken to an apartment that belonged to one of the defendants and that contained racist paraphernalia, including a Nazi flag and a woven dream-catcher emblazoned with a swastika. After taking advantage of the victim’s disability, one of the defendants heated a wire hanger on a stove and used it to brand a swastika into the victim’s arm, while a towel was stuffed in his mouth. The defendants then defaced the victim’s body with white supremacist symbols. They shaved the victim’s head to create a swastika and wrote the words “KKK” and “White Power,” in marker inside the swastika. The defendants mocked the victim’s heritage by drawing an ejaculating penis and testicles on the victim’s back, telling him that they were drawing his “native pride feathers,” all the while recording the incident on a cell phone. The defendants pled guilty. The case is currently on

appeal before the U.S. Court of Appeals for the Tenth Circuit, involving a constitutional challenge to the statute, *i.e.*, whether Section 249 is a valid exercise of Congress's power under Section 2 of the Thirteenth Amendment.

- *United States v. Cannon, McLaughlin, and Kerstetter*: The defendants approached an African-American victim as he sat at a bus stop in downtown Houston. The defendants were all shirtless and sporting white supremacist tattoos. At least one of the defendants used a racial slur, while all of the defendants surrounded and attacked the victim by punching and kicking him in the face, head, and body. The defendants were convicted after trial in a federal court in Houston. A notice of appeal has been filed with the U.S. Court of Appeals for the Fifth Circuit, but the briefs have not yet been submitted.
- *United States v. Dedmon, Rice, and Butler*: Three defendants pled guilty in the Southern District of Mississippi to the fatal assault of James Craig Anderson, an African-American man. The defendants admitted that on numerous occasions leading up to the fatal assault, they, along with other co-conspirators still under investigation, assaulted African Americans with beer bottles, sling shots, and other weapons. In the early morning of June 26, 2011, after having spent the preceding evening talking about committing another assault, several of the co-conspirators drove around West Jackson throwing beer bottles at African-American pedestrians from the windows of moving vehicles. At approximately 5:00 a.m., some of these conspirators spotted the victim in a motel parking lot and

decided he would be a good target for an assault. One of the defendants punched the victim in the face, knocking him to the ground. Another defendant punched him multiple times while he was on the ground. After the assault, various conspirators yelled, “White Power!” as they got back into their vehicles. One of the defendants admitted that he deliberately used his truck to run over the victim, causing his death. Many of us who have seen the surveillance video that happened to capture this horrific act remain haunted by the images.

- *United States v. Jenkins*: Two women in Harlan County, Kentucky pled guilty to aiding and abetting two other defendants in the kidnapping and hate-crime assault of Kevin Pennington, a gay man, because of his sexual orientation. Two men were later indicted for their roles. According to the indictment, the defendants enlisted the two women to trick Pennington into getting into a truck with the defendants, so that the defendants could drive Pennington to a state park and assault him. The defendants then allegedly drove Pennington to a secluded area of the Kingdom Come State Park in Kentucky and assaulted him. The indictment marks the first case charged under the HCPA involving sexual orientation. The case is currently on appeal with the U.S. Court of Appeals for the Sixth Circuit, involving a challenge to the constitutionality of Section 249.

3. Training and Outreach

Enactment of the HCPA has done far more than to allow the Department to prosecute these heartbreaking acts of violence. With the passage of the HCPA, the Department has increased its outreach and training not only for federal law enforcement but also for our state and

local law enforcement partners. As this Committee knows, the HCPA itself clearly envisions that state and local governments will take the lead in prosecuting hate crimes unless they ask the federal government to take over or “a prosecution by the United States is in the public interest and necessary to secure substantial justice.”

To assist state and local organizations in such efforts, the Department has provided dozens of training sessions – along with other resources – to help these agencies identify, investigate, and prosecute hate crimes. We began our state and local government training on the HCPA in the five States without a hate-crimes law of any kind – Georgia, South Carolina, Wyoming, Indiana, and Arkansas. We then held training on hate crimes and on broader civil rights issues with a hate-crimes component in more than 20 States, including California, Connecticut, Delaware, Illinois, Minnesota, New York, Texas, and Wisconsin, as well as Puerto Rico and Guam.

This training is critical to our mission of reducing the incidence of hate crimes. It is particularly important to train those law enforcement officers who are “first responders” to an assault or other act of violence so that they know what questions to ask and what evidence to gather at the scene to allow prosecutors to make an informed assessment of whether a case should be prosecuted as a hate crime.

The FBI and other federal agencies continue to lend their investigative and scientific expertise to our state and local law enforcement partners in these crucial cases. In addition, the HCPA has expanded the mandate of the Community Relations Service (CRS), an agency that helps communities prevent and respond to violent hate crimes committed on the basis of gender, gender identity, sexual orientation, religion, and disability, in addition to CRS’s traditional role vis-à-vis hate crimes committed on the basis of race, color, and national origin. These

enhancements have improved CRS's crisis response across the country and have enabled it to better fulfill its mandate.

B. Enforcement of Other Federal Hate-Crimes Statutes

The Department's hate-crime enforcement efforts go far beyond its prosecutions under the HCPA. We continue to use preexisting hate crimes statutes such as 18 U.S.C. § 245, which criminalizes using force or threats to interfere with federally protected activities; 18 U.S.C. § 247, which criminalizes damaging religious real property and using force or threats to obstruct the free exercise of religious beliefs; and 42 U.S.C. § 3631, which criminalizes using force or threats to interfere with housing rights.

Recently, for example, the Third Circuit affirmed a conviction secured by Civil Rights Division attorneys in Shenandoah, Pennsylvania using one of these statutes. The defendants assaulted and killed a Latino man after having a verbal disagreement with him. One of the members of the defendant's group told the victim, "This is Shenandoah. This is America. Go back to Mexico." That verbal disagreement escalated to a physical altercation, which resulted in the beating of the victim by the defendants and their friends. The assault continued, even after the victim lay helpless on the ground. The victim died two days later as a result of the injuries.

C. Backlash Initiative

As we have all been recently, and tragically, reminded, there are some who use the hatred and fear spread by terrorists as an excuse to engage in their own acts of violence, assaulting victims because they are perceived to be Arab, Muslim, Middle Eastern, or South Asian. Attorney General Holder has made it a priority for the Department to enhance its efforts to engage with local Arab- and Muslim-American communities as well as other communities, such as Sikh men and women, who, in addition to bias that they may experience because of their faith,

have been targeted in this way. Recently, the Attorney General personally visited the Sikh Community of Oak Grove, Wisconsin in the wake of the terrible tragedy that occurred there.

United States Attorneys around the country also have actively increased their dialogues with these communities, and the Civil Rights Division has participated in a number of productive community meetings with U.S. Attorneys' offices around the country. Since 2001, the Civil Rights Division has hosted quarterly meetings bringing together top officials from federal agencies with the leaders of the Arab, Muslim, Middle Eastern, Sikh, and South Asian communities to address a variety of issues of concern. CRS also continues to respond to requests from local law enforcement, community leaders, and government officials across the country for training and assistance in developing community capacity to address tension and prevent hate crimes. And the FBI continues to reach out to communities to educate them on the FBI's role and to respond to questions and concerns.

Since September 11, 2001, the Civil Rights Division, along with our partners in the FBI and the United States' Attorneys offices, has investigated more than 800 incidents involving violent acts, threats, assaults, vandalisms and arsons targeting Arab, Muslim, Middle Eastern, Sikh, and South Asian individuals, and those perceived to be members of these groups. The incidents have consisted of telephone, internet, mail, and face-to-face threats; minor assaults, assaults with dangerous weapons and assaults resulting in serious injury and death; and vandalism, arson, and bombings directed at homes, businesses, and places of worship. For example, a Texas man was indicted this summer for telephoning a bomb threat to a mosque in Murfreesboro, Tennessee in September 2011. The defendant was charged with one count of intentionally obstructing by threat of force the free exercise of religious beliefs in violation of the Church Arson Prevention Act, and one count of using an instrument of interstate commerce to

communicate a threat to destroy a building by means of an explosive device. According to the indictment, which contains only allegations, on September 5, 2011, the defendant called on a cell phone from Corpus Christi, Texas, to the Islamic Center of Murfreesboro and left a threatening, expletive-ridden voice message saying, among other things, “On September 11, 2011, there’s going to be a bomb in the building.” Overall, since September 2001, federal charges have been brought in 43 such cases against 55 defendants, with 47 convictions to date. Additionally, the Department has coordinated with state and local prosecutors in numerous non-federal criminal prosecutions, providing substantial assistance where necessary.

D. Going Forward

The Civil Rights Division remains committed to doing all that is necessary to prevent, punish, and deter future acts of violence based upon bigotry and hatred. While we will protect the constitutional right of people to say hateful things, the Department will not hesitate to pursue federal prosecutions in those cases where words turn to violence and where prosecution at the federal level is necessary to secure justice. We are also committed to conducting training that is vital to increasing the number of successful prosecutions at both the state and federal level.

In addressing the future of the Division’s enforcement efforts, I want to stress that the Division not only has dedicated criminal prosecutors who work to bring perpetrators of hate crimes to justice, but that it also has talented civil attorneys who work tirelessly to ensure that our schools, workplaces, lending agencies, and voting booths are free of unlawful discrimination. Of particular relevance to the subject of this testimony is the work of the Division to address discriminatory harassment and bullying in our public schools. For example, in March 2012, the Division, together with the U.S. Department of Education’s Office for Civil Rights, announced a major settlement to protect children from harassment and bullying in the Anoka-Hennepin

School District, the largest school district in Minnesota. The consent decree, which was approved by a federal court, provides a comprehensive blueprint for sustainable reform of the policies and practices of the district that will ensure that students in the district are protected from sex-based harassment.

We must acknowledge the reality that across America we are sailing into a strong headwind of intolerance that takes many different shapes and forms. In fiscal year 2011, we convicted the most defendants on hate-crimes charges in more than a decade. And our docket of cases involving hate-fueled violence directed at Muslim, Arab, Sikh, and South Asian communities is on the rise. It is unacceptable that violent acts of hate continue to occur in 2012, and the Department will continue to use every available tool, including the HCPA, to identify and prosecute hate crimes whenever and wherever they occur.

Thank you for the opportunity to address this Subcommittee on the Department's hate-crime enforcement and prevention efforts. I am happy to address any questions you may have.