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An Attack on America's Peacemakers is an Attack on All of Us: On the Importance of Embracing the Power of Communities and Rejecting the Trump Administration's Attempt to Eliminate the Community Relations Service

*Becky Monroe**

As images of neo-Nazis marching through our streets fill our screens, and reports of a growing number of hate crimes sweep the country, how can the Community Relations Service (CRS), a small component of the U.S. Department of Justice created by the Civil Rights Act of 1964, help preserve democracy? What is at stake when the Trump Administration threatens to essentially eliminate CRS? This Essay describes the ways in which CRS not only helps communities address tension associated with discrimination, reduce the potential for violence, and prevent and respond more effectively to hate crimes, but also how its services help strengthen democracy.

Part I explores how the brief, yet innovative provisions of Title X of the Civil Rights Act provided the foundation for an agency that could effectively engage with communities, earn trust, and support local leaders in developing local mechanisms for addressing longstanding issues. Part II provides a look at the scope of CRS' work through case studies to

* Incoming Director of the Divided Communities Project and Distinguished Scholar in Residence at Ohio State University's Moritz College of Law, Board member of the Lawyers' Committee for Civil Rights Under Law, former Director of the Stop Hate Project at the Lawyers' Committee for Civil Rights Under Law, and former Acting Director of the Community Relations Service. I would like to thank my extraordinary former colleagues at CRS. Space did not allow me to highlight the work of all of the people I was fortunate enough to work with at CRS, but their belief in the wisdom and strength of the communities we served inspired this Essay and continue to inspire me in my work as a civil rights lawyer. Many thanks as well to my fantastic current colleagues at the Stop Hate Project, who share this commitment to service and to racial justice. Thank you to Nadia Aziz, Arusha Gordon, Gabrielle Gray, Allison Nadler, and Peggy Ramin for your input on this Essay.

demonstrate how CRS converts its statutory mandate into action. Part III describes how the Trump Administration’s proposal to eliminate funding for CRS and to move its services to the Civil Rights Division would violate the terms and spirit of the Civil Rights Act of 1964.

The Essay concludes with a discussion of how the attack on CRS represents an attack on the democratic ideals embodied by an agency that derives its authority and power from the communities it serves. The elimination of CRS would deprive communities of an important resource to keep people safe and remove a key tool to help our country honestly confront our history so we can understand the ongoing impact of slavery, segregation, and Jim Crow on our country today.

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INTRODUCTION

Under the hot Phoenix sun, a half dozen neo-Nazis milled about in a circle next to the Arizona State Capitol building in May 2010. They were toting loaded rifles and spewing hate in the direction of tens of thousands of men, women, and children arriving at the Capitol.¹ The target of the neo-Nazis' rage included a group of peaceful civic activists supporting immigrant rights² and protesting Arizona's Support Our Law Enforcement and Safe Neighborhoods Act (popularly known as SB 1070).³ People from across the country were in Phoenix at the Capitol to protest the virulently anti-immigrant legislation with key provisions that would later be found unconstitutional.⁴ Suddenly, J.T. Ready,⁵ the organizer of the small group of neo-Nazis at the rally, paused to greet James Williams, an African-

1. See Stephen Piggott, *Neo-Nazis Antagonize Marchers Protesting SB 1070 in Phoenix*, IMAGINE 2050 (June 1, 2010), <http://imagine2050.newcomm.org/2010/06/01/neo-nazis-antagonize-marchers-protesting-sb-1070-in-phoenix> [https://perma.cc/VSS3-XBPG] (describing some of the tactics of J.T. Ready and other neo-Nazis at the rally, including bringing loaded weapons to the rally, dramatically increasing the risk of violence, and the need for outside mediators like CRS to promote public safety).

2. See Nicholas Riccardi, *Thousands in Phoenix Protest Arizona's Immigration Law*, L.A. TIMES (May 29, 2010), <http://articles.latimes.com/2010/may/29/nation/la-na-arizona-protest-20100529> [https://perma.cc/PMF4-3VTM].

3. ARIZ. REV. STAT. ANN. § 11-1051 (2012).

4. See *Arizona v. United States*, 567 U.S. 387 (2012) (striking down three sections of S.B. 1070, affirming the exclusive authority of the federal government to regulate immigration laws).

5. See Piggott, *supra* note 1.

American man wearing a U.S. Department of Justice issued jacket and hat⁶ who was walking towards him. “Hello! It is great to see you again! I am so glad you are here today.” Mr. Ready then resumed his vitriolic verbal attack on African Americans, immigrants, Muslims, and Jews, while Mr. Williams walked in between the neo-Nazis and the protestors.

Mr. Ready recognized Mr. Williams from a protest weeks before, where Mr. Williams helped de-escalate tension threatening to boil over to violence. However, Mr. Ready likely did not fully understand Mr. Williams’ role, nor the role of the small, federal agency that sent him to this and to other communities in conflict across the country. Mr. Williams, the man the neo-Nazi recognized, was from the U.S. Department of Justice’s Community Relations Service (CRS).

Created by the Civil Rights Act of 1964, CRS helps communities address tension associated with allegations of discrimination based on race, color, and national origin. CRS also helps communities develop the capacity to more effectively prevent and respond to violent hate crimes targeting people on the basis of race, color, national origin, gender, gender identity, sexual orientation, religion, or disability.⁷ Through its work, CRS helps divided communities identify ways to work together across differences to make communities more fair, just, and equitable. To accomplish these goals, CRS offers services such as facilitated dialogues, mediation, training, and technical assistance.

Today, the need to address community tension rooted in ongoing discrimination and create mechanisms to allow for sustainable change is greater than ever. In 2018, our country is seeing an increase in reports of hate crimes,⁸ with a growing number of communities confronting racist flyers from the Klan and hate groups coming to town,⁹ and a significant

6. I was next to the DOJ employee who was approaching the neo-Nazis.

7. See Cmty Rel. Serv., *Annual Report*, U.S. DEP’T JUST. 12 (2017), <https://www.justice.gov/crs/file/1034811/download> [<https://perma.cc/FJF7-LHXA>].

8. See Brian Levin, James J. Nolan, and John David Reitzel, *New Data Shows U.S. Hate Crimes Continued to Rise in 2017*, CBS NEWS (June 26, 2018), <https://www.cbsnews.com/news/new-data-shows-us-hate-crimes-continued-to-rise-in-2017/> [<https://perma.cc/D4YQ-PWHK>] (finding that for the ten largest cities, hate crimes rose for four straight years to the highest level in a decade in 2017).

9. See Michael A. Nutter, *What to Do If Hate Comes to Your Town*, BROOKINGS INSTITUTION (Aug. 16, 2017), <https://www.brookings.edu/blog/the-avenue/2017/08/16/what-to-do-if-hate-comes-to-your-town/> [<https://perma.cc/265U-44TR>] (providing resources to communities confronting hate groups

majority of people in the United States reporting that racial tensions are increasing¹⁰ in the country. The torches and racist chants that filled the air in Charlottesville in August 2017, brought to the surface the persistence of the same hatred and discrimination that heralded the creation of the Community Relations Service as a part of the Civil Rights Act of 1964.¹¹

Indeed, as communities confront white supremacists who appear emboldened to commit acts of hate, the need for CRS is as clear as when it was created over fifty years ago. And yet the agency known as the nation's peacemakers¹² finds itself struggling to survive an Administration that would eliminate it. President Trump's 2019 Budget¹³ called for an end to

marching in their communities); *The Year in Hate: Trump Buoyed White Supremacists in 2017, Sparking Backlash Among Black Nationalist Groups*, SOUTHERN POVERTY L. CTR. (Feb. 21, 2018), <https://www.splcenter.org/news/2018/02/21/year-hate-trump-buoyed-white-supremacists-2017-sparking-backlash-among-black-nationalist> [https://perma.cc/5JM5-AJTT] (documenting an increase in the number of hate groups in the United States).

10. See Anthony Salvanto, *Poll: One Year After Charlottesville, Majority of Americans See Racial Tensions on the Rise*, CBS NEWS (Aug. 12, 2018), <https://www.cbsnews.com/news/poll-one-year-after-charlottesville-americans-see-racial-tensions-on-increase> [https://perma.cc/HE73-R4RM].
11. See John G. Stewart, *When Democracy Worked: Reflections on the Passage of the Civil Rights Act of 1964*, 59 N.Y.L. SCH. L. REV. 145, 146–47 (2015) (describing racial unrest leading to the passage of the Civil Rights Act of 1964, including the suggestion “that American democracy was facing its sternest challenge since the slow, agonizing slide toward the civil conflict that took place in the 1840s and ‘50s—culminating in the Civil War of the 1860s”); BLACKKLANSMAN (Focus Features 2018) (connecting the protagonists in the film from the 1970s to scenes from the white-supremacists marching in Charlottesville, shouting “blood and soil,” in 2017); see also Debbie Elliott, *Is Donald Trump a Modern-Day George Wallace?*, NPR (Apr. 22, 2016), <https://www.npr.org/2016/04/22/475172438/donald-trump-and-george-wallace-riding-the-rage> [https://perma.cc/EDU3-42YB] (examining comparisons between President Donald Trump to Governor George Wallace).
12. See Cmty. Rel. Serv., *Strategic Plan 2016-2020*, U.S. DEP’T JUST., [hereinafter Strategic Plan], <https://www.justice.gov/crs/file/826336/download> [https://perma.cc/Q4M2-NC55].
13. See OFFICE MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, COMMUNITY REL. SERV., U.S. DEP’T JUST., FISCAL YEAR 2019 (2018) [hereinafter President’s Budget] <https://www.justice.gov/jmd/page/file/1033131/download> [https://perma.cc/234A-JUGQ].

all funding for CRS, proposing to eliminate it as an independent component and to transfer its functions to the Civil Rights Division.¹⁴ As discussed in greater detail in Part III, this proposal to move CRS into an investigating and litigating division of the Department of Justice likely violates the terms of Title X of the Civil Rights Act of 1964, and certainly violates the spirit and intent of the law. Furthermore, after reducing CRS' budget to zero, it appears that under the President's budget, the professional conciliators and mediators in the ten regional and four field offices would cease to function. This attack on CRS coming from a President who equated peaceful protestors advocating for civil rights with violent white supremacists,¹⁵ who regularly uses epithets to refer to African-Americans,¹⁶ whose first year and a half on the job has seemed an unending assault on some of the most basic and fundamental civil rights protections, not only violate Title X, it negatively and significantly impacts vulnerable communities.

As people appear to feel newly emboldened by perceived support from the President of the United States to stoke division and commit acts of hate, it is a particularly important time to understand how CRS can support communities in need. It is also important to assess why the Trump Administration's attack on the agency, if successful, would not only undermine the Civil Rights Act of 1964, but also represent a rejection of the power, wisdom, and capacity of people outside of Washington to work together to drive our country closer to its founding ideals of equality and opportunity.

14. *Id.*

15. See Ashley Parker and David Nakamura, *Trump Again Blames 'Both Sides' for Violence at White Supremacist Rally in Charlottesville*, WASH. POST (Aug. 15, 2017), https://www.washingtonpost.com/politics/trump-defends-organizers-of-white-supremacist-rally-in-charlottesville/2017/08/15/de01ff66-81f9-11e7-902a-2a9f2d808496_story.html [https://perma.cc/NU33-A78P] (declining to condemn groups that had organized the 2017 white supremacist rally in Charlottesville, Virginia, and declaring that "both sides" were to blame for violence).

16. See, e.g., Meghan Keneally, *Why Some See Trump's Attacks on Omarosa and Other African-Americans as Racially Loaded*, ABC NEWS (Aug. 17, 2018), <https://abcnews.go.com/US/trumps-attacks-omarosa-african-americans-racially-loaded/story?id=57192523> [https://perma.cc/5CSU-ZX2N] (comparing former aide Omarosa Manigault Newman, an African-American, to a dog, calling Don Lemon, an African-American journalist, the "dumbest man on television," and questioning LeBron James's intelligence).

In Part I, this Essay describes some of the conditions surrounding the creation of CRS and its inclusion as part of the Civil Rights Act of 1964. This Part explores how the brief, yet innovative provisions of Title X of the Civil Rights Act provided the foundation for an agency that could effectively engage with communities, earn trust, and support local leaders in developing local mechanisms for addressing longstanding issues.

Part II provides a look at the scope of CRS' work and uses case studies of Trayvon Martin's death and immigrant rights protests in Arizona to demonstrate how CRS converts its statutory mandate into action. As Acting Director, I witnessed first-hand the ways in which CRS can help communities address crisis situations while building a framework for longer term, sustainable dialogue to create change.

Part III, describes the Trump Administration's attack on CRS, how the Administration's actions violate federal law, and the impact the Trump proposal would have on the communities CRS serves. The proposal to zero out funding for the agency and move its services to the Civil Rights Division would violate the terms of the Civil Rights Act of 1964, and effectively destroy CRS. Putting its services under the direction of a component that investigates and prosecutes local government entities would destroy the promise of confidentiality and independence that enabled CRS to access local leaders and advocates at times of crisis and greatest need. Additionally, Trump's proposal to end CRS is a direct attack on democracy and the democratic principles on which this country was built. The same voices Trump has tried to silence through efforts to undermine civil rights protections—including immigrants, LGBT individuals, people of color, Muslims, and women—are the ones that CRS helps ensure government officials, law enforcement, and other community members can hear.

I conclude with a brief discussion of how the elimination of CRS would not only deprive communities of an important resource to keep people safe, but also remove a key tool to help our country honestly confront our history so we can understand the ongoing impact of slavery, segregation, and Jim Crow on our country today. Just over one year ago, white supremacists filled the parks and streets of Charlottesville with torches and shouts of "blood and soil," forcing Americans to confront our history of racial discrimination playing out in our communities today. And on a daily basis, we see the impact of our history and systemic racism, discrimination, and bias play out in areas of criminal justice, voting, housing, and education.

At a time when Americans' trust in government and in each other is approaching a record low,¹⁷ the country needs an agency founded on the recognition that the only true progress on civil rights issues will not come from government litigation or law enforcement, but rather from the people. Rather than eliminate an agency well-equipped to support this work, we should find new ways to expand its impact. Efforts to train dispute resolution practitioners in community mediation across the country can help facilitate CRS' work in the communities it serves and try to replicate lessons learned in the communities it cannot reach.¹⁸ We cannot afford to lose a federal agency that actually helps communities come together to confront ongoing injustice.

I. COMMUNITY RELATIONS SERVICE – AN INNOVATION IN TITLE X OF THE CIVIL RIGHTS ACT OF 1964

Years before the Civil Rights Act of 1964 officially created CRS, some legislators discussed the possibility of creating an agency which would serve communities experiencing conflict. As a senator, Lyndon B. Johnson pushed for the creation of a Community Relations Service during Senate consideration of the Civil Rights Act of 1959. He later introduced a bill calling for the creation of CRS “with regional offices to help local communities when disagreement threatened to disrupt peaceful relations among its citizens.”¹⁹

The sacrifice of civil rights leaders, activists, and clergy protesting Jim Crow in the face of violence at the hands of white mobs and law enforcement led President Kennedy to announce that he would introduce

17. See Jessica Estepa, *Survey: American Public's Trust in Government Near Historic Low*, USA TODAY (May 3, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/05/03/survey-american-publics-trust-government-near-historic-low/101239808> [https://perma.cc/6NBS-DSQP]; *Public Trust in Government Remains Near Historic Lows as Partisan Attitudes Shift*, PEW RES. CTR. (May 3, 2017), <http://www.people-press.org/2017/05/03/public-trust-in-government-remains-near-historic-lows-as-partisan-attitudes-shift> [https://perma.cc/RQ39-BS8Y].

18. See Nancy H. Rogers, *When Conflicts Polarize Communities: Designing Localized Offices That Intervene Collaboratively*, 30 OHIO ST. J. ON DISPUTE RESOL. 173, 179 (2015).

19. 151 Cong. Rec. 5078 (Mar. 15, 2005) (remarks of Senator Chris Van Hollen explaining that Senator Johnson sought creation of CRS seven years before the Civil Rights Act of 1964); BERTRAM LEVINE, *RESOLVING RACIAL CONFLICT: THE COMMUNITY RELATIONS SERVICE AND CIVIL RIGHTS, 1964-1989*, at 6 (2005).

a strong Civil Rights Bill.²⁰ The protests, activism, and mobilization that led to the Civil Rights Act of 1964, also led the federal government to recognize the value of federal mediators who helped reduce the potential for violence in volatile situations. For example, in Birmingham in 1963, Civil Rights Division Assistant Attorney General Burke Marshall mediated disputes, “negot[iating] a settlement between civil rights activists and the city’s business community that helped bring Birmingham back from the edge of violence that followed street demonstrations, mass arrests and the use of fire hoses and police dogs.”²¹ When President John F. Kennedy decided to include CRS in his proposed Civil Rights Act, he noted the effectiveness of mediators and conciliators in Birmingham in his letter transmitting the proposed legislation to Congress, explaining: “dialogue and discussion are always better than violence—and this agency [the Community Relations Service], by enabling all concerned to sit down and reason together, can play a major role in achieving peaceful progress in civil rights.”²²

The vision for CRS did not include quashing dissent, but rather respected that the true source of social change came from people across different communities protesting social injustice. Roger Wilkins, one of the first Directors of the Community Relations Service whose vision for the agency and the country indelibly shaped the agency, recognized, “[t]he civil-rights progress of the Kennedy and Johnson years was not made because enlightened public officials perceived a need and took the lead. It was made because an energized interracial civil-rights movement defined the issues, mobilized public opinion and forced the White House to act.”²³

20. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 15, 37–38 (2012) (“[T]he Civil Rights Act of 1964 and the concomitant cultural shift would never have occurred without the cultivation of a critical political consciousness in the African American community and the widespread, strategic activism that flowed from it. Likewise, the notion that the New Jim Crow can ever be dismantled through traditional litigation and policy-reform strategies that are wholly disconnected from a major social movement seems fundamentally misguided.”).

21. Bart Barnes, *Burke Marshall, 80, Dies*, WASH. POST (June 3, 2003), <https://www.washingtonpost.com/archive/local/2003/06/03/burke-marshall-80-dies/b302b7a7-ed0f-4c89-8c85-b1ca615a5c0c/> [https://perma.cc/7KCS-V7EK].

22. LEVINE, *supra* note 19, at 11.

23. Robert L. Borosage, *Farewell to Roger Wilkins, a Man of Honor in Tempestuous Times*, NATION (Mar. 30, 2017), <https://www.thenation.com/>

Social change demands engagement and involvement of people in the community working together to develop, demand, and implement sustainable change. CRS is a rare federal institution that helps create opportunities for social change.²⁴

A. Title X of the Civil Rights Act of 1964: Creating the Nation's Peacemakers

In Title X of the Civil Rights Act of 1964, Congress recognized that litigation and law enforcement activity alone could not make the changes necessary to meet the civil rights needs of a divided nation.²⁵ As a result, Congress included the creation of a small, independent federal agency to support local community and government leaders addressing tension associated with discrimination. CRS was created to

provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce.²⁶

article/farewell-to-roger-wilkins-a-man-of-honor-in-tempestuous-times [https://perma.cc/VK5T-9YGD].

24. See Idit Kostiner, *Evaluating Legality: Toward A Cultural Approach to the Study of Law and Social Change*, 37 L. & SOC'Y REV. 323, 328 (2003) (explaining that people seeking social change often have to use existing institutions to create that change.)
25. See CMTY. REL. SERV., U.S. DEPT. COMMERCE, AN INTERIM REPORT TO CONGRESS, at 1 (Jan. 31, 1964), [hereinafter Interim Report to Congress], (explaining that CRS was unique “[a]mong the many federal agencies and programs designed to implement the Civil Rights Act”), <https://merrick.library.miami.edu/cdm/compoundobject/collection/asm0656/id/1193/rec/48> [https://perma.cc/9LSR-5JAC].
26. Title X of the Civil Rights Act of 1964, 42 U.S.C. § 2000g-1 (1964); see also Eliza Berman, *How a Little-Known Government Agency Kept the Peace in Selma*, TIME (Mar. 25, 2015), <http://time.com/3733726/leroy-collins-selma/> [https://perma.cc/9KDD-WSHW] (explaining that CRS was established “as the peacemaking arm of the Department of Justice, charged with mediating community conflicts rooted in race, religion and other human differences”).

Under the Act, CRS can offer its services when requested or accepted by community leaders, local government officials, or law enforcement leaders in “resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce.”²⁷ CRS is required, “whenever possible . . . [to] seek and utilize the cooperation of appropriate State, or local, public or private agencies.”²⁸ CRS has no enforcement authority, and therefore cannot require anyone to accept its services.²⁹ In creating CRS, Congress recognized that CRS’ services would not be effective if forced on a community. The cooperation CRS seeks from the community is essential not only to CRS’ rapid response services to communities in crisis, but also to supporting communities in developing sustainable mechanisms to address underlying tensions. “CRS moved to attempt to organize community resources for change rather than simply conciliating disputes on an ad hoc, short-term basis.”³⁰

CRS’ statutory mandate is relatively unique in that it recognizes that in order to facilitate sustainable social change that leads to greater equality and community³¹ it is necessary to limit litigation powers traditionally associated with a component of the Department of Justice. This vision for social change recognizes that a component that lacks enforcement authority necessarily derives its power and authority from the community it serves. The statutory mandate that withholds prosecutorial or investigative authority from CRS and imposes a strong confidentiality requirement, encourages leaders to reach out for assistance in advance or in the midst of civil unrest without fear that their requests for assistance

27. 42 U.S.C. § 2000g-1 (1964) (explaining it can do so when, in “such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby” when requested or upon its own motion).

28. 42 U.S.C. § 2000g-2 (1964).

29. “The Service may offer its services in cases of such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.” *Id.*

30. JAMES W. BUTTON, *BLACK VIOLENCE: POLITICAL IMPACT OF THE 1960S RIOTS* 114 (1978).

31. See Steve Bachman, *Lawyers, Law, and Social Change – Update Year 2010*, 34 N.Y.U. REV. L. & SOC. CHANGE 499, 516 (2010).

will open them up to legal liability. This appreciation for the creative force of protest—the ways in which non-violent protest can make communities grapple with difficult issues like systemic discrimination in their communities—is another way in which CRS helps support positive social change.³² CRS helps preserve a government of the people, by the people, and for the people by ensuring that voices are heard and helping community and government leaders use these conversations to drive action and social change.

Originally housed in the Department of Commerce, this independent component was moved to the Department of Justice less than two years after it was created.³³ President Johnson moved CRS to DOJ because it would allow for better coordination and enforcement of civil rights laws.³⁴ On April 16, 1966, CRS officially became part of the Justice Department.³⁵ CRS created regional and field offices shortly after its creation in light of the importance of a local presence to facilitate effective engagement with local communities seeking to address long-standing issues and create

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32. See Wallace Warfield, C.R. MEDIATION.ORG (May 23, 2000) [hereinafter Warfield Interview] http://www.civilrightsmediation.org/interviews/Wally_Warfield.shtml#B02001 [<https://perma.cc/89GA-8PP4>] (“But the very fact that parties were being brought to the table, metaphorically and literally, was in fact a kind of equalizing of the power.”).
 33. Under Reorganization Plan No. 1 of 1966, effective April 22, 1966, 31 F.R. 6187, 80 Stat 1607, CRS was moved from the Department of Commerce to the Department of Justice. See 5 U.S.C.A. § APP. 1 REORG. PLAN 1 1966 (West); Paulette Brown, *The Civil Rights Act of 1964*, 92 WASH. U.L. REV. 527, 537 (2014); President Lyndon B. Johnson, Remarks at the Swearing in of Roger Wilkins as Director, Community Relations Service (Feb. 4, 1966), [hereinafter President Johnson Remarks], <http://www.presidency.ucsb.edu/ws/index.php?pid=27915> [<https://perma.cc/JD4U-S6LV>] (“We are shifting the focus of the Service away from business groups and enlarging its mission by having it report directly to the Attorney General of the United States.”).
 34. “The Attorney General will benefit in his role as the President’s adviser by obtaining an opportunity to anticipate and meet problems before the need for legal action arises. The Community Relations Service, brought into closer relationship with the Attorney General and the Civil Rights Division of the Department of Justice, will gain by becoming a primary resource in a coordinated effort in civil rights under the leadership of the Attorney General. The Community Relations Service will have direct access to the extensive information, experience, staff, and facilities within the Department and in other Federal agencies.” 42 U.S.C. § 2000g (West 1966).
 35. President’s Budget, *supra* note 13, at 3.

sustainable change. Today, CRS has ten regional and four field offices.³⁶ As Wally Warfield, a former Acting Director and celebrated professor in the field of conflict resolution, noted, “[t]hey recognized the fact that service could not be provided much beyond the fire-engine model working out of Washington D.C. The logic was that being closer to the action with field offices would provide better access, and therefore better service.”³⁷

B. The Shepard Byrd Act and Expansion of CRS Jurisdiction

Forty-five years after CRS was created, its jurisdiction was expanded to protect additional vulnerable communities. In October 2009, President Obama signed into law the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (Shepard Byrd Act). The Shepard Byrd Act was the first major piece of civil rights legislation to protect Lesbian, Gay, Bisexual, and Transgender individuals, by allowing federal criminal prosecution of hate crimes motivated by gender identity and sexual orientation. Previously, federal hate crimes protections extended to hate crimes motivated by race, color, religion, or national origin.³⁸ The Shepard Byrd Act also expanded protections for people targeted for violent hate crimes on the basis of disability and gender. Furthermore, the statute simplified the jurisdictional predicate for prosecuting hate crimes targeting people on the basis of actual or perceived race, color, religion, and national origin by eliminating the requirement in those cases that the victim had been engaging in one of six federally-protected activities.³⁹

36. *See About CRS*, COMMUNITY REL. SERV., U.S. DEP'T JUST., <https://www.justice.gov/crs/about-crs> [<https://perma.cc/QT88-FQYT>].

37. Warfield Interview, *supra* note 32.

38. Under 18 U.S.C. § 245, passed in 1968, it is a crime to “use, or threaten to use, force to willfully interfere with any person because of race, color, religion, or national origin and because the person is participating in a federally protected activity, such as public education, employment, jury service, travel, or the enjoyment of public accommodations.” 18 U.S.C. § 245 (1968).

39. 18 U.S.C. § 249 (a); *see also* 18 U.S.C. § 245 (1968) (Subsection (b)(2) of § 245 makes it unlawful to willfully injure, intimidate or interfere with any person, or attempt to do so, by force or threat of force, because of that other person’s race, color, religion or national origin *and* because the person targeted has been engaged in a federally protected activity; 18 U.S.C. § 249 does not require showing the person was engaged in a federally protected activity).

The Shepard Byrd Act was enacted as Division E of the National Defense Authorization Act for Fiscal Year 2010, and authorized an appropriation “to the Department of Justice, including the Community Relations Service, . . . such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of [the Shepard Byrd Act].”⁴⁰ Thus, in addition to “provid[ing] assistance to communities and persons . . . in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin,”⁴¹ consistent with CRS’ original mandate, CRS was now authorized to work with communities to prevent and respond to violent hate crimes committed on the basis of race, color, national origin, gender, gender identity, sexual orientation, religion, and disability.

In expanding CRS’ jurisdiction to “prevent and respond” to violations of the new hate crime statute, the Shepard Byrd Act added to the list of predicate violations that may trigger CRS involvement. CRS engaged in a series of trainings for staff in the months following the passage of the Act, to help ensure that work with new communities (or, in some cases, work with the same communities, but to address different aspects of discrimination targeting the community), was as effective as possible. It is important to note that nothing in the law alters the clear and specific provision that prohibits CRS from prosecuting or investigating any cases.⁴² Rather, the Shepard Byrd Act called on CRS to provide the same services to prevent or respond to hate crimes committed on the basis of gender, gender identity, sexual orientation, religion and disability as it had been providing for forty-five years with respect to tension created by perceived discrimination on the basis of race, color, and national origin: offer its mediation, conciliation, training, and technical assistance to address discrimination and bias that have the potential to cause unrest and, in some cases, violence in communities.

Congress’ expansion of CRS’ jurisdiction demonstrates recognition of the continuing need for CRS in communities confronting discrimination today. As President (then Senator) Johnson explained when calling for the creation of the Community Relations Service in 1959,

40. Pub. L. No. 111-84, § 4706, 123 Stat. 2190 (2009).

41. 42 U.S.C. § 2000g-1 (1964).

42. *See* 42 U.S.C. 2000g-2 (1964) (“No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service.”).

We might as well face the fact that the civil rights issue is not going to go away—and it should not go away so long as there are injustices to be corrected in any State in this Union. We must also face the fact that the issue is not going to be solved by force—because the ultimate goal is human acceptance and that is never secured by force.⁴³

President Johnson was correct in recognizing that the civil rights issue was not going to go away and that the Community Relations Service would serve an important role in working with communities to address tension and prevent violence. With the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Congress recognized the continued importance of CRS helping communities correct the injustices that persist in our country. As described above, CRS was created because Congress believed that in order to protect civil rights and combat discrimination, the government should have an agency dedicated to bringing members of the community to the table to talk to each other in an effort to maintain peace and safety in their communities. Congress recognized the need for this type of assistance in its findings introducing the hate crime bill: “[t]he incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem.”⁴⁴ Furthermore, “[s]uch violence disrupts the tranquility and safety of communities and is deeply divisive.”⁴⁵

The statute also recognized that hate devastates communities, not just the victim. Congress acknowledged that: “A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.”⁴⁶ The overall purpose of the Shepard Byrd Act, the specific reference to increasing CRS personnel to respond to violations of the new provisions as added by section 249, and Congress’ recognition that violence motivated by actual or perceived gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem just as violence motivated by race, color, or national origin does, provided CRS with an

43. Senator Lyndon B. Johnson, Statement Introducing S. 499 (86th Congress) (1959).

44. Pub. L. 111-84, div. E § 4702, 123 Stat. 2835 (2009).

45. *Id.*

46. *Id.*

important opportunity to support communities struggling with hate and violence. And people living at the intersection of two forms of discrimination, for example, people targeted for hate on the basis of race and gender identity, are at increased risk for hate violence.⁴⁷ The expansion of CRS' jurisdiction ensures that the agency can help communities prevent and respond to violence targeting people most vulnerable to hate.

C. Key Characteristics of CRS' Mandate

1. Statutory Protections from Political Pressure and from Federal Law Enforcement and Prosecutors

Congress required that CRS would be headed by a Director appointed by the President with the advice and consent of the Senate. The appointment would be for a period of four years regardless of when the appointment of the Director took place. Therefore, a Director appointed by one President would serve out her term of four years regardless of when the appointing President's term ended, signifying that, like the Director of the FBI, this position was intended to be insulated from political pressure to the extent possible.⁴⁸ The Act also expressly states that CRS shall provide its services "without publicity,"⁴⁹ recognizing that mediation and conciliation services are most effective when they are behind the scenes and further protected from politicization. The Civil Rights Act further establishes the independence of CRS from the law enforcement and prosecutorial arms of the federal government, expressly prohibiting CRS from participating in investigative or prosecutorial functions.⁵⁰

47. See *A Crisis of Hate: A Report on Lesbian, Gay, Bisexual, Transgender, and Queer Hate Violence Homicides in 2017*, NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, at 6–7 (2018), <https://avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release.pdf> [<https://perma.cc/8AJ9-GSGX>] (documenting an eighty-six percent increase in hate violence related homicides targeting LGBTQ individuals in 2017 over the previous year, with seventy-one percent of those homicides against people of color).

48. See 42 U.S.C.A. § 2000g (West 2018).

49. Civil Rights Act of 1964, as amended, Title X, 42 U.S.C. § 2000g–2.

50. "The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would

2. Strict Confidentiality Essential to Effective Delivery of Services

The Act also provides that all officers and employees of CRS are bound by strict standards of confidentiality in the provision of its services; it is a misdemeanor punishable of up to one year in prison to make public in any manner any information shared with the expectation that it would remain confidential.⁵¹ The Act protects confidentiality in two distinct, but not mutually exclusive, contexts: (1) when CRS obtains confidential information through its work⁵² and (2) as a prophylactic measure to prevent CRS from participating in an investigation or prosecution.⁵³ The legislative history of this particular provision provides some insight into the extent to which Congress intended for CRS to maintain confidentiality and avoid publicity in its activities. An early House version of the bill originally required CRS to hold confidential any information it received.⁵⁴ This provision was reinforced by the substitute language in the final version that not only required CRS to provide services in confidence and without publicity, but also included a fine of not more than \$1,000 or imprisonment for not more than one year to prevent such violations of confidentiality.⁵⁵

The statute does not provide any limiting language that would permit CRS to share the confidential information it obtained with other DOJ

be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year." *Id.*

51. Civil Rights Act of 1964, as amended, Title X, 42 U.S.C. § 2000g-2 (1964).
52. 42 U.S.C. § 2000g-2(b) (1964) ("the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held.").
53. *See* 42 U.S.C. 2000g-2(b) (1964) ("No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency or in any litigation."). *Id.*
54. *See* Papers of John F. Kennedy. Presidential Papers. President's Office Files. Legislative Files. *Civil Rights Act of 1963 draft, 13 June 1963, Title IV, § 403(b).*
55. *See id.*; 42 U.S.C. 2000g-2(b) (1964).

components or federal agencies. Indeed, the provision prohibiting CRS employees from engaging in the performance of investigative or prosecutorial functions may be interpreted as applying the confidentiality provisions to communication with other components of DOJ that have those functions so as to avoid providing information that might indirectly aid a prosecution or investigation. Moreover, in the weeks before passage of the Civil Rights Act in 1964, when Senator Strom Thurmond attempted to make an exception to the confidentiality provision by allowing CRS employees to provide information to a duly authorized congressional committee without being in violation of the law, the amendment was debated and rejected by a vote of 38-55.⁵⁶

It is important to note that the information that must be maintained in confidence is limited to “information acquired in the regular performance of its duties upon the understanding that it would be so held” as well as activities of CRS employees in providing conciliation assistance.⁵⁷ Therefore, information regarding activities not associated with conciliation assistance or information that is not obtained upon the understanding that it would be so held may be shared with others. This interpretation is consistent with CRS’ policy and practice of notifying the U.S. Attorney that CRS plans to provide services in the relevant district and sharing with him or her non-confidential information—general information about the nature of the conflict, but no party names—before entering the district. In addition, CRS notifies the relevant members of Congress that CRS will be in their districts when CRS initially deploys staff to their district. These protections enable CRS to focus on the people in greatest need and the issues that need to be addressed. As Dr. Ozell Sutton, a former CRS Director who was a part of the agency from its inception⁵⁸ noted, “The members of the CRS team were many times invisible. We avoided media attention and focused our energies on the people who were

56. See Frank L. Calhoun, *Legislative History of the Community Relations Service*, LEGISLATIVE REFERENCE SERV. 19 (1965); see also H.R. 7152, 88th Cong. (1964), <https://www.govtrack.us/congress/votes/88-1964/s403> [<https://perma.cc/VX4H-W3X6>] (showing vote totals after Senator Thurmond’s failed attempt to create an exception to CRS’ confidentiality provision).

57. 42 U.S.C. § 2000g-2b (1964).

58. See *Civic Makers: Ozell Sutton*, HIST. MAKERS, <http://www.thehistorymakers.org/biography/ozell-sutton-41> [<https://perma.cc/WA96-9UFL>].

directly involved or on those who had the power and ability to prevent disorder.”⁵⁹

The importance of independence was also reflected in internal memoranda from the John F. Kennedy Administration discussing the key elements of what would become the Community Relations Service. As a White House staffer reflected, the Community Relations Service must be

separated from those [enforcement] agencies... which have specific enforcement responsibilities.... [the] confidence of persons who will be using the Service in the effectiveness of the conciliation process will be increased if they do not view it as an arm of the agency which may be going into court to enforce the law.⁶⁰

Interestingly, this memo from 1963 raised concerns with CRS being placed in DOJ because of its components that investigate and prosecute; as discussed below, CRS was ultimately placed in DOJ, making the provisions in the Civil Rights Act of 1964 guaranteeing its independence of critical importance.⁶¹

II. CRS IN ACTION

As a former Senior Counsel and Acting Director of CRS, I had the opportunity to see the agency in action across the country working with local law enforcement and other public safety officials, local and national civil rights organizations, and religious leaders at times when communities were in crisis. When communities were at greatest risk of being torn apart by discrimination, hate incidents, and hate crimes, CRS trained local community leaders to help keep the peace at rallies and marches. In the aftermath of a hate crime, CRS helped law enforcement engage with the targeted communities. CRS also worked with local law enforcement and government officials to develop sustainable mechanisms for engaging with community leaders to help prevent and respond more effectively to hate in

59. VIC CARTER, *FROM YONDER TO HERE: THE LIFE AND WORK OF DR. OZELL SUTTON* 125 (2008).

60. Memorandum from William L. Taylor, Assistant Staff Dir., Liaison and Information, United States Commission on Civil Rights, to Lee White, Community Relations Service (Jul. 3, 1963), <https://www.jfklibrary.org/Asset-Viewer/Archives/JFKWHSFLCW-019-006.aspx> [<https://perma.cc/TB5R-JDKA>].

61. *Id.*

the future. Because CRS shuns publicity, its work is not well understood or recognized. I want to offer some additional details to provide a fuller picture of the work and the extraordinary people who make up CRS.⁶²

A. How CRS Responds to Communities and Measures Its Impact

Generally, an “alert” initiates CRS’ involvement in a community. Local government leaders, community organizations, or individuals may reach out to CRS, or CRS may learn of tension in a community associated with discrimination or hate crimes that would trigger its jurisdiction through media reports. CRS staff in regional offices evaluate the alerts, looking at the severity of the dispute, the potential for violence, or the potential for further tension. If CRS determines that the alert warrants further investigation, CRS will conduct an assessment.⁶³ The in-depth assessment evaluates the community’s needs and potential methods to address them. Following the assessment or appraisal phase, CRS may provide recommendations to help calm tensions and voluntarily resolve the conflict.

CRS’ main tools to address community needs include dialogue, mediation, and training. Dialogues and mediation address issues such as the impact of racism and other forms of discrimination on communities today, trainings for law enforcement and other government officials include cultural competency, and de-escalation techniques, while trainings for the community include event marshal training. Student and school trainings work with participants to identify issues related to discrimination and design and implement practices to address those issues.⁶⁴ CRS also provides trainings for law enforcement and community members to reduce the potential for violence at protests and to de-escalate

62. In compliance with the confidentiality provisions of the Civil Rights Act of 1964 governing CRS, I only share information that is publicly available or that was shared with me without any expectation of confidentiality.

63. CRS approaches dispute resolution using several different processes, including “alerts, assessments, conciliation, mediation and community tension appraisals.” Danielle Scott, *All Opinions Matter*, 9 AM. J. OF MEDIATION; see also Strategic Plan, *supra* note 12, at 9–10 (2016) (describing strategies for assessing and facilitating peaceful resolution of community conflicts).

64. See CMTY. RELATIONS SERV., *Facilitated and Community Collaboration Programs*, U.S. DEP’T JUST., <https://www.justice.gov/crs/our-work/collaboration-programs> [<https://perma.cc/8AGP-RM7Y>].

the response to protest activity.⁶⁵ CRS structures the facilitated conversations on racism and discrimination to enable community and government leaders to take action to address the issues that are discussed. Together, these programs help increase opportunities for everyone in a community—community members, community leaders, students, and law enforcement—to hear each other's voices on issues that matter, and create mechanisms to allow for ongoing substantive input by everyone in a way that leads to long-lasting social change.

Measuring the impact of CRS' services is inherently challenging. An Office of Management and Budget analyst who shadowed a CRS team in a community concluded that unlike DOJ components where reports or numbers of cases may be counted, "[i]t's the process itself that's the product—that draws the parties into a collaborative effort."⁶⁶ Furthermore, much of the work is behind the scenes, and it can be difficult to prove that the absence of a riot or violent activity was due to CRS' intervention. As Roger Wilkins noted:

While we can count the number of communities to which assistance has been given, it is impossible to measure the extent to which antagonisms, conflict and violence were restrained or the degree to which repair of the social fabric and the pace of social change were quickened by our efforts.⁶⁷

However, CRS does have a robust case management system to measure how effective it is in addressing tension and strengthening communities. Each week, the Deputy Director leads a review of every new case in the CRS system, and conducts regular docket reviews with the regional directors of open cases.⁶⁸ Additionally, headquarters provides

65. See CMTY. RELATIONS SERV., *Our Work*, U.S. DEP'T JUST., <https://www.justice.gov/crs/our-work> [<https://perma.cc/WP9F-6RYC>].

66. LEVINE, *supra* note 19, at 234 (quoting OMB budget analyst who shadowed CRS staff on a deployment).

67. *Id.* at 230 (quoting Roger Wilkins describing the challenge of capturing the impact of CRS' work).

68. Based on my experience at CRS, the role of Deputy Director in CRS is perhaps one of the most difficult positions in the agency, effectively serving as the chief operations officer for the agency. Effectively on call 24 hours a day to respond to the needs of the Regional Directors across the country, the Deputy Director helps ensure everyone has all the necessary approvals to respond to immediate crises and long-term needs. No one better embodies the selfless commitment to service and to CRS than Diane Mitchum, who spent over a decade in the role after serving active duty in the military and

weekly operational feedback to the Regional Directors to ensure compliance with CRS' statutory mandate and provides additional support to regional offices engaging in communities.⁶⁹

The number of CRS cases included in recent CRS annual reports reflects the number of matters where the agency worked with communities to address tension or prevent and respond more effectively to hate crimes. While it is possible for more than one case to open in the same community, in my experience, it is more common for each case to represent a different community. Therefore, data publicly available with respect to the number of CRS cases is a decent proxy for the number of communities CRS reaches; for the seven most recent years for which case data is publicly available, the average is 678 cases per year.⁷⁰ Sizes of

then in the reserves. Ms. Mitchum was renowned for her work ethic and her deep understanding of the challenges and opportunities that mediation and conciliation offered. *See* Kathleen M. Amerkhanian, *Monumental Impact: Profiles in Public Service*, THE UNIV. OF TOLEDO COLL. OF LAW TRANSCRIPT, Fall 2007, at 37, <https://www.utoledo.edu/law/alumni/transcript/transcript07.pdf> [<https://perma.cc/5H29-3X2R>] (describing Mitchum's military service and commitment to service through her work at CRS).

69. *See* CMTY. RELATIONS SERV., *Performance Budget Congressional Submission, FY 2017*, U.S. DEP'T JUST., 14 (2016).

70. Based on my experience at CRS, the case management system at CRS has gone through a series of improvements to try to more accurately assess the impact of CRS in different communities; this has also resulted in a change in the ways that the number of engagements is counted. *See About CRS*, Community Relations Service Information System, COMMUNITY REL. SERV., U.S. DEP'T JUST., <https://www.justice.gov/crs/community-relations-service-information-system> [<https://perma.cc/R2TQ-ACT8>] (describing the database management system used to maintain data about CRS' work in communities); *see also* Cmty. Relations Serv., *Annual Report FY 2012*, U.S. DEP'T JUST. 3 (2013), <https://www.justice.gov/sites/default/files/crs/legacy/2013/07/22/crs-fy2012-annual-report.pdf> [<https://perma.cc/RX8T-E9QC>] (explaining that the new case management system implemented in 2012 did not initially capture data related to certain categories and subcategories). For example, in some years, any engagement with a community is counted as a separate case, whereas in others, multiple engagements with the same community are counted as the same case, even if they were about different matters. As a result, it can be difficult to compare case numbers from year to year. Even with the variability, the average between 2011 and 2017, the years for which publicly available data is accessible via annual reports, can help get a sense of the number of communities impacted. The average for these years is 678 cases. The following represents the estimates reported in CRS Annual Reports of total cases for years 2011-2017: 2011: 1,100 cases,

communities obviously matter, but a modest estimation would suggest that tens of thousands of people are touched by CRS services every year.

To highlight the critical role of CRS, I discuss two case studies where CRS successfully de-escalated community tensions and helped create sustainable plans for healing and change. The first is in response to severe tensions in Arizona around SB 1070, anti-immigrant legislation that brought out neo-Nazis in support and immigrant families in opposition; the second involved the aftermath of Trayvon Martin's death.

B. Case Study One: Neo-Nazis and Immigrant Rights, Phoenix, Arizona, 2010

In advance of the Phoenix rally described at the beginning of this Essay, Ron Wakabayashi, Regional Director for CRS' Western Region,⁷¹ Mr.

see Cmty. Relations Serv., *Annual Report FY 2011*, U.S. DEP'T JUST. 1 (2012), <https://www.justice.gov/sites/default/files/crs/legacy/2012/04/27/crs-annual-report2012.pdf> [<https://perma.cc/92TB-SSAV>]; 2012: 728 cases, *see* Cmty. Relations Serv., *Annual Report FY 2012*, U.S. DEP'T JUST. 3 (2013), <https://www.justice.gov/sites/default/files/crs/legacy/2013/07/22/crs-fy-2012-annual-report.pdf> [<https://perma.cc/RX8T-E9QC>]; 2013: 693 cases, *see* Cmty. Relations Serv., *Annual Report FY 2013*, U.S. DEP'T JUST. 21 (2014), https://www.justice.gov/sites/default/files/pages/attachments/2014/08/20/2013_annual_report.pdf [<https://perma.cc/CR5N-BC62>]; 2014: 692 cases, *see* Cmty. Relations Serv., *Annual Report FY 2014*, U.S. DEP'T JUST. 19 (2015), <https://www.justice.gov/crs/file/812846/download> [<https://perma.cc/XA-V7-8X39>]; 2015: 638 cases, *see* Cmty. Relations Serv., *Annual Report FY 2015*, U.S. DEP'T JUST. 12 (2016), <https://www.justice.gov/crs/page/file/933516/download> [<https://perma.cc/67HU-N564>]; 2016: 447 cases, *see* Cmty. Relations Serv., *Annual Report FY 2016*, U.S. DEP'T JUST. 18 (2017) <https://www.justice.gov/crs/file/1034811/download> [<https://perma.cc/FN2S-FSR6>]; 2017: 449 cases, *id.*

71. Ron Wakabayashi came to CRS in 1999 after leading local and national civil rights, mediation, and social services organizations. In the late 1960s, Mr. Wakabayashi served as the National Youth Director for the Japanese American Citizens League (JACL). After founding and serving as leader the Asian American Drug Abuse Program, Mr. Wakabayashi was the JACL National Director during the redress campaign. After JACL, Mr. Wakabayashi later became the Executive Director of the Los Angeles City Human Relations Commission and the Director of the Los Angeles County Commission on Human Relations. *See* Gann Matsuda, *Ron Wakabayashi to Keynote 40th Manzanar Pilgrimage*, MANZANAR COMMITTEE (Apr. 13, 2009), <https://blog.manzanarcommittee.org/2009/04/13/ron-wakabayashi-to-ke>

Williams, a Senior Conciliator in the Western Region, and their CRS colleagues worked with local law enforcement, first responders from the fire department, immigrant rights activists, local community members, federal, state, and local government officials, and civil rights advocates from across the country to facilitate constructive dialogues intended to keep the protests safe.⁷² CRS reached out to neo-Nazis as well as immigrant rights advocates to reduce the potential for violence. CRS also helped build relationships among local leaders combating hate to foster future dialogue without federal assistance. CRS did so without publicity and at no cost to the local government or community advocates. Mr. Wakabayashi, Mr. Williams, and their colleagues brought decades of experience and extraordinary dedication to this work, investing nights, weekends, and long days in working with different communities in the area. I had the privilege of working with Mr. Wakabayashi, Mr. Williams, and the other talented people at CRS,⁷³ and saw first-hand the impact of their work with the community.

In the two hours that followed their arrival, the neo-Nazis continued to lob racist anti-immigrant verbal attacks at the growing number of protestors arriving on the state capitol grounds. They attempted to provoke the peaceful protestors into violence. The small number of neo-Nazis who came out that day in support of SB 1070 presumably felt emboldened to hurl their racial epithets because they knew that local law enforcement was standing nearby. The Klan and neo-Nazis have made a practice of notifying law enforcement in advance of any plans to gather publicly to secure protection. Racist anti-immigrant flyers were circulating in the area; Mr. Wakabayashi found one that stated it was an “immigrant hunting license” with the words “shoot to kill.” While continuing to assess the activities of the neo-Nazis and actions we might need to take to support efforts to decrease the potential for violence, Mr. Wakabayashi told me that he knew about similar flyers that his father had shown him when he was a child. Mr. Wakabayashi’s parents were survivors of the Japanese Internment camps erected in the United States during World War II, and his father kept some documents from the time. One was a flyer that

ynote-40th-manzanar-pilgrimage [https://perma.cc/C767-PZ6U]
(describing Wakabayashi’s professional career before CRS).

72. See Cmty. Relations Serv., *Annual Report FY 2010*, U.S. DEP’T JUST. 17 (2011), <https://www.justice.gov/sites/default/files/crs/legacy/2011/05/09/annualreport2010.pdf> [https://perma.cc/3HCY-MAW8].

73. Between June 2009 and September 2012, I served as Senior Counsel and then Acting Director of the Community Relations Service.

stated it was a “Japanese hunting license,” and Mr. Wakabayashi told me that he recalls the devastating impact of seeing this as a child. As we looked beyond the neo-Nazis to the thousands of immigrant families protesting, he wondered aloud about whether they thought, like he did as a child, about what they could have done to warrant such hatred and anger.

While he was speaking, he scanned the crowd, and walked over to help mediate a potential conflict developing between a Maricopa County Sheriff's Deputy and a protestor on the sidewalk. The protestor appeared to be attempting to use a technique called a sleeping dragon, using a combination of PVC pipe and handcuffs to connect himself with other protestors in an effort to block entry to an area. Mr. Wakabayashi calmly talked to both parties, and they reached an agreement allowing the protestor to continue to demonstrate while clearing the entry in a manner consistent with legal requirements.⁷⁴

Among the protestors were also religious leaders, as well as young men and women in their late teens and early twenties who had completed a recent CRS event marshal training for volunteers working to keep the protest safe.⁷⁵ At the training, they learned de-escalation techniques, anticipating the armed neo-Nazis' tactic to try to provoke a physical confrontation with peaceful protestors. A young Latina college student who had completed the training recognized the dynamic and spoke to the peaceful protestors whom the neo-Nazis were targeting. In the face of the armed neo-Nazis, this young woman urged the peaceful protestors, “don't fall for it. They are trying to provoke you, because they are cowards. If you want to truly stand up for our community, go stand with the community. Don't dignify the cowards' words with a response.” Within approximately fifteen minutes, protestors were turning their backs to the neo-Nazis. Starved of an audience and stunned by the organized resistance, the neo-Nazis packed up and left the Capitol.

74. The skill, compassion, and commitment with which I witnessed Mr. Wakabayashi approach these protestors was consistent with the way in which Mr. Wakabayashi approached all people in communities he served. A mentor for countless CRS staff, including me, his dedication to the work reflected decades of experience and a unique capacity to help parties recognize common goals while respecting the need for protest and peaceful conflict.

75. See Cmty. Relations Serv., *Event Marshals: Maintaining Public Safety During Events*, U.S. DEP'T JUST., <https://www.justice.gov/file/1047521/download> [<https://perma.cc/7Q4A-TPX5>].

C. Case Study Two: Sanford, Florida, Following the Death of Trayvon Martin

CRS worked in Sanford, Florida, after the tragic killing of Trayvon Martin, an African-American teenager who was shot while walking home carrying nothing more than iced tea, Skittles, and a cell phone. His death sparked a national dialogue on race and prompted protests and marches in Sanford and around the country. His death also captured the attention of members of Congress and launched a movement for black lives that continues to change the world.⁷⁶ CRS was one of the first federal⁷⁷ agencies on the ground in Sanford following Trayvon's killing, and provided support, training, and resources to local community leaders, government officials, law enforcement, and grassroots and national advocates for over a year in the community.

CRS' work in Sanford highlights the unique services the agency offers and the ways in which neutral federal officials can support communities in times of crisis in building more sustainable mechanisms for change. As the Acting Director of the agency during this time, I joined CRS' team in Sanford for several days during the protests that enveloped the city in the weeks following Trayvon's death. When I returned to Washington, D.C., I spoke to members of Congress about the role of CRS during a briefing organized to address racial profiling. During the briefing, I saw in the members of Congress a reflection of the anger, sadness, and sense of

76. See KENNETH J. FASCHING-VARNER ET AL., *TRAYVON MARTIN, RACE, AND AMERICAN JUSTICE WRITING WRONG* xv (2014) ("The killing of Trayvon Martin profoundly changed a nation, and also ignited a spirit of activism and race consciousness among a generation far removed from the marches and sit-ins of half a century ago."); George Davis, *Trayvon Martin in Post-Racial America*, *PSYCHOL. TODAY* (Apr. 6, 2012), <https://www.psychologytoday.com/us/blog/modern-melting-pot/201204/trayvon-martin-in-post-racial-america> [<https://perma.cc/EER8-TJX2>] ("The tragic shooting of Trayvon Martin, a 17-year old black youngster, has stayed in public consciousness for so long because it represents the most important current struggle to defend or destroy one of the most powerful illusions in American life. [It destroyed] [t]he idea that we are a post-racial society [which] is widely accepted as the official description of our nation now.").

77. See Audra D.S. Burch, *Federal Mediator Thomas Battles Serves as Peacemaker in Sanford*, *MIAMI HERALD* (July 8, 2013, 7:23 PM), <https://www.miamiherald.com/news/state/florida/trayvon-martin/article-1953005.html> [<https://perma.cc/JX6E-ZSMM>].

urgency I saw from protestors in Sanford.⁷⁸ In retrospect, I saw a preview of the division our country is experiencing today. If we refuse to truly reckon with the racism and discrimination that continues to devastate our country, not only will more parents grieve for their children, but unscrupulous leaders will be able to sow division and hate.

1. Impact of the Devastating Killing of Trayvon Martin on Sanford, Florida and the Country

On February 26, 2012, seventeen-year-old high school student Trayvon Martin was shot and killed while walking down the street after buying Skittles and an iced tea from the local 7-Eleven convenience store. Trayvon Martin was killed by George Zimmerman, a neighborhood watch volunteer who said that Trayvon, an African-American high school student returning to the home of a family friend from a convenient store, looked “real suspicious.” Mr. Zimmerman claimed that he killed Trayvon in self-defense, but evidence later demonstrated that Mr. Zimmerman called 911 upon seeing Trayvon in the neighborhood to report his suspicions, and then ignored the 911 operator’s admonition to leave Trayvon alone and stay in his car. Mr. Zimmerman chased and shot Trayvon, killing the young man. When police arrived after the shooting, they took Mr. Zimmerman into custody, but released him after questioning him. The Sanford Police Department did not charge Mr. Zimmerman in Trayvon Martin’s death.⁷⁹ Trayvon Martin was African American, and Zimmerman was an adult male of Caucasian and Peruvian descent.

The devastating killing surfaced longstanding racial tensions in Sanford and across the country.⁸⁰ Trayvon Martin’s death spurred protests in other cities across the country as well,⁸¹ launched the Black Lives Matter

78. See Brian Hamacher & Lisa Orkin Emmanuel, *Trayvon Martin’s Parents Talk At Congressional Hearing on Racial Profiling*, NBC MIAMI (Mar. 27, 2012, 10:44 PM EDT), <https://www.nbcmiami.com/news/Trayvon-Martins-Mom-to-Participate-in-Racial-Profiling-Forum-in-DC-144354145> [<https://perma.cc/DM6R-9Z23>].

79. See Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” from Emmett Till to Trayvon Martin*, 102 IOWA L. REV. 1113, 1115 (2017).

80. Joseph J. Kammerman, *One Hundred Years of Local Conflict and One National Tragedy: Trayvon Martin & Dispute Resolution in Sanford, Florida*, AM. B. ASS’N 1, 12 (2015).

81. See *Trayvon Martin Rallies Spread Across the United States – In Pictures*, GUARDIAN (Mar. 27, 2012), <https://www.theguardian.com/world/gallery/20>

movement, and inspired people across the country to begin to seriously engage with each other and their elected officials.⁸² Demanding answers about racial profiling, the criminal justice system, and accountability, people sought change while grieving the loss of a young man who, as President Obama explained, could have been his son, and the son of so many Americans of color.⁸³

2. Initial Engagement with the Sanford Community—CRS Regional Office

CRS' regional office was contacted by Andrew Thomas—a senior Sanford government official—and local civil rights leaders following the killing of Trayvon.⁸⁴ The Regional Director of CRS, Thomas Battles, was originally from Florida,⁸⁵ and had extensive personal and professional

12/mar/27/trayvon-martin-marches-across-us-pictures [https://perma.cc/D82W-43GR].

82. *See id.*; David Morgan, *Trayvon Martin's Father: The Problem of Social Injustice "Needs to Be Rectified"*, CBS NEWS (July 30, 2018, 11:15 AM), <https://www.cbsnews.com/news/trayvon-martins-father-tracy-martin-rest-in-power-the-trayvon-martin-story-documentary-series> [https://perma.cc/K6FE-WTRB] (“Trayvon Martin’s death gave birth to Black Lives Matter; the verdict was when the hashtag was created, she said. So, we chronicled the birth of Black Lives Matter all the way to the ‘whitelash,’ the opposite-side reaction to that. We go from Trayvon to Trump, and we see the connective tissue to the last six years and how the political landscape has been thrown into mass chaos today.”).
83. *See* President Barak Obama, Remarks by the President on Trayvon Martin (July 19, 2013).
84. *See* Arelis R. Hernandez, *DOJ 'Peacemakers' Helped Sanford Stay Cool Amid Rising Tensions*, ORLANDO SENTINEL (Apr. 15, 2012), http://articles.orlando-sentinel.com/2012-04-15/news/os-trayvon-martin-george-zimmerman-justice-departm-20120415_1_federal-workers-racial-tensions-peacekeepers [https://perma.cc/T6LF-AA46] (quoting the President of the Seminole County NAACP chapter regarding CRS mediators, as saying “People are more relaxed and satisfied when they know they have someone from the outside, like DOJ who have no ties to the community to try and relax the emotions.”). I have had the opportunity to work with Andrew Thomas on unrelated matters, and he brings extensive mediation experience and dispute resolution expertise to the City of Sanford.
85. *See* Burch, *supra* note 77.

contacts across the state.⁸⁶ With over thirty years of experience at CRS, Battles' expertise in addressing tension and supporting communities with the federal agency was valued by local government leaders and activists. In initially reaching out to Battles and CRS, Andrew Thomas explained, "[t]he situation was escalating. We needed somebody from the outside that could command respect, pull the community together and generate dialogue . . . [h]e and his team were very effective."⁸⁷

By opening lines of communication with the Sanford Sheriff's office, police department, city manager, mayor, local community advocates, and national community advocates, Battles and his team of experienced conciliators were able to quickly understand some of the immediate interests and needs of all the parties. Importantly, city leaders recognized that the pain the community was experiencing needed to be expressed, heard, and addressed in a meaningful way.

3. Understanding the Importance of Protest and Keeping People Safe

Sanford city government officials did not attempt to stop the protests, but rather sought help from CRS to make them safe. In the days leading to the larger protests,⁸⁸ CRS conciliators met daily with stakeholders from all of these groups, providing "self-marshalling" training for community leaders, including religious leaders, to keep the peace at protests. Battles led the team of conciliators, including Mildred Duprey de Robles, an extraordinarily gifted conciliator who has decades of experience in mediation. CRS also worked with state and local law enforcement to ensure that the Dream Defenders, sixty students from across Florida who marched for three days from Daytona Beach to Sanford in honor of

86. See *id.*; Evan McMorris-Santoro, *Sanford, Florida, Mayor Urges Ferguson to Welcome Obama Administration's Help*, BUZZFEED (Aug. 20, 2014, 12:40 PM ET), <https://www.buzzfeednews.com/article/evanmcsan/doj-in-ferguson> [<https://perma.cc/6E2C-TF25>] (quoting Jeff Triplet, the mayor of Sanford, Florida, as saying, "They had the rolodex of the demonstrators. They know Al Sharpton and his people. They know [Jesse] Jackson and his people. They know the people who put together how they're coming in, when they're coming in, where they're coming in . . . They had the contacts that we would never have.").

87. Burch, *supra* note 77.

88. See *Trayvon Martin: NAACP Rally Draws Thousands to Florida*, NEWSONE (Apr. 1, 2012), <https://newsone.com/1968665/trayvon-martin-naacp-rally-draws-thousands-to-florida/> [<https://perma.cc/DAG6-BYQF>].

Trayvon Martin and in protest against racial profiling and Stand Your Ground laws,⁸⁹ were safe during their historic march to Sanford. At one point, protestors blocked the main entrance to the police department, sitting on the stairs leading to the front door. After five hours, CRS helped facilitate a compromise whereby the protestors left peacefully after securing an agreement to hold a community forum to address the needs of people of color and all people vulnerable to attack in Sanford.⁹⁰ A previously scheduled routine city commission meeting happened to coincide with the protests. Rather than cancel the meeting or focus on the original agenda and ignore community tensions, CRS worked with the city to facilitate discussion and use the meeting to address the shooting and some of the other issues the tragedy raised in the community. There were no arrests during the over eighty protests following Trayvon's killing.⁹¹ Sanford's Mayor Jeff Triplett noted CRS' "experience on how to handle large crowds and engage with protest movements" was important to the city leaders, especially with respect to de-escalation. The Mayor further explained,

The best thing that you can do is use your mind and your mouth versus a nightstick and a gun. You know, 'violence breeds violence' type thing. These guys [Justice Department advisers] have been there, done it, they're very astute . . . We on the city side, we fix roads. We make sure your lights turn off and on. We make sure

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89. See Vincent J. Intondi, *The Dream Defenders: Learning from History*, HUFFINGTON POST (Nov. 27, 2013, 2:46 PM ET), https://www.huffingtonpost.com/vincent-intondi/the-dream-defenders_b_3996379.html [https://perma.cc/A6ZR-WJWQ].
90. See Kammerman, *supra* note 80, at 14; *Regional and Field Offices, Southeastern Region Case Highlight*, U.S. DEP'T JUST., <https://www.justice.gov/crs/about-crs/regional-and-field-offices-archive> [https://perma.cc/L9C9-77AL]; Rene Stutzman & Bianca Prieto, *Trayvon Martin: Protestors Leave Sanford Police Department*, ORLANDO SENTINEL (Apr. 9, 2012, 6:51 PM EST) http://articles.orlandosentinel.com/2012-04-09/news/os-trayvon-martin-civil-disobedience-20120409_1_special-prosecutor-angela-corey-protest-leaders-community-forum [https://perma.cc/9LUK-YFNN] ("[P]rotesters . . . blocked the front doors of the Sanford Police Department for nearly five hours but walked away peacefully after convincing city officials to hold a community forum").
91. See Cmty. Relations Serv., *God Squad: Keeping the Peace in Sanford, Florida*, YOUTUBE (Nov. 23, 2016), [hereinafter *God Squad*], <https://www.youtube.com/watch?v=ezMxLN6nzq8&feature=youtu.be> [https://perma.cc/3JDX-5EE7].

your toilets flush. We cut ribbons for new businesses. So you've got to rely on those that know.⁹²

4. Establishing Sustainable Mechanisms for Meaningful Community and Law Enforcement Engagement

After the initial protests and call for action subsided with the announcement that George Zimmerman would be prosecuted, the city continued to engage with the community and grapple with the underlying concerns that came to the surface with Trayvon Martin's death. From the first dialogues and community meetings that CRS helped facilitate, Sanford leaders quickly understood that the killing of Trayvon Martin was surfacing longstanding tension between the African-American community and Sanford.⁹³ City officials started to grapple with the painful history of the loss of Goldsboro, an African-American town that was "absorbed" into Sanford in 1911.⁹⁴ African Americans lost a sense of community and independence with the loss of Goldsboro, and many reported that in the predominantly African-American neighborhoods within Sanford, residents received lower quality public services from the city than people living in

92. McMorris-Santoro, *supra* note 86.

93. *See Mission, Vision & Core Values, Action Plan for Reuniting Sanford*, SANFORD FLA. <http://www.sanfordfl.gov/residents/community-relations> [<https://perma.cc/DVW6-C3N>] ("The reality of the situation is, Trayvon's death and the perceived delay in arresting George Zimmerman caused the black community to reflect on their negative past experiences with law enforcement and the criminal justice system. Sadly, as more time elapsed between the incident and an arrest of the defendant, the more the community recounted the history of social injustices, inequalities, prejudices and racism that has existed Trayvon Martin's case was seen by many as the tipping point for the community and symbolized to many a gross injustice; causing them to say, enough is enough; it's time for change.").

94. *See Goldsboro Museum, About Us*, GOLDSBORO MUSEUM, <http://goldsboromuseum.com/about-us/> [<https://perma.cc/QRT2-VPK5>] ("In 1911 Goldsboro lost its charter, when Forrest Lake, a powerful Sanford banker and state lawmaker, devised a plan to dissolve the charters of both Sanford and Goldsboro, to create a new charter that would bankrupt Goldsboro and make it a community within Sanford. After the demise of Goldsboro, the town began a downward spiral with abandoned buildings, rising unemployment, and the loss of identity.").

predominantly white neighborhoods.⁹⁵ African Americans in Sanford were also concerned with the number of African-American young men murdered in the area in recent years. The City acknowledged that following previous killings, they did not involve the community in the healing process.⁹⁶ And many in the African-American community felt that basic city services and infrastructure were lacking in the areas where they lived when compared with predominantly white neighborhoods of Sanford.⁹⁷ Sanford's government leaders noted,

[b]ecause of the deeply rooted views of racism and social injustice held by many in the black community, any effort to move the City forward and reunite the community would require a holistic multi-faceted systemic approach. The approach ultimately would have to be broad in scope and address a number of the societal problems that over the years have been identified as contributors to poverty, inequality, racism and social unrest.⁹⁸

To support this longer-term approach, upon their request, CRS worked with the City, local community advocates, religious leaders, and law

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95. See Francis Oliver, *Commentary for the February 9, 2012 36th Edition of Central Florida Matters*, CARROLL MCKENNEY FOUND. FOR PUBLIC MEDIA https://cmfmedia.org/web/wp-content/uploads/2012/02/OliverF_GBoro_com.pdf [<https://perma.cc/2E35-TQC9>] (describing “the sadness that came with having their city and their identity taken away” by the Mayor of Sanford in 1911, absorbing the second all Black City in Florida, incorporated after Eatonville, Florida); see also Kammerman, *supra* note 80, at 10 (“The African American community’s feelings of ‘mistrust and tension,’ first instilled in 1911, permeated the conflict with the City and its Police Department. These sentiments deepened and hardened during the century leading up to Trayvon Martin’s death.”); Cara Buckley, *Police Chief in Florida Tries to Ease Old Tensions*, N.Y. TIMES (June 16, 2013), <http://www.nytimes.com/2013/06/17/us/in-city-of-zimmerman-trialpolice-chief-navigates-race-relations.html> [<https://perma.cc/N6JL-W7F5>].
96. See Joshua Kirven & George Jacinto, *Community Healing and Reconciliation*, 2017 ENCYCLOPEDIA SOC. WORK 1, 19 (2017).
97. See Andrew Thomas, *Nine Point Plan: Action Plan for Reuniting the Community, One City – Many Communities, Two Year Progress Report, April 2012-April 2014*, CITY OF SANFORD, FLA. 2 (Jan. 2015) [hereinafter *Nine Point Plan Progress Report*], <http://www.sanfordfl.gov/home/showdocument?id=11455> [<https://perma.cc/UR7F-EHTY>].
98. *Mission, Vision & Core Values, Action Plan for Reuniting*, *supra* note 93.

enforcement officials to produce a nine-point Action Plan for reuniting the community.⁹⁹

The Action Plan provided concrete steps to address a number of issues that contributed to poverty, inequality, racism, and social unrest identified through community meetings and dialogues.¹⁰⁰ These issues included a lack of job training and employment opportunities, scarcity of affordable housing, limited educational opportunities, and inadequate healthcare services. The Action Plan also included requests to the Department of Justice to conduct a pattern and practice investigation of the Sanford Police Department.¹⁰¹ In addition, the Action Plan provided for the creation of an Office of Community Relations, with the Director of the Office responsible for following up on the action plan.¹⁰² Follow-up included identifying action steps to address the issues identified by the community. The Action Plan also established a Police-Community Relations Blue-Ribbon Panel to review, assess, and suggest strategies to strengthen police community relations.¹⁰³ The Plan called for investing in youth training and employment opportunities, as well as the establishment of an Inter-Racial Interfaith Alliance to focus on strengthening race relationships in the community.¹⁰⁴ Finally, the Plan requested ongoing implementation support from CRS.¹⁰⁵

CRS continued to support Sanford city officials and community groups in the implementation of its plan. With respect to the Inter-Racial Interfaith Alliance, CRS helped local leaders create Sanford Pastors Connecting, a model that others are trying to replicate across the country.¹⁰⁶ Battles and his team from CRS engaged with over seventy

99. See Burch, *supra* note 77 (“He also worked with the city to create its nine-point plan that aims to improve race and police relations.”).

100. See *Nine Point Plan, Action Plan*, SANFORD FLA., at points 2–7, 9, <https://www.sanfordfl.gov/residents/community-relations/nine-point-plan> [<https://perma.cc/6XED-6GAB>].

101. *Id.* at 4.

102. *Id.* at 6.

103. *Id.*

104. *Id.* at 8.

105. *Id.* at 12-13.

106. After the trial, members of Sanford Pastors Connecting (the inter-faith and inter-racial alliance that they created with the support of CRS) went to other cities, including Detroit, to talk about how they created and continued to sustain Sanford Pastors Connecting to help bring peace and reconciliation to

Sanford area ministers of different races and different faiths to talk about how they could work together to help the city heal.¹⁰⁷ Building relationships that worked across different faiths, neighborhoods, and racial backgrounds took some time, but CRS' quiet persistence succeeded. What had eluded local efforts to bring faith leaders together in this way for over twenty-five years took shape with support from CRS.¹⁰⁸

In addition to supporting some of the ongoing larger community dialogues intended to address longstanding racial tension in the city, the pastors took several steps to prepare for the trial and the verdict in the state case against George Zimmerman. CRS helped set up regular meetings to discuss what would happen in the courtroom, allowing for dialogue between law enforcement and local clergy. CRS also worked with local court officials to arrange for reserved seating in the courtroom for the religious leaders so they could see the proceedings for themselves and share the information with their congregations and the community. This method of addressing rumor control also made sure that religious leaders had access to the information they needed as community leaders to provide support after the trial ended.¹⁰⁹ The announcement of the verdict finding Mr. Zimmerman not guilty was followed by devastation, grief, anger, and a re-commitment by the community to address racism and bigotry, but no violence.

Nearly three years after the shooting, the City of Sanford identified many areas of progress, highlighting its creation of a Community Relations office within its government and the establishment of several mechanisms

the community. See Angela G. King, *Can Sanford Pastors' Success Work in Other Cities?*, CHRISTIANITY TODAY (Aug. 22, 2013), <https://www.christianitytoday.com/ct/2013/october/sanford-florida-pastors-reconciliation-trayvon-zimmerman.html> [<https://perma.cc/B73T-CYV2>].

107. See Burch, *supra* note 77 (“Among his first tasks: [CRS mediator Thomas] Battles rallied about seventy or eighty Sanford-area ministers—of varying races and faiths—and talked to the group about the role they should play in bringing peace back to the city. ‘The idea was to bring different kinds of people into the same room and get them to talk,’ said Rev.”).
108. See *God Squad*, *supra* note 91, at 2:06 (Sheriff explaining that CRS was able to help unify faith leaders); *Id.* at 3:28 (Pastor explaining efforts for over twenty-five years to bring pastors together and recognizing CRS as the catalyst).
109. See *Justice Department Releases Videos Highlighting Work of Community Relations Service*, U.S. DEP’T JUST. (Dec. 6, 2016), <https://www.justice.gov/opa/pr/justice-department-releases-videos-highlighting-work-community-relations-service> [<https://perma.cc/W6H2-RR6Z>].

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to address the racism and bigotry that marred so much of Sanford's past and present.¹¹⁰ Yet importantly, Sanford also recognized that its work was ongoing, and celebrated many of these accomplishments precisely because they institutionalized a mechanism to continue reckoning with race and justice. Sanford city government officials noted, "[O]ne glaring reality for the City is race relations continues to be a pressing concern in our community and many communities across this country. City Officials fully recognize[] that improving race relations is still a work in progress."¹¹¹ The City of Sanford continues to move forward with a focus and resolve on reuniting the community through reconciling difference, embracing race relations, and a vision for Sanford that is inclusive of all its communities.

III. THE TRUMP ADMINISTRATION'S ATTACK ON CRS: ATTEMPTING TO ELIMINATE THE AGENCY CREATED TO ADDRESS THE RACIAL DIVIDES PRESIDENT TRUMP IS STOKING

Sanford and Phoenix are just two examples of cities where CRS has helped keep the peace and assisted a community in addressing underlying racial tensions and a history of discrimination. Today, as racial tension across the country continues to increase, CRS' role in supporting communities in conflict is more important than ever. And yet, despite CRS' track record of success and the continued need for the agency, President Trump has proposed cutting CRS' funding completely and moving its services to the Civil Rights Division of DOJ. This move violates the terms and the spirit of Title X of the Civil Rights Act of 1964.

A. Stripping CRS of its Independence: Trump's Proposal Would Move CRS into a Component of Litigators who Investigate and Prosecute Cases in Violation of Title X of the Civil Rights Act of 1964

The President's Budget states that it would transfer CRS' activities to the Civil Rights Division.¹¹² Not only does this appear to violate the express terms of Title X of the Civil Rights Act of 1964 by inserting CRS into a division that litigates and investigates, it also deprives CRS of one of its fundamental advantages when seeking to serve communities in crisis. Indeed, the proposal violates every one of the key statutory provisions that

110. *Nine Point Plan Progress Report*, *supra* note 97, at 3, 5-12.

111. *Id.* at 3.

112. President's Budget, *supra* note 13.

established CRS.¹¹³ Namely, CRS was established to be an independent component headed by a Senate-confirmed appointee who would serve a fixed term independent of who is in office. The proposal would place CRS under the auspices of the Civil Rights Division, a component headed by a politically appointed Assistant Attorney General whose employment is tied to the President and Attorney General in office at the time.

Furthermore, the Civil Rights Act mandated the independence of CRS from the law enforcement and prosecutorial arms of the federal government, expressly prohibiting CRS from participating in investigative or prosecutorial functions.¹¹⁴ This statutory protection was critical to gaining entry into communities in particularly tense conflicts. If the Trump proposal were approved, it would put CRS squarely inside of a component with a mandate to investigate and prosecute civil rights violations. As a result, the proposal undermines the strict confidentiality provisions of the Civil Rights Act that prohibit CRS mediators from sharing information provided in confidence, including, and perhaps especially, with federal law enforcement components. Additionally, the Trump proposal encourages violations of the provision of the Act that imposes a fine and imprisonment for up to one year for a violation of the confidentiality requirement by placing CRS inside of a component where information gathering from the same communities may lead to future investigations and litigation.¹¹⁵ I can confirm that investigative and litigating components of the Department of Justice have asked for information that CRS could not provide because it was shared in confidence. Although they respected our refusal as a separate component to provide the information in those circumstances due to our statutory mandate, the kind of information CRS has access to will likely be of interest to these components in the future.

For mayors, chiefs, sheriffs, school officials, and community leaders, the fact that CRS could not be used to support a prosecution or an investigation makes it possible for leaders to ask for the help that they needed to prevent violence and keep the peace, rather than worry it could come back to hurt them in a lawsuit. In fact, CRS' involvement free from the threat of investigation or prosecution decreases the potential for litigation, saving taxpayer dollars while simultaneously promoting public safety. Republican Senator Grassley once reflected on the importance of CRS as an alternative to litigation, lauding the money and time saved when

113. *See supra* Section I.C.

114. 42 U.S.C. § 2000g-2(b) (1964).

115. 42 U.S.C. § 2000g-2(b) (1964).

CRS offered mediation services:¹¹⁶ “The federal government is in an ideal position to serve as a beacon for the rest of our society. Its agencies should be far more active in using consensual dispute resolution.”¹¹⁷ A proposed move of CRS’ services to the Civil Rights Division undermines the effectiveness of the agency in contradiction of the very statute that created the agency.

As noted in Part I, CRS conciliators and mediators are not armed with weapons or with the ability to investigate or prosecute. Rather, as the agency reported to Congress in 1964, “[t]o do their job, staff members would be expected to rely almost exclusively on persuasion—more specifically, those techniques of persuasion consistent with the democratic process—backed by a professional understanding of the community organization.”¹¹⁸ Litigation and law enforcement, while important, are insufficient to fully realize civil rights protections. Power to make the kind of systemic change necessary to reach our country’s promises of equal justice and equal opportunity for all rests in our communities. The Trump budget proposal would effectively strip CRS of the ability to utilize these tools. It also represents an attack on the spirit of Title X—the understanding that our communities have the wisdom and power to implement sustainable changes that advance civil rights—thereby undermining a provision of the Civil Rights Act that recognized the fundamental truth that our Constitution’s guarantee of equality before the law had never been fully realized.

B. Trump’s Budget Would Eliminate Regional Offices of DOJ Critical to Serving the Needs of People Outside of Washington

CRS needs a local presence, not more people sitting in Washington, D.C. The Trump Administration’s proposal, while not directly closing regional and field offices, would eliminate all funding for the agency and provides for no CRS positions after the proposed transfer to the Civil

116. In cases where the Department of Justice’s Community Relations Service offered formal mediation services as a means of resolving civil rights disputes referred by federal district court judges, CRS estimated that mediation saved \$340,000 per case in its evaluation of the court referral pilot project. See Senator Charles E. Grassley & Charles Pou, Jr., *Congress, the Executive Branch and the Dispute Resolution Process*, 1992 J. DISP. RESOL. 1, 9 (1992).

117. *Id.* at 21.

118. Interim Report to Congress, *supra* note 25, at 2.

Rights Division.¹¹⁹ Professionals in CRS regional and field offices invest time and resources in their local communities, earning the trust necessary to serve as neutral mediators to keep the peace and to keep people safe. These regional and field offices understand the needs of people in their communities. When community leaders learn a hate group is coming to town, they don't call an office in D.C. in the hopes that someone there will understand the unique needs of their community. Instead, they call the CRS regional director or trained conciliator in the region to help train religious leaders and other community leaders as self-marshals that keep the peace. CRS regional representatives also help facilitate meetings between local advocates and law enforcement in advance of a march or rally.

When unrest follows a tragedy like an officer-involved shooting, a hate crime, or other forms of violence, local government, law enforcement, and community leaders need people who can get to the area quickly with an understanding of underlying tensions. When the television cameras leave, community leaders look to CRS to help work with local government and law enforcement leaders in order to begin conversations, brainstorm solutions, and create action agendas to address some of the longstanding issues at the root of the problem. In a country where racism and other forms of discrimination continue to permeate social structures, CRS is a way to promote more civic engagement at the local level. In short, regional professionals from CRS assist in creating long-term and sustainable social change. Now is not the time to take these resources from communities in crisis.

The real-world impact of removing these offices includes the suppression of under-represented voices. The greatest opportunity for earning trust in communities comes from developing and fostering the relationships through repeated and regular interactions. Removing local contacts and expertise eliminates critical links for vulnerable communities to access federal and local government. At its most effective, CRS uses its

119. Through a Freedom of Information Act (FOIA) request, I obtained documents from the Department of Justice about the President's Budget, and these documents included an email from the Acting Director of CRS to all staff titled "Talking Points on the President's FY 19 Budget Request," in which she notes, inter alia, "No CRS positions would be transferred to the Civil Rights Division If Congress adopts the budget proposal all the CRS offices would be closed by September 30, 2019". Email from Gerri Ratliff, Acting Dir., Community Relations Service, to CRS All Staff Security (Feb. 14, 2018) (on file with author).

ability to get state and local law enforcement and government leaders to the table with local community members, including leaders from marginalized communities. Regional offices have earned the trust necessary to get people to the table and to invest in longer-term solutions. In the aftermath of the horrific hate crime that took the life of James Byrd, Jr., in Jasper, Texas at the hands of vicious white supremacists, CRS staff from Texas offices led many of the initial conversations in the community. One reporter reflected on the way that community conversations led to a deeper understanding of systemic inequities: "What started as community conversations about an unfathomable murder grew into an unsparing examination of race relations and inequities in Jasper."¹²⁰

C. The Attack on CRS is an Attack on Democracy

Beyond the obvious attack on civil rights inherent in a proposal to eliminate an agency created to meaningfully address the very same racial divides that the President is stoking, Trump's proposal is also a more subtle attack on democracy. CRS' mission and mandate are based on an understanding that the true power and wisdom to address discrimination and to create long-lasting peace rests in the community. At its most effective, CRS does not prevent protests or dissent; rather, it reduces the potential for violence and helps ensure that communities benefit from the input of all of their members, including those who have historically been ignored and silenced.

Congress highlighted the importance of listening to the voices of people in the community, especially marginalized people, by creating a component of DOJ whose power and authority came from the people it served. Title X recognized the inevitable reckoning our country must have with respect to racism and other forms of discrimination. Additionally, Title X acknowledged that this reckoning would not be limited to the national level, but would necessarily reach local communities across the country. The failure to utilize the democratic process of engaging people across the country to address tension associated with discrimination jeopardizes the very idea of America. As Professor Ibram X. Kendi recently reflected, "[i]f allowed to proceed far enough, racism will ultimately destroy the American idea. And it will lead to contentiousness and

120. Audra D.S. Burch, *In Texas, a Decades-Old Hate Crime, Forgiven but Never Forgotten*, N.Y. TIMES (July 9, 2018), <https://www.nytimes.com/2018/07/09/us/james-byrd-jasper-texas-killing.html> [<https://perma.cc/8USB-2DXS>].

resentment and, yes, violence that will make today's polarization seem quaint by comparison."¹²¹

The democratic principles fundamental to the creation of the United States are particularly antithetical to unilateral action by the Executive Branch that would undermine well-established federal law. The stakes seem particularly high when the Executive in question has, attempted to quash the voice of the people in several other ways, such as attacks on free press and the portrayal of people who dare to dissent as traitors. CRS was established to get people from across different communities to the table "to reason together."¹²² The attempt to eliminate CRS would remove critical opportunities for people outside of government to help shape the policies and practices of local governments that address discrimination and have such a significant impact on their lives. Professor Kendi noted,

[c]ivic engagement and collaboration are the lifeblood of any republic. Racist policies inhibit dialogue and undermine efforts at bipartisanship. They pit citizens against one another. Rather than locating the real sources of economic hardship and inequality, for instance, racist politicians encourage Americans to blame their struggles on neighbors who don't look or act like them, who are supposedly stealing their jobs or subsisting on their hard-earned money.¹²³

CRS-supported efforts to bring everyone together to find common ground while recognizing the value inherent in our differences can strengthen our democracy at a time when divisions feel deeper and more intractable than ever.

121. Ibram X. Kendi, *A House Still Divided*, ATLANTIC (Oct. 2018), <https://www.theatlantic.com/magazine/archive/2018/10/a-house-still-divided/568348/> [<https://perma.cc/H3LM-UQXS>].

122. LEVINE, *supra* note 19, at 11 (quoting President John F. Kennedy, explaining that "dialogue and discussion are always better than violence—and this agency [the Community Relations Service], by enabling all concerned to sit down and reason together, can play a major role in achieving peaceful progress in civil rights.").

123. *Id.*

CONCLUSION: CRS—SUPPORTING COMMUNITIES TRANSFORMING CONFLICT TODAY
INTO JUSTICE TOMORROW

With white supremacists marching proudly through our streets, spreading their message through mainstream media, and organizing online, and a President who adopts their theories and refuses to condemn their actions, many people are making comparisons to the turmoil and pain that preceded the Civil Rights Act of 1964.¹²⁴ While I join these and other commentators in their recognition that this comparison is by no means intended to minimize the complex factors that may distinguish these moments in history, I do think there is value in looking to the past to understand a path forward today.

One of the lessons of the 1960s is that true change in racial justice came from grassroots advocacy—local community leaders recognizing what was needed most and taking action to address it.¹²⁵ CRS was born out of that recognition. As former Director of CRS Dr. Ozell Sutton explained, “Never before in the history of the country had a federal agency been charged with such an awesome responsibility. We were the sole branch of the United States government that worked exclusively on a grassroots level to pre-empt violence and other forms of conflict.”¹²⁶

This recognition of the power of people in communities to effect real and lasting change is based on the fundamental truth that the wisdom to address civil rights and any other major issue confronting a community lies in the community. As Professor Lani Guinier notes, lawyers and mediators who recognize their role as bridge builders who maintain the centrality of their clients in their work, are going to help create longer

124. See, e.g., Clyde Haberman, *George Wallace Tapped Into Racial Fear: Decades Later, Its Force Remains Potent*, N.Y. TIMES (Apr. 1, 2018), <https://www.nytimes.com/2018/04/01/us/george-wallace-tapped-into-racial-fear-decades-later-its-force-remains-potent.html> [https://perma.cc/9HM6-X75K] (describing the similarities between President Trump and Governor George Wallace, including playing on racial fear and sowing division).

125. Professor Michelle Alexander described the centrality of grassroots organizing and mobilizing public opinion to making progress on civil rights, including the work leading to the Civil Rights Act of 1964. See ALEXANDER, *supra* note 20, at 225 (“Throughout most of our nation’s history—from the days of the abolitionist movement through the Civil Rights Movement—racial justice advocacy has generally revolved around grassroots organizing and the strategic mobilization of public opinion.”).

126. CARTER, *supra* note 59 at 127.

standing change that is more sustainable.¹²⁷ Professor Guinier reflects on the danger of putting legal arguments ahead of community needs. “The danger of our expert-driven strategy is both the obvious one of losing in court, as we eventually did, and more important, of demobilizing our community base, which put great faith in our efforts and did not organize in other ways.”¹²⁸

What we have also learned from the 1960s is that responding to the immediate crisis or legal needs of individual clients as articulated by people in the community is necessary, but not sufficient, to make a change. Our continuing failure to reckon with the racism, bigotry, and legacy of white supremacy, that was with us at our country’s founding and continues to persist today, will prevent us from fully moving forward. Bryan Stevenson,¹²⁹ a leading voice in American society about injustice in our criminal justice system, notes that countries like Germany have dozens of public markers and memorials that make it almost impossible to forget the victims of the Holocaust.¹³⁰ Other countries like South Africa have gone through a truth and reconciliation process.¹³¹ We, as a country, have not confronted our history, and therefore have failed to confront and understand the same white supremacy that led to lynching, Jim Crow, segregation, and present-day systemic discrimination. CRS may be the federal agency best equipped to help communities engage with this history and its ongoing impact today. Its unique structure enables it to

127. *See generally*, LANI GUINIER, *LIFT EVERY VOICE: TURNING A CIVIL RIGHTS SETBACK INTO A NEW VISION OF SOCIAL JUSTICE* 220-247 (2003) (explaining that the best role for national organizations is often to “reinforce local energy and leadership,” and the importance of lawyers understanding their role in supporting the community’s recognition of its own power).

128. *Id.* at 237.

129. Bryan Stevenson is the founder and Executive Director of the Equal Justice Initiative, who has dedicated his career to serving the poor and incarcerated.

130. *See* Ben Sales, *What a New Memorial for Black Lynching Victims Learned from Holocaust Commemoration*, JEWISH TELEGRAPHIC AGENCY (Apr. 26, 2018), <https://www.jta.org/2018/04/26/news-opinion/new-memorial-black-lynching-victims-learned-holocaust-commemoration> [<https://perma.cc/RHL3-KL2B>].

131. Mary Kay Magistad, *South Africa’s Imperfect Progress, 20 Years After the Truth & Reconciliation Commission*, PUBLIC RADIO INT’L. (Apr. 6, 2017), <https://www.pri.org/stories/2017-04-06/south-africas-imperfect-progress-20-years-after-truth-reconciliation-commission> [<https://perma.cc/2B9W-MH9>].

simultaneously respect the need to empower local community leaders to drive change while also supporting dialogues nationwide to move beyond the current crisis and address the underlying harms that white supremacy and racism continues to inflict in communities across the country.

This is the time to invest in CRS to enable the federal government to support this crucial goal. Respecting the creative force of protest and moving to act on the underlying issues that often come to the fore at times of crisis is difficult, but CRS has the proven ability to accomplish this balancing act. In Sanford, despite the inability or unwillingness of the courts to bring justice to Trayvon Martin and his family, we saw local government, community, and law enforcement leaders willing to truly reckon with racism in a way that respected Trayvon Martin's memory as well as the memory of other victims of bigotry.

We need rigorous enforcement of civil rights laws, community engagement that drives litigation and settlements, and leaders who use their positions of power at the federal and local level to condemn racism, bigotry, and hatred in all its forms, while also endorsing policies to strengthen civil rights. But we also need to make sure that people in communities across the country who are living with discrimination every day have the ability to lead these discussions. When talking about a civil rights case that she lost in court, Guinier noted,

It was a mistake, I came to believe, to rely only on lawyers and politicians to frame the argument.... It was also a mistake because as lawyers, we focused on enforcing the law but then lost sight of the real problem: opening up the democratic process so that the citizens rather than the politicians could exercise real power.¹³²

CRS was designed to help facilitate the kinds of dialogues that lead to action, and that lead to citizens exercising real power. Private and academic entities can support this work, for even if fully funded, CRS would not be able to facilitate these dialogues and action plans in every community in need. Professor Nancy Rogers, former Acting Attorney General of Ohio, has described the potential for the development of state and local offices to supplement the work of CRS,¹³³ and the Ohio State University Moritz College of Law's Divided Community Project has developed resources that help communities develop local capacity to

132. GUINIER, *supra* note 127, at 237.

133. *See* Rogers, *supra* note 18, at 173.

engage effectively with CRS and sustain the work after a crisis passes.¹³⁴ Because the demand for these services is so great, the Divided Community Project can also support local communities in developing mechanisms informed by CRS' work elsewhere. These and other partnerships can maximize the impact of CRS, and more importantly, the community members investing their time, energy, and wisdom into confronting racism and strengthening their communities.

In 1964, President Lyndon B. Johnson explained,

I believe that this Nation cannot endure torn by hatred, and bigotry, and racial strife. I believe that we are, at this very moment, at a crossroads in America. And I believe that the destiny of our children and our grandchildren await its decision. That decision will not be made by a powerful, strong Federal Government here in Washington. Of course, that Government can and will help. That

134. The Divided Community Project strengthens community efforts to transform division into action, and provides law enforcement, government, and other community leaders with tools and strategies that have proven effective in other cities to effectively prepare and respond to civil unrest. The project focuses on how communities can respond constructively to tension in communities in the aftermath of hate crimes and other events that harm entire communities. The Project also helps communities identify and meaningfully address the reasons underlying community division. Resources include: (1) Step by Step Toolkits on establishing committees including government and community leaders to respond to incidents, (2) Simulations for city managers, elected officials, community members, civil servants, and law enforcement officials that enable leaders to develop strategies for their own cities to prepare and respond to civil unrest, as well as (3) Reports with effective problem-solving strategies used by other communities addressing division in communities in the aftermath of devastating and divisive incidents. The Project is also launching a rapid response project that will offer communities rapid consultation on processes for addressing community conflict. Upon request, mediators and other experts with extensive experience in helping local leaders respond effectively to civil unrest and tension in communities across the country can help mediate conflicts between community and law enforcement, train local community members on effective strategies to keep protests safe and offer technical assistance to executives and community members seeking to build community advisory boards or other kinds of sustainable infrastructure for engagement. See *The Divided Community Project: News from the Project, Key Considerations, Planning in Advance, Social Media*, OHIO ST. U. MORITZ C. L., <https://moritzlaw.osu.edu/dividedcommunityproject> [<https://perma.cc/3UJ2-WRXM>].

Government can and will right injustices. That Government can fill empty plates and it can try to help nourish eager minds. But after all is said and done . . . it is with the people in the communities of this Nation that really the ultimate decision rests and where the ultimate responsibility lies. It rests in their hearts. It rests in their sense of decency and fair play. Above all, it rests in their commonsense. So it is to these people and their communities that you must direct the efforts of the Community Relations Service.¹³⁵

Today, we are again at a “crossroads in America” as an increase in reports of hate incidents and crimes reflect a time in which some feel newly emboldened to commit acts of hate, and the future of this country rests not in the hands of elites in Washington, but in the strong and capable hands of people in communities across the country. CRS is a rare federal agency that has demonstrated success in supporting local communities in this work. CRS can help make sure that people across the country who confront racism and bigotry daily have the opportunity to be heard and to take action. As we look beyond this Administration, CRS is well positioned to help repair the deepening rifts in communities across the country.¹³⁶ Although it will be essential for lawmakers and litigators to repair the country following the most recent assault on civil rights, litigation and law enforcement alone will not be sufficient.

The severed trust between people in different communities and between people and their government will not be easily remedied. But recalling the 100-degree day in Phoenix I described at the beginning of this Essay, if we are to have a shot at rebuilding trust and reconciliation, we need the support of an agency that recognizes that when confronting an armed neo-Nazi, the most powerful person is not an armed law enforcement officer nor a lawyer ready to sue. But it may be a young college student, armed with the knowledge that she has the power to fight white supremacy, demand justice, and effect change.

135. President Johnson Remarks, *supra* note 33.

136. See Joshua A. Geltzer, *How to Prepare for Ex-President Trump*, CNN (Aug. 30, 2018, 4:38 PM EST), <https://www.cnn.com/2018/08/30/opinions/how-to-prepare-for-ex-president-trump-opinion-geltzer/index.html> [<https://perma.cc/67JJ-HLLT>].