

DOG WHISTLE POLITICS: THE TRUMP ADMINISTRATION'S INFLUENCE ON HATE CRIMES

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I. INTRODUCTION

The United States has a long history of discrimination of its citizens, beginning with the formation of the country and continuing today.¹ This article examines the Constitution, federal and state legislation, and the adoption of common law principles which clearly established a framework of racism, misogyny, heterosexism, and nativism that becomes the

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cornerstone for inequality in the United States since 1787.² Given the tradition of discriminatory treatment sanctioned by the government, it is not surprising that hate crimes occur.³ Hate crimes are offenses involving an actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.⁴ When the government enacts progressive legislation to protect citizens's rights, however, hate attacks decrease.⁵ This occurred during the Barack Obama Presidency from January 20, 2009, through January 20, 2017 ("the Obama Years").⁶ Since Donald Trump was elected president in November, 2016, the opposite has occurred, as the number of hate crimes increased during this time.⁷

Part I of this paper reviews the governmental acts that have led to either an increase or decrease in hate crimes. More specifically, this section examines hate crime statistics from 2007–2017; including legislation, executive orders, presidential directives, and judicial opinions during both the Obama presidency and the current Trump presidency. Part II provides a review of the systemic prejudice of the United States government that has encouraged racism, misogyny, nativism, heterosexism, anti-Semitism, and anti-Islamism throughout our history. Part III examines hate crime legislation and statistical evidence of hate crime incidents reported from 2007 to 2017. Part IV examines the reported hate crimes that occurred during the "Obama Years." Part V discusses the Trump administration's utilization of dog whistle politics and the aggravating result it has on hate attacks. Part VI addresses the limitations of the data used in this article and provides a recommendation for other sources to consider. Lastly, Part VII concludes with our thoughts on the findings.

² *Id.*

³ See generally Kathleen A. Bantley, *Judicial Activism and Progressive Legislation: A Step Toward Decreasing Hate Attacks*, 71 ALB. L. REV. 545 (2008).

⁴ See 18 U.S.C. § 249 (2018).

⁵ Bantley, *supra* note 3.

⁶ See *President Barack Obama*, <https://obamawhitehouse.archives.gov/administration/president-obama> (October 14, 2019, 9:00 PM); U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION: UNIFORM CRIME REPORT, *Hate Crimes Statistics* (2009–2016).

⁷ See Griffin S. Edwards & Stephen Rushin, *The Effect of Trump's Election on Hate Crimes*, SSRN ELEC. JOURNAL (January 14, 2018), <https://ssrn.com/abstract=3102652>; U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION: UNIFORM CRIME REPORT, *Hate Crimes Statistics* (2017).

II. SYSTEMIC PREJUDICE & HATEISMS

A. *African Americans and Racism*

The United States of America created a society ripe for hate attacks for generations to come. The nation's founding document, the U.S. Constitution, the supreme law of the land, immediately established unequal treatment for African Americans with three express provisions.⁸ The first was the notorious Three Fifths Clause in Article I, Section 2, Clause 3, which stated that enslaved African Americans were counted as three-fifths of a person for purposes of congressional representation and taxation.⁹ Next, the Import Clause of Article I, Section 9, Clause 1, provided that the federal government could levy a tariff of up to \$10 for each imported "person," allowing the slave trade to continue until 1808.¹⁰ Finally, the Fugitive Slave Clause of Article IV, Section 2, Clause 3, required states to return any runaway slave to his or her owner.¹¹ This was similar to the Extradition Clause also found in Article IV, Section 2.¹² The Extradition Clause required that a criminal who fled across state lines be returned to the state from which he or she originally fled.¹³ While the Fugitive Slave Clause was immediately enforced upon the ratification of the Constitution, the Extradition Clause would not be enforced until 1987.¹⁴

The Constitution makes clear that the United States treated African Americans as subhuman.¹⁵ The three-fifths rule established that the law did not consider African Americans as whole persons.¹⁶ In addition, the original Constitution treated runaway slaves worse than escaped criminals, as states were mandated to return slaves to their owners; conversely, courts

⁸ See U.S. CONST. art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV; U.S. CONST. art. I, § 9, cl. 1, *repealed by* U.S. CONST. amend. XIII; U.S. CONST. at art. IV, § 2, cl. 3, *repealed by* U.S. CONST. amend. XIII.

⁹ U.S. CONST. art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV.

¹⁰ U.S. CONST. art. I, § 9, cl. 1, *repealed by* U.S. CONST. amend. XIII.

¹¹ U.S. CONST. art. IV, § 2, cl. 3, *repealed by* U.S. CONST. amend. XIII; see *Ku Klux Klan*, HISTORY, (Oct. 15, 2019, 7:30 PM), <https://www.history.com/topics/reconstruction/ku-klux-klan>.

¹² See U.S. CONST. art. IV, § 2, cl. 2, *repealed by* U.S. CONST. amend. XIII; see also TEACHING AMERICAN HISTORY, *The Fugitive Slave Clause*, (last visited May 27, 2019), <https://teachingamericanhistory.org/library/document/the-fugitive-slave-clause/> (citing JAMES MADISON, DEBATES IN THE FEDERAL CONVENTION OF 1787 (Gordon Lloyd ed., Ashbrook Center 2014) (1818)).

¹³ See U.S. CONST. art. IV, § 2, cl. 2, *repealed by* U.S. CONST. amend. XIII.

¹⁴ *Puerto Rico v. Branstad*, 483 U.S. 219, 227 (1987).

¹⁵ See Douglas Martin, *Blacks and Constitution are the Focus of a Panel*, N.Y. TIMES, May 31, 1987, at 44, <https://www.nytimes.com/1987/05/31/nyregion/blacks-and-constitution-are-the-focus-of-a-panel.html>.

¹⁶ See U.S. CONST. art. I, § 2, cl. 3 (1787).

took another 100 years to mandate the extradition of criminals.¹⁷ If the above treatment of African Americans was not bad enough, the Import Clause went even further, and treated African Americans similar to commodities and goods that were being imported and taxed, like sugar.¹⁸

Although these Constitutional provisions were repealed with the abolishment of slavery, the provisions effectively set the stage for systemic discrimination by the United States government and violent racist hate attacks.¹⁹ In the period following the Civil War, known as the Jim Crow era, segregation was legal and the United States continued to treat African Americans as inferior to whites.²⁰ The Supreme Court legalized segregation, also known as the “separate but equal doctrine,” in the 1896 case, *Plessy v. Ferguson*.²¹ Governmental segregation remained in effect until 1954, when the Supreme Court held segregation was unconstitutional in terms of the schooling of children in *Brown vs. Board of Education*.²² The *Brown vs. Board of Education* decision was the catalyst for the Civil Rights Movement of the 1960s, where the federal government would finally enact legislation granting African Americans equal standing in the United States.²³

This attempt at equality came at a cost. In 1865, the year that marked the end of the Civil War, the Ku Klux Klan (“KKK” or “The Klan”) was founded.²⁴ As part of the KKK’s initiative, the Klan used intimidation tactics and extreme violence such as lynching to instill fear in freed blacks.²⁵ These racist acts of violence continued against African

¹⁷ See U.S. CONST. art. IV, §2, cl. 3 (1787), at n. 8; U.S. CONST. art. IV, §2, cl. 2 (1787).

¹⁸ See U.S. CONST. art. IV, §2, cl. 3, *repealed by* U.S. CONST. amend. XIII; Paul Finkelman, *The Abolition of the Slave Trade: The Act of 1807*, THE SCHOMBURG CENTER FOR RESEARCH IN BLACK CULTURE (2007), http://abolition.nypl.org/essays/us_constitution/5/; Michael P. Malloy, *Tariff Act of 1789*, ENCYCLOPEDIA (last updated Nov. 22, 2019), <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/tariff-act-1789>.

¹⁹ U.S. CONST. amend. XIII; Bryan Stevenson, Director, *Lynching in America: Targeting Black Veterans*, EJI, <https://eji.org/reports/online/lynching-in-america-targeting-black-veterans> (last visited May 25, 2019); *Ku Klux Klan*, HISTORY, <https://www.history.com/topics/reconstruction/ku-klux-klan> (last updated May 22, 2019).

²⁰ *Jim Crow Laws*, HISTORY, <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> (last updated March 13, 2019).

²¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

²² *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

²³ Kelly Jean Kelly, *Brown v. Board of Education Helps Launch Civil Rights Movement*, VOA (May 13, 2018), <https://learningenglish.voanews.com/a/supreme-court-brown-v-board-of-education/4389765.html>.

²⁴ *Civil War*, HISTORY, <https://www.history.com/topics/american-civil-war/american-civil-war-history> (last updated September 19, 2019); *Ku Klux Klan*, *supra* note 19.

²⁵ *Black History Milestones*, HISTORY, <https://www.history.com/topics/black->

Americans through the Jim Crow era, the Civil Rights movement of the 1960s, and even today.²⁶ Even though African Americans continue to advocate for equal treatment under the law, hate crimes against them persist.²⁷

B. Women and Misogynism

During the formation of the United States, African Americans were not the only people discriminated against by the government. Women, too, were treated as inferior to their male counterparts. Misogyny, defined as a “belief that men are much better than women,” also existed.²⁸ Discrimination against women can be noted immediately in the Declaration of Independence, which boldly states that, “[w]e hold these truths to be self-evident, that all *men* are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”²⁹ The application of this provision, however, was very limited. The language did not apply to women and, as discussed above, African Americans.³⁰

With respect to equality for women, the writers of the Declaration of Independence could have added language stating that all “men and women” are created equal. But they did not. In 1848, in Seneca Falls, New York, a group of men and women attempted to incorporate the ideals that were lacking in the Declaration of Independence. They signed what is known as the Declaration of Sentiments.³¹ This was a plea to end discrimination against women in the United States. The drafters of this sentiment cleverly began the document with the exact wording of the Declaration of Independence, although they explicitly included the word “women.”³² The Declaration of Sentiments reads: “We hold these truths to be self-evident; that all men *and women* are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.”³³

history/black-history-milestones (updated September 16, 2019).

²⁶ *Id.*

²⁷ See *Hate Crimes Case Examples*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/hatecrimes/hate-crimes-case-examples> (last visited Nov. 17, 2019).

²⁸ Misogyny, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/misogyny> (last visited Nov. 17, 2019).

²⁹ THE DECLARATION OF INDEPENDENCE pmb1. (U.S. 1776) (emphasis added).

³⁰ See generally PETER IRONS, A PEOPLE’S HISTORY OF THE SUPREME COURT (Penguin Books, 1999).

³¹ Elizabeth Cady Stanton, DECLARATION OF SENTIMENTS (1848).

³² *Id.*

³³ *Id.* (emphasis added).

The Declaration of Sentiments also outlined the various ways that women were treated poorly in the United States.³⁴ One area that was specifically addressed was the issue of domestic violence.³⁵ The drafters not only thought that women should be equal in the eyes of the law, they also believed that the power husbands had over their wives, including the right to chastise them, should end.³⁶

Once a woman married, her legal existence was suspended, and her legal status was known as “coverture.”³⁷ This common law tradition of treating married women as legal wards of their husbands carried over to the United States from England.³⁸ This meant that wives were *covered* by their husbands in all aspects of their lives.³⁹ As such, married women did not have a separate legal existence from their husbands.⁴⁰ Under this system, violence, power, and control in the home were widely accepted as part of a strong legal tradition.⁴¹ As the master of his house, a husband had the right to use violence against his wife and enforce his will.⁴² This allowed husbands to have an incredible amount of power over their wives including the ability to beat them.⁴³ This common law tradition transitioned to the newly formed United States.⁴⁴ Although widely discussed today, the concept and crime of domestic violence is not a new phenomenon; it occurred for centuries.⁴⁵ It was not until 1920, the same year that the 19th Amendment was ratified enfranchising women, that all states made wife beating illegal.⁴⁶

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Irons, *supra* note 30, at 11–12.

³⁸ Irons, *supra* note 30, at 11–12.

³⁹ *Id.*

⁴⁰ *Women and the Law, Women, Enterprise, & Society*, https://www.library.hbs.edu/hc/wes/collections/women_law/.

⁴¹ Stanton, *supra* note 31.

⁴² Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging Solutions*, 60 WASH. L. REV. 267, 286 (1985).

⁴³ Christine O'Connor, *Domestic Violence No-Contact Orders and the Autonomy Rights of Victims*, 40 B.C. L. REV. 937, 939 (1999).

⁴⁴ Irons, *supra* note 30, at 11–12.

⁴⁵ Waits, *supra* note 42, at 267.

⁴⁶ Cheryl Hannah, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1857 (1996); *Women's Suffrage*, HISTORY (Oct. 29, 2009), <https://www.history.com/topics/womens-history/the-fight-for-womens-suffrage> (last visited Nov. 17, 2019).

Another common law tradition that carried over to the United States is the Hale Doctrine, which is known as the Marital Rape Exemption.⁴⁷ Sir Matthew Hale, Chief Justice in England in the 17th century, once stated that, “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband which she cannot retract.”⁴⁸ Marital rape became yet another form of domestic violence readily accepted throughout the United States until 1975, when South Dakota removed its marital rape exemption.⁴⁹ The remaining forty-nine states and Washington D.C. followed suit and by 1993, marital rape was illegal throughout the United States.⁵⁰ Nevertheless, some sexual assaults by a spouse still remain legal.⁵¹

Criminalizing domestic violence and marital rape in the United States would be a long road. Although all states made wife beating illegal by 1920, prior to 1970, mediation was the preferred response to a domestic violence situation.⁵² Feminists argue that “criminalization of domestic violence is one way to correct the historical, legal, and moral disparities in legal protections afforded to women, making public what traditionally has been thought of as a private crime.”⁵³

In the 1970s, the policies governing domestic violence began to change.⁵⁴ The public focus moved toward improving legal responses to protect women and to punish offenders.⁵⁵ Domestic violence, however, would not be considered a “serious crime” until the 1980s.⁵⁶ This was reaffirmed in 1994 with the passage of the Violence Against Women Act

⁴⁷ Lalenya Weintraub Siegel, *The Marital Rape Exemption: Evolution to Extinction*, 43 CLEV. ST. L. REV. 351, 353 (1995).

⁴⁸ *Id.*

⁴⁹ Jessica McLaughlin, *Marital Rape in the U.S.: What Are the Laws?*, LAW STREET (August 2, 2015), <https://lawstreetmedia.com/issues/law-and-politics/marital-rape-u-s-laws/>.

⁵⁰ *Id.*

⁵¹ Meghan Keneally, *Minnesota’s Repeal of Marital Rape Exemptions Highlights Existing Legal Loopholes*, ABC NEWS (May 4, 2019), <https://abcnews.go.com/US/minnesotas-repeal-marital-rape-exemptions-highlights-existing-legal/story?id=62802650>.

⁵² Hannah, *supra* note 46, at 1857.

⁵³ Cheryl Hannah, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1514 (1998).

⁵⁴ Jeffrey Fagan, *The Criminalization of Domestic Violence: Promises and Limits*, (1996), <https://www.ncjrs.gov/txtfiles/crimdom.txt?iframe=true&width=95%&height=95%> (last visited Oct 23, 2019); Nichole Miras Mordini, *Mandatory State Interventions For Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 DRAKE L. REV. 295, 307 (2004); O’Connor, *supra* note 43, at 939; Waits, *supra* note 42.

⁵⁵ Fagan, *supra* note 54, at 2.

⁵⁶ Hannah, *supra* note 46, at 1857.

(“VAWA”).⁵⁷ VAWA was implemented in part to provide assistance to local law enforcement programs in their efforts to combat domestic and sexual abuse against women.⁵⁸

During this time, the Violent Crime Control and Law Enforcement Act (“Enhancement Act”) was passed, which included a section on hate crimes.⁵⁹ This section added gender, sexual orientation, and disability as protected categories in the legislation.⁶⁰ The legislation mandated an increased penalty for an offender who commits a hate crime of no less than three offense levels, including those motivated by gender.⁶¹ Even though this act added gender as a category, federal hate crime statistics still do not account for domestic violence.⁶²

C. LGBTQ+ and Heterosexism

Like African Americans and women, historically the LGBTQ+ community was also not treated equally to its heterosexual counterparts in the United States. This treatment started as early as the colonial era, when the state could execute individuals for committing sodomy.⁶³ In some states, consensual sodomy statutes against homosexuals remained legal until 2003.⁶⁴ Sodomy statutes, however, were not the only methods used by the government to treat homosexuals differently than their heterosexual counterparts. For a time, the Federal Government considered homosexuals to be a national security threat.⁶⁵ In the 1940s and 1950s, Congress used the Un-American Activities Committee and the McCarthy Hearings to illustrate that homosexuals were a national menace, a threat to security, and a threat to the overall stability of the country.⁶⁶ These hearings opened the

⁵⁷ Violence Against Women Act, 34 U.S.C. (1994), *invalidated in part by United States v. Morrison*, 529 U.S. 598 (2000).

⁵⁸ *Id.*

⁵⁹ Violent Crime Control Enhancement Act (1994), Pub. L. 103-322 (Sec. 280003), 108 Stat. 2096, (codified at 28 U.S.C. § 994).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Ann Noel, *Rethinking Violence Against Women As Hate Crimes*, CAL. ASS’N OF HUM. REL. ORG. (August 18, 2011), <http://www.cahro.org/2011/08/rethinking-violence-against-women-as-hate-crimes/> (last visited Oct 24, 2019).

⁶³ Irons, *supra* note 30, at 6–7.

⁶⁴ See *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (holding that a Texas criminal statute outlawing sodomy was unconstitutional).

⁶⁵ Judith Adkins, *These People are Frightened to Death*, PROLOGUE MAGAZINE (Summer 2016, Vol. 48, No. 2), <https://www.archives.gov/publications/prologue/2016/summer/lavender.html>.

⁶⁶ Joyce Murdoch & Deb Price, 35 COURTING JUSTICE: GAY MEN AND LESBIANS V. THE SUPREME COURT 35 (2001); Deanna F. Morrow, *Older Gays and Lesbians: Surviving a Generation of Hate and Violence*, in *FROM HATE CRIMES TO HUMAN RIGHTS: A TRIBUTE TO MATTHEW SHEPARD* 151, 155 (Mary E. Swigonski, et al. eds., 2001).

door for President Eisenhower to issue an executive order listing “Sexual Perversion” as a disqualifier for individuals seeking a federal job.⁶⁷ Many private employers followed suit and fired anyone they knew to be, or believed to be, homosexual.⁶⁸ As we moved through the century, however, the rights of employees increased. In 1964, Title VII of the Civil Rights Act of 1964 preventing employees from being fired due to race, color, religion, sex, and national origin was passed.⁶⁹ Following this trend, it is not that surprising that today, in the 21st century, there are twenty-one states that explicitly prohibit employment discrimination based on sexual orientation and gender identity.⁷⁰

Historically, law enforcement treated the LGBTQ community poorly; police officers would harass, abuse, blackmail, and entrap homosexuals.⁷¹ Due to a long history of the law enforcement’s distrust of homosexuals and the overt violation of their rights, many homosexuals were reluctant to report sustained attacks to the police.⁷² Some gays and lesbians would even hide their victim status because of the perceived lack of support from law enforcement.⁷³ These historical actions or inactions by the government ultimately conveyed the message that lesbians and gay men do not deserve legal protection, and also signaled to offenders that anti-gay hate crimes would not be punished by law.⁷⁴

In some jurisdictions, the trend remains, and, as recently as June 2, 2019, a police officer in Tennessee gave a sermon at his local church calling on the government to execute members of the LGBTQ+ community.⁷⁵ He stated, “God has instilled the power of civil government

⁶⁷ Murdoch & Price, *supra* note 66, at 38.

⁶⁸ Murdoch & Price, *supra* note 66, at 38.

⁶⁹ Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964).

⁷⁰ Julie Mureau, *Can you be fired for being gay? Answer depends largely on where you live*, NBC NEWS (Jan. 25, 2019), <https://www.nbcnews.com/feature/nbc-out/can-you-be-fired-being-gay-answer-depends-largely-where-n962711>.

⁷¹ Murdoch & Price, *supra* note 66, at 39; Kevin T. Berrill & Gregory M. Herek, *Violence Against Lesbians and Gay Men: An Introduction*, 5 J. INTERPERSONAL VIOLENCE 269, 270 (1990).

⁷² Jack Levin & Jack McDevitt, *HATE CRIMES REVISITED: AMERICA’S WAR ON THOSE WHO ARE DIFFERENT* 169 Boulder, CO. (Westview Press 2002); Kevin T. Berrill & Gregory M. Herek, *Primary and Secondary Victimization in Anti-Gay Hate Crimes Official Response and Public Policy*, 5 J. INTERPERSONAL VIOLENCE 401, 403-04 (1990); Bantley, *supra* note 3, at 547.

⁷³ Nadine Recker Rayburn et al., *Base Rates of Hate Crime Victimization Among College Students*, 18 J. INTERPERSONAL VIOLENCE 1209, 1211 (2003); Bantley, *supra* note 3, at 550.

⁷⁴ Berrill & Herek, *supra* note 72, at 402–03.

⁷⁵ Ralph Ellis & Amanda Watts, *Tennessee Preacher-Cop Calls for Execution of LGBTQ People*, CNN (June 14, 2019), <https://www.cnn.com/2019/06/14/us/tennessee-preacher-cop-lgbtq/index.html>.

to send the police in 2019 out to the LGBT freaks and arrest them and have a trial for them, and if they are convicted, then they are to be put to death.”⁷⁶ These comments were not supported by local officials.⁷⁷ Even though LGBTQ+ Americans have gained significant rights through criminal codes, same-sex marriage legalization, and the passage of federal hate crime legislation, a lack of trust in law enforcement remains with some members of the community, impacting the number of actual hate crimes reported.⁷⁸

D. Immigrants and Nativism

Immigration has long been controlled in the United States.⁷⁹ “The Chinese Exclusion Act” is one of the more notorious immigration laws passed by Congress.⁸⁰ It was the first immigration law to exclude people based on race.⁸¹ For nearly thirty years prior to its enactment, Chinese immigration was encouraged.⁸² The Chinese were considered cheap labor and were used primarily to help build the western railroads.⁸³ White laborers in California were not happy with the rapid increase of cheap Chinese laborers.⁸⁴ Anger towards the Chinese grew as unemployment and economic depression set in, culminating and ultimately leading to acts of violence and riots against the Chinese.⁸⁵

California and the Southwest have a long history of blaming immigrants and/or their children for a poor economy and social problems, also known as nativism.⁸⁶ Nativism is a policy of favoring native inhabitants as opposed to immigrants.⁸⁷ Part of this includes trying to

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See generally *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 135 S.Ct. 2584, 2591 (2015); 18 U.S.C.A. § 249 (2019); Katie Gagliano & Emma Keith, *Lack of Trust in Law Enforcement Hinders Reporting of LGBTQ Crimes*, THE CENTER FOR PUB. INTEGRITY (Aug. 24, 2018), <https://publicintegrity.org/federal-politics/lack-of-trust-in-law-enforcement-hinders-reporting-of-lgbtq-crimes/>.

⁷⁹ D’Vera Cohn, *How U.S. immigration laws and rules have changed through history*, PEW RESEARCH CENTER (September 30, 2015), <https://www.pewresearch.org/fact-tank/2015/09/30/how-u-s-immigration-laws-and-rules-have-changed-through-history/>.

⁸⁰ The Chinese Exclusion Act of 1882, 22 Stat. 58 (repealed 1943).

⁸¹ Polly J. Price, *A “Chinese Wall” at the Nation’s Borders: Justice Stephen Field and The Chinese Exclusion Case*, 43 J. SUP. CT. HIST. 7, 11 (2018).

⁸² *Id.* at 10.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Mark R. Day, *Nativism in American: Yesterday and Today*, LA PRENSA SAN DIEGO (May 30, 2008), <http://www.laprensa-sandiego.org/archieve/2008/may30-08/Nativism053008.htm>.

⁸⁷ *Nativism*, MERRIAM WEBSTER, <https://www.merriam->

strengthen laws to keep immigrants out.⁸⁸ “The Chinese Exclusion Act” could be viewed as one piece of legislation enacted to promote such nativism. During the depression of the 1930s, both Mexicans and Mexican Americans were targeted for mass deportations resulting in over 500,000 people being “dumped” across the Mexican border.⁸⁹ A similar deportation took place in the 1950s when a policy known as “Operation Wetback” was implemented, resulting in the deportation of over one million laborers.⁹⁰

In 1994, California introduced legislation in the form of Proposition 187 that impacted immigration.⁹¹ This legislation prevented suspected undocumented immigrants from being able to receive a variety of public assistance.⁹² Shortly after Proposition 187 passed, hate attacks in California increased by 23.5 percent.⁹³ Although Proposition 187 was later deemed unconstitutional, it still stoked fears of government sanctioned xenophobia in the Latino and immigrant communities.⁹⁴ This alarming trend was repeating itself as the Trump administration considered new immigration policies and garnered support to build the infamous “wall,” significantly impacting certain groups of people based on national origin.⁹⁵ These policies were strikingly similar to The Chinese Exclusion Act and its call to build a “wall” of its own as all were attempts to keep immigrants out.⁹⁶

webster.com/dictionary/nativism (last visited June 9, 2019).

⁸⁸ R. Michael Alvarez and Tara L. Butterfield, *The Resurgence of Nativism in California? The Case of Proposition 187 and Illegal Immigration*, 81 *Social Science Quarterly* 167, 168 (2000).

⁸⁹ Adrian Florido, *Mass Deportation May Seem Unlikely But It Has Happened Before*, NPR (Sept. 8, 2015), <https://www.npr.org/sections/codeswitch/2015/09/08/437579834/mass-deportation-may-sound-unlikely-but-its-happened-before>.

⁹⁰ Erin Blakemore, *The Largest Deportation in American History*, HISTORY, (Updated Sept. 1, 2018), <https://www.history.com/news/operation-wetback-eisenhower-1954-deportation>.

⁹¹ Nancy Cervantes, Sasha Khokha & Bobbie Murray, *Hate Unleashed: Los Angeles in the Aftermath of Proposition 187*, 17 *CHICANO-LATINO L. REV.* 1, 3 (1995).

⁹² *Id.* at 1.

⁹³ *Id.* at 8.

⁹⁴ *Latino Political Power in California: 25 Years After Proposition 187*, LATINO CMTY FOUND., <https://latinocf.org/wp-content/uploads/2019/03/LCF-Prop-187-Paper.pdf> (last visited Nov. 17, 2019).

⁹⁵ Eric Levitz, *The Insurmountable Obstacle to a Compromise on Trump's Wall*, INTELLIGENCER, THE MAGAZINE (Dec. 27, 2018), <http://nymag.com/intelligencer/2018/12/government-shutdown-the-giant-obstacle-to-trumps-border-wall-congress.html>.

⁹⁶ Price, *supra* note 81, at 7.

E. Religion, Anti-Semitism & Anti-Islamism

As mentioned earlier, hate crime legislation includes crimes committed against persons or property based on actual or perceived race, color, national origin, gender, sexual orientation, and gender identity.⁹⁷ Hate crimes also include crimes against people or property based on their religion.⁹⁸ The government's treatment of people based on religion, however, has been very different compared to the other categories already discussed.

Religious freedom exists in the United States in the Constitution.⁹⁹ The First Amendment protects both the free exercise of religion and the establishment of any one religion by the government.¹⁰⁰ As such, the United States has often been thought of as a country that promotes religious tolerance.¹⁰¹ This, however, is not the case.

One of the first government sanctioned anti-Semitic acts took place during the Civil War when General Ulysses S. Grant ordered the expulsion of Jews from several states under his control.¹⁰² This Act, however, was quashed by President Lincoln.¹⁰³ Again, in 1924, Congress passed the Johnson-Reed Act, limiting immigration through a national origins quota.¹⁰⁴ Although the Johnson-Reed Act did not specifically target Jews, the act had a disparate impact on Jewish immigrants, as it virtually halted Jewish immigration from Eastern Europe.¹⁰⁵ This restriction also occurred at a time when the KKK's membership hit record numbers and Jews and African Americans were targeted with hate and violence.¹⁰⁶ Around the same time the Johnson-Reed Act was enacted, anti-Semitism and violence

⁹⁷ 18 U.S.C. § 249 (2018).

⁹⁸ *Id.*

⁹⁹ U.S. CONST., amend. I.

¹⁰⁰ *Id.*

¹⁰¹ Kenneth C. Davis, *America's True History of Religious Tolerance: The idea that the United States has always been a bastion of religious freedom is reassuring – and utterly at odds with the historical record* (October 2010), SMITHSONIAN, <https://www.smithsonianmag.com/history/americas-true-history-of-religious-tolerance-61312684/>

¹⁰² Jeff Jacoby, *Ulysses S. Grant's Greatest Regret: His anti-Semitic Order haunted – and drove – him* (Dec. 5, 2012, 2:27 AM), BOSTON GLOBE, <https://www.bostonglobe.com/opinion/2012/12/05/jacoby/YEQhAs7UWrOfXirKcs3DvJ/story.html> (citing General Order No. 11).

¹⁰³ *Id.*

¹⁰⁴ The Immigration Act (The Johnson-Reed Act), OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1921-1936/immigration-act> (last visited May 25, 2019); see Immigration Act (Johnson-Reed Act), Pub. L. No. 68-139, 43 Stat. 153 (1924).

¹⁰⁵ David B. Oppenheimer, Swati Prakash & Rachel Burns, *Playing the Trump Card: The Enduring Legacy of Racism in Immigration Law*, 26 BERKLEY LA RAZA L.J. 1, 18 (2016).

¹⁰⁶ HISTORY.COM EDITORS, *supra* note 19.

against Jews increased in the United States.¹⁰⁷ In fact, the United States demonstrated an overall sense of apathy toward Jews during World War II, taking in few Jewish refugees from Hitler's Europe.¹⁰⁸ It is estimated that up to 200,000 Jewish refugees could have been saved if U.S. immigration policies were different.¹⁰⁹ The number of Jewish refugees entering the United States from war-torn Europe did not increase until President Roosevelt ("FDR") issued an Executive Order in 1944, establishing the War Refugee Board, which assisted in their rescue.¹¹⁰

Anti-Semitism in the U.S. declined in the aftermath of the Holocaust, with the passage of FDR's Executive Order and the increased awareness of the horrors suffered by the Jewish people.¹¹¹ Anti-Semitism, however, would never be completely eradicated. Jews remain the religious group that is most targeted by hate crimes in the United States.¹¹²

Muslims follow right behind Jews in terms of the number incidents of hate attacks.¹¹³ Prior to September 11, 2001, there were few hate crimes against Muslims.¹¹⁴ In the aftermath of the attacks on the World Trade Center, however, hate crimes against Muslims rose and, in 2010, anti-Muslim legislation increased.¹¹⁵ The legislation in the form of anti-Sharia

¹⁰⁷ Stuart Wexler, *The Roots of American Anti-Semitism: The Christian identity movement, white supremacy, and the future of homegrown anti-Jewish terror*, TABLET MAGAZINE (Nov. 1, 2018, 9:30 PM), <https://www.tabletmag.com/jewish-news-and-politics/273831/the-roots-of-american-anti-semitism>.

¹⁰⁸ See generally David S. Wyman, *The Abandonment of the Jews: America and the Holocaust, 1941–1945*, (New York: Pantheon Books, 1984).

¹⁰⁹ Daniel A. Gross, *The U.S. Government Turned Away Thousands of Jewish Refugees, Fearing That They Were Nazi Spies*, SMITHSONIAN (Nov. 18, 2015), <https://www.smithsonianmag.com/history/us-government-turned-away-thousands-jewish-refugees-fearing-they-were-nazi-spies-180957324/>.

¹¹⁰ Franklin Delano Roosevelt, THE HOLOCAUST ENCYCLOPEDIA, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/franklin-delano-roosevelt> (last visited Nov. 17, 2019).

¹¹¹ Jonathan D. Sarna & Jonathan Golden, *The American Jewish Experience in the Twentieth Century: Antisemitism and Assimilation*, TEACHERSERVE: THE NATIONAL HUMANITIES CENTER (last visited Nov. 17, 2019), <http://nationalhumanitiescenter.org/tserve/twenty/tkeyinfo/jewishexpb.htm>.

¹¹² *About Hate Crime Statistics, 2017*, FED. BUREAU INVESTIGATION, <https://ucr.fbi.gov/hate-crime/2017> (last visited Nov. 13, 2019).

¹¹³ *Id.*

¹¹⁴ *Hate Crimes Statistics Report (1996–2000)*, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/hate-crime> (last visited Nov. 13, 2019).

¹¹⁵ *Explaining the Rise of Hate Crimes Against Muslims in the U.S.*, THE CONVERSATION (July 19, 2017), <http://theconversation.com/explaining-the-rise-in-hate-crimes-against-muslims-in-the-us-80304>; *Anti-Muslim*, SPLC SOUTHERN POVERTY LAW CENTER (retrieved June 7, 2019), <https://www.splcenter.org/fighting-hate/extremist-files/ideology/anti-muslim>.

laws (Sharia being Islam's legal system) was enacted.¹¹⁶ As of February, 2018, 201 anti-Sharia laws were introduced in forty-three states since 2010.¹¹⁷ Texas and Arkansas both enacted this type of legislation, banning the practice of Sharia law.¹¹⁸ States are not the only ones to enact laws that adversely affect Muslims. A few days after his election, President Trump issued an executive order for a travel ban that effectively discriminated against Muslims and banned refugees from primarily Muslim countries.¹¹⁹ The five Muslim majority countries targeted in the ban are Iran, Syria, Libya, Yemen, and Somalia.¹²⁰ Trump's travel ban is similar to the immigration policy that limited Jews and Jewish refugees in the 1920s and 1940s.¹²¹

III. HATE CRIME LEGISLATION & STATISTICS

As mentioned above, hate crimes are offenses involving an actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.¹²² The first hate crime legislation was enacted after the Civil War in 1871.¹²³ This legislation is known as the Ku Klux Klan Act.¹²⁴ It was designed to protect African Americans from violence perpetuated by the Klan.¹²⁵ During the modern civil rights movement, the Civil Rights Act of 1968 was enacted.¹²⁶ This act was passed to protect people based on race, color, religion, or national origin from bias attacks while they engaged in federally protected activities.¹²⁷ In 1994, there were two other key pieces of legislation that were passed.¹²⁸ These two include

¹¹⁶ *What is Sharia and How Is It Applied?*, BBC NEWS (May 7, 2014), <https://www.bbc.com/news/world-27307249>; Swathi Shanmugasundaram, *Anti-Sharia Law Bills in the United States*, SPLC SOUTHERN POVERTY LAW CENTER (Feb. 5, 2018), <https://www.splcenter.org/hatewatch/2018/02/05/anti-sharia-law-bills-united-states>.

¹¹⁷ Shanmugasundaram, *Anti-Sharia Law Bills in the United States*, *supra* note 116.

¹¹⁸ *Id.*

¹¹⁹ *Trump Administration Civil and Human Rights Rollbacks*, THE LEADERSHIP CONFERENCE ON CIVIL & HUMAN RIGHTS, <https://civilrights.org/trump-rollbacks/> (retrieved May 25, 2019).

¹²⁰ Vahid Niayesh, *Trump's 'travel ban' was really was a Muslim Ban, data suggests*, THE WASHINGTON POST (September 26, 2019), <https://www.washingtonpost.com/politics/2019/09/26/trumps-muslim-ban-really-was-muslim-ban-thats-what-data-suggest/>.

¹²¹ Oppenheimer, *supra* note 105; Wyman, *supra* note 108.

¹²² 18 U.S.C.A. § 249 (2018).

¹²³ Ku Klux Klan Act of 1871, Pub. L. No. 42-22, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C.A. § 1985(3)).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ 18 U.S.C.A. § 245(b) (1996).

¹²⁷ *Id.*

¹²⁸ Violent Crime Control Enhancement Act (1994); Violence Against Women Act

the Enhancement Act and the VAWA.¹²⁹

This trend continued with the codification of hate crime legislation in 1996, when Congress passed the Church Arsons Prevention Act.¹³⁰ Prior to its enactment, a series of black churches were burned in the South.¹³¹ With these crimes in consideration, the Act called for an enhanced penalty if a house of worship is burned, vandalized, or an individual commits violent interference with religious worship.¹³² Hate crime legislation was again expanded in 2009 with the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (Shepard & Byrd, Jr. Act).¹³³ This act added sexual orientation, disability, and gender identity as protected classes to the Civil Rights Act of 1968.¹³⁴ It also removed the restriction that a person needed to engage in a federally protected activity to be charged with a hate crime under federal legislation.¹³⁵

To determine the prevalence of hate crimes, the Hate Crimes Statistics Act (“HCSA”) was enacted in 1990.¹³⁶ The HCSA mandates the collection of data involving hate crimes.¹³⁷ The FBI collects this data as part of its Uniform Crime Reporting program.¹³⁸ The program receives data from voluntary reporting of more than 18,000 cities, universities and colleges, counties, states, and tribal and federal agencies.¹³⁹ Starting in 2013, the statistics included new categories of gender and gender identity, added by the Shepard & Byrd, Jr. Act in 2009.¹⁴⁰ Table 1 shows the number of overall incidents and number of offenses reported for 2007–2017 considered in this project.¹⁴¹

(1994).

¹²⁹ *Id.*

¹³⁰ Church Arsons Prevention Act (1996), P.L. 104-155, 110 Stat. 1392, codified at 18 U.S.C. §247 (1996).

¹³¹ 104 Cong. Rec. H6096 (daily ed. July 10, 1996) (statement of Ms. Clayton).

¹³² Church Arson Prevention Act, *supra* note 130.

¹³³ Matthew Shepard and James Byrd, Jr. Hate Crimes Protection Act (2009), Pub. L. No. 111-84, Div. E, § 4701, 123 Stat. 2841 (codified at 18U.S.C.A. § 249).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Hate Crime Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (1990), (current version at 34 U.S.C.A. §41305).

¹³⁷ *Id.*

¹³⁸ Uniform Crime Reporting (UCR) Program, FBI, <https://www.fbi.gov/services/cjis/ucr>.

¹³⁹ Fed. Bureau of Investigation, *Uniform Crime Reporting Program*, <https://www.fbi.gov/services/cjis/ucr>, (last visited Nov. 17, 2019).

¹⁴⁰ Uniform Crime Report, *2013 Hate Crimes Statistics Report*, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/hate-crime/2013/resource-pages/summary/fbi-releases-2013-hate-crime-statistics> (last visited Nov. 17, 2019).

¹⁴¹ Uniform Crime Report, *Hate Crimes Statistics Report (2007–2017)*, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/hate-crime> (last visited Nov. 17, 2019).

Table 1: Number of Hate Incidents Reported 2007–2017 & Number of Offenses 2007–2017

Year	Number of Incidents	Number of Offenses
2007	7,624	9,006
2008	7,783	9,168
2009	6,604	7,789
2010	6,628	7,699
2011	6,222	7,254
2012	5,796	6,718
2013	5,928	6,933
2014	5,479	6,418
2015	5,850	6,885
2016	6,121	7,321
2017	7,175	8,437

It can be noted in Table 1 that in 2009, the number of hate incidents and offenses decreased.¹⁴² This trend continued, for the most part, over the next eight years, during President Obama’s time in office.¹⁴³ President Obama served as President from January 20, 2009, through January 20, 2017 (“the Obama Years”).¹⁴⁴ In 2008, the year before President Obama took office, there were 7,783 hate incidents reported and in 2016, President Obama’s last year in office, there were 6,121.¹⁴⁵ The lowest number of reported hate incidents during the Obama presidency was 5,479 in 2014.¹⁴⁶

¹⁴² Compare Uniform Crime Report, *2007 Hate Crimes Statistics Report*, FED. BUREAU OF INVESTIGATION (OCT. 2008), <https://www2.fbi.gov/ucr/hc2007/index.html>; Uniform Crime Report, *2008 Hate Crimes Statistics Report*, FED. BUREAU OF INVESTIGATION (NOV. 2009), <https://ucr.fbi.gov/hate-crime/2008>, with Uniform Crime Report, *2009 Hate Crimes Statistics Report*, FED. BUREAU OF INVESTIGATION (NOV. 2010) <https://ucr.fbi.gov/hate-crime/2009> (last visited Nov. 17, 2019).

¹⁴³ Uniform Crime Reports, *2009–2017 Hate Crimes Statistics*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr/publications#Hate-Crime%20Statistics>.

¹⁴⁴ Jeff Wallenfeldt & David Mendell, Barack Obama, *ENCYCLOPEDIA BRITANNICA* (Nov. 2019), <https://www.britannica.com/biography/Barack-Obama>.

¹⁴⁵ Compare Uniform Crime Report, *2008 Hate Crimes Statistics Report*, FED. BUREAU OF INVESTIGATION (NOV. 2009) <https://ucr.fbi.gov/hate-crime/2008>, with Uniform Crime Report, *2016 Hate Crime Statistics Report*, FED. BUREAU OF INVESTIGATION (FALL 2017), <https://ucr.fbi.gov/hate-crime/2016> (last visited Nov. 17, 2019).

¹⁴⁶ Uniform Crime Report, *2014 Hate Crime Statistics Report*, FED. BUREAU OF INVESTIGATION (FALL 2015), https://ucr.fbi.gov/hate-crime/2014/topic-pages/incidentsandoffenses_final.pdf.

IV. THE OBAMA ADMINISTRATION

During the Obama years, when reported hate incidents decreased, there were several laws and executive orders that enhanced protections for members of the LGBTQ+ community or increased their rights in the United States.¹⁴⁷ For example, in 2009, Congress passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act to include sexual orientation, disability and gender identity.¹⁴⁸ In 2010, the Don't Ask, Don't Tell Act was repealed.¹⁴⁹ In 2014, President Obama signed an executive order preventing workplace discrimination for lesbian, gay, bisexual, and transgender employees.¹⁵⁰ California also passed legislation barring the use of "Gay or Trans Panic" defenses in criminal cases in 2014, followed by Illinois in 2017.¹⁵¹

The President, Congress, and states, however, were not the only ones to act to either protect or provide equal opportunities to the LGBTQ+ community. The United States Supreme Court in *Obergefell v. Hodges* in 2015 held that state bans on same-sex marriages and on recognizing same-sex marriages duly performed in another jurisdiction were unconstitutional under the Fourteenth Amendment's due process and equal protection clause.¹⁵² This article argues that the combination of this legislation played a role in the downward trend of all reported hate incidents during the Obama years, not just those against the LGBTQ+ community.

¹⁴⁷ Matthew Shepard and James Byrd, Jr. Hate Crimes Protection Act, Pub. L. No. 111-84, Div. E, § 4701, 123 Stat. 2841 (2009) (codified at 18 U.S.C.A. § 249); Office of the Press Secretary, *Fact Sheet: Obama Administration's Record and the LGBT Community*, THE WHITE HOUSE, (June 9, 2016) <https://obamawhitehouse.archives.gov/the-press-office/2016/06/09/fact-sheet-obama-administrations-record-and-lgbt-community> (last visited Nov. 17, 2019).

¹⁴⁸ Matthew Shepard and James Byrd, Jr. Hate Crimes Protection Act.

¹⁴⁹ Office of the Press Secretary, *Fact Sheet: Obama Administration's Record and the LGBT Community*, *supra* note 147.

¹⁵⁰ Gregory Korte, *Obama signs executive order banning LGBT discrimination*, USA TODAY (July 21, 2014, 3:28 PM), <https://www.usatoday.com/story/news/politics/2014/07/21/obama-executive-order-lgbt-discrimination/12944523/> (last visited Nov. 17, 2019).

¹⁵¹ Assemb. B. No. 2501, ch. 684 (Ca. 2014), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2501; Public Act 100-0460, 100th General Assemb., (Il. 2017), <http://ilga.gov/legislation/billstatus.asp?DocNum=1761&GAID=14&GA=100&DocTypeID=SB&LegID=104743&SessionID=91>.

¹⁵² *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

V. DOG WHISTLE POLITICS: THE TRUMP ADMINISTRATION'S LEGACY

Since President Trump was elected in November of 2016, the number of hate crime incidents has steadily risen.¹⁵³ The Southern Poverty Law Center reported 867 hate incidents in the ten days following Trump's election.¹⁵⁴

President Trump often uses inflammatory rhetoric towards others, which began during his campaign.¹⁵⁵ This rhetoric has arguably fueled hate attacks that have occurred in recent years.¹⁵⁶ Examples include when Trump referred to Mexican immigrants as "criminals and rapists," immigrants as "animals," and white nationalists as "very fine people."¹⁵⁷ Some offenders have latched onto this rhetoric to justify their attacks.¹⁵⁸ For example, during the presidential election campaign, attackers beat a homeless Hispanic man.¹⁵⁹ One of the attackers stated that he was motivated by Trump's message on immigration.¹⁶⁰ After Trump's election, there were also several reports of verbal and physical attacks on African Americans by those expressing support for Trump.¹⁶¹ Similarly, a church

¹⁵³ Griffin S. Edwards & Stephen Rushin, *The Effect of Trump's Election on Hate Crimes*, SSRN ELEC. JOURNAL (January 14, 2018), <https://ssrn.com/abstract=3102652>; Uniform Crime Report, *2017 Hate Crime Statistics Report*, FED. BUREAU OF INVESTIGATION (Fall 2018), <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses.pdf>.

¹⁵⁴ Alexandra Werner-Winslow, *Ten Days After: Harassment and Intimidation in the Aftermath of the Election*, SPLC SOUTHERN POVERTY LAW CENTER (Nov. 29, 2016), <https://www.splcenter.org/20161129/ten-days-after-harassment-and-intimidation-aftermath-election>.

¹⁵⁵ Jonathan Cohn, *The Comprehensive Guide to Trump's Most Outrageous Statements*, HUFFPOST (Updated June 16, 2016), https://www.huffpost.com/entry/worst-trump-quotes_n_5756e8e6e4b07823f9514fb.

¹⁵⁶ Edwards & Rushin (2018), *supra* note 7 (citing German Lopez, *Donald Trump's Long History of Racism, from the 1970's to 2018*, VOX (Jan. 11, 2018), <https://www.vox.com/2016/7/25/12270880/donald-trump-racism-history>).

¹⁵⁷ Edwards & Rushin (2018), *supra* note 7; Aaron Sankin & Will Careless, *The Hate Report: Trump's 'animals' comment enlivens neo-Nazis*, REVEAL, FROM THE CENTER OF INVESTIGATIVE REPORTING (May 25, 2018), <https://www.revealnews.org/blog/the-hate-report-trumps-animals-comment-enlivens-the-neo-nazis/>; Glenn Thrush & Maggie Haberman, *Trump Gives White Supremacists an Unequivocal Boost*, N.Y. TIMES (August 15, 2017), <https://www.nytimes.com/2017/08/15/us/politics/trump-charlottesville-white-nationalists.html?mcubz=0>.

¹⁵⁸ Russell Berman, *A Donald Trump Inspired Hate Crime in Boston*, THE ATLANTIC (August 20, 2015), <https://www.theatlantic.com/politics/archive/2015/08/a-trump-inspired-hate-crime-in-boston/401906/>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Lizzie Dearden, *Donald Trump's victory followed by wave of hate crime attacks against minorities across US – led by supporters*, INDEPENDENT (November 10, 2016), <https://www.independent.co.uk/news/world/americas/us-elections/donald-trump-president-supporters-attack-muslims-hijab-hispanics-lgbt-hate-crime-wave-us-election->

with a large immigrant population was spray painted with the words “Whites Only” and “Trump Nation.”¹⁶² Another occurrence since the election was an attack on a gay male whose offender stated “the president says we can kill all you.”¹⁶³ President Trump appears to be conveying a message that he will not condemn hate crimes committed in his name.¹⁶⁴

The Trump administration has refused to engage in a proactive position. A proactive position is one that would increase and/or protect the rights of the marginalized groups under attack; however, the Trump administration has done the opposite. Unlike during the Obama years where the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act was passed, “Don’t Ask, Don’t Tell” was repealed, and an executive order preventing workplace discrimination for LGBTQ+ was signed,¹⁶⁵ President Trump has not introduced legislation or executive orders that protects the groups that are being targeted by hate crimes. As an alternative, President Trump has implemented an anti-Muslim, anti-LGBTQ+, and anti-immigrant agenda.¹⁶⁶

On his first day in office, President Trump’s administration removed all LGBTQ+ content from both the White House and State Department’s webpages.¹⁶⁷ This was followed days later with President Trump issuing an executive order for the controversial travel ban, that had a disproportionate impact on Muslims and banned refugees.¹⁶⁸ This executive order would appear to be strikingly similar to both the ban and deportation of Mexicans in the 1930’s and 1950’s, as well as the immigration policies toward Jewish refugees during and after World War II.¹⁶⁹

a7410166.html.

¹⁶² ‘Trump Effect’ led to hate crime surge, report finds, BBC NEWS (Nov. 29, 2016), <https://www.bbc.com/news/world-us-canada-38149406>.

¹⁶³ *Id.*

¹⁶⁴ Heidi Beirich & Susy Buchanan, 2017: *The Year in Hate and Extremism*, SPLC SOUTHERN POVERTY LAW CENTER (Feb. 11, 2018), <https://www.splcenter.org/fighting-hate/intelligence-report/2018/2017-year-hate-and-extremism#anti-muslim>.

¹⁶⁵ Matthew Shepard and James Byrd, Jr. Hate Crimes Protection Act, *supra* note 147; Office of the Press Secretary, *Fact Sheet: Obama Administration’s Record and the LGBT Community*, *supra* note 147.

¹⁶⁶ Mary Emily O’Hara, *Trump Administration Removes LGBTQ Content From Federal Websites*, NBC NEWS (Jan. 24, 2017), <https://www.nbcnews.com/feature/nbc-out/trump-administration-removes-lgbtq-content-federal-websites-n711416>; *Trump Administration Civil and Human Rights Rollbacks*, *supra* note 119; Florido, *supra* note 89; Blakemore, *supra* note 90; Wyman, *supra* note 108.

¹⁶⁷ O’Hara, *supra* note 166.

¹⁶⁸ *Trump Administration Civil and Human Rights Rollbacks*, *supra* note 119.

¹⁶⁹ Florido, *supra* note 89; Blakemore, *supra* note 90; Wyman, *supra* note 108.

President Trump's dog whistle political agenda continued throughout his first year in office and culminated with one of his most controversial statements as the leader of the free world.¹⁷⁰ On August 12, 2017, James Alex Fields plowed his car into a group of people protesting a white nationalist rally in Charlottesville, Virginia.¹⁷¹ White nationalists believe that whites are superior to all other races and should dominate society.¹⁷² Fields' assault on the crowd resulted in one death and nineteen others being injured.¹⁷³ In addressing this tragedy, President Trump stated that there were "very fine people on both sides" of the demonstration, although it was the white nationalists who were heavily armed and a white nationalist who used his car as a deadly weapon on the protestors.¹⁷⁴

It is not surprising that the number of hate incidents reported in President Trump's first year in office increased by more than 1,000 incidents compared to 2016.¹⁷⁵ In 2016, there were 6,121 incidents reported and 7,175 in 2017.¹⁷⁶ Table 2 shows an increase in incidents reported in 2017 for groups discussed in Part II of this article.

Table 2: Hate Incidents Reported in 2016 & 2017

Bias Motivation	Incidents in 2016	Incidents in 2017
Anti-Black or African American	1,739	2,013
Anti-Hispanic or Latino	344	427
Anti-Jewish	684	938
Anti-Islamic (Muslim)	307	273
Anti-Sexual Orientation (all)	1,076	1,130
Anti-Female	24	24

¹⁷⁰ Thrush & Haberman, *supra* note 157.

¹⁷¹ *Suspect in deadly Charlottesville car rampage charged with federal hate crimes*, CBS NEWS (June 27, 2018), <https://www.cbsnews.com/news/james-alex-fields-suspect-in-deadly-charlottesville-car-rampage-charged-with-federal-hate-crimes/>.

¹⁷² Ray Sanchez, *Who Are White Nationalists and What Do They Want?*, CNN (Aug. 13, 2017), <https://www.cnn.com/2017/08/13/us/white-nationalism-explainer-trnd/index.html>.

¹⁷³ *Id.*

¹⁷⁴ Thrush & Haberman, *supra* note 157.

¹⁷⁵ *2016 Hate Crime Statistics Report*, FED. BUREAU OF INVESTIGATION <https://ucr.fbi.gov/hate-crime/2016>; *2017 Hate Crime Statistics Report*, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/hate-crime/2017>.

¹⁷⁶ *Id.*

As seen in Table 2, incidents of Anti-Black or African American hate crimes increased by 274, followed by an increase of 234 Anti-Jewish incidents.¹⁷⁷ There were eighty-three more Anti-Hispanic or Latino incidents and fifty-four more Anti-Sexual Orientation incidents.¹⁷⁸ Anti-Islam (Muslim) hate incidents, however, decreased from 307 to 273 in 2017.¹⁷⁹ Even with this statistic in mind, it is important to note that the 307 incidents reported in 2016 was a ten-year high.¹⁸⁰

President Trump's second year in office would prove to be just as eventful. The Trump administration spent a good part of the year trying to gain approval from Congress to build a wall along the southern border to prevent immigrants from crossing into the United States.¹⁸¹ Like his travel ban, this reflected historical initiatives of the past, specifically, the proposed wall that would keep Chinese immigrants out of the country in the late 19th century.¹⁸² Trump's insistence on having a "wall" ultimately resulted in a government shutdown in December, 2018, and lasted for thirty-four days, making it the longest shut down in history.¹⁸³ Also in 2018, while the number of hate incidents decreased from 2017, the number of hate offenses increased.¹⁸⁴

VI. LIMITATIONS & RECOMMENDATIONS

The data used for this article is only from the Uniform Crime Reports - Hate Crime Statistics reported to the FBI by law enforcement agencies.¹⁸⁵ This in itself causes some limitations. First, it is a voluntary reporting program.¹⁸⁶ Second, many victims of crime—especially domestic, sexual,

¹⁷⁷ 2016 *Hate Crime Statistics Report*, *supra* note 175; 2017 *Hate Crime Statistics Report*, *supra* note 175.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Uniform Crime Reports, 2007–2017 *Hate Crimes Statistics*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr/publications#Hate-Crime%20Statistics>.

¹⁸¹ Eric Levitz, *The Insurmountable Obstacle to a Compromise on Trump's Wall*, INTELLIGENCER, THE MAGAZINE (Dec. 27, 2018), <http://nymag.com/intelligencer/2018/12/government-shutdown-the-giant-obstacle-to-trumps-border-wall-congress.html>.

¹⁸² Price, *supra* note 81.

¹⁸³ Mihir Zaveri, Guilbet Gates and Karen Zraick, *The Government Shutdown Was the Longest Ever. Here's the History*, N.Y. TIMES (updated Jan. 25, 2019).

¹⁸⁴ Compare Uniform Crime Reports, 2018 *Hate Crime Statistics Report*, FED. BUREAU OF INVESTIGATION (NOV. 2019), <https://ucr.fbi.gov/hate-crime/2018/resource-pages/hate-crime-summary>, with 2017 *Hate Crime Statistics Report*, *supra* note 175.

¹⁸⁵ Uniform Crime Report (2007–2017), *supra* note 141; Uniform Crime Report (2018), *supra* note 184.

¹⁸⁶ *Uniform Crime Reporting Program*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr/>.

and hate crimes—do not report their attacks to law enforcement.¹⁸⁷ It is recommended that readers access the Bureau of Justice Statistics (“BJS”) National Crime Victimization Survey for data based on victim reporting.¹⁸⁸

VII. CONCLUSION

In evaluating the United States government’s policies over time, it is evident that our country has a long history of discriminating against certain groups of minorities. This treatment is apparent in the way the government treated African Americans, women, LGBTQ+ persons, and immigrants, as they have fought and continue to fight for rights in this country. In considering these actions by the government, it is unsurprising that there is a continuing trend of hate attacks among and between citizens in the United States.

When President Obama was in office, the rights of marginalized groups increased and hate crimes against them respectively decreased. Currently, the opposite has occurred during Trump’s presidency, as the number of hate crimes rose in 2017 and in 2018. It is no coincidence that hate crimes are on the rise with the legislation that President Trump is supporting. As long as there is a persistence of structuralized inequities within the United States government, marginalized groups will stay marginalized, and hate attacks against them will continue to exist.

¹⁸⁷ *Data Collection: National Crime Victimization Survey (NCVS)*, OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT., (last visited May 25, 2019), <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=245>.

¹⁸⁸ *Id.*