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STATEMENT OF

KRISTEN CLARKE
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

AT A HEARING ENTITLED

“Oversight of the Department of Justice Civil Rights Division”

PRESENTED
December 5, 2023

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Good morning, Acting Chairman Chip Roy, Ranking Member Mary Gay Scanlon, and distinguished members of the Committee. Thank you for the opportunity to appear before you today to discuss the priorities and work of the Civil Rights Division of the Justice Department.

Protecting civil rights is foundational to the Department of Justice’s existence. When the Department was established in 1870, enforcing rights created by the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution was paramount to its mission. Its mandate to confront the Ku Klux Klan and others who used terror and violence to prevent Black people from exercising their civil rights continues to inform the work we do today.

The Civil Rights Act of 1957 gave renewed focus to the priority of civil rights within the Department’s mission by creating the Civil Rights Division. Since then, the Division has led the federal government’s efforts to combat violence motivated by bias, hate, or bigotry based on race, sex, religion, national origin, disability, or other protected characteristics of the victims. The Division also stands at the forefront of federal efforts to create a more just and equitable society, including by enforcing federal statutes protecting the right to vote and prohibiting discrimination in employment, housing, education, and elsewhere.

Our work remains as vital as ever. Recent years have seen an alarming increase in hate crimes and acts of violence that target people simply because of who they are, what they look like, or where they come from. The unspeakable tragedies in places like El Paso, Buffalo, Colorado Springs, and Pittsburgh are only a few of the recent reminders of the pain and trauma that these crimes inflict not only on individuals, but entire communities. In addition, discrimination in housing, employment, education, and public accommodations continues to impose unlawful and unfair burdens on too many people in the United States. And jurisdictions across the country have enacted laws that make it more difficult for individuals to access the ballot and participate in our democratic process.

The Civil Rights Division is meeting these challenges, and more. In my testimony this morning, I will detail some of our efforts to prosecute and prevent hate crimes, foster trust and legitimacy in law enforcement, protect voting rights, and uproot unlawful discrimination.

I. Combatting Hate Crimes

Combatting hate crimes is a top priority of the Civil Rights Division. The FBI's recent crime statistics, released in October, show that the number of reported hate crimes reached an all-time high in 2022, even though violent crime overall has declined. The data also show that, as in previous years, nearly sixty percent of all hate crimes were motivated by the victim's race, with Black people the most frequent target. The data further show that antisemitic hate crimes rose 25 percent from 2021 to 2022, with those crimes accounting for over half of all reported religion-based hate crimes. Hate crimes against Muslim-Americans—or those perceived to be Muslim—constituted a significant portion of the remainder of religion-based hate crimes. Hate crimes based on the victim's religion, sexual orientation, or gender identity also rose by sixteen percent last year.

The Justice Department is working tirelessly to investigate and combat hate crimes and bias-motivated incidents. Since January 2021, the Civil Rights Division has substantially increased the number of prosecutors in its Criminal Section, including those working on hate crimes cases. In that period, the Division has charged more than 105 defendants in more than 95 cases with committing bias-motivated crimes and has obtained more than 90 convictions. We investigate and prosecute these cases in close cooperation with local United States Attorneys' Offices, the FBI, and state and local law enforcement partners.

These prosecutions include holding individuals accountable for horrific, bias-motivated mass murders. In February 2023, the Department secured a guilty plea from Patrick Wood Crusius, a self-described white nationalist who targeted people he perceived to be Hispanic immigrants at a Walmart in El Paso, Texas, killing 23 people and injuring 22 more. He was later sentenced to 90 consecutive life sentences. In addition, in June 2023, the Division secured a conviction against Robert Bowers, who killed 11 congregants and critically wounded seven others who were worshipping at the Tree of Life Synagogue in Pittsburgh. Bowers, who said his goal was to "kill Jews," was recently sentenced to death.

The Department also obtained convictions of Travis James McMichael, Gregory Johns McMichael, and William Roderick Bryan, Jr., who killed Ahmaud Arbery merely because he was a Black man jogging on a public street in Georgia. In addition, the Department secured a 45-year sentence against Daniel Jenkins, who was convicted of kidnapping and attempted murder in Louisiana, as part of a hate-driven scheme targeting users of a dating app for gay men. The Department secured a 25-year sentence against Jose Gomez III, who targeted and attacked an Asian family at a supermarket in Midland, Texas; Gomez held racist and xenophobic beliefs that the family was responsible for the COVID-19 pandemic. More recently, in October, the Department secured a guilty plea from Anthony Paz Torres, who killed one person and attempted to kill others in Dallas, Texas, because of his hatred toward Muslim-Americans and individuals perceived to be Muslim.

Additionally, the Department has prioritized addressing unlawful hate incidents, which are acts of bias that do not rise to the level of criminal violations. In the Civil Rights Division, we are using our civil rights authorities, such as the Civil Rights Act of 1964 and the Fair Housing Act of 1968, to address hate incidents that take place in our schools, workplaces,

housing, and communities. For example, in October 2021, the Civil Rights Division and the United States Attorney's Office for Utah announced a settlement agreement with the Davis School District in Davis County, Utah, to address unlawful race discrimination in the district's schools, including serious and widespread racial harassment of Black and Asian American students. The agreement required the district to create a new department to address complaints of racial discrimination, improve training of teachers and staff, and reform its policies concerning discipline and student assessment, among other measures.

The Division also criminally prosecutes those who attack places of worship, even when persons are not injured. For example, the Division prosecuted Alan Douglas Fox for intentionally setting fire to four churches in Nashville, Tennessee: the Crieewood United Methodist Church, the Crieewood Baptist Church, the Saint Ignatius of Antioch Catholic Church, and the Priest Lake Community Baptist Church, all because of their religious character. Fox was sentenced to seven years in federal prison.

Our fight against hate crimes and hate incidents has taken on increasing urgency since the October 7 attacks in Israel, which were followed by an alarming increase in antisemitic and Islamophobic acts of hate. The Department is using a range of criminal authorities to track and respond to these incidents. For example, on October 16, the Department arrested and charged Jeffrey Scott Hobgood, a North Carolina man, who allegedly sent threatening emails to Jewish organizations. On October 31, the Department arrested and charged a Cornell University student who allegedly threatened to "bring an assault rifle to campus and shoot all you big jews," among other threats. We also recently announced a federal hate crimes investigation into the events leading to the tragic death of six-year-old Wadea Al-Fayoume, and the serious injuries suffered by his mother. State and local law enforcement agencies are also investigating the shooting of the three young men of Palestinian descent last week in Burlington, Vermont. Federal law enforcement agencies are monitoring these investigations and the United States Attorneys' Office and the Civil Rights Division will assess the evidence to determine whether a federal crime may have been committed.

The Division also seeks to prevent discrimination based on religion by enforcing the Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal law that Congress passed unanimously in 2000, which protects persons and religious institutions from discriminatory land use regulations, among other provisions. Since RLUIPA's passage, the Department has opened over 150 formal investigations and filed 28 lawsuits and 34 amicus briefs related to RLUIPA's land-use provisions. For instance, the Department recently obtained a consent decree with a village in New York to resolve allegations that the village revised its zoning code to discriminate against Orthodox Jewish residents and make it more difficult for them to worship in their own homes. In another matter filed in Michigan, a federal court found that the city's zoning practices treated places of worship worse than equivalent nonreligious assemblies, and a zoning denial substantially burdened the religious exercise of a Muslim group seeking to establish the city's only permanent place of Islamic worship. Finally, the Department reached an agreement in New Jersey to settle allegations that a township and planning board violated RLUIPA and the Fair Housing Act when they passed and applied a series of

discriminatory zoning ordinances that intentionally targeted the Orthodox Jewish community by prohibiting religious schools and associated dormitories.

Our work in this area reflects a fundamental proposition: no one should be targeted, or made to feel unsafe, because of who they love, what they look like, where they are from, whether they have a disability, or how they worship.

We know, unfortunately, that many hate crimes and hate incidents go unreported every year, and that is why the Department is also working to improve reporting of hate crimes and hate incidents, which will in turn promote more effective prevention and prosecutions of these crimes. In September 2022, the Attorney General launched United Against Hate, a community outreach and engagement program. This program brings together community groups, federal hate crimes prosecutors, law enforcement at every level, and others to build trust and strengthen coordination to combat hate crimes and hate incidents by helping individuals learn to identify, report, and prevent hate crimes. In announcing the program, the Attorney General directed every one of the 94 U.S. Attorney's Offices to host at least one community outreach event by the end of September 2023. I am proud to report that we have not only met that goal, we have exceeded it. To date, we have held more than 200 events to an overall audience of more than 6,000 people.

In November 2023, the Division announced the launch of the Federal Language Access Working Group, a new interagency effort that will coordinate language access across the federal government. The Department also announced the release of updated federal agency language access plans on its website, www.LEP.gov. The Civil Rights Division has reviewed, and will continue to review, language access plans from across the federal government.

In addition, in the past fiscal year, the Department awarded nearly \$30 million in grants to support state and local agencies in investigating and prosecuting hate crimes, in addition to grants to improve hate crime reporting.

II. Advancing Constitutional Policing

Law enforcement officers are asked to do a difficult, and often very dangerous, job. We ask them to keep their communities safe, uphold the rule of law, and protect the civil rights of their fellow citizens. Most law enforcement officers meet this challenge and carry out their mission with honesty, dedication, and integrity. But when officers abuse the power entrusted to them—when they violate civil and constitutional rights—they can harm individuals and erode hard-earned trust in the legitimacy of the work conducted by their fellow officers. The Justice Department is therefore committed to seeking accountability for law enforcement officers who violate their oaths to uphold our Nation's laws and, in doing so, violate individuals' legal and constitutional rights.

This work includes criminal prosecutions of individual law enforcement officers who violate our Nation's federal civil rights laws and violate individuals' constitutional rights. Last year, working with local federal prosecutors, the Division obtained convictions of former Minneapolis police officers Derek Chauvin, J. Alexander Kueng, Thomas Lane, and Tou Thao, for their roles in the death of George Floyd. Derek Chauvin was sentenced to more than 20 years

in prison. In addition, last year, we secured indictments of police officers Joshua Jaynes, Kyle Meany, Brett Hankinson, and Kelly Goodlett, who were tied to the death of Breonna Taylor in Louisville, Kentucky. And this past September, we secured indictments of five police officers for the death of Tyre Nichols in Memphis, Tennessee. Two of those officers, Kelly Goodlett and Desmond Mills Jr., have pled guilty.

We also investigate systemic failures within law enforcement agencies that may violate the Constitution or federal law. The Justice Department has authority to conduct civil pattern-or-practice investigations into law enforcement agencies to determine whether those agencies have engaged in systemic violations of the Constitution or federal law.

For example, this summer, we announced findings of an investigation concerning the Minneapolis Police Department and City of Minneapolis, which concluded that the department and city discriminated against people with behavioral health disabilities when responding to calls for assistance. We also found that the police department violated the rights of people engaged in protected speech, routinely used excessive force, and unlawfully discriminated against Black people and Native American people in its enforcement activities. The Justice Department also recently announced an investigation of the City of Memphis and the Memphis Police Department to determine whether the city and the police department are engaging in a pattern or practice of unconstitutional conduct and discriminatory policing based on race, including a dangerously aggressive approach to traffic enforcement.

The Department is working with these police departments, local officials, and the communities to identify and implement remedies for addressing these violations—including consent decrees—in a manner that is fair, transparent, and effective.

Working with law enforcement agencies can improve police practices and help strengthen trust within the communities they serve. For instance, this September, at the joint request of the Justice Department and the City of Seattle, a federal district court terminated most of the consent decree there, finding that the police department had “made tremendous improvements in its policies, methods of operation and leadership with respect to the areas of use of force, stops and detentions and crisis intervention.” In fact, between 2014 and 2021, serious use of force by Seattle police officers declined 61 percent, sparing hundreds of community members, not to mention many officers, significant harm and trauma. Likewise, we have moved for partial termination of consent decrees in Portland, Oregon, and Albuquerque, New Mexico, as a result of significant progress by jurisdictions to remedy conduct.

We also use our other civil enforcement authorities to address misconduct within law enforcement agencies and advance constitutional policing. For example, under Title VII of the Civil Rights Act of 1964, the Division has authority to initiate investigations against state and local government employers, including law enforcement agencies, where it has reason to believe that a “pattern or practice” of employment discrimination exists. Through this work we have reached settlements with law enforcement agencies to help address the underrepresentation of women in law enforcement. In Pennsylvania, for instance, we alleged that, in hiring new troopers, the State Police violated federal law by using an unnecessary physical test that discriminated against female applicants. The court-approved settlement required the State Police

to adopt a gender-normed physical fitness test, compensate women harmed by the challenged practices, and offer up to 65 women priority hiring relief, with retroactive seniority.

The Division, and the entire Justice Department, is committed to working with law enforcement agencies, local officials, and the communities to identify and implement remedies for addressing these violations—including through the use of tailored and appropriate consent decrees—in a manner that is fair, transparent, and effective.

The Department also works cooperatively to help law enforcement to improve policing techniques. Our Office of Justice Programs, Office of Community Oriented Policing Services (COPS Office), and Office on Violence Against Women provide technical assistance and grants to support law enforcement. In fiscal year 2023, the Department awarded nearly \$1 billion in grants to support state and local law enforcement agencies in a number of areas, including in investigating and prosecuting gender-based violence, investigating and prosecuting hate crimes, increasing hate crime reporting, and hiring.

III. Protecting Voting Rights

The Civil Rights Division remains committed to vigorously protecting voting rights, from which all other rights ultimately flow.

The Department has more than doubled the number of enforcement attorneys in the Civil Rights Division to scrutinize new laws that may deny or abridge the right to vote on account of race, color, or language status. Since 2021, we have filed or intervened in 12 voting rights cases, asserting claims under the Voting Rights Act of 1965, the Help America Vote Act, the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), and the Equal Protection Clause of the Fourteenth Amendment, among other authorities. We have also filed amicus briefs and statements of interest in federal appeals and district courts across the country, as well as in the Supreme Court, to weigh in on critical questions. Through this work, the Department has sought to address discriminatory voting laws, to protect language access at the ballot box, and to ensure that voters with disabilities are able to exercise the right to vote.

For example, under UOCAVA, the Division protects the right of our servicemembers and their families to vote by absentee ballot in federal elections when living away from home on military orders. In 2022 the Division entered into an agreement with the state of Ohio to help ensure that military service members, their family members, and U.S. citizens living overseas had an opportunity to participate fully in the May 2022 federal primary election in that state.

The Justice Department stands ready to work with Congress to provide all necessary support to develop and advance federal legislation to protect voting rights—including legislation that would restore critical tools to help protect the fundamental right to vote.

IV. Ensuring Compliance with the Immigration and Nationality Act

The Civil Rights Division enforces the antidiscrimination provisions of the Immigration and Nationality Act (INA), which protect U.S. citizens, permanent residents, and certain other work-authorized individuals from employment discrimination based on their citizenship or immigration status. These provisions were added to the INA by the Immigration Reform and Control Act of 1986, which President Ronald Reagan called “the most comprehensive reform of our immigration laws since 1952” and “an excellent example of a truly successful bipartisan effort.”

When the Department determines, after completing an investigation, that an entity has violated the anti-discrimination provision of the INA, it informs the entity and attempts to resolve the violation without filing a lawsuit. Over the past decade, the Department has entered into multiple settlements with employers found to have violated the INA. Through those settlements, the Department has recovered millions of dollars in back pay for victims and civil penalty relief. Most of these cases involve a small number of victims and settlement payments of less than \$100,000.

A small number of the Department’s investigations involve larger companies. For instance, in 2021, the Department reached a settlement with Facebook, now known as Meta, to resolve claims that the company preferred to hire temporary visa workers over U.S. workers because of their citizenship or immigration status, in violation of the INA. Under the settlement, Facebook paid almost \$15 million in civil penalties to the United States and back pay to affected workers.

Just last month, the Department reached a settlement agreement with Apple, Inc. to resolve allegations that Apple discriminated against U.S. citizens, U.S. nationals, and others with the right to work in the United States. Under the settlement, Apple is required to pay \$25 million in back pay to victims and civil penalties. This award constitutes the largest award that the Department has recovered under the anti-discrimination provisions of the INA.

The Department also filed a complaint against Space Exploration Technologies Corp. (SpaceX) on August 24, 2023, alleging that SpaceX erroneously relied on export control laws to restrict its recruiting and hiring to U.S. citizens and lawful permanent residents (often referred to as “green card holders”). The Department’s investigation into SpaceX began in May 2020. As the Department has made clear in settlement agreements with other companies and past public statements, export control laws do not permit employers to restrict hiring in this way. Instead, export control laws require that employers treat individuals who have been granted asylum or refugee status by the federal government the same as U.S. citizens and lawful permanent residents.

The litigation against SpaceX is pending, which limits the information I can provide in this testimony. But I can assure the Committee that the Department will continue to enforce the INA to protect the employment rights of U.S. citizens and protected non-U.S. citizens in a fair and evenhanded manner.

V. Enforcing the FACE Act

Congress enacted the Freedom of Access to Clinic Entrances (FACE) Act in 1994 in response to an increase in violence toward providers and patients of reproductive health services.

The Department's Civil Rights Division, along with U.S. Attorneys' Offices around the country, prosecutes FACE Act violations. The Department's prosecutions rest on the straightforward proposition that violence and threats of violence have no place in our society. Since the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, the Department has met with pro-choice groups and pro-life groups regarding the protections offered by the FACE Act. The Department has also prosecuted FACE Act violations involving both abortion providers and pregnancy resource centers.

VI. Advancing Civil Rights and Environmental Justice

The Department has made important strides in advancing matters that address the environmental and health harms that have disproportionately burdened many communities of color, low-income communities, Tribal Nations, and other communities around our nation facing environmental injustice. For example, in May 2023, the Division partnered with the Office for Civil Rights of the U.S. Department of Health and Human Services to secure a settlement agreement that requires the State of Alabama to remedy sanitation issues that had long plagued predominantly Black communities in Lowndes County, including by requiring the Alabama Department of Public Health to end exposure to raw sewage and provide access to basic sanitation services. This was the Department's first-ever environmental justice action under Title VI of the Civil Rights Act of 1964.

In June 2023, the Department secured an agreement with the City of Houston, Texas, which requires the city to take actions to address illegal dumping that disproportionately burdened the predominantly Black and Latino residents of Houston's Trinity/Houston Gardens Super Neighborhood. The agreement was achieved in response to a citizen complaint filed under the Civil Rights Act of 1964 and in close cooperation with the U.S. Attorney's Office and the City of Houston.

VII. Combatting Sexual Assault and Sexual Misconduct

The Civil Rights Division is committed to protecting people from sexual misconduct in violation of their legal rights. Sexual misconduct includes sexual harassment, sexual assault, and gender-based violence. The Division enforces criminal and civil federal civil rights laws that vindicate the rights of survivors and hold perpetrators accountable. This includes protections from sexual misconduct in the rental, sale, or financing of housing; sexual misconduct in education programs and activities; sexual misconduct in the workplace and application process, and at offsite functions or on official business; and sexual misconduct during encounters with the police, during arrests, and in correctional facilities.

For example, in October, the Division secured a sentence of 30 years of imprisonment against an Oregon Department of Corrections employee for sexually assaulting nine female

inmates at the state's only women's prison. In addition, in August, the Division secured a sentence of over 12 years against a deputy sheriff in Dallas County, Alabama, who sexually assaulted a woman while he was on duty.

The Department's efforts to combat sexual misconduct have also resulted in millions of dollars awarded to victims and survivors, thousands of dollars in civil penalties, and numerous civil complaints and criminal investigations, as well as thousands of people across the country trained on combatting sexual misconduct. For example, the Division found that a landlord in New Jersey sexually harassed multiple tenants and housing applicants over the course of more than 15 years. The settlement required the landlord to pay \$4.5 million in monetary damages and a civil penalty. The local prosecutor has also charged the landlord with sexual crimes against his tenants.

Through our Human Trafficking Prosecution Unit, the Division also prosecutes sex trafficking, forced labor, and other forms of human trafficking—horrific crimes that cause unimaginable harm, often to some of the most vulnerable members of society. As one example, the Department secured the convictions of two men who trafficked women from Cuba to Houston, where they were forced to engage in commercial sex acts. The defendants were sentenced to 210 months and 120 months of imprisonment, respectively, and ordered to pay hundreds of thousands of dollars in fines. In December 2022, we also secured a 60-year sentence against an Alabama man who coerced several victims, including a minor, to engage in prostitution.

VIII. Supporting Servicemembers

The Department of Justice works to ensure that the rights of the brave individuals who serve in our Nation's uniformed services, past and present, are safeguarded from discrimination and unfair treatment.

For example, the Division enforces the Servicemembers Civil Relief Act (SCRA), which protects servicemembers and their families in dealing with home foreclosures, vehicle repossessions, leasing agreements, and other unfair business practices imposed on servicemembers as they deploy or change their duty station. Since 2011, the Justice Department has reached settlements for violations under the SCRA that provided more than \$481 million in monetary relief to over 146,000 servicemembers.

The Division also enforces the Uniformed Services Employment and Reemployment Rights Act, which entitles servicemembers to return to their civilian employment after completing their military service with the seniority, status, and rate of pay that they would have had if they had remained continuously employed by their civilian employer. As an example, in September of this year, we announced that we had resolved a complaint against the City of Chicago on behalf of a U.S. Army Reservist who was denied the opportunity to take an examination upon his return from military service that would have made him eligible for

promotion. The settlement resulted in an award of retroactive seniority and back pay for the Reservist.

IX. Promoting Diversity in Higher Education

In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, et al.*, the U.S. Supreme Court held that Harvard College violated Title VI of the Civil Rights Act of 1964 and the University of North Carolina violated the Fourteenth Amendment of the U.S. Constitution and Title VI of the Civil Rights Act of 1964 by impermissibly using race in admissions processes. In August, the Department, jointly with the Department of Education, issued resources to help institutions of higher education understand the Supreme Court’s decision and to assist them in “implementing lawful admissions programs on [their] campus[es],” consistent with the recent decision. As that resource document stated, the Department will “continue to address all complaints of race discrimination by applying the relevant legal standards under civil rights statutes and will vigorously enforce civil rights protections, including prohibitions against racial discrimination.” Dep’t of Just., *Continuing to Advance Diversity and Opportunity in Higher Education*, <https://www.justice.gov/opa/blog/continuing-advance-diversity-and-opportunity-higher-education>.

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All the work I have just described is only possible because of the courage, dedication, and integrity of the professionals in the Civil Rights Division. Every day, they do difficult and demanding work on behalf of the American people. I am grateful to them. And I could not be prouder to work with them.

All of us at the Justice Department recognize the trust placed in us to do this work. We are honored to do it, and we are eager to continue our efforts to uphold our nation’s civil rights. Thank you for the opportunity to testify. I look forward to your questions.