June 7, 2020

The Honorable Xavier Becerra  
Department of Justice  
1300 I Street  
Sacramento, CA 95814

Subject: Hate Crimes

Dear Attorney General Becerra:

We are writing to support the May 1 letter from 23 legislators asking you for several major actions on hate crimes, and to add requests of our own.

We are grateful for all your actions on hate crimes and other civil rights priorities since you took office, up to and including your April 30 bulletin to law enforcement agencies and the accompanying press release summarizing their legal powers and duties concerning hate crimes. We especially give you credit for your cooperation with seeking the 2018 State Auditor’s program audit, which found that “law enforcement has not adequately identified, reported, or responded to hate crimes,” and your followup on the audit’s recommendations to DOJ that we understand recently resulted in hiring five new hate crimes staff, a major step.

As we know you are aware, hate crimes, harassment and the spread of vile conspiracy theories have spiked during the COVID-19 pandemic, particularly targeting Asians, Asian Americans, Jews, Muslims, Sikhs, African Americans and Latinos. This has come on top of the wave of hate crimes that has been growing since 2015. The legislators' letter goes into more details. We also note that, since the five-year national wave of hate crimes began in 2015, the times around two national elections have been seen the largest increases in these crimes, and we see no reason to expect the 2020 election to be any less extreme.

The legislators’ requests are all totally reasonable, and we strongly support them. We understand there are questions about whether you have the legal power to order all of the proposed mandates, and we hope you be able to conclude that you do. If not, we ask that you take these extensive steps, which clearly are within your authority and should accomplish most of what the legislators requested and more:

1. (A) Inform all local law enforcement agencies that have adopted or amended hate crime policies since January 1, 2019, or that adopt or amend their policies in the future, of the requirement of Penal Code Section 422.87(a) that their policies comply with PC 422.87(a) and 13519.6(c), including by incorporating the content of the Commission on Peace Officer Standards and Training (POST) model hate crime policy dated July 8, 2019, which is based on those sections.

(B) Inform all state law enforcement agencies of the requirement of PC 13519.6(c) that they adopt the POST model policy.
(C) Ask all other local law enforcement agencies that they, too, adopt the POST model policy or develop their own policies that comply with those sections.

2. Inform all law enforcement agencies of the requirement of PC 422.9 that their policies use the statutory definition of “hate crime.” Note that if any agency amends or, since January 1, 2019, has amended its policy to comply with this requirement, that amendment triggers the requirement that they adopt the full hate crime policy in compliance with PC 422.87(a) and 13519.6(c), as discussed above.

3. (A) Inform all law enforcement agencies of the requirement of PC 422.92 that they have a hate crimes pamphlet for victims and the public, the requirement of PC 422.9 that it include the statutory definition of “hate crime,” and the availability of the DOJ hate crime pamphlet to use to meet the requirement.

   (B) Review and update the DOJ pamphlet, and consult us in the review, to add the PC 422.87(a) information on recognizing hate crimes in general and anti-disability hate crimes in particular and to make any other improvements.

4. Ask all law enforcement agencies to comply with the recommendations of the audit, specifically on improving hate crime reporting, including by the use of supplemental report forms, and requiring all officers to take periodic hate crime refresher training, as the legislators’ letter discusses. Note that the POST DVD/learning portal hate crimes course is available for use as the refresher training.

5. Pursuant to PC 13023, require all law enforcement agencies to submit the following to DOJ:

   (A) Their hate crime policies, if any.
   (B) Their supplemental hate crime report forms, if any.
   (C) Their hate crime pamphlets as required by PC 422.92, if any.
   (D) Information on their officers’ training using the POST DVD/learning portal hate crimes course and/or other training materials, if they have conducted any such training or have a schedule to do so.

   This would be an expanded update of the survey that DOJ conducted in 2010. DOJ found then that merely asking agencies for information prompted some of them to adopt policies and conduct training.

   In response to the survey, 39 agencies submitted policies that used definitions of “hate crime” that did not comply with PC 422.9 (adopted in 2004!) requiring that they use the statutory definition. The 2018 audit found that some still did not. In 2020, some still have no hate crime policies at all.

   To encourage all of them to adopt compliant policies and pamphlets and train their officers, we suggest that you give agencies a deadline with whatever generously long
extensions are necessary to give them time to bring them into compliance -- which they can do easily by simply adopting the POST model policy with any additions they choose, by amending their existing pamphlets or using the DOJ pamphlet, and by using the POST course. You could tell them explicitly that the goal is to be able to report that all agencies have adopted policies and pamphlets, that they all are compliant with the law, and that they have trained all their officers or have a schedule to do so.

We recognize that DOJ may lack the resources to immediately analyze the information and documents the agencies submit and to report on them to the Legislature and the public as PC 13023 envisions. Nonetheless, we believe simply requiring them to submit the materials should achieve most of the goals the legislators and we seek.

6. Speak out publicly on hate crimes, building on your April 30 press release, and invite Governor Newsom to join you. We would be happy to join you at a virtual press conference, which we believe would be an ideal platform to announce actions including those we are asking of you above. We know that public statements and actions by responsible leaders -- such as President Bush’s visit to a mosque shortly after 9/11 -- have an effect on public attitudes and some individuals’ actions, just as public statements by certain irresponsible leaders do. District attorneys, law enforcement agency leaders, and state and local elected officials around California have been speaking out on hate crimes. Some of us have made this request of the Governor repeatedly, and we hope you may be more convincing than we have been.

7. Have your staff conduct virtual meetings with us and any other civil rights groups regularly, preferably at least quarterly, for an open, two-way exchange of information and ideas on hate crimes and other civil rights issues. Many of us have requested this before. We believe this is especially important now as hate crimes escalate and as the DOJ’s new hate crime staff begin their work.

Thank you again for all your good work on these issues and for considering our requests. We realize that, should you agree to our requests, carrying them out will be a complex and, in some cases, long process, and we are available to assist however we can.

We are including our email addresses in hopes you will respond to all of us.

Sincerely,

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