



**Asian American
Bar Association
of New York**

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April 24, 2023

United States Commission on Civil Rights
1331 Pennsylvania Avenue NW, Suite 1150
Washington, DC 20425

Re: Comments from the Asian American Bar Association of New York in Response
to the March 24, 2023 Public Briefing on the Federal Response to Anti-Asian
Racism in the United States

Dear Commissioners:

The Asian American Bar Association of New York (AABANY) was established in 1989 as a not-for-profit professional membership organization with a mission to foster the meaningful participation of Asian American Pacific Islanders in the legal field through the study, practice, and fair administration of law. We advance diversity and inclusion through professional development, legal scholarship, advocacy, and engagement of the AAPI community. We seek to support the legal interests and serve the needs of the AAPI community. In pursuing these goals, AABANY is committed to collaboration in the pursuit of social justice.

We express our appreciation to the Commission for drawing attention to anti-Asian racism. AABANY presents this letter as our comment to underscore the urgent need for further federal government intervention in breaking the cycle of anti-Asian hate and to share the knowledge we have gained over the past three years of dealing with an unprecedented wave of anti-Asian hate and violence that has affected AAPI communities across the United States and especially in New York. COVID-19 triggered an alarming increase in anti-Asian violence and attacks. These actions were fueled by unfounded rumors and misinformation linking the virus to the Asian community, leading to a wave of verbal and physical abuse, harassment, and assaults targeting AAPI individuals across the United States. Since the onset of the COVID-19 pandemic, AABANY has taken the lead in addressing the rising tide of anti-Asian discrimination, including hosting several panels to raise awareness, facilitate discussions, and provide solutions to combat this issue.

For example, in May 2020, AABANY hosted a webinar that addressed anti-Asian violence and hate stemming from the COVID-19 pandemic. The panel discussion included an overview of the pandemic's impact on the Asian community, a review of the history of anti-Asian sentiment in the United States, and legal and advocacy strategies to counter anti-Asian violence and hate crimes. In the same month, the AABANY Pro Bono & Community Service Committee hosted another webinar titled "COVID-19 Related Anti-Asian Violence and Hate," specifically examining the surge in anti-Asian violence during the pandemic, its effect on the AAPI community, and strategies to respond to and prevent hate crimes.

To reach a wider audience, AABANY also presented two community webinars in Mandarin, Cantonese and Korean. These webinars provided an overview of legal remedies and resources available to victims of anti-Asian violence and hate crimes. AABANY's 2020 Fall Conference featured a panel titled "Anti-Asian Violence and Hate Arising from the COVID-19 Pandemic" bringing together experts in law, policy, and advocacy to discuss the increase in anti-Asian violence and hate crimes, the impact on the AAPI community, and solutions for preventing and responding to these incidents.

During the fall of 2020, AABANY partnered with Paul, Weiss to write a report on anti-Asian hate and violence in New York. In February 2021, the report titled *A Rising Tide of Hate and Violence against Asian Americans in New York During COVID-19: Impact, Causes, Solutions* was published.¹ The report focused on the distressing surge in anti-Asian hate and violence in the New York City area during the COVID-19 pandemic. It delved into the underlying reasons and factors contributing to this trend, and emphasized the necessity for additional action from politicians, law enforcement, and community organizations to address the issue. The report outlined seven recommendations:

1. Enacting clear reporting mechanisms for victims, including online and hotline channels;
2. Developing uniform and consistent classification, documentation, and reporting of hate crimes by law enforcement, as well as uniform and consistent investigation and prosecution of hate crimes;
3. Promoting the creation of Asian hate crime task forces in the NYPD and greater representation of AAPIs in law enforcement, public office, and the courts;
4. Launching public education campaigns to promote kindness and respect for fellow Americans from all backgrounds;
5. Fostering stronger unity and collaboration among minority groups;
6. Expanding existing legislation to provide greater protection against racially-motivated crimes;
7. Providing an alternate civil enforcement pathway for discrimination.

Following the release of the report, AABANY launched its Anti-Asian Violence Task Force (AAVTF) charged with three primary goals. The first was to educate the public by creating presentations on anti-Asian hate and developing guides summarizing laws and statutes. The second goal was to advocate for increased funding for hate crime units, push for the prosecution

¹ AABANY & Paul, Weiss. (2021). *A Rising Tide of Hate and Violence against Asian Americans in New York During COVID-19: Impact, Causes, Solutions*. Retrieved from https://cdn.ymaws.com/www.aabany.org/resource/resmgr/press_releases/2021/A_Rising_Tide_of_Hate_and_Vi.pdf.

of anti-Asian hate crimes, and engage with political and community leaders to explore potential solutions to the crisis. The third objective was to conduct policy and law research and analyses and to create tools to track and map incidents of anti-Asian hate.

To date, AAVTF has achieved significant milestones aligned with these objectives. Regarding education, Asian Americans in the Law as an accredited course has been adopted by schools including Columbia Law School, St. John's Law School, Cornell Law School, Rutgers Law Newark, Touro Law School and New York Law School. For advocacy, AAVTF held meetings with prosecutors' offices and elected officials to advocate for specific cases involving AAPI survivors. AAVTF also met with elected officials to propose changes in the hate crimes law. Additionally, AAVTF established HEART (Hate Eradication Active Response Team) to connect anti-Asian hate and violence survivors with AABANY volunteers, who assisted in navigating a variety of legal matters including trusts and estates, probate, wrongful death, accepting financial aid, and hospitalization challenges. Lastly, AAVTF collected data on anti-Asian violence, tracking cases and monitoring them to their conclusion.

In May 2022, AAVTF released its second report titled *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*, which was a continuation of AABANY's investigation into the surge of anti-Asian hate and violence during the COVID-19 pandemic.² The report chronicled the progress made during 2021 in addressing these incidents and evaluated their impact using detailed data collection and analysis of 233 anti-Asian reports in New York City during the first nine months of 2021. The report found that the majority of these incidents were assault (58%). Females (55%) were more often victims than males (45%), with a majority of victims being between the ages of 20 and 49. Of those incidents, only 39% led to an arrest and local DA's offices pursued hate crime charges in 18% of those cases. The report found that out of the 64 criminal prosecutions studied, only 7 have led to hate crime convictions, while 20 cases with hate crime charges were still open.

Based on these observations, the paper highlighted the shortcomings of the current legal framework and urged elected officials, law enforcement, and community organizations to implement nine proposals to ensure the safety of the AAPI community in America:

1. Improve Public Hate Crime Data Reporting
2. Recognize the Community as Victim and Investigative Partner
3. Develop Better Guidance for Hate Crime Investigations
4. Reform the Hate Crimes Law
5. Fully Fund the Study, Prevention, and Prosecution of Hate Crimes
6. Develop Anti-Bias Programming, Training in Cultural Sensitivity, and Trauma-Assisted Counseling
7. Remedy Barriers to Reporting of Hate Incidents
8. Improve Investigative Training and Tools Available to Government Agencies
9. Revisit Bail Reform

² AABANY (2022). *Endless Tide: The Continuing Struggle to Overcome Anti-Asian Hate in New York*. Retrieved from https://cdn.ymaws.com/www.aabany.org/resource/resmgr/aavtf/Endless_Tide_Report_2022_FIN.pdf.

Despite previous promises, sympathy, and collective efforts made thus far, the problem of anti-Asian hate and violence persists. AABANY now presents three recommendations distilled from AAVTF's two reports to address the ongoing cycle of anti-Asian hate crimes and bias incidents. A comprehensive and multi-faceted approach is required to tackle the issue, including updating hate crime laws, facilitating collaborative law enforcement efforts, and mandating appropriate training.

First, there should be improved hate crime data reporting. All law enforcement agencies should be required to report to a comprehensive, publicly accessible database of hate crimes and bias incidents. Databases should include specific data points such as location, date, time, prosecutorial charges, and incident nature and category. The database should allow public tracking of reported hate crimes and bias incidents through the criminal justice system, including easily accessible information about case dispositions, and filtering, searching, and mapping functions to locate and monitor incidents. Additionally, AABANY recommends the creation of a new mechanism for members of the public to request information about hate crimes and bias incidents, as current reporting methods are insufficient. Furthermore, AABANY recommends the collection and disclosure of data on mental health of hate crime offenders, as there is evidence of correlation between the two, but no data is currently available. Local and state government agencies with access to such data should release it to prevent and mitigate crime.

Second, prosecutors' offices should recognize the community as victim and investigative partner, and develop better guidance for hate crime investigations. Hate crimes not only harm the individual victim but also the group and community to which the victim belongs. Thus, prosecutors should work with designated interest groups to consult on matters related to hate crime cases. AABANY strongly recommends that law enforcement recognize the value of cooperating with the community to facilitate the investigation of hate crimes.

Third, prosecutors' offices and other governmental agencies should receive appropriate training on best practices in how to investigate hate crimes. To further combat anti-Asian hate and bias incidents, AABANY proposes the establishment and funding of diversion programs, cultural sensitivity training, and trauma-assisted counseling for law enforcement agencies and victims' assistance programs. Anti-bias programming for defendants should be a centralized initiative. Increasing funding for sensitivity and trauma-assisted counseling for law enforcement agencies and victims' assistance programs is crucial. The federal government should prioritize educating the general public about instances of anti-Asian hate and including courses on Asian-American history in universities and high schools.

AABANY's AAVTF continues to operate so that the above recommendations along with several others outlined in our two anti-Asian violence reports can be implemented. (PDFs of both of our reports are attached to this letter for your review and reference.) AAVTF is vigorously pursuing legislative change to the New York hate crimes laws. AAVTF is also working on a video to amplify the voices of the many victims and survivors of anti-Asian violence in New York so that their experiences, trauma and struggles are not forgotten. AAVTF has been organizing court-watching events in New York for a number of cases involving AAPI victims of hate crimes and anti-Asian violence. Most recently, on March 31, AAVTF led a court-watching for the sentencing of Jarrod Powell who pled guilty to the murder of Yao Pan Ma. The level of attention

and visibility that AABANY has raised for the AAPI community through the AAVTF may be considered a template for others to follow, including federal authorities, as they consider future actions to combat anti-Asian racism.

Thank you for the opportunity to provide this comment to the Commission. Please feel free to contact me if you have any questions about any of the above or if we can provide further information and details to the Commission.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above the printed name and title.

Yang Chen
Executive Director

Att.