

NO SAFE HAVEN: ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATORS, PART II

HEARING BEFORE THE SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED ELEVENTH CONGRESS FIRST SESSION

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NO SAFE HAVEN: ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATORS, PART II

TUESDAY, OCTOBER 6, 2009

U.S. SENATE,
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Feingold, Franken, and Coburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. Good morning, everybody, and welcome to this hearing of the Subcommittee on Human Rights and the Law of the Senate Judiciary Committee. This hearing will come to order. Today, we are going to consider "No Safe Haven: Accountability for Human Rights Violators in the United States, Part II."

Two years ago, this Subcommittee held the first ever Congressional hearing on the enforcement of human rights laws in the United States. At that hearing, we learned that the Government was investigating over 1,000 suspected human rights violators from almost 90 countries who have found safe haven in our country. Today, we will examine what the Government has done since that hearing and what more we can do.

For decades, the United States has led the fight for human rights around the world. But when human rights violators are able to live freely in our country, America's credibility is threatened.

Throughout our history, America has provided sanctuary to victims of persecution. Sadly, some refugees arrive from distant shores to begin a new life, only to encounter those who tortured them or killed their loved ones.

Two years ago, this Subcommittee heard compelling testimony, which I still remember to this day, from Dr. Juan Romagoza. He endured a 22-day ordeal of torture at the hands of the National Guard in El Salvador. As you may remember, those of you who have followed it, he has a clinic here in town where he helps poor people. Dr. Romagoza sought asylum in our country and received it, but later learned that the two generals who were responsible for his torture had also fled to the United States. While he had his clinic helping poor people, his hands had been deformed and mangled by his torturers so that he could no longer be a surgeon.

Mean-while, these two generals responsible for his imprisonment were drinking Cuban coffee and buying lottery tickets in Miami.

The Human Rights Subcommittee has worked to ensure our Government has the authority and resources to bring perpetrators to justice and to vindicate the rights of people like Dr. Romagoza.

Since our hearing 2 years ago, this Subcommittee has produced landmark legislation to reform and modernize our human rights laws. And I want to thank my colleague Senator Coburn. We do not agree on a lot of things, but we sure agree on some of these things. And I think that——

Senator COBURN. We agree on a lot more than everybody thinks we do.

Chairman DURBIN. A lot more. It kind of surprises people. A real odd couple here.

The Genocide Accountability Act, the Child Soldiers Accountability Act, and the Trafficking in Persons Accountability Act, three bills which we co-authored, have all been signed into law. These laws give the Government the authority to prosecute perpetrators of genocide, child soldier recruitment, and human trafficking. This builds on the Anti-Atrocity Alien Deportation Act, important legislation authored by Judiciary Committee Chairman Pat Leahy in 2004 that allows the Government to deport perpetrators of torture and extrajudicial killing.

I worked with Senator Mikulski and Senator Shelby on the Appropriations Committee to secure funds for the FBI and the Justice Department to hire additional agents and attorneys to investigate and prosecute human rights abuses. The fiscal year ended last week, and I was disappointed to learn that the FBI has not yet hired any new agents to investigate human rights violations.

I want to commend Immigration and Customs Enforcement and the Justice Department for their success over the last 2 years in bringing human rights violators to justice.

Since our hearing, ICE has deported a number of human rights violators. In addition to these significant cases, I was especially pleased to learn that last Friday ICE filed charges against the two generals in Miami responsible for the torture of Dr. Romagoza. Dr. Coburn and I have been urging the Government to deport the generals since our hearing 2 years ago. I look forward to the day when they are no longer in the United States.

In May, the Government deported John Demjanjuk to Germany, where he will be tried for his involvement in the murder of more than 29,000 people at the Sobibor extermination camp in Nazi-occupied Poland. I want to commend the Justice Department for prevailing in a long and difficult legal struggle so that he will face the judgment that he truly deserves. This case sends a message that the United States is determined to bring human rights violators to justice, even if decades have passed since they committed their crimes.

In another important victory, last year the Justice Department obtained the first ever Federal conviction for a human rights offense. Chuckie Taylor, the son of former Liberian president Charles Taylor, was sentenced to 97 years in prison for committing torture in Liberia.

This was a groundbreaking case, but one case is not enough. We must ask ourselves why so many human rights abusers are still able to find safe haven in the United States of America.

Unfortunately, there are still legal loopholes that allow human rights violators to escape accountability. For example, under current law, perpetrators of crimes against humanity who find safe haven in our country cannot be prosecuted. So Marko Boskic, who participated in the Srebrenica massacre in Bosnia and was living in Massachusetts, was charged with visa fraud, rather than crimes against humanity. Earlier this year, I introduced the Crimes Against Humanity Act, which would make it a violation of U.S. law to commit a crime against humanity. I look forward to working with my colleagues to pass this bill.

Our Government should also use existing authority and resources more efficiently to increase the likelihood that human rights violators will be held accountable. Senator Coburn and I introduced the Human Rights Enforcement Act, which would combine the two offices in the Department of Justice with jurisdiction over human rights violations.

I was pleased to learn that the Justice Department is planning such a consolidation.

We have made great progress in the last 2 years, but there is a lot more to do. The United States is still that city on the hill. The world is watching us closely. When we bring human rights violators to justice, foreign governments are spurred into action, victims take heart, and future perpetrators may think twice.

I now want to recognize my friend and colleague on this Committee, Senator Coburn, for an opening statement. Then we will turn to our witnesses.

**STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM
THE STATE OF OKLAHOMA**

Senator COBURN. Well, thank you, Senator Durbin, and I thank the witnesses for being here. This is an issue of prime importance, and you can see, when Senator Durbin and I can work and accomplish through our colleagues in the Senate and the House, what has happened over the last 2 years.

I have a statement for the record that I would like for it to be accepted.

Also, in reviewing our testimony 2 years ago, one of the things that we did not see was what is the estimated number. I am not sure we got a handle on that, the number of people that are here that fall under this definition. And so I would like to hear about that. I am glad that we have both the FBI and the State Department here today because I think that gives us the complement that we need in addressing the problem.

The other thing I would note is I did not think anybody could be any worse than the Bush administration on timeliness. But 7 o'clock is when we got the last testimony last night, and that may not be the witnesses' problems, but it certainly is a problem for me if I am going to prepare for a hearing. With me being on five major committees, it is difficult. And I know that may be an OMB issue, but I would appreciate your taking it back. This hearing has been noticed for a while, and we should not have to get testimony at 7

o'clock last night when it violates our rules. And if I were Chairman, I would have canceled the hearing and we would have had the time to read more thoroughly the testimony.

Thank you.

[The prepared statement of Senator Coburn appears as a submission for the record.]

Chairman DURBIN. Thank you very much.

We are going to turn to our witnesses for opening statements. Each witness will have 5 minutes, and their complete written statements will be made part of the record. I would like to ask the witnesses now if they would please stand and take an oath.

Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BREUER. I do.

Mr. MORTON. I do.

Mr. DONAHUE. I do.

Mr. CUMMINGS. I do.

Chairman DURBIN. Let the record reflect that all the witnesses have answered in the affirmative.

Our first witness, Lanny Breuer, is Assistant Attorney General of the Justice Department's Criminal Division, where he oversees the two Justice Department offices responsible for prosecuting human rights violators. Previously, Mr. Breuer was a partner in the law firm of Covington & Burling and special counsel to President Clinton. He received a B.A. and J.D. from Columbia University.

Mr. Breuer, when we first met after your nomination, you told me prosecuting human rights violators was personal for you because your parents were Holocaust survivors. I understand that your mother, Lilo Breuer, is here with you today and that she is commemorating two special anniversaries. Today is her 89th birthday, and 70 years ago, she fled Nazi Europe after losing both of her parents in the Holocaust.

Mr. Breuer, would you please introduce your mother?

Mr. BREUER. Mr. Chairman, thank you. And here is my mother, Lilo Breuer. And you are right, Senator, this is actually her birthday today.

[Applause.]

Chairman DURBIN. Mrs. Breuer, what an honor it is to have you here today, and I am sure you are proud of your son.

Mr. BREUER. Thank you.

Chairman DURBIN. We are delighted that you are here.

I also want to recognize and thank the following Justice Department officials for their dedication to prosecuting human rights violators: Deputy Assistant Attorney General Jason Weinstein, Office of Special Investigations Director Eli Rosenbaum, and the Domestic Security Section Chief Teresa McHenry.

Mr. Breuer, thank you for joining us today, and the floor is yours.

STATEMENT OF LANNY A. BREUER, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. BREUER. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member Coburn, Senator Franken, I appreciate the opportunity to appear before you today to discuss the continuing efforts of the Department of Justice to pursue justice on behalf of the victims of human rights violations and war crimes.

Today I would like to update the Subcommittee on some of the Department's major human rights law enforcement activities and accomplishments since we last presented testimony before the Subcommittee and on our plans to strengthen further the Department's already extremely robust enforcement program.

As you know, we pursue our human rights on multiple fronts. The first of these is located at our borders where the U.S. Government attempts to prevent human rights violators from ever entering the United States. Even after perpetrators have gained entry into the United States, however, we have a wide range of tools at our disposal to bring them to justice, including criminal prosecution for substantive human rights violations, criminal prosecution for other offenses, immigration litigation including denaturalization and removal, and cooperation with our foreign partners to ensure that justice can be done when a suspect has been extradited or removed.

We have had successes along all of these fronts, and I would like to highlight just a few for you.

Last year, we secured the first ever conviction under the U.S. torture statute in the case of Roy Belfast, also known as "Chuckie Taylor," son of former Liberian dictator Charles Taylor. Belfast was sentenced to 97 years in prison.

In May of this year, the Department, along with our investigative partners, obtained the conviction of former army soldier Steven D. Green on 16 counts, including premeditated murder and aggravated sexual abuse arising out of the rape of a 14-year-old Iraqi girl and the murder of the girl and the murder of her entire family in Iraq. Green was sentenced to five concurrent terms of life imprisonment.

And, finally, on May 11th of this year, John Demjanjuk was removed to Germany by ICE agents. Immediately upon arrival in Germany, he was arrested and charged as an accessory to the murders of more than 29,000 Jews in the Sobibor extermination center in Nazi-occupied Poland.

These and all of our successes would not be possible without close coordination. The Department works closely with our friends and colleagues at ICE and the FBI and the State Department and our valued partners in nongovernmental organizations to ensure that we use all available tools to the U.S. Government. Moreover, we are actively engaged with our foreign law enforcement partners to ensure that the U.S. and the global community are adequately equipped to pursue violators through extradition, mutual legal assistance requests, international training assistance, and capacity building.

Although the Department is proud of all our efforts to prosecute human rights violators and build global capacity to address these atrocities, we can and will do more to pursue justice and achieve deterrence in these cases. We have reviewed the Human Rights Enforcement Act of 2009, which, Mr. Chairman, you and Senator Coburn have introduced, and which would combine the two offices

in the Criminal Division with jurisdiction over human rights violations to create a new consolidated and streamlined Human Rights Enforcement Section.

I myself, as I promised I would, have recently completed a comprehensive review of the Criminal Division's efforts in human rights enforcement. While no structural reform can take place without the approval of the Office of Management and Budget and notification to the House and Senate Appropriations Committees, based on my review I have recommended to the Attorney General that already outstanding efforts in this area would be enhanced by a merger of the Domestic Security Section and the Office of Special Investigations into a new section with responsibility for human rights enforcement, MEJA and SMTJ cases, and alien smuggling and related matters. That new section would be called the "Human Rights and Special Prosecutions Section." The Attorney General has indicated his support for this change and the Department's strong commitment to enforcing human rights, and we expect to move forward on this. I truly believe that the new section will take our already outstanding human rights enforcement program to even greater heights.

Mr. Chairman, as you have pointed out, I personally am extraordinarily committed to these kinds of cases. I believe they are in my DNA. And the Department of Justice is firmly committed to ensuring that no human rights violator or war criminal ever again finds safe haven in the United States. And we look forward to working with you to achieve that goal.

I thank you for this opportunity to testify and would be pleased to take all your questions.

[The prepared statement of Mr. Breuer appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Breuer.

Our next witness is John Morton, Assistant Secretary of Homeland Security for Immigration and Customs Enforcement. He oversees the Human Rights Violators and War Crimes Unit, the DHS office responsible for investigating human rights violators. Previously, Mr. Morton served in the Justice Department's Criminal Division as Acting Chief of the Domestic Security Section and Acting Deputy Assistant Attorney General, where he focused on human rights prosecutions. He has also served as an Assistant U.S. Attorney in the Eastern District of Virginia, and is a graduate of the University of Virginia Law School.

Since the Human Rights Subcommittee's inception in January 2007, we have worked closely with Mr. Morton, who has advised us on human rights investigations and prosecutions. We thank you for your valuable assistance.

I also want to recognize and thank the following ICE officials for their commitment to denying safe haven to human rights violators: Erik Barnett, Mona Ragheb, Tom Annello, and Rick Butler. Mr. Barnett also worked as a detailee on my Judiciary Committee staff, and it is nice that he is here today.

Mr. Morton, we look forward to your testimony.

**STATEMENT OF JOHN T. MORTON, ASSISTANT SECRETARY
FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DE-
PARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Mr. MORTON. Thank you, Mr. Chairman, Ranking Member Coburn, and Senator Franken. Thank you very much for inviting me to this hearing and for the opportunity to present Immigration and Customs Enforcement's recent efforts to hold human rights violators accountable and to deny them safe haven in the United States.

As the primary criminal investigative arm of the Department of Homeland Security, ICE remains firmly committed to this mission, and you can be assured that I will personally promote aggressive human rights enforcement during my time as Assistant Secretary.

The human rights program at ICE, while young, is healthy and growing. Since fiscal year 2004, ICE has successfully removed more than 300 suspected or known human rights violators from the United States. As I speak, we are pursuing more than 180 human rights-related investigations—investigations which could ultimately support criminal or civil charges.

In addition, we have more than 1,000 cases in immigration proceedings. These removal cases are at various stages of investigation and litigation and involve individuals known or suspected to have been involved in human rights violations in over 95 different countries.

Let me highlight our commitment to this important work by addressing two cases of longstanding concern for this Committee—the cases that the Chairman just mentioned—that of Carlos Eugenio Vides-Casanova and Jose Guillermo Garcia. As the Subcommittee knows quite well, these two gentlemen are former Salvadoran defense ministers who now reside in the United States as lawful permanent residents and were found civilly liable for torture in Federal court in 2006. And while I cannot discuss the details of our efforts against these two men, I can confirm what the Chairman said today, which is we have charged these two individuals; we have put them in proceedings; we are going to try to remove them from the United States; and there are pending removal proceedings in Florida. We are going to move smartly on those two cases.

Let me also briefly highlight the cooperation in a few cases—just to let the Chairman and the members of the Committee know that there really is a pretty strong sense of partnership in this particular area and a recognition that there is a need to get to work.

First, the case of Chuckie Taylor. While it is only one case, it was a very, very important case, because it set the tone for what I hope is going to be aggressive enforcement in the future. It also represented an extraordinary level of cooperation between ICE and the FBI—the two investigative agencies involved—and an extremely strong commitment from the Department of Justice in the form of the Criminal Division and the U.S. Attorney's Office.

Next, John Demjanjuk—again, referred to by the chairman—a tremendous effort by OSI at the Department of Justice over literally decades to see that this gentleman ultimately saw justice, even at the end of his life, for some horrific crimes in Nazi Germany. I am very pleased that ICE was able to support the ultimate removal effort. And with some difficulty, as everyone knows, we ul-

timately were able to remove him to Germany where he faces justice at long last.

Finally, the case of Carlos de Graca Lopes, a citizen of Cape Verde, who entered the United States on a fraudulently obtained visitor's visa. An indictment was issued against him in his home country for various crimes, including the torture of prisoners that were in his care. He fled; he entered the United States. ICE agents arrested him; the U.S. Attorney's Office in Boston charged him with 14 counts of visa fraud, false statements, and perjury. He recently pled guilty. He is completing his term in Federal prison, at which point we intend to remove him to Cape Verde where he faces prosecution for torture.

Our recent efforts include more than casework, however. Let me just briefly note that we have established last year a pilot project to create a human rights violators and war crimes center. I will not belabor the point, but just to let the Chairman and the Committee know that I have made that permanent, and we are going to staff it appropriately. We have a total of 23 people now in headquarters—agents, attorneys, and historians—devoted to the work of the center, and I am looking very hard at how within the existing resources we can continue to augment that effort, so that is a work in progress.

My time is coming short here, so let me close with two things. First, I want to let the Committee know how much I support the recent decision that Mr. Breuer has announced to merge OSI and DSS. As someone who worked in DSS for a long time in the Criminal Division and has worked very closely with OSI, I know these are two very proud institutions. And I am very confident that the combination of those two institutions is going to lead to a much stronger whole. I can tell you without any question that the merger of those two institutions is going to lead to a much better and closer worker relationship with ICE. We are committed to investigating the cases that the Department of Justice charges.

Let me also say how much I appreciate your leadership on these important issues. I congratulate you both on the enactment of the Child Soldiers Accountability Act, the Genocide Accountability Act, and the Trafficking Victims Act. I can say with all sincerity that the cause of human rights enforcement and accountability worldwide has been greatly advanced by the creation of this Subcommittee and by its work.

Let me also thank the Subcommittee for the professional conduct of its staff. They are a pleasure to deal with and very committed to the Subcommittee's work. It is very nice to be in a situation in Washington in which you have highly motivated and professional staff working with our staff in the executive branch.

I thank you and I look forward to answering any questions you may have.

[The prepared statement of Mr. Morton appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. Morton.

Our next witness, David Donahue, is here to represent the State Department. Mr. Donahue is the Deputy Assistant Secretary for Visa Services in the Bureau of Consular Affairs. Previously, he was Director of the Office of Policy Coordination of Public Affairs in the

Bureau of Consular Affairs. He has served in the State Department for over 25 years. Mr. Donahue graduated from St. Meinrad College in Indiana—on whose campus I once camped out as a Boy Scout.

[Laughter.]

Chairman DURBIN. Mr. Donahue, thank you for——

Mr. DONAHUE. It has never been the same since.

Chairman DURBIN. Never been the same. Mr. Donahue, thank you for joining us. Please proceed.

STATEMENT OF DAVID T. DONAHUE, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. DONAHUE. Thank you, Mr. Chairman, Ranking Member Coburn, and Senator Franken. I am pleased to be here today to discuss the matter of visas and human rights violators.

Within the Department of State, the Bureau of Democracy, Human Rights, and Labor has the overall lead on human rights issues. Information on human rights violators is gathered by Foreign Service personnel at our embassies abroad. I am here to discuss the role of the Bureau of Consular Affairs, which issues and denies visas according to statute using information obtained through a visa interview and database checks.

Our consular officers at over 200 visa processing posts review applications for over 8 million potential travelers each year. They take their roles as the first line of defense in preventing ineligible persons or those who may want to harm us from traveling to the United States very seriously. Most of our applicants are legitimate, and those who are not are denied visas.

Determinations of eligibility are based on law. As the honorable members are aware, there is currently no broad-based visa ineligibility for human rights violators per se; however, there are several visa ineligibilities related to human rights concerns, including those for foreign government officials who have committed particularly severe violations of religious freedom; for individuals who have committed or conspired to commit a human-trafficking offense; for individuals involved in Nazi-related persecutions; for individuals who have engaged in genocide or for individuals who have committed acts of torture or extrajudicial killings; and for individuals who have engaged in the recruitment or use of a child soldier.

Presidential proclamations under Section 212(f) of the Immigration and Nationality Act that suspend entry to the United States of those who would be detrimental to U.S. interests have been effective in denying visas to human rights violators from Burma, Cuba, Zimbabwe, and the Balkans—among other countries.

Consular officers receive training on all visa ineligibilities, including those related to human rights violations. Consular officers use three basic tools to apply the law during a visa process: the application form itself, the interview, and interagency databases.

Our paper and electronic applications ask whether an applicant has committed torture, genocide, extrajudicial or political killings, violations of religious freedom, Nazi-related persecutions, or other crimes and acts of violence. We are working to add a question

about child soldier recruitment. Applicants must answer all questions prior to interview.

After reviewing the visa application and applying their understanding of local history and society, consular officers may issue or deny a visa or use the interview to ask questions that may lead to or confirm a suspicion of ineligibility.

Finally, perhaps the most effective method to detect human rights violators is to check an applicant against interagency databases. All applicants are checked against the State Department Consular Lookout and Support System, CLASS database, which includes many records from the Department of Homeland Security's Traveler Enforcement Compliance System, TECS, as well as the Department of Homeland Security's Automated Biographic Identification System, IDENT, our own facial recognition system, and the FBI's Criminal Justice Information System.

We are working with the Department's Bureau of Democracy, Human Rights, and Labor to ensure that all records with personal identifying information in its Leahy amendment vetting database—this is called INVEST—will be incorporated into our CLASS database. INVEST, which is being developed now, will contain all data available to the Department on Leahy amendment vetting results.

Consular officers depend on human rights officials abroad, regional bureaus, the Bureau of Democracy, Human Rights, and Labor, the Departments of Homeland Security and Justice, and the Federal Bureau of Investigation to develop information that can be entered into CLASS to inform our consular officers of possible ineligibilities. We recently entered 500 names from ICE into our databases of suspected human rights violators.

Our CLASS database has lookouts for nine individuals based on possible participation in a severe violation of religious freedoms, 330 individuals based on possible involvement in trafficking in persons, 12,812 based on possible involvement in Nazi-related persecutions, 3,000 individuals based on possible involvement in genocide, and over 700 individuals based on possible involvement in torture and extrajudicial killings.

Mr. Chairman, Senator Franken, I know your Subcommittee has grappled with this issue for many years. Your leadership on this topic is admirable and inspiring. We have denied visas to hundreds of human rights violators, but we believe we can do more, and I am dedicated to ensuring that anyone who has committed violations that would make him ineligible or inadmissible does not receive a visa.

As noted, we are looking forward to the exchange of data between INVEST and CLASS. I am instructing consular section chiefs to maintain regular contacts with our human rights reporting officers abroad to ensure that anyone identified by these officers as potential human rights violators has a lookout in CLASS. We will also remind our consular officers of the available tools to deny visas to human rights violators.

With this I conclude my testimony and welcome your questions.

[The prepared statement of Mr. Donahue appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Donahue.

Our final witness is Arthur Cummings, representing the FBI, where he serves as Executive Assistant Director in the National Security Branch. He was previously the Deputy Assistant Director of the Counter Terrorism Division. He has served in the FBI for over 20 years. He is a graduate of the University of California at San Diego.

I do want to note for the record, as Senator Coburn has, that it puts the Subcommittee at a distinct disadvantage when we do not receive your testimony until 6:30 p.m. the day before. We have not had the time we need to reflect on it and to prepare the kinds of questions which I really think should have been prepared for this hearing for your important agency.

I also want to recognize Paul Tiao, Special Counsel to FBI Director Robert Mueller, who like Erik Barnett, has the disadvantage of having served on my staff. He was a detailee on my Judiciary Committee staff.

We appreciate, Mr. Cummings, your coming here today and please proceed with your testimony.

STATEMENT OF ARTHUR M. CUMMINGS, EXECUTIVE ASSISTANT DIRECTOR, NATIONAL SECURITY BRANCH, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC

Mr. CUMMINGS. Thank you, Mr. Chairman, and good morning. Good morning, Ranking Member Coburn and Senator Franken. I am pleased to be here with you today to discuss the FBI's efforts as they relate to human rights enforcement. For its part, the FBI is committed to supplementing international communities' efforts to advance human rights.

Our mission is to identify human rights violators in the United States and bring them to justice for violations committed within and outside the United States. We investigate violators of both human rights and traditional criminal violations.

Since 1988 Congress has enacted a series of statutes that have expanded the FBI's investigative jurisdiction of human rights issues in the international arena. Executive Order 13107, which outlined the implementation of human rights treaties, further expanded our responsibilities.

Although our authority in this area has grown with the enactment of the aforementioned laws, our reach remains limited by legal restrictions. For example, for many well-known international human rights atrocities, the statutes of limitations have run or the atrocities took place before the laws were enacted, thereby implicating the ex post facto clause of the Constitution. Nonetheless, the FBI has had success in bringing human rights violators to justice and expects to have success in the future as well.

The FBI supports the overarching U.S. Government principle that respect for human rights helps to secure peace and to deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises. With additional funding for human rights enforcements provided by Congress in fiscal year 2009, we are expanding our investigative efforts in this area and further establishing a human rights offenses program.

As part of this program the FBI will utilize four key strategies—joint investigations, training, intelligence collection, and assistance to international investigative bodies—to fulfill our commitment to the enforcement of human rights laws and the promotion of human rights principles.

First, utilizing rule-of-law principles, the FBI will together with our domestic and international law enforcement partners investigate priority human rights cases using established investigative techniques and protocols.

Second, the FBI will train its own personnel and those of our foreign counterparts to ensure that human rights investigations are conducted in a manner consistent with rule-of-law principles. This training will strengthen our investigative efforts and promote institutionalized respect for human rights.

Third, the FBI will collect domestic and international intelligence on human rights violators and violations through its 56 field offices, 60 foreign legal attachés, network of sources within and outside the United States, and relationships with domestic and international law enforcement partners.

Fourth, in response to requests from international and foreign investigative bodies, the FBI will continue to provide assistance that advances efforts to enforce human rights laws in foreign and international legal fora. The FBI has personnel at FBI headquarters dedicated to the management of its human rights offenses program. A program manager will ensure that the FBI's domestic field offices and foreign legal attachés are fully engaged in advancing our human rights mission.

In addition, FBI plans to dedicate a number of additional personnel at headquarters to support the program. With this dedicated corps of personnel, the FBI intends to issue human rights intelligence requirements to its 56 domestic field offices and its 60 foreign legal attachés. We will develop performance measures and hold periodic reviews to ensure that agents and analysts in the field are actively addressing human rights cases.

We also plan to identify human rights coordinators in each office and work with the Department of Justice's Criminal Division to conduct training that will enable us to develop a body of experts who are dedicated to the investigation and prosecution of human rights abuses.

Eventually, the FBI believes that based on its domain analysis it will be in a position to forward deploy dedicated assistant legal attachés in countries with a history of human rights violations that fall within the scope of U.S. human rights laws. These ALATs would be expected to establish contacts with human rights officials in the embassies and local nongovernmental organizations, collect intelligence on human rights abuses, and support human rights investigations.

Chairman Durbin, Ranking Member Coburn, and Senator Franken, I appreciate this opportunity to come before you today to share the work of the FBI, what we were doing and what we plan to do in the future, to address human rights violations. I am certainly happy to answer your questions.

[The prepared statement of Mr. Cummings appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Cummings.

We will now turn to questions for the witnesses, and each Senator will have 7 minutes.

I would like to ask Mr. Morton—I am glad that there is an effort afoot to hold these two generals who are responsible for the torture of Dr. Romagoza accountable. While removing them from the United States is important, it is not the same as prosecuting them for human rights crimes. Unfortunately, it is not possible to prosecute the two generals for Dr. Romagoza's torture because it took place before our torture law was enacted.

Now, is it your understanding, Mr. Morton, that these individuals will be prosecuted in El Salvador?

Mr. MORTON. It is my understanding that we are going to inform the Salvadorans of what we are doing, work with them to come—make sure that they receive these two gentlemen—assuming we are successful, obviously; we have a removal proceeding first to go through—and that we are going to be fully cooperative with them in sharing all the information and evidence that we have.

As to whether or not they will ultimately prosecute these two individuals, I cannot say.

Chairman DURBIN. Does your agency consider the likelihood a human rights violator will be prosecuted upon return to his home country when deciding whether to remove him?

Mr. MORTON. We do. Part of that calculation comes in up front with—I mean, we look at the priorities this way: wherever we can bring a substantive offense ourselves working with Mr. Breuer and the U.S. Attorney's Offices at the Department of Justice, that is where we want to start.

As you have already alluded to and some of the other witnesses have alluded to, the law as it presently stands does not allow us to do that. Where we can, then, we have uniform priority on at least removing the people from the United States, and we want to promote prosecution in the home countries if prosecution is not possible here.

Chairman DURBIN. Mr. Cummings, I am disappointed the FBI has not yet hired any agents to investigate human rights violations with the funds we specifically provided you in the fiscal year 2009 appropriation. I would like for you to explain this delay. And I understand that currently there are no FBI agents dedicated to investigating human rights violations. I would like to know if that is correct.

I also understand that the FBI currently has only six human rights cases while ICE in comparison has over 1,000 human rights cases. How do you explain this discrepancy?

Mr. CUMMINGS. Senator, you are correct in that there are only six human rights cases currently being worked by the FBI within those categories. The fact that we have not hired additional personnel does not in any way imply or state that the work is not being done.

Currently, our human rights program, the torture, genocide, child soldier side of that, outside of the human trafficking work that we do, is a reactive program. We receive referrals. The great work that ICE does—we receive referrals from ICE, we receive

sometimes complaints from citizens and sometimes actually information we get from the State Department.

Those referrals are acted upon, each and every one, looking for that which would satisfy the elements of the crime and allow us to work that. So while there is not a single case agent working just human rights violations, there are agents working it in a number of different areas.

It is not a program that stands by itself yet. We are working in that direction. We are working to move from what has been traditionally a reactive program, case-based, referral-based program, to that which will be an intelligence-led program, meaning what we are looking to do with your \$1.5 million is to actually build the program. That is undergirded by collection in those areas where these atrocities happen, where we will gain that intelligence, where we will then begin to collect information that will inform those cases. As it stands right now, the cases are informed by referrals.

Chairman DURBIN. And let me follow up on that. If I understand correctly, the FBI plans to use these resources that Congress provided to hire assistant legal attachés who will be based in foreign countries. Can you explain to the Committee how FBI officials based in foreign countries will help identify human rights violators in our country?

Mr. CUMMINGS. Yes, I can. The atrocities, the witnesses, most of the information regarding those individuals that may be in the United States will start with the countries overseas. The intelligence that leads us to either a witness or a victim or a perpetrator will almost always be in those foreign countries. We have to understand where those are, where those atrocities took place. We have to fully understand the collection environment there. How do we gain that information?

In other words, right now we work on a reactive pace. That is not, I do not believe, going to satisfy your Committee. It certainly does not satisfy me and it would not satisfy the Director of the FBI if we are going to expand this program, and we have committed to doing so.

So as we expand the program, if we do not have the reach overseas, we do not understand the intelligence that will force us to gain that information, we will not increase our caseload, and we will not on our own find those perpetrators, witnesses, or victims.

Chairman DURBIN. Mr. Donahue, Assistant Secretary Morton testified about ICE's efforts to bring to justice Juan Rivera-Rondon and Telmo Hurtado-Hurtado, two Peruvians who led the Accomarca massacre of 67 unarmed men, women, and children. Rivera-Rondon was removed to Peru, where he is in custody awaiting trial, while Hurtado is awaiting extradition.

Retired Lieutenant General Jose Daniel Williams Zapata, who commanded Rivera-Rondon and Hurtado, has been detailed by the Peruvian Government to the Inter-American Defense Board, which is based right here in Washington, DC. In contrast to his subordinates who are facing extradition and trial for participation in a massacre, Williams Zapata, their commander, is living freely in the United States and was reportedly issued a G visa by the State Department.

I believe our staff notified you that we might ask about this case. Why is Williams Zapata allowed to remain in the United States, unlike the two men under his command at the time of the massacre? Will the State Department revoke his visa?

Mr. DONAHUE. Thank you, Mr. Chairman. The visas for Mr. Zapata, both his visitor visa and his G-1 visa, have been revoked. I am not sure where they are in the process of removal, but he is no longer in the United States under a visa.

Mr. BREUER. I can address that a little bit further, Mr. Chairman. We worked closely with the State Department. They agreed to revoke his visa, and he has left the country.

Chairman DURBIN. Thank you.

Senator COBURN.

Senator COBURN. Thank you, Mr. Chairman, and thank you—and, again, happy birthday, Mrs. Breuer. Happy birthday, Mrs. Breuer.

Mrs. Breuer. Thank you very much.

Senator COBURN. Mr. Chairman, I have a several-page list of questions that I would like to submit to the record, and if you all take 2 or 3 weeks to get them back to us, that is fine.

[The questions appear as questions and answers for the record.]

Senator COBURN. I want to go in a couple of directions. One, Mr. Morton, there are some significant human rights abuses occurring on our southern border today with the people that are transporting foreign nationals in, and I do not know if you are familiar with the history and the information about the rape trees in southern Arizona and Texas. If you are not, you should become aware of it.

But, you know, there is not a greater civil rights violation than to say you are transporting somebody to freedom and then rape them along the way and hang their underwear on trees, and the fact that that is occurring because we have two agencies that are not working together is something that I will detail in specific questions to you. But it is something that not only should we be prosecuting, but we should be doing the things to prevent it which—and that is in no way a reflection on ICE, I want to say. I think the problem is on the other side of that, and I have talked with former Senator Salazar, Secretary Salazar about that and hope that we have some resolution.

But it is an important question because we lack credibility when we, within our own Government, cannot stop violation of human rights on our border, and yet we are proclaiming we are going to prosecute everybody else that is doing it outside who comes here. So it is an important message of consistency that we need to solve.

Mr. Breuer, how many prosecutions have been brought under the new Title 18 authority relating to child soldiers which we enacted in the last Congress? Do you have any data on that?

Mr. BREUER. Senator, as of today—of course, this was enacted in October of 2008—there have been none yet.

Senator COBURN. OK. So do we have cases underway?

Mr. BREUER. What I can say, Senator, is that we are aggressively pursuing cases with respect to all the human rights statutes, and, obviously, we look very closely at this kind of conduct, which is, of course, reprehensible; and if we have a provable cases that we can bring, we absolutely will.

Senator COBURN. OK. Mr. Morton testified that many of the offenses that are charged—visa fraud, naturalization fraud, false statements—carry only light sentences and do not have much of a deterrent effect. Do you agree with that, number one? And if, in fact, that is the case, when those charges are the only option, does that affect DOJ's position as far as pursuing a case? And, finally, what would you recommend we do about it if that is the case?

Mr. BREUER. OK. Senator, I think it is fair to say that when we look at human rights cases, we employ whatever statutes we can to bring them. So we may bring statutes that are not quintessentially considered human rights statutes, but we will bring the full panoply of cases.

And you are absolutely right. As my friend Assistant Secretary Morton said, we do have disabilities. Some can be because of statute of limitations. Some can be because of jurisdictional grounds. So that is the disability. It is not a reason we do not pursue the case.

In fact, as the Office of Special Investigation has shown through its glorious history, we will pursue a case if it is a righteous case to bring, regardless of what the ultimate punishment is, because we want to make a statement. And in some cases it may simply be that the person can no longer stay in the United States.

I would be delighted to work with your staff in figuring out in certain cases whether we need to enhance penalties or frankly, Senator, whether in certain circumstances it may make sense to increase the statute of limitations, both of which would empower us greater.

Senator COBURN. And there is a statute of limitations presently on visa fraud and—

Mr. BREUER. There is, Senator. There is a statute of limitations with respect to visa fraud. I believe it is 5 years. The question is about how you can—how you measure that. But it is a 5-year statute.

Senator COBURN. Thank you.

One other question, and this really does not fall, Mr. Breuer, under your direct responsibility. We have all these cold civil rights cases. And last year or the year before last, we passed the Emmett Till Civil Rights Act. And I was wondering if all these researchers and historians that you use in collaborating and collecting the data in terms of the human rights cases could be cross-utilized so that the Justice Department could use that expertise as well in helping to solve these unsolved civil rights crimes within our own borders.

Mr. BREUER. Well, Senator, candidly, I have not thought about that. I think that is a terrific suggestion. One of the goals of combining, of course, the two sections into one is to give our historians even a greater latitude about the kinds of areas that they can work with. I would be happy to speak with you but, more importantly, to speak with my colleagues in the Civil Rights Section to see if that could be employed. And thank you for that suggestion.

Senator COBURN. All right. Thank you.

I think, Mr. Chairman, the rest of my questions are going to be going to all the witnesses. I do have one question for Mr. Donahue, and then I will finish up.

Your testimony states that visa applications are referred to agencies in DC. for additional review and a security advisory opinion. You say that approximately 260,000 of these SAOs are processed every year, and these are generally used for individuals who may be ineligible because of human rights offenses.

When cases are referred for an SAO, how much time does it take to issue the final opinion, on average? Just a guess.

Mr. DONAHUE. Thank you for the question. They vary greatly. Many SAOs can be resolved in a matter of weeks, usually, if you do the—including all the interagency vetting. If it becomes a difficult case where there is more research that needs to be done—there is nothing conclusive, there are files held by different agencies. We want to check with our own bureaus of Democracy, Human Rights and Labor. We want to check with the embassy. They can take a longer amount of time. They can take months. But most cases are resolved in about—within a month now.

Senator COBURN. How many of those 260,000 result in denial?

Mr. DONAHUE. I do not have a figure. I can get that for you.

Senator COBURN. Can you? OK. Well, I will submit all those.

[The information appears as a submission for the record.]

Senator COBURN. Mr. Chairman, I again want to thank you. I have to be on the floor for Mr. Perez's nomination. I will submit these questions for the record, and I appreciate your having it. And I apologize for not being able to stay for the rest of the hearing.

Chairman DURBIN. Thanks, Senator Coburn. There will be written questions sent to all the witnesses. I hope you can respond to them in a timely way. I thank Senator Coburn for his participation.

I want to make a statement for the record. I am about to recognize Senator Feingold. This is not a violation of the human rights of Senator Franken, who was here earlier, but it turns out that Senator Feingold actually came before you did. And that is the tradition of the Committee. It is no reflection. And because of his prodigious seniority and early* arrival, I am now going to recognize Senator Feingold.

Senator FRANKEN. That is OK. We had a good outcome on the football game last night.

Senator FEINGOLD. Oh, I knew it.

[Laughter.]

Senator FEINGOLD. Dick, I know you are trying to protect me, but that is a little painful.

I thank you, Mr. Chairman. I do want to commend you for your leadership on human rights issues, however.

Significant gains have been made in recent years to increase accountability for human rights abuses. That said, we still have a long way to go on this topic. We have made tremendous progress in the last 2 years toward passing legislation that will ensure adequate laws are in place to bring perpetrators of serious crimes to justice.

But the executive branch has not done an adequate job of investigating and prosecuting perpetrators under these laws. As I know was mentioned, the successful prosecution of Chuckie Taylor was an important milestone, and I hope it will send a message to perpetrators of human rights abuses that the United States will not turn a blind eye toward torture and other egregious human rights

violations, but it is absolutely unacceptable that this is the only human rights case that has been filed by the DOJ.

I am disappointed that the United States has not done more to ensure that human rights abusers are held accountable for their crimes. According to DHS, in 2008 potentially more than 1,000 abusers from 89 different countries had settled in our country, and yet we have only had one prosecution for a human rights offense.

In order to hold these perpetrators accountable, there needs to be more coordination and cooperation among DOJ, ICE, and the FBI. I also think that the Department of State needs to be more proactive when assessing visa applications to ensure that we are not admitting individuals from high-conflict countries who may be wanted for human rights abuses.

The failure to prosecute those guilty of torture, genocide, and other war crimes makes it more likely that such crimes will be repeated. And I have long believed that the protection of basic human rights and accountability for human rights abuses must be a cornerstone of American foreign policy. It is not enough to give lip service to these principles or to simply pass laws that are never enforced. We need to make sure that these cases are aggressively and proactively investigated and prosecuted.

By ensuring these human rights violators are punished, we send the message that the United States is not a safe haven for abusers but, more importantly, that the world will not tolerate genocide, torture, or crimes against humanity. And I look forward to seeing whether the current administration will take a more proactive approach to address this very important issue, and I hope that this hearing will help us find ways to hold more perpetrators accountable for their actions.

Mr. Morton, when we held a hearing on crimes-against-humanity issues, I focused on one example where perpetrators of human rights abuses found a safe haven on American soil. In 1984, American church women who had been working with refugees in El Salvador were brutally murdered by members of the Salvadoran National Guard, and in command of these men were two Salvadoran generals who bear direct responsibility for this atrocity. These same generals that Senator Durbin mentioned in his opening statement are who we are talking about, and you were already questioned about them.

It is my understanding from your testimony that notices to appear have finally been issued for both generals, and the Department is finally taking steps to remove these individuals from the country.

Now, these individuals have been in the United States for almost 30 years. Can you explain to me why there has been such a tremendous delay in this case? What procedures are you planning to put in place to reduce delays in resolving outstanding human rights cases?

Mr. MORTON. I cannot speak to the 30-year process. What I can tell you is that I have been very aware for quite some time about these two cases, frankly, in large part because of the work of the Committee and the staff. I was aware of them when I was at the Department of Justice. And I am now in a position as Assistant Secretary to make some determinations on, you know, the people

that should go into proceedings. And we have been working very closely with the Department of Justice. We have put both of these gentlemen into proceedings this past Friday. We did so explicitly on the grounds that they assisted or otherwise participated in torture in El Salvador. We are not mincing our words, and we are going to seek to remove them from the United States.

Is 30 years too long? Of course it is too long. But we are going to do what we can now, and they are in removal proceedings. And, you know, it is obviously my hope that the Government prevails.

Senator FEINGOLD. What about as to procedures to avoid similar situations?

Mr. MORTON. Well, I think the real—while I agree that there is a lot of work to be done, I will say I do think a tremendous amount has happened in the last 2 years. There is a very, very close working relationship between the Department of Homeland Security and the Department of Justice, both FBI and the Criminal Division and U.S. Attorney's Offices. We need to just continue to organize ourselves. We need to—the work of the historians at the Department of Justice has been critical to identify these people. We need to get them in the databases so that they do not even get a visa to come here in the first place.

We at ICE are going to try to adopt and have adopted some of the historian model that is at the Department of Justice to build up our own capability. And the people at this table need to meet quite regularly. We need to be aggressive. And we just—you know, we just do not need things to linger on the books.

And I can tell you, I know the gentleman to my right quite well. I do not know the two gentlemen to my left as well, but I am confident that you are going to see a much more aggressive and proactive approach. But we have got to organize ourselves. The changes at the Department of Justice I think are going to be helpful. What we are doing at ICE is going to be helpful. And then you need to keep calling us up here and asking us tough questions about what we are doing.

Senator FEINGOLD. Mr. Breuer, in January 2008 the Justice Department stated in response to questions regarding prosecutions under a theory of command responsibility that the Department has not had occasion to consider whether an individual could be criminally prosecuted under the torture statute under a theory of command responsibility.

Has DOJ now had occasion to re-examine these statutes? What is DOJ's policy regarding prosecution of heads of state and other high-ranking members of the military under a theory of command responsibility?

Mr. BREUER. Senator, as you point out, command responsibility has not, at least in the criminal context, really been a central tenet of American jurisprudence. That is not to say it could not be, but it has not in the past.

It seems to me, though, that these very same cases can probably be brought under theories of conspiracy and aiding and abetting. I am very willing to look hard at the command responsibility doctrine. I think given our history it is less likely that we will pursue that, more likely that we would pursue these very same cases through aiding and abetting and conspiracy.

But it is an issue that I have thought about and we will continue to very seriously.

Chairman DURBIN. Mr. Donahue, the Federal Government expends significant resources removing human rights violators from our country. It would obviously be more efficient to stop these individuals from entering in the first place. However, it appears that consular officers are handicapped by limited information.

You testified that CLASS, the consular database, contains information on the involvement of only nine individuals in violation of religious freedom, 330 in human trafficking, and 707 in torture or extrajudicial killings. By contrast, CLASS includes information on 12,800 people involved in Nazi-related persecution.

Unfortunately, many more than nine people around the world are involved in violation of religious freedom and more than 330 in human trafficking, certainly more than 700 in torture and extrajudicial killing.

Why are these numbers so low? What can the State Department do to improve the information about possible human rights violators in their own database so that we can avoid the embarrassment of having them settle in the United States and go through the expense and time involved in removing them?

Mr. DONAHUE. Thank you, Mr. Chairman. I think that is a very good question and one that we have been working with as we prepared for this testimony.

As you have stated the officers are dependent upon the information that is provided to them during the interview and in our databases. I think that, as Mr. Morton has mentioned, we need to work together between our different agencies, both within the State Department and within the Justice Department, the FBI, and the Department of Homeland Security, to ensure that all cases that are known about, all people that are known about, are added to the system so that a person is stopped, that the security advisory opinion is pursued, and a decision is made by people who know the details of these instances.

But the problem right now I think is that there is not a systematic governmentwide way to do this, and I think we want to work to make that happen.

Chairman DURBIN. Mr. Morton testified about Carlos Lopes, a former prison warden from Cape Verde who was recently convicted of visa fraud. Lopes obtained a non-immigrant visa while he was under indictment for torturing prisoners. How is it possible for someone under indictment for torture to obtain a visa to come to the United States and what can we do to prevent this?

Mr. DONAHUE. I do not have details. I know, as Mr. Morton said, that it was done under visa fraud, and it may have been that—we do not know who he presented himself to be. We also do not know when the information was placed into the databases, whether we had the negative information in the database at the time of the visa interview.

We can get more information for the Chairman if you would like on this particular case.

Chairman DURBIN. I wish you would. I also understand that a report required by Section 556 of the Foreign Operations Appropriations Act of 2006 contained the names of approximately 700

Colombian army and security service members under investigation for human rights abuses. I think we notified you we might ask about this.

Mr. DONAHUE. Right.

Chairman DURBIN. Was the information in that report about Colombian human rights violators included in the CLASS database for consular officers so that for those people seeking visas from Colombia we would check against this list to see if they might be human rights violators?

Mr. DONAHUE. We have checked a number of the names, and they are in our database. We continue to check them. One of the difficulties with lists like that is they often do not contain any other biographical information.

It is very important in gathering this information that we gather dates of birth, places of birth. Otherwise, many, many innocent people are held up in their visa application process. So we will continue to work on that list.

Chairman DURBIN. Thank you.

Mr. Morton, Kelbessa Negewo, who was accused of serious human rights abuses in Ethiopia and had found safe haven in Atlanta, Georgia, was the first person to be charged under Chairman Leahy's Anti-Atrocity Alien Deportation legislation enacted in 2004, which made torture and extrajudicial killing grounds for removal from the United States.

How many other individuals have been charged under this law?

Mr. MORTON. I do not know the answer to that, Mr. Chairman. We have brought seven substantive charges under the torture or extrajudicial provisions, and we have had five people that we have turned around at the border on the same theory. But under the specific provision for Mr. Negewo, I do not know and let me get back to you on that.

Chairman DURBIN. Thank you. I would like to ask you, Mr. Breuer, and Mr. Cummings: One significant challenge to prosecuting human rights abusers for crimes committed in another country is securing and protecting witnesses. What kind of steps are we taking to deal with that challenge?

Mr. BREUER. Mr. Chairman, you are right, it is an extraordinary burden. With respect to what we do at the Department of Justice, working with our friends at ICE and at the FBI and at State, is we—it is very labor intensive. Our own lawyers go out, often to very dangerous parts of the world; they meet with the witnesses themselves. When we can, we try to bring witnesses to the United States.

But, frankly, Mr. Chairman, it is an extraordinary burden, and at times if we do not have the collaboration and cooperation of the host country, that poses a remarkable burden.

I do not think there is an easy answer to it, it is labor intensive and it is costly, and some of the great career people behind me have worked countless hours in dealing with these very issues.

It is a case-by-case matter. We work with our friends at ICE and the FBI to help us, but there are no easy answers there.

Chairman DURBIN. I would like to thank all the witnesses for coming today and my colleagues for joining us, and as I said, there will be some written questions.

I would like to place in the record written statements from the following organizations and individuals:

Advocates for Human Rights, Center for Justice and Accountability, Center for Victims of Torture, Human Rights First, Human Rights USA, Human Rights Watch, and Ambassador David Scheffer of Northwestern University Law School.

[The statements appears as a submission for the record.]

Chairman DURBIN. I would also like to enter into the record a letter from 30 advocacy organizations in support of the Crimes Against Humanity Act. Without objection they'll be included.

[The letter appears as a submission for the record.]

Chairman DURBIN. If there are no further comments, I am going to bring the hearing to a close. As we close it, I would like to acknowledge one person who is here and one who is not, and that, of course, would be Mrs. Breuer for joining us and Dr. Romagoza for inspiring us in an earlier hearing. They are from different generations and from different parts of the world, but they have a great deal in common. They have both survived horrible human rights abuses, and they had the courage to flee their homes and find sanctuary in our home country, where they became Americans and made great contributions.

We owe it to both of them and countless others like them to ensure that America never provides safe haven to those who violate fundamental human rights. From John Demjanjuk who helped massacre over 29,000 Jews during World War II to the Salvadoran generals responsible for the torture of Dr. Romagoza, we have a responsibility to bring human rights violators to justice.

I thank you all for helping us in that effort, and this hearing stands adjourned.

[Whereupon, at 11:07 a.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530
February 28, 2011

The Honorable Richard J. Durbin
Chairman
Subcommittee on the Constitution, Civil Rights, and Human Rights
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the appearance of Assistant Attorney General Lanny A. Breuer before the Subcommittee on Human Rights and the Law on October 6, 2009, at a hearing entitled "No Safe Haven: Accountability for Human Rights Violators, Part II." We apologize for our lengthy delay in submitting these responses. We hope that this information is of assistance to the Subcommittee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Lindsey Graham
Ranking Minority Member

Hearing before the
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate

Entitled
"No Safe Haven: Accountability for Human Rights Violators, Part II"
October 6, 2009

Questions for the Record
Submitted to
Lanny A. Breuer
Assistant Attorney General
Department of Justice

Questions Addressed to Lanny Breuer

1. I would like to have a better understanding of DOJ's human rights caseload. Can you please tell me:

- a. What percentage of cases that you handle result in criminal charges of *substantive* violations of human rights law (i.e. torture, genocide, or war crimes)?

Answer: To date, only one case (the successful torture prosecution of Charles "Chuckie" Taylor, Jr., also known as Roy M. Belfast, Jr.) has been prosecuted under any of the three referenced statutes (18 U.S.C. §§ 2340A (torture), 1091 (genocide), and 2441 (war crimes)).

- b. What percentage of cases results in other criminal charges short of substantive violations of human rights law (i.e. murder, visa fraud, false statements, etc)?

Answer: With regard to non-World War II human rights violator cases prosecuted by the Human Rights and Special Prosecutions Section ("HRSP") and its predecessor components (*i.e.*, the Domestic Security Section ("DSS") and the Office of Special Investigations ("OSI")), all of the prosecutions, except for that of Chuckie Taylor, have been criminal prosecutions brought under statutes other than the torture, genocide, and war crimes statutes. These cases include not only naturalization fraud and visa fraud prosecutions, but also criminal prosecutions brought under the Military Extraterritorial Jurisdiction Act ("MEJA"), such as the Steven Green case, which resulted in a life sentence. All of the World War II Nazi cases have gone forward as civil denaturalization and/or removal cases.

A - 1

- c. What percentage of cases gives you no prosecution options, requiring you to seek extradition, denaturalization, and/or removal?

Answer: Substantially all of the World War II Nazi cases handled by HRSP (and previously by OSI) fall into that category. With regard to non-World War II human rights violator matters handled by HRSP (and previously by DSS and OSI), while it is not possible at this time to predict the percentage of investigations that will yield evidence of participation in human rights violations but present no possibility of domestic criminal prosecution, there certainly are some instances in which there are no criminal prosecution options. In some instances where prosecution is not possible, we may have received a request for extradition from a foreign country, or we may be able to provide information to a foreign country that ultimately leads to the country requesting extradition. There are some countries, however, as to which extradition is not possible because the United States does not have an extradition treaty with those countries or the treaty does not provide for extradition in the circumstances presented. As one example, the United States and Rwanda do not have an extradition treaty. It should also be noted that in some instances, because there is no possibility of a prosecution, the matter may never be opened or referred to the Department of Justice by a law enforcement entity.

2. At the hearing, you testified that no charges have been brought under the new Title 18 authority relating to child soldiers, which was enacted during the 110th Congress. Can you confirm whether there are any related investigations taking place? If so, how many?

Answer: Although the child soldiers statute was enacted comparatively recently, in October 2008, and does not cover crimes committed prior to that date, HRSP investigative work involving this crime is under way. We have been actively seeking information from sources, including non-governmental organizations, regarding potential perpetrators who are present within the United States or otherwise fall within the statute's jurisdictional requirements. Thus far, we have not received significant information from the government's own efforts or from others, and it is fair to say that the number of investigations is very small. We do not believe it would be appropriate to disclose the number of persons under investigation. We believe that the number will increase as our efforts continue, as more people learn about the new law, and as time passes such that more perpetrators will fall within the statute's jurisdictional requirements.

3. How many investigations is DOJ pursuing for individuals in the United States having committed genocide, torture, or war crimes?

Answer: Although HRSP is pursuing investigations in which the possibility of prosecution for one or another of these crimes exists, the number is comparatively small and it is not possible to predict how many, if any, of those investigations will generate criminal prosecutions under any of the statutes specified. As is stated above, between our active efforts and the passage of time,

we anticipate an increase in our investigations and prosecutions under these three statutes in the future.

4. Mr. Morton testified that many of the offenses charged (i.e. visa fraud, naturalization fraud, and false statements) carry only light sentences that have no deterrent effect. Do you agree?

Answer: Our most significant problem is not the maximum sentences available under these statutes (generally 5 or 10 years) but instead the fact that the sentences actually imposed for visa, immigration fraud, and naturalization fraud are often very low, and generally do not reflect the seriousness of the underlying human rights-related criminal conduct. We note that the sentencing guidelines do not currently delineate sentencing enhancements for individuals who have also committed human rights violations. In some circumstances, we have been successful in obtaining upward departures. We would certainly welcome the opportunity to work further with the Congress in considering whether an increase in the statutory maximum would increase the actual sentences likely to be imposed and the potential for increasing the deterrent effect. Moreover, while the prospect of a sentence involving little or no time in prison – as is common for first offenders in visa fraud, naturalization fraud, and false statements cases – certainly has a limited deterrent value, there are additional consequences that successful prosecutions for these offenses can have and hence a significant potential deterrent effect that can be generated. For example, in addition to the possibility of obtaining upward departures at sentencing, convictions in cases involving naturalization fraud automatically result in denaturalization, a consequence that frequently makes it possible for United States Immigration and Customs Enforcement (“ICE”) to institute proceedings in immigration court to remove the convicted individuals from the United States.

- a. At the hearing, you stated that such light charges do not affect the DOJ’s decision to pursue a case where those authorities are the only option to pursue a human rights violator. Nonetheless, would stiffer penalties for those offenses make it likely that DOJ would pursue more of these cases?

Answer: We certainly do not lack sufficient motivation to pursue these cases, as is evidenced perhaps most tellingly by the fact that the Department of Justice has so tenaciously pursued the World War II Nazi cases for three decades despite the absence, in nearly every instance, of any practical possibility of prosecution for a criminal offense. As I stated in my testimony, the Department of Justice is committed to ensuring that human rights violators and war criminals do not find safe haven in the United States, and we will continue to marshal our resources to guarantee that no stone is left unturned in pursuing that goal. That having been said, we support the making of changes to the sentencing guidelines, as my answer to the next question posed in your letter reflects, to enable us to obtain longer sentences in cases of individuals who have participated in the commission of human rights violations or war crimes.

- b. Do you agree that the Sentencing Guidelines should be revised where human rights offenses are involved?

Answer: Yes. Sentencing guidelines currently do not delineate sentence enhancements for individuals who have committed human rights violations, nor are there guidelines specifically for the substantive human rights offenses. We have urged the U.S. Sentencing Commission to undertake a comprehensive review of the current Guidelines, both as they relate to fraud offenses committed by human rights violators and as they relate to the substantive offenses.

- 5. How many non-WWII cases have been litigated by OSI to denaturalize perpetrators of serious human rights offenses since the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) was enacted?

Answer: The former OSI brought three such cases, all of them criminal prosecutions for naturalization fraud. Two of those prosecutions resulted in convictions and consequent denaturalization. The third case is scheduled to go to trial this year.

- 6. I appreciated your willingness to entertain my question about civil rights crimes committed within the United States, including those civil rights "cold cases" committed many years ago. I am concerned that many of these cases remain unsolved, and that domestic human rights violators have enjoyed a lifetime of safe haven in the U.S.

- a. Recognizing that you might have to consult with colleagues in the Civil Rights Division, what, specifically, has the Department of Justice done to leverage the authorities provided by the Emmett Till Unsolved Civil Rights Crimes Act to address these cold cases?

Answer: As you may be aware, last year the Attorney General submitted his Second Annual Report to Congress pursuant to the Emmett Till Unsolved Civil Rights Crimes Act. That report is attached to give you a full picture of the work done by my dedicated colleagues in the Civil Rights Division, the FBI and the affected United States Attorneys' Offices.

- b. Can you confirm whether the researchers and investigators who work on human rights cases can be made available to assist in civil rights cold cases? Have they been used on those cases in the past? Are they actively working on them now?

Answer: In a prosecution arising out of the 1963 bombing of the 16th Street Baptist Church in Birmingham, the former OSI volunteered its assistance to Alabama state prosecutors in connection with a judge's determination that age-related dementia prevented prosecution of a

defendant. The offer was accepted, the assistance was provided, the defendant was found competent, was convicted and sentenced to life imprisonment, and he died in prison. Although that support did not involve assistance of the type that HRSP researchers can provide, and while HRSP staff are not currently assisting in any such matters, the Criminal Division always stands ready to provide assistance, in appropriate cases, upon request from prosecutors outside the Division.

Questions Addressed to All Witnesses

1. What is the most common human rights offense you see from perpetrators seeking (or enjoying) safe haven in the United States?

Answer: Participation, typically employing violent means, in the persecution of others on the basis of race, religion, ethnicity, or political belief is the most common human rights violation we encounter. I understand that the FBI's response to this question identifies torture as the human rights offense that it encounters most commonly. However, that response was, by its terms, limited to the title 18 crimes of genocide, kidnappings of specified persons, hostage takings, overseas torture, war crimes, and recruitment or use of child soldiers. To date, the vast majority of the cases brought by the Department against human rights violators have been criminal and civil cases alleging fraudulent concealment or misrepresentation of the perpetrators' pre-immigration pasts, and in those cases participation in acts of persecution has been the most common human rights violation we have encountered.

2. What is the biggest challenge you face in trying to fulfill your human rights enforcement responsibilities?

Answer: Developing evidence of a human rights offense sufficient to sustain our heavy burden of proof is the biggest challenge we face. The human rights violator cases, which almost always involve crimes that occurred years earlier outside the United States, are among the most challenging ones faced by law enforcement authorities anywhere. Even when sufficient evidence can be amassed, moreover, we still face the frequently daunting tasks of trying to bring witnesses to the United States (including witnesses who are inadmissible to this country, witnesses who have no familiarity with the adversarial system they will encounter in our courts, and witnesses who do not speak any language commonly spoken in the United States), protecting witnesses here and abroad, and surmounting numerous logistical obstacles and cost challenges that typically arise. Further, when a witness located outside the United States is reluctant to cooperate, our ability to require testimony for trial is often limited. Further, unlike domestic cases, where we usually have access to all persons within the hierarchy of a criminal organization such that we can work our way up to those higher in the chain of command and unlike jurisdictions or tribunals that provide for command responsibility, in our human rights

cases, we often have access solely to the victims, who can at best provide evidence only against those at the lower levels with whom they had direct contact. Jurisdictional and statute of limitations barriers often present as well. For example, until it was amended in December 2007, the genocide statute (18 U.S.C. §1091) covered only genocide committed in the United States or by a United States national. The statute has therefore been unavailable in cases involving the Rwandan genocide of 1994 or the genocide of Jews in Europe committed by Nazi Germany and its allies. The war crimes statute confers jurisdiction only if a perpetrator or victim is a United States national or member of the United States armed forces. The statutes of limitations in naturalization fraud (18 U.S.C. §1425) and visa fraud (18 U.S.C. §1546) are ten years and five years, respectively, and they have frequently run even before the suspected offender is identified. Another challenge is presented by the fact that there are serious human rights violations that do not fall within existing statutes. In that connection, we look forward to discussions regarding congressional interest in enacting additional laws pertaining to human rights crimes, including a Federal criminal statute covering crimes against humanity.

3. Regarding enforcement of human rights laws, what is your biggest frustration/hindrane to coordinating with other agencies?

Answer: While coordination challenges, such as database compatibility issues, will almost invariably arise when multiple agencies are working on the same and related matters, we have not encountered and do not foresee encountering any intractable problems. A significant issue on which we and our interagency partners continue to work relates to achieving the right balance between ensuring that the United States has an efficient visa/immigration process and ensuring that the United States obtains the information from applicants necessary to identify and/or prosecute human rights violators.

4. Is there any evidence that any human rights violators seeking or enjoying safe haven in the United States have had connections to international terrorism?

Answer: Most human rights violators whom we encounter do not have known connections to international terrorism. For example, many of the offenses investigated by HRSP and its law enforcement partners are perpetrated by former members of various foreign governments which have not been classified as "terrorist organizations."

5. To the extent that we (the U.S. Government) are not doing all we can to keep human rights violators out of the United States, is the biggest problem that we are not adequately enforcing laws already on the books, or that we do not have the legal tools needed to do the job well?

Answer: Following the creation of the Department of Homeland Security ("DHS") in 2003 and the transfer to that agency of most functions of the former Immigration and Naturalization

Service, exclusion of inadmissible aliens has been the responsibility of DHS and the Department of State. I note that ICE Assistant Secretary John Morton, who testified at the October 6 hearing, has provided an answer to this question. I have taken the liberty of reprinting that answer below, for your convenience.

Currently, U.S. Immigration and Customs Enforcement (ICE) does not have specific grounds of inadmissibility for aliens who “order, incite, assist, or otherwise participate in the persecution of others” under the Immigration and Nationality Act (INA). A persecutor is not eligible for asylum, withholding of removal, refugee resettlement, and temporary protected status. See INA §§ 101(a)(42), 207(c), 208(b)(2)(A)(i), 241(b)(3)(B)(i), 244(c)(2)(B)(ii). But the Department of Homeland Security and the Department of State have limited authority to refuse visas or deny admission to aliens who have engaged in acts of persecution other than certain, specific human rights violations enumerated in the INA, *viz.*, torture, extrajudicial killings, genocide, recruitment or use of child soldiers, Nazi persecution or, if committed as a foreign government official, particularly severe violations of religious freedom. There is not, for example, a ground of inadmissibility that encompasses all of the atrocities enumerated in the criminal war crimes statute (18 U.S.C. 2441).

Furthermore, certain loopholes prevent adequate enforcement of existing statutes. For example, the five-year statute of limitations for certain offenses, such as visa fraud (18 U.S.C. 1546) or false statements (18 U.S.C. 1001) limits ICE’s ability to bring criminal charges in these types of cases. Sentencing guidelines do not currently delineate sentence enhancements for those who have engaged in human rights violations. Due to *ex post facto* issues, several recently enacted or amended criminal statutes, such as recruitment of child soldiers (18 U.S.C. 2442) or genocide (18 U.S.C. 1091), are only applicable to recent conduct, while jurisdictional limitations often prevent the enforcement of the war crimes statutes (18 U.S.C. 2441).

6. I appreciated your willingness to entertain my question about civil rights crimes committed within the United States, including those civil rights “cold cases” committed many years ago. I am concerned that many of these cases remain unsolved, and that domestic human rights violators have enjoyed a lifetime of safe haven in the U.S.

- a. Recognizing that you might have to have consult with colleagues in the Civil Rights Division, what, specifically, has the Department of Justice done to leverage the authorities provided by the Emmett Till Unsolved Civil Rights Crimes Act to address these cold cases?

Answer: See our response to question 6.a. at page A-4, *supra*.

- b. Can you confirm whether the researchers and investigators who work on human rights cases can be made available to assist in civil rights cold cases? Have they been used on those cases in the past? Are they actively working on them now?

Answer: Federal civil rights crimes are the province of the Criminal Section of the Civil Rights Division, and the Emmett Till Unsolved Civil Rights Crimes Act of 2007 specifically provides for a Deputy Chief from that office who is responsible for coordinating the investigation and prosecution of these civil rights cold cases. The Criminal Section of the Civil Rights Division, along with the FBI, are the subject matter experts on these matters and the hate groups responsible for many of them. In fact, the FBI has devoted significant resources to investigating and trying to resolve these cold cases. The Criminal Section has a long and proud history of successfully prosecuting civil rights crimes, including those which occurred during the nation's civil rights era. The Criminal Division's Human Rights and Special Prosecutions Section can prosecute certain human rights crimes and war crimes committed outside the United States, including, in some circumstances, torture, genocide, and the use or recruitment of child soldiers, and relevant felony offenses covered by the Military Extraterritorial Jurisdiction Act of 2000 (MEJA).

The crimes investigated by the Human Rights and Special Prosecutions Section, and that Section's expertise, are substantially different than those of the Civil Rights Division and the civil rights FBI agents they work with; thus, our internationally-focused human rights case researchers and investigators have not worked on domestic civil rights-era cold cases in the past, nor are they doing so now.

THE ATTORNEY GENERAL'S
SECOND ANNUAL REPORT TO CONGRESS
PURSUANT TO THE EMMETT TILL
UNSOLVED CIVIL RIGHTS CRIME ACT OF 2007
MAY 13, 2010

INTRODUCTION

This report is submitted pursuant to the Emmett Till Unsolved Civil Rights Crime Act of 2007 ("The Emmett Till Act").¹ This second Department of Justice ("DOJ" or "Department") Report describes the Department's activities in the year since the first report² and summarizes prior Department activities.

Section I of the Report gives a history of the Department's civil rights cold case work and provides an overview of the factual and legal challenges we face in our ongoing efforts to prosecute unsolved civil rights era homicides. Over the past year, Department attorneys and FBI agents interviewed potential witnesses, reviewed thousands of pages of documents, files, and evidence and we have now concluded our investigation into 56 of 109 cold cases involving 122 victims. Though very few prosecutions have resulted, the Department's efforts have helped bring closure to many families. This Section describes the Department's efforts locating the victims' next of kin, personally notifying them of the closure, and providing them with a detailed letter explaining the facts of their relative's case and our decision.

Section II of the Report sets forth the steps we have taken since we began the Cold Case Initiative in 2006 and describes how our efforts to bring justice and/or closure to the families has evolved as it has become apparent that most of these cases will not result in prosecutions. This Section describes our ongoing efforts to generate leads, uncover relevant information and heighten public awareness through extensive outreach efforts. This year, the Department conducted significant outreach to interested community groups, law enforcement organizations, academic communities, and the media. Section II chronicles our cold case presentations at national conferences, in classes, and as part of town hall meetings. And, this Section updates the Department's efforts regarding our successful prosecution of James Ford Seale for the 1964

¹ Pub. L. 110 – 344 (2008). The Act requires the Attorney General to annually conduct a study and report to Congress not later than 6 months after the date of enactment of this Act, and each year thereafter. Among other issues, the study and report is required to discuss the number of open investigations within the Department for violations of criminal civil rights statutes that occurred not later than December 31, 1969, and resulted in a death. The Act also requires the report to discuss any applications submitted for grants under section 5, the award of any grants, and the purposes for which any grant amount was expended. Additionally, the Act requires the Attorney General to designate a Deputy Chief in the Criminal Section of the Civil Rights Division to coordinate the investigation and prosecution of these criminal cases, and authorizes the Deputy Chief to coordinate investigative activities with State and local law enforcement officials.

² The Attorney General's First Report to Congress Pursuant to the Emmett Till Unsolved Civil Rights Crime Act of 2007 was submitted on May 13, 2009.

murders of Charles Moore and Henry Dee. Over the course of this year the Department participated in extensive appellate litigation to uphold this conviction in a process that culminated on March 12, 2010 when the Fifth Circuit affirmed the conviction.

Section III of the Report sets forth where things currently stand with respect to the 109 matters opened for review during this process. Section III identifies by name all 122 victims and the approximate date and location of death. It also identifies the two cases which were successfully prosecuted and the 54 matters for which, after significant investigation and review, we have made a decision to close the matter without prosecution. In the vast majority of the matters that we have closed without prosecution, all identified subjects are deceased. In others, there is insufficient evidence to establish that a racially motivated homicide occurred, as opposed to some other manner of death outside the scope of the Emmett Till Act.

We believe that we have made great progress this year, and look forward to continued progress in the upcoming year.

I. THE DEPARTMENT OF JUSTICE'S EFFORTS TO INVESTIGATE AND PROSECUTE UNSOLVED CIVIL RIGHTS ERA HOMICIDES

A. Overview and Background

The Department of Justice continues to fully support the goals of the Emmett Till Act. For more than 50 years, the Department of Justice has been instrumental in bringing justice to some of the nation's most horrific civil rights era crimes, including the Department's groundbreaking federal prosecution of 19 subjects for the 1964 murders of three civil rights workers in Philadelphia, Mississippi, a case commonly referred to as the "Mississippi Burning" case. These crimes occurred during a terrible time in our nation's history when all too often crimes were not fully investigated or prosecuted or evidence was ignored by juries because of the color of the victims' skin. The Department of Justice believes that racially motivated murders from the civil rights era constitute some of the greatest blemishes upon our history. As such, the Department stands ready to lend our assistance, expertise, and resources to assist in the investigation and possible prosecution of these matters.

Unfortunately, federal jurisdiction over these historic cases is quite limited. The Ex Post Facto Clause of the Constitution and federal statutory law have limited the Department's ability to prosecute most civil rights era cases at the federal level. For example, two of the most important federal statutes that can be used to prosecute racially motivated homicides, 18 U.S.C. § 245 (interference with federally protected activities) and 42 U.S.C. § 3631 (interference with housing rights), were not enacted until 1968. Under the Ex Post Facto Clause, these statutes cannot be applied retroactively to conduct that was not a crime at the time of the offense.

The five-year statute of limitations on federal criminal civil rights charges presents another limitation on such prosecutions. In 1994, death-resulting violations of 18 U.S.C. § 242 (civil rights violations committed under color of law) and 18 U.S.C. § 245 (interference with federally protected activities) became capital offenses; as capital offenses, these statutes are no longer subject to a statute of limitations. However, even death-resulting civil rights violations which occurred prior to 1994 are governed by the then-existing five-year statute of limitations.

In addition, there are certain difficulties inherent in these cold cases: subjects die; witnesses die or can no longer be located; memories become clouded; evidence is destroyed. Even with our best efforts, investigations into historic cases are exceptionally difficult, and justice in few, if any, of these cases will ever be reached inside of a courtroom. Notwithstanding these legal and factual limitations, the Department believes that the federal government can still play an important role in these cases.

The Department has always been willing to reassess and review cold cases when new evidence came to light, and, as set forth below, played a major role in successfully prosecuting three such cold cases prior to the Cold Case Initiative. In order to further the Department's mission, in 2006, the FBI began its Cold Case Initiative to identify and investigate the murders committed during our nation's civil rights era.

In October 2008, the Emmett Till Act was signed into law, directing the Department to designate a Deputy Chief in the Civil Rights Division to coordinate the investigation and prosecution of civil rights era homicides, and a Supervisory Special Agent in the FBI's Civil Rights Unit to investigate those cases. The Civil Rights Division and the FBI were also given the authority to coordinate their activities with State and local law enforcement officials. For fiscal years 2009 through 2018, the Act authorized \$10,000,000 per year to the Attorney General, to be allocated as appropriate by the Department's Civil Rights Division and the FBI; \$2,000,000 per year for grants to State or local law enforcement agencies for expenses associated with the investigation and prosecution by them of civil rights era homicides; and \$1,500,000 per year to the Department's Community Relations Service ("CRS") to bring together law enforcement agencies and communities in the investigation of these cases. For fiscal year 2009, no funds authorized by this Act were appropriated; thus, the Department had to meet its obligations under this project by shifting resources from other important civil rights programs, projects, and prosecutions. For fiscal year 2010, Congress approved the President's budget request, which included, among other things, a request for \$1,600,000 for the Civil Rights Division's Cold Case Unit.

B. Pre-Cold Case Initiative Efforts

For many years now, the Department has played an important role in the investigation and prosecution of civil rights era homicides, notwithstanding the constitutional and

jurisdictional limitations noted above. Even prior to launching the Cold Case Initiative in 2006, the Department was able to play an important – indeed, essential – role in three successful cold case prosecutions.

For example, in 1997, the FBI reopened the investigation into the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham, Alabama which resulted in the deaths of an eleven year old and three fourteen year old girls. Civil Rights Division attorneys worked with the United States Attorney for the Northern District of Alabama in conducting a federal grand jury investigation. We were able to assume federal jurisdiction because a predecessor statute to the current arson and explosives statute, 18 U.S.C. § 844, provided that in situations where death resulted from an explosive transported in interstate commerce, the penalty was death, and under 18 U.S.C. § 3281, crimes punishable by death have no statute of limitations. Ultimately, we could not prove that the explosive traveled in interstate commerce, so we released the grand jury investigation to the State of Alabama. State charges were filed against defendants Thomas Blanton and Bobby Cherry in Birmingham, Alabama, in May 2000. Defendant Blanton was convicted in April 2001, and sentenced to four life terms; Cherry was convicted in May 2002, and sentenced to four life terms. The United States Attorney for the Northern District of Alabama was cross-designated to serve as the lead prosecutor in the state trials. Thus, this case – which was investigated by federal agents and a federal grand jury, and ultimately successfully prosecuted by a federal prosecutor in state court – provides a perfect example of the Department's efforts to find creative ways to pursue civil rights era cases.

In 1999, the Civil Rights Division and the United States Attorney's Office for the Southern District of Mississippi reopened the investigation into the 1966 murder of Ben Chester White, an elderly African-American farm worker, by Ernest Henry Avants, a Mississippi Klansman. Avants, along with two other men, lured White to Pretty Creek Bridge in the Homochitto National Forest outside of Natchez, Mississippi. Once there, White was shot multiple times with an automatic weapon, and also was shot in the head with a single barrel shotgun. Following the killing, which was intended to lure Dr. Martin Luther King to the area, White's body was thrown off the bridge. His bullet ridden body was discovered several days later. A 1967 state prosecution for murder resulted in an acquittal for Avants and a mistrial for another defendant who is now deceased. A third defendant, also now deceased, was never prosecuted by state officials. The Justice Department opened an investigation into the death of White in 1999, using a federal statute that prohibits murder on federal property, 18 U.S.C. § 1111. Avants was indicted in June 2000, convicted in February 2003 and sentenced to life in prison in June 2003.

Another matter in which federal resources contributed to the conviction of a civil rights era murderer involved the reopened investigation into the 1964 the murder of three civil rights workers in Philadelphia, Mississippi - an incident commonly known today as the "Mississippi Burning" case. At the time of the murders, the Assistant Attorney General of the Civil Rights

Division, John Doar, personally led the investigation and prosecution of these murders. Despite facing extraordinary hurdles, he was able to secure the convictions of 7 of the 18 defendants charged with these murders; however, they received sentences ranging from just 4 to 10 years of imprisonment. One of the ringleaders, Ku Klux Klan member Edgar Ray Killen, received a mistrial because one of the jury members refused to convict a “preacher.” The Department, however, remained committed to ensuring that Justice eventually prevailed in that case. The FBI worked with local law enforcement and provided invaluable assistance on the reopened investigation, which resulted in the indictment of Killen on three counts of state murder charges on January 6, 2005. Killen was finally convicted on June 21, 2005 for three counts of manslaughter for his involvement in the case. The then-80-year-old Killen was sentenced to twenty years for each count, to be served consecutively.

In addition to the three successful cold case prosecutions, the Department also made significant contributions in the recent re-investigation of the murder of Emmett Till, the then-14-year-old victim of a brutal murder in Money, Mississippi in 1955, and the individual for whom the Congressional Act authorizing renewed federal investigations of these cold cases is named. Photographs of Mr. Till’s mutilated body caused a national outcry and galvanized the civil rights movement. Two men, now deceased, were acquitted by a jury of 12 white men of murdering Emmett Till in a 1955 state prosecution. Shortly after the trial, the two men admitted to a magazine reporter that they had killed the teenager. Since then, allegations persisted that there were others – most of whom are also deceased – involved in the murder. At the request of the District Attorney for the 4th Judicial District of Mississippi and the Department’s Civil Rights Division, the FBI commenced a new investigation of the murder in May 2004, and in March 2006 turned over a more than 8,000 page report to the District Attorney.³ The District Attorney presented the matter to a grand jury in February 2007 and the grand jury declined to issue any new indictments in the matter. Although the grand jury did not issue an official report on the matter, several members of the biracial grand jury spoke with members of the press, and they reported that the grand jury unanimously agreed that there was insufficient evidence to establish probable cause that any surviving individual participated in the kidnapping or murder of Emmett Till. In March 2007, the FBI and the District Attorney met with family members of Emmett Till and discussed the investigative findings with them. Additionally, the FBI produced a detailed report on the investigation, a redacted version of which is available on the FBI’s website, www.fbi.gov. Although this particular case did not result in a successful prosecution, we believe that the exhaustive investigation conducted by the FBI gave some sense of closure to the victim’s family members and the community. Additionally, the investigation served to benefit history by unearthing the long-lost transcript of the 1955 trial.

³ The five-year statute of limitations on any potential federal criminal civil rights violation has expired, and there were no other applicable federal statutes; thus, there was no possibility of a federal prosecution.

These four cold cases represent the four different models in which the Department of Justice has participated in the investigation and prosecution of civil-rights era crimes: 1) non-civil rights federal statutes, such as the federal murder statute, have been used to successfully prosecute the perpetrators in federal court; 2) when the federal investigation failed to establish federal jurisdiction, a federal prosecutor was cross-designated to serve as a state prosecutor and was able to use the federal investigation in a successful State trial; 3) federal and local investigators have jointly investigated and provided assistance to a State prosecutor in an effort to bring a State prosecution; and 4) a thorough investigation has been completed and even though no prosecution has resulted, some closure has been provided.

II. THE COLD CASE INITIATIVE

A. Overview

In order to further the Department's commitment to investigating and prosecuting civil rights era homicides, the FBI in 2006 began its Cold Case Initiative (the Initiative) to identify and investigate the murders committed during the civil rights era. The Department and the FBI have jointly participated in a multi-faceted strategy to address these investigations.

The first step was to identify cases for inclusion under the Initiative. Each of the 56 field offices was directed to identify cases within its jurisdiction that might warrant inclusion on a list of cold cases meriting additional investigation. In 2007, we began the next phase of this initiative, which includes a partnership with the National Association for the Advancement of Colored People (NAACP), the Southern Poverty Law Center (SPLC), and the National Urban League to identify possible additional cases for investigation and to solicit their assistance with already identified matters.

As the investigations progressed, we fully realized the challenges associated with locating surviving subjects, witnesses and family members of the victims. In an effort to generate leads and other information, we began an extensive outreach campaign, soliciting assistance from community groups and other NGOs, engaging the academic community, reaching out to the media, and working with state and local law enforcement organizations. We have received valuable information as a result of these efforts, and our outreach campaign will continue. And at a minimum, we believe that our demonstrated commitment already has provided the communities with the assurance that they are being heard and that the Department is doing everything possible to investigate these important cases.

B. Ongoing Outreach Efforts

As part of the Department's efforts to uncover relevant information regarding our unsolved civil rights era homicides, we continue to engage in a comprehensive outreach program, meeting with a broad array of interested individuals and organizations.

i. Meetings with NGOs and Community Activists

In July 2009, the Attorney General met with the Chairman of the Emmett Till Justice Campaign, a cousin of Emmett Till, and other interested advocates, academics, journalists and members of the media to discuss issues related to the Emmett Till Act. This meeting followed up on an earlier meeting in which Department officials met with a number of key supporters of the Cold Case Initiative, including the Chairman of the Emmett Till Justice Campaign, and the brother of slain civil rights worker James Chaney to update them on the status of the Department's cold case work. During these meetings, we also discussed how these groups and individuals could: (1) help law enforcement locate witnesses and family members of the victims; (2) assist in providing psychological comfort and closure to victims; and (3) fulfill a historical role by documenting the stories underlying these cases through investigative journalism, research, and documentary films. We expect these productive dialogues with these groups to continue throughout the Initiative.

Senior officials with the Department and the FBI have also met with and will continue to meet with representatives from the NAACP, SPLC, and the National Urban League. The purpose of these meetings is threefold: 1) to encourage those organizations to reach out to their field offices and to try to obtain information on cold cases; 2) to provide the organizations with updates on our progress; and 3) to educate these organizations on the scope of the Emmett Till Act and the impediments that we face in pursuing these matters.

ii. Law Enforcement Outreach

We have also reached out to federal and local law enforcement officials and organizations to educate them about the Emmett Till Act and to solicit assistance and information. As noted earlier, the FBI reached out to all of its field offices and instructed them to identify all potential cold cases in their districts. The Department has proactively reached out to all of the United States Attorneys' Offices in districts in which there are open cold cases, notifying them of the cases in their districts and seeking their assistance.

A Department official presented on the Emmett Till Act at the 2009 Criminal Civil Rights Conference at the National Advocacy Center in Columbia, South Carolina. The conference was attended by Assistant United States Attorneys and FBI agents from across the country. A Department official also gave a presentation on the Emmett Till Act at the FBI's Civil Rights training program in 2009, attended by agents from across the country.

In an effort to broaden the outreach to prosecutors at a state and local level, Department officials participated in the annual conference of the National Black Prosecutors Association in July 2009, and presented on the James Ford Seale case. The FBI and Department officials have also met with representatives from the Mississippi Highway Safety Patrol, the Alabama Bureau of Investigation, and numerous other state and local law enforcement agencies.

iii. Collaboration with Academic Communities

In January 2008, November 2008, July 2009, and October 2009, Department officials met with professors from the Syracuse University College of Law. The Syracuse law school founded a Cold Case Justice Initiative (CCJI) project in response to the unsolved 1964 murder in Ferriday, Louisiana of shoe shop owner Frank Morris, who suffered fatal burns when his store was set on fire, presumably by members of the Ku Klux Klan.⁴ Under the supervision of the professors, Syracuse University College of Law students have researched thousands of documents related to the Morris matter and other cold cases in that geographic area. In addition, in October 2009, the Department and FBI met with a Syracuse undergraduate class in which students have done significant research on civil rights homicides. Syracuse has generously shared the results of the research conducted by its students.

We have also been in contact with a professor from Northeastern University School of Law, who is directing Northeastern University's Civil Rights and Restorative Justice Project, which engages students in matters relating to the civil rights movement. These students have also done extensive research on a number of our cold cases, and have shared their findings with us.

iv. Conferences and Town Hall Meetings

In addition to our efforts with scholars, the Department continues to reach out to local civil rights organizations and participate in conferences in an effort to encourage the active assistance of these groups. For example, an official from the FBI participated in the Mississippi Civil Rights Veterans Conference in Jackson, Mississippi in March 2009 and March 2010. In both instances, the official met with journalists, veterans of the civil rights movement, and others to discuss issues related to cold cases, explain our achievements with the Initiative, answer questions regarding specific cases, and request assistance with our efforts. In connection with the 2010 conference, the Attorney General issued a statement in support of the Emmett Till Act in which he encouraged citizens to come forward with any information they might have concerning civil rights era racially motivated homicides.

Similarly, in March 2009, officials from the FBI and the Civil Rights Division jointly participated in a two-day conference in Monroe, Georgia, sponsored by the Moore's Ford Memorial Committee. During that conference, officials participated in a panel discussion and met with community members, civil rights veterans, local law enforcement, jury consultants, and others in an attempt to re-invigorate the Moore's Ford investigation, which focuses on the

⁴ It should be noted that the Department is continuing to vigorously pursue the Morris murder case and the FBI has offered a \$10,000 reward for information leading to an indictment in the Morris matter.

lynching of two African-American couples on the Moore's Ford bridge in 1946. The FBI has offered reward money for information leading to an indictment in this matter.

During the October 2009 visit to Syracuse, New York, officials participated in a town hall meeting, which began with the screening of a documentary film about one of the cases under review as part of the Initiative. The officials granted an interview to a local public television program and met with community members, professors, journalists, and other interested persons in an attempt to identify leads and other information for the Cold Case Initiative in the northeast, where many African Americans relocated during the turbulent civil rights era.

The FBI also participated in a town hall meeting in Baton Rouge, Louisiana in November 2009, again partnering with a documentary filmmaker to screen one of his Cold Case documentaries in a community where some of these crimes occurred and where witnesses might reside.

In July 2010, a Department official is scheduled to deliver a presentation on the Cold Case Initiative at the NAACP's annual conference in Kansas City, Missouri.

v. Media Outreach

The Department and the FBI have embarked on an aggressive media outreach campaign, granting interviews to the Washington Post, National Public Radio, the British Broadcasting Company, 60 Minutes, Dateline, and other local media outlets to continue to elicit the public's assistance with locating witnesses to these crimes, as well as family members of the victims.

As noted in the first Report, in January 2009, the Department sponsored a joint press conference held by representatives from the FBI, the Civil Rights Division, the United States Attorneys and other prosecutors from the Northern and Southern Districts of Mississippi, senior officials from the United States Marshals Service, and the Mississippi Attorney General. During this press conference, the Department released the names of the victims whose murder cases are currently under review in the state of Mississippi, provided a phone number for a cold case hotline, and asked for citizen assistance in solving these crimes.

The Department continues to meet with journalists to seek input, ideas, and possible leads. For instance, we are regularly in contact with members of the Civil Rights Cold Case Project, a multi-partner, multi-platform effort focused on the unresolved history of the South during the civil rights era, seeking any information that it may have relevant to cold cases. Among the participants in that project are investigative reporters from Alabama, Mississippi, and Louisiana, who are vigorously investigating the matters in their respective regions. Investigative reporters from Michigan and Massachusetts are also contributing to the project. Another participant in that project is a documentary film maker from the Canadian Broadcasting

Corporation, who provided the Department with invaluable information during the investigation and successful prosecution of the James Ford Seale case.⁵

C. Prosecutions

The Cold Case Initiative resulted in one successful federal prosecution which was upheld on appeal this past year. This case involved the 1964 murders of 19-year-old Charles Moore and Henry Dee, in Franklin County, Mississippi. On May 2, 1964, James Ford Seale and other members of the Ku Klux Klan forced Moore and Dee into a car and drove the teenagers into the Homochitto National Forest. Mistakenly believing that Dee was a member of the Black Panthers and that he was bringing guns into the county, the Klansmen beat the boys while interrogating them about the location of the weapons. In order to stop the beating, the boys falsely confessed, telling the Klansmen that guns were stored in a nearby church. The Klansmen then split into two groups. One group went to search the church for the guns. The other group, including Seale, transported the victims across state lines, into Louisiana, and then back into Mississippi to a remote location on the Mississippi River. Moore and Dee, bound and gagged, were chained to a Jeep engine block and railroad ties, and were taken by Seale out onto the water in a boat, and were pushed overboard to their deaths. Their severely decomposed bodies were found months later.

Seale and another Klansmen, Charles Edwards, were arrested on state murder charges in late 1964, but the charges were later dropped. The Civil Rights Division and the United States Attorney's Office for the Southern District of Mississippi reopened an investigation into the murders in 2006. The new investigation revealed evidence that supported a federal prosecution under the federal kidnapping statute, 18 U.S.C. § 1201. Edwards, who was in the group of Klansmen who searched the church, but who did not participate in the actual murders, was granted immunity and testified against Seale, the only other surviving participant. Seale was indicted in January 2007, and convicted in June 2007, of two counts of kidnapping and one count of conspiracy. He was sentenced to three life terms. On appeal, when Seale's conviction was reversed by a three judge panel on a legal technicality involving the statute of limitations, the Department successfully sought en banc review. The en banc panel reinstated Seale's conviction and returned the case to the original panel for consideration of the remaining issues. On March 12, 2010 Seale's conviction was affirmed by the original Fifth Circuit panel.

D. Notifying Victim Family Members

⁵ An FBI official was also interviewed by another film maker for a documentary on another particularly egregious cold case – the murder of Johnnie Mae Chappell, and African-American mother of ten who was gunned down by a car full of white men as she walked along the side of the road searching for her wallet. At the end of the documentary, which aired on the History Channel in February 2009, the film maker provided an FBI phone number for viewers to call with information related to any cold cases.

During the past year, the FBI has completed its work on many of the investigations and has submitted them to the Department for review. The Department is in the process of reviewing these investigations and the thousands of documents provided by the FBI. Unfortunately, during this process, it has become apparent that due to the many impediments discussed earlier in this report, few, if any, of these cases will be prosecuted.

In an effort to nonetheless bring some sense of closure to the family members of these victims, the Department is writing letters to the next of kin when found. Pursuant to 68 Fed.Reg. 47610-01, excepting certain categories of disclosure from the Privacy Act, the Civil Rights Division has the authority to disclose information about the results of an investigation or case to family members of the victims. Thus, we have made the decision that our notification letters will detail our investigative efforts and our findings. We have also made the decision to have FBI agents hand deliver these letters to the family members.

The FBI has devoted considerable resources to locating the next of kin for the victims, successfully locating family members for 93 of the 122 victims. This past year, the FBI enlisted the public's assistance in locating next of kin at a town hall forum on November 18, 2009, at Southern University in Baton Rouge, Louisiana by presenting a list of the victims for whom the FBI was searching for next of kin. A press advisory alerted media to the announcement beforehand, and press packets were available at the event. Following the announcement, the FBI posted the Next of Kin list on the Seeking Information page of its website, and simultaneously issued a press release with updates and a link to the Seeking Information poster. Additionally, the information was publicized with a front page story on www.fbi.gov, email alerts to www.fbi.gov subscribers, a video on the FBI's YouTube channel, announcements on the FBI's Twitter feed and Facebook page, and through the "Wanted by the FBI" Podcast. A large number of media outlets picked up the story, including the Associated Press. This effort helped the FBI locate 12 of the 93 next of kin.

III. COLD CASE STUDY AND REPORT

As set forth above, the Department's efforts to investigate and prosecute unsolved civil rights era homicide cases predate the Emmett Till Act. During the course of the Department's focus on these matters, we have opened 109 matters, including 122 victims, for review. Two of those matters have been opened since the First Report to Congress was submitted in May 2009.

Thus far, the Department's efforts have resulted in two successful federal prosecutions, and two successful state prosecutions. The first federal case was *United States v. Avants*, 367 F.3d 433 (5th Cir. 2004), which was indicted in the Southern District of Mississippi in June 2000. Avants was convicted in February, 2003, and sentenced to life in prison. The second federal case was *United States v. James Ford Seale*, --- F.3d ---, 2010 WL 909199 (5th Cir. March 12, 2010), described in Section II.C. above, which was indicted in the Southern District of

Mississippi in January 2007. Seale was convicted in June 2007, and sentenced to three life terms.

The first successful federally-assisted state prosecution was the Sixteenth Street Church bombing case described above. The second successful federally-assisted state prosecution was the *State of Mississippi v. Edgar Ray Killen*. Charges were filed against Killen in Philadelphia, Mississippi, in January 2005; he was convicted of three counts of manslaughter in June 2005, and was sentenced to 60 years in prison.

Six of the 109 matters have been referred to state authorities. One of those matters is *In re: Emmett Till*. As discussed above, the District Attorney for the 4th Judicial District of Mississippi presented the matter to a grand jury in February 2007, and the grand jury declined to issue any new indictments. In another matter, State charges have been filed against then-Alabama State Trooper James Bonard Fowler for the 1965 murder of Jimmie Lee Jackson in Marion, Alabama. The murder of Jackson, an unarmed civil rights protester, was one of the events which led to the Selma to Montgomery marches. In May 2007, Fowler was charged with murder in Marion, Alabama. His October 2008 trial date was vacated, and the court has not yet set a new trial date.

Thus far, our review has revealed no viable federal statutory authority for any of the matters other than the federal murder statute used in *United States v. Avants* and the federal kidnapping statute used in *United States v. Seale*. In 39 of the cases closed without prosecution, all identified subjects are deceased. In 14 of the closed cases, there was insufficient evidence of a racially motivated homicide, as opposed to an accidental death, a suicide, a heart attack, a homicide committed by a black subject for non-racial reasons, or some other manner of death outside the scope of the Emmett Till Act.

Since January 2007, at least 57 federal prosecutors have worked on cases under review as part of the Department's Cold Case Initiative and the Emmett Till Act. Although no matters are currently under federal indictment, several cases have been identified as potentially viable prosecutions at the state level. The resources involved in a viable prosecution are enormous. More than 40 federal employees participated in the Seale prosecution alone. That number does not include the numerous retired federal employees, local law enforcement officials, or contract employees who provided additional assistance.

The Department has received no applications for grants from State or local law enforcement agencies under the Emmett Till Act.

Below is a chart listing the 122 victims whose deaths the Department has reviewed and is reviewing in accordance with the Emmett Till Act:

NAME OF VICTIM	INCIDENT LOCATION	INCIDENT DATE	CLOSING DATE
1. Louis Allen	Amite County, Mississippi	January 31, 1964	
2. Andrew Lee Anderson	Crittendon County, Arkansas	July 17, 1963	April 9, 2010
3. Frank Andrews	Usman, Alabama	November 28, 1964	
4. Isadore Banks	Marion, Arkansas	June 8, 1964	
5. John Larry Bolden	Chattanooga, Tennessee	May 3, 1958	April 15, 2010
6. Preston Bolden	San Antonio, Texas	May 8, 1953	
7. James Brazier	Dawson, Georgia	April 20, 1958	April 6, 2009
8. Thomas Brewer	Columbus, Georgia	February 18, 1956	April 6, 2009
9. Hilliard Brooks	Montgomery, Alabama	August 13, 1952	April 9, 2010
10. Benjamin Brown	Jackson, Mississippi	May 11, 1967	
11. Charles Brown	Yazoo City, Mississippi	June 18, 1957	April 16, 2010
12. Gene Brown/a.k.a Pheld Evans	Canton, Mississippi	1964	April 21, 2010
13. Jessie Brown	Winona, Mississippi	January 13, 1965	April 19, 2010
14. Carrie Brumfield	Franklinton, Louisiana	September 12, 1967	
15. Eli Brumfield	McComb, Mississippi	October 13, 1961	April 16, 2010
16. Johnnie Mae Chappell	Jacksonville, Florida	March 23, 1964	
17. Jesse Cano	Brookville, Florida	January 1, 1965	
18. Silas Caston	Hinds County, Mississippi	March 1, 1964	May 2, 2010
19. James Chaney	Philadelphia, Mississippi	June 21, 1964	
20. Thad Christian	Anniston, Alabama	August 28, 1965	
21. Clarence Cloniger	Gaston, North Carolina	October 10, 1960	April 3, 2009
22. Willie Countryman	Dawson, Georgia	May 25, 1958	April 6, 2009
23. Vincent Dahmon	N/A	N/A	April 12, 2010
24. Jonathan Daniels	Lowndes County, Alabama	August 20, 1965	
25. Woodrow Wilson Daniels	Yalobusha County, Alabama	June 25, 1958	April 12, 2010
26. Henry Hezekiah Dee	Parker's Landing, Mississippi	May 2, 1964	March 15, 2010
27. George Dorsey	Monroe, Georgia	July 25, 1946	
28. Mae Dorsey	Monroe, Georgia	July 25, 1946	
29. Roman Duckworth	Taylorsville, Mississippi	April 9, 1962	April 12, 2010
30. Joseph Dumas	Perry, Florida	May 5, 1962	April 9, 2010
31. Joseph Edwards	Vidalia, Mississippi	July 12, 1964	
32. Willie Edwards	Montgomery, Alabama	January 23, 1957	
33. James Evansington	Tallahatchie, Mississippi	December 24, 1955	April 12, 2010
34. Andrew Goodman	Philadelphia, Mississippi	June 21, 1964	
35. Mattie Greene	Ringgold, Georgia	May 20, 1965	
36. Jasper Greenwood	Vicksburg, Mississippi	July 10, 1964	
37. Jimmie Lee Griffin	Sturgis, Mississippi	September 24, 1965	
38. Paul Guihard	Oxford, Mississippi	September 30, 1962	
39. A.C. Hall	Macon, Georgia	October 11, 1962	
40. Rogers Hamilton	Lowndes County, Alabama	October 22, 1957	

41. Adlena Hamlett	Sidon, Mississippi	January 11, 1966	
42. Samuel Hammond	Orangeburg, South Carolina	February 8, 1968	
43. Collie Hampton	Winchester, Kentucky	August 14, 1966	
44. Alphonso Harris	Albany, Georgia	December 1, 1966	April 12, 2010
45. Isaiah Henry	Greensburg, Louisiana	July 28, 1954	
46. Arthur James Hill	Villa Rica, Louisiana	August 20, 1965	
47. Ernest Hunter	Savannah, Georgia	September 13, 1958	April 6, 2009
48. Jimmie Lee Jackson	Marion, Alabama	February 18, 1965	
49. Luther Jackson	Philadelphia, Mississippi	October 25, 1959	April 16, 2010
50. Wharlest Jackson	Natchez, Mississippi	February 27, 1967	
51. Ernest Jells	Clarksdale, Mississippi	October 20, 1963	April 16, 2010
52. Joseph Jeter	Atlanta, Georgia	September 13, 1958	May 2, 2010
53. Nathan Johnson	Alabaster, Alabama	May 8, 1966	
54. Marshall Johns	Ouachita Parish, Louisiana	July 13, 1960	April 22, 2010
55. Birdie Kegar	Sidon, Mississippi	January 11, 1966	
56. Bruce Klunder	Cleveland, Ohio	March 7, 1964	April 16, 2010
57. William Henry "John" Lee	Rankin County, Mississippi	February 25, 1965	
58. George Lee	Belzoni, Mississippi	May 7, 1955	
59. Herbert Lee	Amite County, Mississippi	September 25, 1961	April 16, 2010
60. Richard Lillard	Nashville, Tennessee	July 20, 1958	April 15, 2010
61. George Love	Ruleville, Mississippi	January 8, 1958	
62. Maybelle Mahone	Zebulon, Georgia	December 5, 1967	April 6, 2009
63. Dorothy Malcolm	Monroe, Louisiana	July 25, 1946	
64. Roger Malcolm	Monroe, Louisiana	July 25, 1946	
65. Sylvester Maxwell	Canton, Mississippi	January 17, 1963	May 2, 2010
66. Bessie McDowell	Andalusia, Alabama	June 14, 1956	April 9, 2010
67. Ernest McPharland	Ouachita Parish, Louisiana	July 13, 1960	April 22, 2010
68. Robert McNair	Pelahatchie, Mississippi	November 6, 1965	
69. Clinton Melton	Sumner, Mississippi	December 3, 1955	April 12, 2010
70. Delano Middleton	Orangeburg, South Carolina	February 8, 1968	
71. James Andrew Miller	Jackson, Georgia	August 30, 1964	April 12, 2010
72. Booker T. Mixon	Clarksdale, Mississippi	September 12, 1959	
73. Neimiah Montgomery	Cleveland, Mississippi	August 10, 1964	April 12, 2010
74. Charles Edward Moore	Parker's Landing, Mississippi	May 2, 1964	March 15, 2010
75. Harriette Moore	Mims, Florida	December 25, 1951	
76. Harry Moore	Mims, Florida	December 25, 1951	
77. Oneal Moore	Varnado, Louisiana	June 2, 1965	
78. William Moore	Attalia, Alabama	April 23, 1963	
79. Frank Morris	Ferriday, Louisiana	December 10, 1964	
80. James Motley	Elmore County, Alabama	November 20, 1966	April 12, 2010
81. Samuel O'Quinn	Centreville, Mississippi	August 14, 1959	
82. Herbert Orsby	Canton, Mississippi	September 7, 1964	April 12, 2010
83. Will Owens	New Bern, North Carolina	March 5, 1956	April 3, 2009

84. Mack Charles Parker	Pearl River County, Mississippi	May 4, 1959	
85. Larry Payne	Memphis, Tennessee	March 28, 1968	
86. Charles Horatious Pickett	Columbus, Georgia	December 21, 1958	April 12, 2010
87. Albert Pitts	Ouachita Parish, Louisiana	July 13, 1960	April 22, 2010
88. David Pitts	Ouachita Parish, Louisiana	July 13, 1960	April 22, 2010
89. Jimmy Powell	New York City, New York	July 16, 1964	
90. William Roy Prather	Corinth, Mississippi	October 31, 1959	
91. Johnny Queen	Fayette, Mississippi	August 8, 1965	
92. Donald Raspberry	Okolona, Mississippi	February 27, 1965	May 17, 2010
93. James Reeb	Selma, Alabama	March 8, 1965	
94. James Earl Reese	Gregg County, Texas	October 22, 1955	April 15, 2010
95. Fred Robinson	Edisto Island, South Carolina	August 5, 1960	
96. Johnnie Robinson	Birmingham, Alabama	September 15, 1963	April 9, 2010
97. Willie Joe Sanford	Hawkinsville, Georgia	March 1, 1957	
98. Michael Schwerner	Philadelphia, Mississippi	June 21, 1964	
99. Marshall Scott	Orleans Parish, Louisiana	January, 1965	
100. Jessie James Shelby	Yazoo City, Mississippi	January 21, 1956	May 24, 2010
101. Ollie Shelby	Hinds County, Mississippi	January 22, 1965	April 16, 2010
102. George Singleton	Shelby, North Carolina	April 30, 1957	April 16, 2010
103. Ed Smith	Stateline, Mississippi	April 27, 1958	November 5, 2009
104. Henry Smith	Orangeburg, South Carolina	February 8, 1968	
105. Lamar Smith	Brookhaven, Mississippi	August 13, 1955	April 12, 2010
106. Maceo Snipes	Butler, Georgia	July 18, 1946	April 12, 2010
107. Eddie Stewart	Jackson, Mississippi	July 9, 1966	
108. Isaiah Taylor	Ruleville, Mississippi	June 26, 1964	April 12, 2010
109. Emmett Till	Money, Mississippi	August 28, 1955	December 28, 2007
110. Ann Thomas	San Antonio, Texas	April 8, 1969	April 15, 2010
111. Freddie Lee Thomas	Sidon, Mississippi	August 19, 1965	
112. Selma Trigg	Hattiesburg, Mississippi	January 21, 1965	May 2, 2010
113. Ladislado Ureste	San Antonio, Texas	April 23, 1953	April 20, 2010
114. Hubert Varner	Atlanta, Georgia	September 10, 1966	April 6, 2009
115. Clifton Walker	Woodville, Mississippi	February 29, 1964	
116. Virgil Ware	Birmingham, Alabama	September 23, 1963	
117. James Waymers	Allendale, South Carolina	July 10, 1965	April 15, 2010
118. Ben Chester White	Natchez, Mississippi	June 10, 1966	October 16, 2003
119. Robert Wilder	Ruston, Louisiana	July 17, 1965	
120. Rodell Williamson	Camden, Alabama	May 20, 1967	May 2, 2010
121. Archie Wooden	Camden, Alabama	December 25, 1967	April 20, 2010
122. Samuel Younge	Tuskagee, Alabama	January 3, 1966	



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 8, 2011

The Honorable Richard J. Durbin
Chairman
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the appearance of FBI Executive Assistant Director Arthur Cummings before the Subcommittee on October 6, 2009, at a hearing entitled "No Safe Haven: Accountability for Human Rights Violators, Part II." We apologize for our lengthy delay in submitting these responses. We hope that the information is of assistance to the Subcommittee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in dark ink, appearing to read "m. weich".

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Tom Coburn
Ranking Minority Member

**Responses of
The Federal Bureau of Investigation**

**To Questions for the Record
Arising from a Hearing Before the
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate**

**Entitled
"No Safe Haven: Accountability for Human Rights Violators, Part II"**

October 6, 2009

Questions Posed by Senator Coburn

- 1. Your agency received money for human rights investigations in FY09 appropriations, of which a similar amount and directive is included in the FY2010 appropriations bill pending now in the Senate. Did the FBI request this money in either FY09 or FY2010?**

Response:

The Administration's budget requests to Congress in Fiscal Year (FY) 2009 and FY 2010 did not include additional funding for this initiative.

- 2. About how much does it cost to fund a single FBI agent?**

Response:

A new FBI Agent costs, on average, approximately \$270,000 to \$287,000 in the first year of employment, including recruitment costs, initial training, new equipment, and a partial year's salary, among other factors. Thereafter, the recurring cost of an FBI Agent is approximately \$190,000 to \$368,000, depending on the Agent's pay grade, location, eligibility for danger pay, and other factors. This includes salary, the replacement cycle for equipment, ongoing training, and retirement and other benefits, among other factors.

- 3. What investigative functions are performed by the FBI that cannot be performed by other agencies in these human rights cases?**

A - 1

Response:

The FBI works closely with its U.S. interagency counterparts on matters related to human rights violations. Unlike some of our U.S. law enforcement partners, FBI criminal investigations are not limited to U.S. citizens or to domestic criminal activity. The FBI may generally initiate a human rights investigation when the perpetrator is a U.S. person, the victim is a U.S. person, or the perpetrator is located in the United States, regardless of nationality. (As discussed later, some offenses, such as war crimes under 18 U.S.C. § 2441, do not confer jurisdiction based solely upon the offender's presence in the United States.)

The FBI offers assistance to other U.S. Government (USG) agencies and international investigative bodies. The FBI's authorities uniquely position it to address broader jurisdictional and geographical matters, as evidenced by the FBI's history of complex, extraterritorial investigations. The FBI's operational foundation includes not only its 56 U.S. field offices but also its international cadre of 61 Legal Attachés serving in U.S. embassies worldwide. With this broad foundation, FBI personnel are able to pursue investigative and intelligence leads, uncover evidence, pursue perpetrators, and leverage a well-established international network of foreign law enforcement and intelligence partners.

The FBI has offered the use of its well-trained Special Agents (SAs), Intelligence Analysts (IAs), forensics experts, and attorneys in a number of human rights cases, where the expertise they offer in crime scene preservation, interviewing techniques, and other areas has proven vital to successful investigations. For example, the FBI's experts in the Behavioral Analysis Units at the National Center for the Analysis of Violent Crimes and the biometrics tools available through the FBI's Criminal Justice Information System Division have been integral to the identifications of both perpetrators and victims, and the FBI's Language Services Section has been instrumental in maximizing the language skills of SAs, IAs, and linguists to initiate, enhance, and support investigations worldwide.

4. a. Please describe how the FBI has been involved in the enforcement of human rights laws in the past.

Response:

Traditionally, FBI SAs have worked in tandem with IAs to investigate cases involving overseas homicides, political violence, mass atrocities, torture, kidnappings, hostage takings, and bombings against U.S. interests. The expertise the FBI has developed through these complex cases will enable the Genocide War Crimes Program (GWCP) to develop a more systematic approach to investigations related to genocide, kidnappings of specified persons, hostage

takings, overseas torture, war crimes, and recruitment or use of child soldiers, in violation of 18 U.S.C. §§ 1091, 1201, 1203, 2340A, 2441, and 2442, respectively.

b. Do you believe the FBI should be more involved in the day-to-day work on human rights cases?

Response:

The FBI should be involved in the day-to-day work on human rights particularly as it pertains to U.S. national security interests and to domestic public safety. The FBI is experienced in these unique investigations and is accustomed to balancing the need for objective pursuit of the facts with the preservation of civil liberties. The FBI works with its U.S. and international law enforcement partners and consults with international human rights organizations to develop respect for the rule of law and to improve law enforcement capabilities. Historically, the efforts of the GWCP have been integrated with programs in the Department of Justice, Department of Homeland Security, Immigration and Customs Enforcement, Department of State, and others in the U.S. Intelligence Community. This interagency collaboration has provided the foundation for an effective investigative synergy that can enhance human rights investigations worldwide.

c. Can it do so without being distracted or over-extended from its traditional law enforcement and counter-terrorism responsibilities?

Response:

The FBI does not view its responsibilities regarding human rights as a distraction. A full-time cadre of dedicated personnel with experience in both traditional law enforcement and counterterrorism are assigned to the Human Rights Program. The focus of the work conducted by the GWCP includes the Balkans, Horn of Africa, and other conflict zones affected by international terrorism. As conflict areas emerge worldwide, the FBI will review these situations to assess U.S. security interests and potential Federal jurisdiction and then appropriately collect intelligence to identify potential violations.

5. What is the most common human rights offense you see from perpetrators seeking (or enjoying) safe haven in the United States?

Response:

The response to this inquiry depends in part on the meaning of "human rights offense." If the question pertains to which of the Federal criminal violations listed in response to Question 4a we see most often, the most common human rights offense the FBI has seen is violation of the torture statute, 18 U.S.C. §

2340A. Many of the perpetrators associated with these violations originate from South America, the Balkans, and Africa. The FBI has vigorously investigated these cases, leveraging the expertise of the FBI's extraterritorial squads and Legal Attachés. If, instead, the question pertains to which of the offenses listed in Question 4a permit the perpetrator to be present in the United States without becoming subject to U.S. jurisdiction based solely on that U.S. presence, the only listed offenses in which the offender's presence does not confer jurisdiction are war crimes under 18 U.S.C. § 2441.

6. What is the biggest challenge you face in trying to fulfill your human rights enforcement responsibilities?

Response:

Human rights cases typically involve piecing together fragmentary information, interviewing foreign witnesses in conflict zones who fear for their lives, collecting evidence in foreign countries that exercise varying levels of care in evidence collection, accommodating language barriers, and working with governments whose political systems are vulnerable to corruption. Consequently, from an investigative perspective, the greatest challenge is posed by the fact that these complex and lengthy investigations require sustained, productive collaboration with foreign counterparts and predictable and consistent resourcing. While these investigative challenges are the primary impediments to successful prosecution, we are also challenged, from a legal standpoint, by the fact that some offenses often characterized by the public and by international organizations as "human rights violations," such as war crimes, do not permit the U.S. to exercise criminal jurisdiction based solely upon the offender's presence in the United States.

7. Regarding enforcement of human rights laws, what is your biggest frustration/hindrance to coordinating with other agencies?

Response:

The FBI has not experienced any impediments to our coordination with other agencies. The FBI's working relationships with its interagency partners remain strong and continue to grow. The GWCP attributes this interagency synergy to teamwork and to the dedication of the investigators, analysts, and attorneys assigned to the FBI's Human Rights Program.

8. Is there any evidence that any human rights violators seeking or enjoying safe haven in the United States have had connections to international terrorism?

Response:

The GWCP has not identified human rights violators with known or overt connections to international terrorism who are seeking or enjoying safe haven in the United States. By the very nature of some of the protracted conflicts in the world, such as in the Democratic Republic of the Congo, Horn of Africa, Balkans, and Sudan, socio-economic and political factors are the impetus for acts of terrorism. The escalation of violence increases the likelihood of human rights abuses, including torture and genocide.

9. To the extent that we (the U.S. Government) are not doing all we can to keep human rights violators out of the United States, is the biggest problem that we are not adequately enforcing laws already on the books, or that we do not have the legal tools needed to do the job well?

Response:

The most important key to keeping human rights violators out of the United States is enhancing the USG's sharing of information with interagency partners to prevent perpetrators from entering the country. The abuse of U.S. asylum laws and the use of fraudulent documents have enabled human rights perpetrators to cross U.S. borders. For example, some perpetrators have used victim populations as a camouflage to cover their illegal entry into the United States. Perpetrators of offenses that do not confer U.S. criminal jurisdiction based solely on the offender's presence in the U.S., such as war crimes, may have particular incentive to attempt these fraudulent entries into the United States.

**Questions for the Record Submitted to
Deputy Assistant Secretary David T. Donahue by
Senator Tom Coburn
Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law
October 6, 2009**

Questions for Mr. Donahue (State):

1. At the hearing, we discussed how some visa applications are referred to agencies in D.C. for additional review and a Security Advisory Opinion (SAO). You said that approximately 260,000 of these SAOs are processed every year and that these are generally used for individuals who may be ineligible because of human rights offenses.
 - a. Are there any time pressures or deadlines that affect the timing of an SAO? Or are agencies free to take as much time as they need to complete the SAO?

Answer:

Definitive responses are not sent to posts until the SAO process has been completed. Some cases may be prioritized based on U.S. national interests. For example, we may prioritize applicants attending UN General Assembly Meetings and individuals coming for high-level U.S. government meetings. The Department makes every effort to work with our partner agencies to process all SAOs in an expeditious manner while ensuring information is properly obtained, reviewed, and cleared. I should also point out that the majority of SAOs are sent to verify whether derogatory information in the lookout system is actually identifiable with a specific visa applicant. Many lookout records are fragmentary, or contain very common names. Most of these cases are subsequently cleared for issuance.

- b. How many of the 260,000 SAOs processed each year result in a visa denial?

Answer:

In my testimony, I stated that the SAO process is generally used for individuals who may be ineligible under Section 212(a)(3) of the Immigration and Nationality Act. Most SAOs involve concerns related to possible ineligibility on grounds of terrorist activity (INA 212(a)(3)(B)) or unlawful exportation of sensitive technology (INA 212(a)(3)(A)(ii)), but some also include individuals who may have been involved in genocide, extrajudicial killings, torture, or the recruitment or use of child soldiers. Some INA provisions for ineligibility based on human rights offenses (e.g., particularly severe violations of religious freedom and human trafficking) are located in other Section 212(a) subsections, and legal opinions regarding these grounds of ineligibility are provided by means of Advisory Opinions, rather than SAOs.

With respect to denials of nonimmigrant visas under INA Section 212(a)(3), in FY 2009, there were approximately 106 denials under subsection (3)(A)(i), 48 under (3)(A)(ii), two under (3)(A)(iii), 449 under (3)(B), and one under (3)(C). Additionally, 74 applicants who were nationals of countries designated as state sponsors of terrorism failed to overcome the presumption of Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), and were therefore denied visas. Among immigrant visa applicants, there were approximately three denials under subsection (3)(A)(i) of INA 212(a), 52 under (3)(A)(ii), zero under (3)(A)(iii), 21 under (3)(B), zero under (3)(C), and zero based on Section 306 of the EBSVERA.

- c. How many SAOs approving a visa have later been discovered to have been in error, such that a person has to be tracked down and removed?

Answer:

I would have to defer to the other witnesses for any information about the apprehension and removal of aliens already in the United States. As an interagency process, SAOs are designed to gather all relevant information from appropriate agencies before a visa is adjudicated.

**Questions for the Record Submitted to
Deputy Assistant Secretary David T. Donahue by
Senator Tom Coburn
Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law
October 6, 2009**

Questions for All Witnesses:

1. What is the most common human rights offense you see from perpetrators seeking (or enjoying) safe haven in the United States?

Answer:

It is undetermined which human rights abuses are the most common because there is no specific category for general human rights abuses. Human rights abusers may be refused under various sections of the Immigration and Nationality Act (INA). (See Answer 5 below for details on the various INA sections under which a human rights abuser may be deemed ineligible for a visa.) However, as of October 2009, the Department had refused one visa based on participation in a particularly severe violation of religious freedoms, 24 visas based on involvement in trafficking in persons, 7,235 visas based on involvement in Nazi-related persecutions, 32 visas based on involvement in genocide, and 11 visas based on involvement in torture or extrajudicial killings. The Department also denied 2,758 visas based on Presidential Proclamations under Section 212(f).

**Questions for the Record Submitted to
Deputy Assistant Secretary David T. Donahue by
Senator Tom Coburn
Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law
October 6, 2009**

2. What is the biggest challenge you face in trying to fulfill your human rights enforcement responsibilities?

Answer:

Most human rights abuses are committed in the fog of war or other conflict, and in almost every case the perpetrators attempt to conceal their actions. Reporting on these activities is often incomplete, unsubstantiated and sometimes tainted by personal animus or political motivation. Historically, getting to the truth of human rights violations has been the greatest challenge. Access to intelligence is the most valuable resource available to consular officers in connection with visa adjudication. The Visa Office, through its robust consular systems, has the ability to quickly ingest lookout information on human rights violators. Once a potential inadmissibility is entered into our systems, it is incorporated in "real time" into our visa screening process. Therefore, the primary challenge is to obtain reliable, authoritative, complete, and accurate information on human rights violators from law enforcement and other sources.

**Questions for the Record Submitted to
Deputy Assistant Secretary David T. Donahue by
Senator Tom Coburn
Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law
October 6, 2009**

3. Regarding enforcement of human rights laws, what is your biggest frustration/hindrance to coordinating with other agencies?

Answer:

The Visa Office works closely with the Department of Justice (DOJ) and the Department of Homeland Security (DHS) to share information on these cases, particularly in regards to entering lookouts in the Consular Affairs Automated Lookout System (CLASS).

4. Is there any evidence that any human rights violators seeking or enjoying safe haven in the United States have had connections to international terrorism?

Answer:

I would have to defer to the other witnesses.

**Questions for the Record Submitted to
Deputy Assistant Secretary David T. Donahue by
Senator Tom Coburn
Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law
October 6, 2009**

5. To the extent that we (the U.S. Government) are not doing all we can to keep human rights violators out of the United States, is the biggest problem that we are not adequately enforcing laws already on the books, or that we do not have the legal tools needed to do the job well?

Answer:

There is currently no broad-based visa ineligibility for human rights violators per se.

However, there are several visa ineligibilities within the INA that are related to human rights concerns under Section 212(a), including an ineligibility for foreign government officials who have committed particularly severe violations of religious freedom; for individuals who have committed or conspired to commit a human trafficking offense; for individuals involved in Nazi-related persecutions from 1933 to 1945; for individuals who have engaged in genocide; for individuals who have committed acts of torture or extrajudicial killings; and for individuals who have engaged in the recruitment or use of a child soldier. Additionally, Presidential Proclamations have been used to bar entry to human rights violators under Section 212(f) of the INA. Presidential Proclamations have been used to deny visas to individuals from Burma, Cuba, Zimbabwe, and the Balkans, among others. (It should be noted, however, that there are no 212(f) Presidential Proclamations that bar entry specifically on the basis of "human rights" violations. Rather, persons who have engaged in human rights abuses will often be ineligible on

some other 212(f) basis, e.g., acts that “impede democracy” or “threaten democratic institutions.”)

It is also possible that a human rights violator may be ineligible on other, more defined grounds, such as if he or she has had two or more criminal convictions for which the aggregate sentence of confinement was five years or more, or who has committed a crime involving moral turpitude. However, these grounds are not specifically targeted to or limited to individuals who have committed human rights abuses. Finally, there may be other acts which one would deem human rights violations, yet the U.S. law does not render the person ineligible for a visa. For example, an individual who has engaged in religious persecution, but was not serving as an official of a foreign government at the time, would not be ineligible under the religious persecution provision of the INA.

Another issue is the lack of evidentiary standard for human rights ineligibilities. There is no “reason to believe” standard for foreign government officials who commit particularly severe violations of religious freedom, or for significant human trafficking in persons. Within the trafficking-in-persons provision, INA 212(a)(2)(H), an alien is inadmissible as a knowing aider, abettor, assister, conspirator, or colluder of a trafficker based on “reason to believe,” but there is no “reason to believe” provision applicable for determination of whether an alien is inadmissible as an actual trafficker. There is a lower standard for prudential revocations, requiring sufficient information to potentially support an ineligibility finding, but not an actual ineligibility finding. However, because an alien whose visa is prudentially revoked may reapply, there should be some evidentiary basis

at the time of the prudential revocation to suspect that the alien is ineligible for a visa. There also is no "reason to believe" standard for ineligibilities for participants in genocide, Nazi persecution, torture, or extrajudicial killings under 212(a)(3)(E).

Question#:	1
Topic:	common
Hearing:	No Safe Haven: Accountability for Human Rights Violators, Part II
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: What is the most common human rights offense you see from perpetrators seeking (or enjoying) safe haven in the United States?

Response: Having ordered, incited, assisted, or otherwise participated in persecution against others is the most common offense U.S. Immigration and Customs Enforcement encounters among perpetrators seeking safe haven in the United States. Under the Immigration and Nationality Act (INA), those engaged in acts of persecution, on account of the victim's race, religion, nationality, membership in a particular social group, or political opinion, are barred from obtaining refugee or asylum status, withholding of removal, or temporary protected status.

Question#:	2
Topic:	challenges
Hearing:	No Safe Haven: Accountability for Human Rights Violators, Part II
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: What is the biggest challenge you face in trying to fulfill your human rights enforcement responsibilities?

Regarding enforcement of human rights laws, what is your biggest frustration/hindrance to coordinating with other agencies?

Response: In criminal cases, establishing jurisdiction and statute of limitations issues are the biggest challenges to enforcing human rights laws. For example, the War Crimes Statute (18 U.S.C. § 2441) covers a broad range of criminal acts related to human rights. However, jurisdiction under this statute is currently limited to circumstances where either the victim or the perpetrator is a United States national or a member of the Armed Forces of the United States. Although more recently enacted statutes, such as those on genocide (18 U.S.C. § 1091) or torture (18 U.S.C. § 2340a), provide jurisdiction over an offender found in the United States regardless of nationality, the *ex post facto* clause of the Constitution precludes their use against people with violations that occurred before their enactment.

In fulfilling our duty to enforce the civil immigration law, the biggest challenge is the absence in the Immigration and Nationality Act (INA) of a ground of inadmissibility for aliens who have ordered, incited, assisted, or otherwise participated in the persecution of others. There are statutory bars to the issuance of a visa or admission to the United States on some human rights grounds, for example Nazi persecution, genocide, torture, extrajudicial killings, or recruitment or use of child soldiers. However, there is no statutory bar to address the vast majority of our cases in which the target engaged in acts of persecution, on account of the victim's race, religion, nationality, membership in a particular social group, or political opinion.

Question#:	3
Topic:	evidence
Hearing:	No Safe Haven: Accountability for Human Rights Violators, Part II
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: Is there any evidence that any human rights violators seeking or enjoying safe haven in the United States have had connections to international terrorism?

Response: Generally speaking, ICE encounters very few human rights violators with known connections to international terrorism. Many of the offenses ICE investigates are perpetrated by members of various foreign governments, which are not classified as "terrorist organizations." In some cases, individuals are identified as having some connection to organizations listed on the Department of State's list of Foreign Terrorist Organizations (FTO) or its Terrorist Exclusion List (TEL). U.S. antiterrorism laws are far broader in scope and jurisdiction than the human rights laws and therefore are generally more effective as tools for investigating and prosecuting individuals such as members of the Colombian FARC (Fuerzas Armadas Revolucionarias de Colombia, also known as the Revolutionary Armed Forces of Colombia-People's Army) and the Peruvian Shining Path organizations. In other cases, the U.S. Government has decided to extradite and prosecute human rights violators based on involvement with narcotics trafficking organizations, rather than involvement in human rights abuses.

Question#:	4
Topic:	tools
Hearing:	No Safe Haven: Accountability for Human Rights Violators, Part II
Primary:	The Honorable Tom A. Coburn
Committee:	JUDICIARY (SENATE)

Question: To the extent that we (the U.S. Government) are not doing all we can to keep human rights violators out of the United States, is the biggest problem that we are not adequately enforcing laws already on the books, or that we do not have the legal tools needed to do the job well?

Response: Currently, U.S. Immigration and Customs Enforcement (ICE) does not have specific grounds of inadmissibility for aliens who “order, incite, assist, or otherwise participate in the persecution of others” under the Immigration and Nationality Act (INA). A persecutor is not eligible for asylum, withholding of removal, refugee resettlement, and temporary protected status. *See* INA §§ 101(a)(42), 207(c), 208(b)(2)(A)(i), 241(b)(3)(B)(i), 244(c)(2)(B)(ii). But the Department of Homeland Security and the Department of State have limited authority to refuse visas or deny admission to aliens who have engaged in acts of persecution other than certain, specific human rights violations enumerated in the INA, *viz.*, torture, extrajudicial killings, genocide, recruitment or use of child soldiers, Nazi persecution or, if committed as a foreign government official, particularly severe violations of religious freedom. There is not, for example, a ground of inadmissibility that encompasses all of the atrocities enumerated in the criminal war crimes statute (18 U.S.C. 2441).

Furthermore, certain loopholes prevent adequate enforcement of existing statutes. For example, the five-year statute of limitations for certain offenses, such as visa fraud (18 U.S.C. 1546) or false statements (18 U.S.C. 1001) limits ICE’s ability to bring criminal charges in these types of cases. Sentencing guidelines do not currently delineate sentence enhancements for those who have engaged in human rights violations. Due to *ex post facto* issues, several recently enacted or amended criminal statutes, such as recruitment of child soldiers (18 U.S.C. 2442) or genocide (18 U.S.C. 1091), are only applicable to recent conduct, while jurisdictional limitations often prevent the enforcement of the war crimes statutes (18 U.S.C. 2441).

SUBMISSIONS FOR THE RECORD



WRITTEN STATEMENT OF
THE ADVOCATES FOR HUMAN RIGHTS

SUBMITTED TO THE UNITED STATES SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

For The October 6, 2009 Hearing On
"No Safe Haven: Accountability For Human Rights Violators, Part II"

I. Introduction

The Advocates for Human Rights is a non-governmental, 501(c)(3) organization dedicated to the promotion and protection of internationally recognized human rights. With the help of hundreds of volunteers each year, The Advocates investigates and exposes human rights violations; represents immigrants and refugees in our community who are victims of human rights abuses; trains and assists groups that protect human rights; and works through education and advocacy to engage the public, policy makers and children about human rights. The Advocates holds Special Consultative Status with the United Nations.

Background on The Advocates' TRC of Liberia Diaspora Project: From 1979 to 2003, more than 1.5 million Liberians were forced from their homes to escape from the violence and destruction of a protracted civil conflict. Tens of thousands of Liberians eventually made their way to the United States in their flight from war. The Liberian Truth and Reconciliation Commission (TRC) was negotiated and agreed upon in the August 2003 peace agreement and subsequently enacted into law with the TRC Act of 2005. The TRC was established to "promote national peace, security, unity and reconciliation," and at the same time make it possible to hold perpetrators accountable for gross violations of human rights and humanitarian law that occurred in Liberia between January 1979 and October 2003.

At the request of, and under a Memorandum of Understanding with, the Liberian TRC, The Advocates coordinated the work of the TRC in the Liberian diaspora beginning in 2006. This was the first TRC to make a concerted effort to solicit the involvement of a diaspora community. The Advocates recruited, trained and supported the more than 600 volunteers who took statements from Liberians in the United States, the United Kingdom, and Buduburam Refugee Settlement in Ghana. The Advocates also assisted the TRC in holding public hearings in the U.S. in 2008, marking the first time any national truth commission has ever conducted such hearings outside of their home country. In June 2009, The Advocates submitted to the TRC a 600 page

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final report, entitled *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project*.

II. The Advocates' Findings on Impact of Human Rights Violators in the U.S. and Recommendations for Accountability

The Advocates report on the experience of the Liberian diaspora, entitled *A House with Two Rooms*, documents the experience of human rights abuses and violations of international humanitarian law that forced Liberians to leave the country. It is based on an analysis of more than 1600 TRC statements, fact-finding interviews, and witness testimony at public hearings held in the U.S. The report also tells the story of the "triple trauma" experienced by members of the diaspora during their flight through Liberia and across international borders, while living in refugee camps in West Africa, and in resettlement in the U.S. and U.K. In addition, the report summarizes the views of Liberians in the diaspora on the root causes of the conflict and their recommendations for systemic reform, accountability and reconciliation. The full report is available at http://www.advrighs.org/Final_Report.html.

Summary of Findings: Liberians in the diaspora reported with some frequency encounters with human rights violators here in the United States. Many Liberians in the U.S. have settled in "Little Liberias," where survivors of human rights abuses find themselves living in the same community as ex-combatants and other perpetrators, including former child soldiers. The following is an excerpt from a section entitled "Perpetrators in the Community" in *Chapter 13 "Everyone Scattered" Experiences of the Liberian Diaspora*.¹

Like refugees in Ghana and elsewhere in the sub-region, individuals in the United States also report encounters with those who perpetrated crimes against them during the war.² This experience can re-traumatize individuals finally beginning to adjust to life in a new country.³ Encounters with perpetrators are reported to lead to changes in victim behavior, increased isolation, or other changes such as moving.⁴

One young woman saw another Liberian who had committed crimes against her family in the parking lot of her apartment complex in Minnesota. She later discovered that he was living on the floor above her. She went to the apartment management, and they helped her to move. She did not, however, report the encounter to anyone else. A social service provider described why:

¹ See pages 363-64 of *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project* (2009), <http://www.advrighs.org/uploads/Chapter+13+-Experiences+of+the+Liberian+Diaspora.pdf>.

² TRC Diaspora Statement Recs. 122, 784, 1254, 1434, 1444, 1611.

³ Telephone interview with C. Hendrix Grupee, United Nimba Citizens Council (June 7 & 8, 2008).

⁴ See Interview with Ada Beh, Co-founder, Minnesota African Women's Association (MAWA), Minneapolis, Minn. (Sept. 4, 2008).

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[T]hey made eye contact and she had the feeling that he doesn't know her, he doesn't know it's her. But just the fact that, it's him and not recognizing what he had done. First of all he doesn't know who she is so how can he recognize what he had done...And I think her issue was she was helpless, how can they hold him accountable, what she can do, who will she go to to believe what [she is] saying. It's her word against his, especially here, so what [is she] going to do? Talking to him and maybe seeing him more often would just keep bringing everything back to [her] and [she] didn't want to go through that.⁵

A community leader in Minnesota told the TRC that "I've seen people move, I know of a family that actually moved out of state. I know a family that left a job because [one member] ran into another person that actually killed somebody in her sight."⁶ Victims generally do not report these encounters, leading to an accountability vacuum.⁷ Another Liberian professional living in Minnesota recounted his encounter with a perpetrator in a newspaper interview: "[w]hen he was least expecting it - at a peaceful Liberian community meeting in Minnesota - he saw the man who, years earlier, had tortured him...After the confrontation years later in Minnesota, [the] torturer apologized. But...he's not ready to forgive."⁸

In addition to the reports detailed in the excerpt above, which includes a story reported in the Minneapolis Star Tribune, the New York Times also has reported on the experience of victims encountering human rights violators in the U.S.⁹

⁵ *Id.*

⁶ *Id.*

⁷ A notable exception is the trial of Chuckie Taylor, son of Charles Taylor. Chuckie Taylor, whose actions during the Liberian civil conflict were notorious, was arrested in the United States on immigration fraud charges and ultimately was convicted of criminal torture under 18 U.S.C. § 2340A. Chuckie Taylor is a U.S. citizen.

⁸ Sharon Schmickle, *Stories from more survivors*, Star Trib. (Feb. 20, 2007), <http://www.startribune.com/local/11551991.html>.

⁹ Somini Sengupta, *Liberian Refugees Come Full Circle; Trying to Rebuild Their Lives in Staten Island Neighborhoods*, N.Y. Times (June 25, 2002)

<http://www.nytimes.com/2002/06/25/nyregion/liberian-refugees-come-full-circle-trying-rebuild-their-lives-staten-island.html?scp=6&sq=liberian&st=nyt>; Ellen Barry, *From Staten Island Haven, Liberians Reveal War's Scars*, N.Y. Times (Sept. 18, 2007),

http://www.nytimes.com/2007/09/18/nyregion/18liberians.html?_r=1&pagewanted=all

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While generally victims are reluctant to report encounters with human rights violators, The Advocates found that these encounters are re-traumatizing and often lead to avoidance behaviors, such as only associating with members of their own ethnic group or avoiding community-wide activities. Personal encounters with human rights violators have also reportedly led to confrontations with other members of the violator's ethnic group.

The Advocates' Recommendations Related to Accountability: Chapter 14 of *A House with Two Rooms* contains The Advocates' suggested recommendations, as requested by the TRC of Liberia. Related to accountability measures, The Advocates recommended that:

- The U.S. government should cooperate with any prosecutions and act promptly to respond to requests for extradition.
- The U.S. government should explore prosecutions of foreign nationals for crimes committed outside of the United States, including those under the Genocide Accountability Act, Child Soldiers Accountability Act, War Crimes Act of 1996, and the Extraterritorial Torture Statute.

In addition, The Advocates made the following recommendations to the U.S. government and other members of the international community regarding accountability and justice, taking account of the obligation to prosecute grave breaches of the Geneva Conventions.

- States Parties of the international community should "undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches" of the Geneva Convention.¹⁰
- States Parties of the international community should "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts" or hand such persons over to another State Party for prosecution.¹¹

The Advocates made extensive recommendations to the Government of Liberia regarding prosecutions and other anti-impunity measures.¹² The following recommendations are relevant to the U.S. legal context:

¹⁰ Geneva Convention relative to the Protection of Civilian Persons in Time of War art. 146, entered into force Oct. 21, 1950, 75 U.N.T.S. 287. Grave breaches include "those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." *Id.* art. 147.

¹¹ *Id.* art. 146.

¹² See Ch. 14, Section IV. Ending Impunity for Violations 1979-2003, in *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project* (2009), http://www.theadvocatesforhumanrights.org/Final_Report.html.

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- The Government of Liberia should coordinate with national prosecutorial and immigration bodies in the United States to assess extraterritorial prosecution options for Liberian perpetrators physically present in another jurisdiction.
 - The Government of Liberia should evaluate with U.S. authorities the possibility of bringing prosecutions using U.S. federal criminal laws.
- The Government of Liberia should ensure that its policies do not impede the efforts of individual Liberians or groups of Liberians to file claims in foreign jurisdictions for human rights and humanitarian violations committed during Liberia's civil wars, such as claims under the U.S. Alien Tort Claims Act or the Torture Victims Protection Act.

III. Accountability Recommendations made by the TRC of Liberia

The TRC of Liberia was charged with ensuring accountability for gross violations and abuses of human rights that occurred between 1979 and 2003,¹³ and it was envisioned that the TRC would make recommendations to the Government of Liberia for prosecutions and other anti-impunity measures.¹⁴

In Volume II of the TRC's Final Report, made public in June 2009, the TRC made Recommendations on Accountability.¹⁵ Chapter 12 includes Recommendations for Prosecutions by an Extraordinary Criminal Tribunal.

12.3. Names of Those Responsible (Perpetrators) Recommended for Prosecution

The TRC recommends several persons for prosecution for those human rights violations including violations of international humanitarian law, international human rights law, war crimes and egregious domestic laws violations of Liberia and economic crimes. Some perpetrators recommended for prosecution include:

LEADERS OF WARRING FACTIONS

NAME	FACTION
Charles G. Taylor	NPFL
Prince Y. Johnson	INPFL
Roosevelt Johnson*	ULIMO & ULIMO-J
Alhaji G.V. Kromah	ULIMO & ULIMO-K
George Boley	LPC
Thomas Yaya Nimely	MODEL
Sekou Damante Konneh	LURD
Francois Massaquoi*	LDF

*believed to be deceased

¹³ An Act to Establish the Truth and Reconciliation Commission of Liberia, art. VII, § 26(d) (enacted by the National Transitional Legislative Assembly, May 12, 2005), <https://www.trcofliberia.org/about/trcmandate>.

¹⁴ See *id.* art. X § 44.

¹⁵ Chapters 12-16. Complete Listing of persons recommended for prosecution for gross Human rights violations and war crimes <https://www.trcofliberia.org/reports/final>.

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Of those recommended for prosecution by the TRC of Liberia, one – Dr. George Boley – is a legal permanent resident of the United States and a resident of the State of New York.¹⁶ The U.S. government should facilitate the implementation of the existing laws by taking steps to ensure that information from national justice mechanisms in foreign jurisdictions, including independent national bodies such as truth and reconciliation commissions, is considered in determinations about eligibility for entry into the U.S. and immigration benefits, as well as in federal prosecutions for foreign nationals committing crimes overseas.

IV. The Application of the Persecutor Bar to Asylum and Withholding of Removal

United States law prohibits persecutors from receiving refugee status, asylum, or withholding of removal.¹⁷ The United Nations High Commissioner for Refugees (“UNHCR”) has issued guidance stating that the rationale for the exclusion clauses in the Refugee Convention and Protocol, upon which the United States’ persecutor bars are based, is that “certain acts are so grave as to render their perpetrators undeserving of international protection as refugees.”¹⁸ Despite this seemingly clear language, the determination of who is barred as a persecutor is complex. It is imperative that the United States balance its obligation to provide protection to bona fide refugees against the necessity of providing no safe haven to persecutors. An overly broad or inflexible reading of the persecutor bar threatens to undermine the very protection the United States has pledged to provide.¹⁹

In its brief to the Supreme Court in *Negussie v. Mukasey* (128 S. Ct. 1695 (U.S. Mar. 17, 2008) (No. 07-499)), The Advocates for Human Rights urged the Court to adopt a standard of assistance to persecution that turns on individual culpability because asylum claims will continue to present the difficult line-drawing problems that litigation over Nazi persecution almost never did. Fedorenko and subsequent lower court decisions point to a number of important factors that courts should consider when assessing whether an individual’s particular conduct assisted persecution. These include voluntariness, shared persecutory motive, membership in the

¹⁶ In November of 2008, Dr. Boley sued The Advocates for Human Rights and Deputy Director Jennifer Prestholdt for defamation in the United States District Court for the District of Minnesota (Civil Action No. 08-CV-5908-PJS/FLN). Court records related to the claim are available as a matter of public record. The allegedly defamatory statements were made during a 2006 interview on Minnesota Public Radio with Prestholdt and Jerome Verdier, Chairman of the Liberian Truth and Reconciliation Commission about the TRC process in the United States. The Advocates views the case as without merit and will be filing a motion for summary judgment.

¹⁷ 8 U.S.C. sec. 1101(a)(42); 8 U.S.C. sec. 1158(b)(2)(A)(i); 8 U.S.C. sec. 1231(b)(3)(B)(i) (2009).

¹⁸ United Nations High Commission for Refugees, Guidelines On International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, 15 Int’l J. Refugee L. 492, 493 (2003) (“UNHCR Guidelines”).

¹⁹ See Brief of Amici Curiae Human Rights First, et al. in Support of Petitioner, *Negussie v. Mukasey*, 128 S. Ct. 1695 (U.S. Mar. 17, 2008) (No. 07-499) (mem.) at 5, 2008 WL 2597010, at *5.

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persecuting organization, the directness or indirectness of involvement in acts of persecution, knowledge, and redemptive acts.²⁰

Conclusion

Important steps have been made in efforts to hold human rights violators accountable for serious human rights abuses and violations of international humanitarian law committed outside of the U.S. The Advocates would like to thank the Senate Judiciary Subcommittee on Human Rights and the Law for the leadership in developing a legal framework that ensures that the U.S. is not a safe haven for human rights violators. The Advocates for Human Rights now urges the Senate to take the next step and ensure that these laws are implemented to the greatest extent possible and balanced with our obligation to provide protection to bona fide refugees.

Thank you for the opportunity to submit this written statement. Please contact me with any questions about our work at 612-341-3302 ext.109 or rphillips@advrights.org.

Sincerely,



Robin Phillips
Executive Director

²⁰ Brief of Amicus Curia The Advocates for Human Rights in Support of Petitioner, *Negusie v. Mukasey*, 128 S. Ct. 1695 *U.S. Mar. 17, 2008) (No. 07-499) (mem.) at 4-5.

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650 Third Avenue South • Suite 550 • Minneapolis, MN 55402-1940 • USA
Tel: 612.341.3302 • Fax: 612.341.2971 • Email: hrights@advrights.org • www.theadvocatesforhumanrights.org



Department of Justice

STATEMENT OF

**LANNY A. BREUER
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW**

HEARING ENTITLED

**"NO SAFE HAVEN: ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATORS,
PART II"**

PRESENTED

OCTOBER 6, 2009

INTRODUCTION

Mr. Chairman, Ranking Member Coburn, and distinguished Members of the Subcommittee, I appreciate the opportunity to appear before you to discuss the continuing efforts of the Department of Justice to pursue justice on behalf of the victims of human rights violations and war crimes. We are grateful to your Subcommittee for its leadership on this important topic and for providing us with the additional criminal authorities that have become an integral part of our overall human rights strategy, and to you, Mr. Chairman, for inviting me to discuss the Department's enforcement program.

Bringing the perpetrators of human rights and humanitarian law violations to justice is a mission of immense importance, particularly at a time when atrocities continue to be committed abroad with such frequency and ferocity. President Obama, visiting the former Buchenwald Concentration Camp on June 5 with German Chancellor Merkel and Holocaust survivor and Nobel Peace Prize laureate Elie Wiesel, reminded us of a terrible reality when he said, "we've seen genocide. We've seen mass graves and the ashes of villages burned to the ground; children used as soldiers and rape used as a weapon of war."¹

In the context of such atrocities, the Department of Justice's human rights law enforcement mission is a moral and ethical imperative – one we have pursued vigorously and tirelessly for well over six decades. The Department of Justice has played a leading role in seeking justice for the victims of human rights violations and war crimes worldwide ever since former Attorney General Robert H. Jackson and a team of officials from the Justice, State, and War Departments and other federal agencies led efforts to create international tribunals before which surviving Nazi and Japanese war criminals were tried. Justice Jackson's senior deputy at the Nuremberg Trial was a former Special Assistant in the Criminal Division, Thomas J. Dodd, father of the current senior Senator from Connecticut. The chief Allied prosecutor in Tokyo was one of my predecessors as Assistant Attorney General for the Criminal Division, Joseph Keenan. Additionally, the Department of Justice has made prosecutors available to investigate and prosecute cases at ad-hoc international criminal tribunals. The Department's history of contributing to global efforts to seek justice for victims of human rights violations and war crimes is one that we are proud of. But more importantly, we are committed to continuing this tradition through the identification of human rights violators and war criminals and the use of all of our available tools to see that justice is done.

The Department's enforcement work in this area also has deep personal meaning to me. My parents fled Nazi Europe during World War II, and their story of survival and the stories of countless others have instilled in me a respect for fairness, the rule of law, and the pursuit of justice.

¹ From: Office of the Press Secretary, The White House, Remarks by President Obama, German Chancellor Merkel, and Elie Wiesel at Buchenwald Concentration Camp, June 5, 2009, www.whitehouse.gov/the_press_office/Remarks-by-President-Obama-German-Chancellor-Merkel-and-Elie-Wiesel-at-Buchenwald-Concentration-Camp-6-5-09/.

Today, I would like to update the Subcommittee on some of the Department's major human rights and war crimes law enforcement activities and accomplishments since the Department last presented testimony before the Subcommittee and on our plans to strengthen further the Department's already very robust enforcement program, which is carried out within the Department by the Criminal Division, the National Security Division, the United States Attorney's Offices, and the Federal Bureau of Investigation (FBI), in conjunction with other federal agencies (principally U.S. Immigration and Customs Enforcement (ICE) in the Department of Homeland Security and the Department of State).

ENFORCEMENT OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

As the Subcommittee is aware, the government pursues its human rights and humanitarian law enforcement mission on multiple fronts. The first of these is located at our borders. By attempting to identify human rights violators and war criminals before they attempt to enter the United States, we have the opportunity, through the Department of Homeland Security, to add their names to the interagency border control system and ensure that they will never be admitted to this country.

The government also takes proactive measures to identify perpetrators who have already gained entry to the United States, so that criminal prosecution or other appropriate law enforcement action can be taken domestically. Of course, there are cases in which domestic criminal prosecution is not possible or not the most desirable course of action. In such cases, we aim to arrest and extradite or transfer suspects to stand trial abroad. In other instances, we seek to denaturalize human rights abusers and institute administrative removal proceedings litigated by ICE in immigration courts and before the Board of Immigration Appeals within the Justice Department's Executive Office for Immigration Review.

Finally, in close coordination with our international partners, the Department of Justice and the Department of State work to enhance the capacity of foreign governments and international tribunals to investigate and prosecute criminal cases against participants in genocide, war crimes, and crimes against humanity – including investigations and prosecutions of suspects whom the U.S. government has removed.

Domestic Prosecution

When evidence implicates individuals in this country in genocide, war crimes, torture, or other violent human rights violations, the Federal government moves swiftly to investigate and take legal action. In some instances, individuals responsible for human rights offenses or war crimes committed outside the United States can be criminally prosecuted within the United States. Those prosecutions can include charges of substantive violations of human rights or international humanitarian law (such as torture, genocide, or war crimes) or other criminal violations, such as murder, manslaughter, visa fraud, false statements, unlawful procurement of naturalization, or acts of terrorism. Even when offenders are not subject to prosecution here, however (e.g., when the crimes were committed before the applicable Federal statutes were

enacted, as was the case with World War II-era Nazi criminals, among others), the U.S. government will employ other effective law enforcement tools, such as extradition (or, alternatively, denaturalization and/or removal).

The Department's domestic prosecution efforts are spearheaded within the Criminal Division by the Domestic Security Section (DSS) and the Office of Special Investigations (OSI), and within the National Security Division by the Counterterrorism Section (CTS). These components have achieved landmark successes since the Division last presented testimony before this Subcommittee.

1. Domestic Prosecution for a Human Rights-Based Offense: Torture

Last year, DSS and the United States Attorney's Office for the Southern District of Florida, with important assistance from attorneys of the National Security Division's Counterterrorism Section and the Criminal Division's Organized Crime and Racketeering Section, Office of International Affairs (OIA), Office of Enforcement Operations (OEO), and Appellate Section, tried the first case charging an individual with violations of the U.S. statute prohibiting torture, *United States v. Roy M. Belfast, a/k/a "Chuckie Taylor."* Our prosecutors proved at trial that the defendant, who was born in the United States and is the son of former Liberian dictator Charles Taylor, commanded a Liberian paramilitary organization known as the Anti-Terrorist Unit. Between 1999 and 2003, in his role as commander of that unit, Belfast and his associates committed numerous and varied forms of torture, including burning victims with molten plastic, lit cigarettes, scalding water, candle wax, and an iron; severely beating victims with firearms; cutting and stabbing victims; and shocking victims with an electric device. In addition to the novel legal issues generated by this first-ever prosecution under the U.S. torture statute, the case raised significant legal issues that recur in human rights cases, such as that of a victim's right to prevent disclosure of his or her personal medical information. Moreover, the trial team faced enormous logistical challenges in transporting, lodging, and then preparing witnesses from several African and European countries. Following a six-week trial, Belfast was convicted in October 2008 of five counts of torture, one count of conspiracy to torture, one count of using a firearm during the commission of a violent crime, and one count of conspiracy to use a firearm during the commission of a violent crime. He was sentenced on January 9 to 97 years in prison and is currently appealing his conviction. The case was investigated by ICE and the FBI.

2. Domestic Prosecution for Other Criminal Offenses

Many times, perpetrators cannot be prosecuted for a human rights or humanitarian law-based offense, such as the Title 18 torture, genocide, war crimes, or child soldier statutes. In those instances, the Department is committed to using all tools at its disposal to bring offenders to justice, including the prosecution of individuals for non-human rights or humanitarian law-based violations. This can include prosecutions under other criminal statutes or for immigration- and naturalization fraud-related offenses, as well as the innovative use of various other criminal statutes. Two examples of public cases follow.

First, in May of this year, DSS and the United States Attorney's Office for the Western District of Kentucky, relying on the investigative work of the FBI and the U.S. Army Criminal

Investigation Division, obtained the conviction of Steven D. Green, a former Ft. Campbell, Kentucky, soldier, on non-human rights-based charges arising out of the rape of a 14-year-old Iraqi girl and the murder of the girl and her family on March 12, 2006, in and around Mahmoudiyah, Iraq. As the government's evidence proved at trial, while manning a military checkpoint, Green and other soldiers forced their way into the nearby home of the Al-Janabi family. The proof at trial showed that Green then took the mother, father, and a six-year-old child into a bedroom where he shot and killed them. In the living room, Green and the other soldiers raped the 14-year-old girl, and then Green shot her in the face repeatedly and set her body on fire. Our evidence showed that Green then tried to blow up the house, after which the soldiers returned to their checkpoint, and Green bragged to others that the experience was "awesome." As in the Chuckie Taylor prosecution, the Green prosecution team overcame enormous logistical challenges in transporting, lodging, and preparing witnesses from Iraq to testify in the United States. The defendant was convicted on sixteen counts, including premeditated murder, aggravated sexual abuse, felony murder, conspiracy to commit murder, conspiracy to commit aggravated sexual abuse, use of firearms during the commission of violent crimes, and obstruction of justice. On September 4, Green was sentenced to five concurrent terms of life imprisonment. Green has provided notice that he will be appealing his conviction.

Second, on February 17, 2007, the Counterterrorism Section of the National Security Division, along with the United States Attorney's Office for the Eastern District of North Carolina, obtained the conviction of David Passaro, who is the only civilian tried and convicted in a District court for detainee abuse during the wars in Iraq and Afghanistan. Passaro, 40 years old, worked as a contractor for the CIA and was stationed in Afghanistan at Asadabad Base. On June 18, 2003, Passaro and military personnel took an Afghan man named Abdul Wali into custody after he had surrendered himself at the front gate of Asadabad Base. Wali was wanted for questioning in rocket attacks, and during these interrogations, Passaro beat Wali using his hands and feet, a mag-lite and a large spotting light. Wali died on June 21, 2003, while still in custody at Asadabad Base. This case presented substantial challenges, as well as novel questions concerning the reach of federal criminal laws to acts that an American civilian commits abroad while in service to the United States. On August 10, 2009, the United States Court of Appeals for the Fourth Circuit affirmed Passaro's conviction but remanded the case solely for re-sentencing to allow for further findings on the upward departure enhancements requested by the Government.

Immigration Litigation

Another powerful tool in our arsenal against human rights violators and war criminals is immigration litigation. As one example, on May 11 of this year, in the culmination of a decade-long prosecutorial effort by OSI and the United States Attorney's Office for the Northern District of Ohio, former Nazi death camp guard John Demjanjuk of Seven Hills, Ohio, was removed to Germany by ICE agents. Immediately upon arrival in Germany, he was arrested and subsequently charged with having been an accessory in the murders of more than 29,000 Jews at the Sobibor extermination center in Nazi-occupied Poland. The Criminal Division's Office of International Affairs provided significant assistance in this matter, as did ICE and the Department of State. Demjanjuk had immigrated to the United States in 1952 by concealing

from U.S. immigration authorities his true whereabouts during World War II and his service at the Sobibor camp and other notorious Nazi camps. He was denaturalized by court order in 2002, and in 2005 he was ordered removed based on evidence amassed and presented in court by OSI. Similarly, in two other cases investigated and litigated by OSI since the Division last presented testimony to this Subcommittee, participants in World War II-era Nazi crimes of persecution were removed from the United States: Paul Henss of Lawrenceville, Georgia, voluntarily gave up his United States citizenship and left the U.S. for Germany in November 2007, and ICE and DOJ negotiated the removal of Josias Kumpf of Racine, Wisconsin, to Austria in March of this year. OSI continues to pursue justice on behalf of the victims of Nazi inhumanity. The office is currently litigating eleven such cases. OSI, in cooperation with OIA, other Criminal Division sections including the Asset Forfeiture and Money Laundering Section (AFMLS), and the Department of State, also continues to provide extensive assistance to foreign authorities that are investigating individuals suspected of involvement in Nazi crimes during the Second World War.

In December 2007, ICE attorneys concluded another important human rights violator case when an immigration court in Tacoma, Washington, ordered the removal from the United States of Bozo Jozepovic, a naturalized Canadian citizen, after determining on the basis of evidence developed by OSI that he had participated in the June 9, 1993, murder of seven Muslim men in Bosnia, while serving in Croatian Defense Council (HVO) forces. Evidence presented at the removal hearing showed that six of the seven victims were killed with axes, hammers, and other instruments. This case illustrates the close coordination required to succeed in these cases. The removal case, which was litigated by ICE attorneys, was based on proof of Jozepovic's involvement in the murders that was presented in immigration court through the witness testimony of an OSI investigative historian. Jozepovic was first taken into ICE custody after attempting to enter the United States from Canada in 2006. That border stop followed OSI's identification of Jozepovic as a suspect and OSI's provision of his name to ICE in 2005 for incorporation in the interagency border control watchlist system.

Coordination and Training

The close coordination that undergirds all of the successes that I have already discussed remains critical to our current enforcement efforts. In partnership with ICE, OSI developed and is currently prosecuting a criminal case for visa fraud and unlawful procurement of naturalization against an individual we allege participated in the 1994 Rwandan genocide, an underlying crime over which the United States lacks criminal jurisdiction. OSI also continues, in partnership with United States Attorney's Offices around the country and with ICE, to pursue immigration- and naturalization-related charges against U.S. residents who concealed from federal authorities their service in military or paramilitary units that took part in egregious post-World War II human rights violations abroad. For example, OSI worked with the United States Attorney's Office for the Northern District of Illinois to obtain a visa fraud guilty plea in Chicago this year from Ljubomir Kristo, who was charged with naturalization fraud for concealing from U.S. authorities his service in Croatian forces that participated in "ethnic cleansing" crimes in Bosnia in 1993, which included multiple murders of Muslim civilians. He was sentenced on September 15 to six months in prison. OSI similarly worked with U.S. Attorney's Offices to obtain guilty pleas last year and earlier this year from two defendants charged with unlawful procurement of naturalization for concealing from federal immigration authorities their service in Bosnia in the

Zvornik Brigade of the Army of the Republika Srpska during the wars that attended the breakup of the former Yugoslavia. Elements of the Zvornik Brigade participated in killing some 8,000 Muslim men and boys in and around Srebrenica, Bosnia in July 1995, the largest mass murder perpetrated in Europe since World War II. Both defendants agreed to denaturalization.

The Department of Justice is committed to continued success in our efforts to identify human rights violators and war criminals and ensure justice is served. To that end, the Criminal Division has taken a leadership role in training federal prosecutors and agents to investigate and prosecute such cases. For example, in April of last year, at the Department of Justice National Advocacy Center in Columbia, South Carolina, the Criminal Division presented the Department's first conference and training program on investigation and prosecution of these cases. The program, organized by the Division's Domestic Security Section and the Office of Special Investigations, attracted widespread federal law enforcement interest. The conference addressed genocide, war crimes, torture, and other human rights violations in the context of criminal prosecution for the underlying offenses as well as criminal prosecution for immigration-related violations and institution of civil denaturalization actions. Presenters included many prosecutors from around the Department and agents from our law enforcement partners. We were especially pleased that Joseph Zogby of the Chairman's staff agreed to address the participants. His address was both powerful and inspiring.

We also had participants from organizations that work with victims of these egregious crimes address our law enforcement audience to make them aware of the difficulties many of these victims face long after their abuse has ended. We consider non-governmental organizations a valuable part of our efforts against human rights abusers and war criminals. Non-governmental organizations often have invaluable expertise, field experience, information, and access to potential witnesses. We are enormously grateful for their assistance in the past in many of our prosecutions, and we look forward to working with them even more closely as we move forward.

International Assistance and Training

In addition to our own prosecution efforts, using both human rights-related charges and other criminal offenses, the Department is actively engaged in work with foreign law enforcement to ensure that the U.S. and the global community are adequately equipped to address violators. Working closely with our other Department partners, including the National Security Division and the Federal Bureau of Investigation, three components of the Criminal Division in particular provide significant assistance and training to foreign law enforcement authorities pursuing justice in the aftermath of conflicts that were characterized by large-scale human rights violations. OIA takes the lead in executing foreign requests for evidence or other legal assistance and works closely with the State Department on matters relating to international extradition. OIA also has responded to requests from multiple countries for assistance in matters relating to war crimes, genocide, and other human rights offenses since 2007. For example, OIA has assisted human rights efforts by arranging for testimony for prosecutions or other proceedings ongoing in Croatia, Bosnia-Herzegovina, and Colombia. OIA also handles requests for extradition of human rights abusers currently in the United States. For example, OIA and the

State Department successfully extradited to the Philippines two police officers wanted for murder. These individuals were identified, investigated, and ultimately arrested by ICE.

The Criminal Division's Overseas Prosecutorial Development and Training section (OPDAT) and the International Criminal Investigative Training Assistance Program (ICITAP) take the lead for the Department in providing training and assistance in criminal justice sector reform and development. OPDAT has continued to work closely with the U.S. Ambassador-at-Large for War Crimes Issues on efforts to enhance bilateral cooperation on war crimes cases among successor countries to the former Yugoslavia, most notably between Serbia and Bosnia. In June of this year, for example, OPDAT facilitated a meeting between the Serbian War Crimes Prosecutor and the Bosnian Chief State Prosecutor to discuss mechanisms for improving cooperation between those two nations in war crimes cases. The assistance that OPDAT, OSI, and other Division components have provided in the former Yugoslavia, as elsewhere, is given with the goal of increasing the ability of these countries and jurisdictions to prosecute cases involving genocide, war crimes, and crimes against humanity. This capability is especially important now that the International Criminal Tribunal for the Former Yugoslavia (ICTY) is progressing towards its U.N. Security Council-endorsed closure and has transferred a number of cases to the individual countries in the region for investigation and prosecution. In cooperation with OPDAT, ICITAP, OEO, and the Department of State, OSI also continues to provide important assistance to other foreign law enforcement authorities investigating and prosecuting human rights and war crimes in their respective countries.

Likewise, ICITAP also has continued to provide extensive direct assistance to foreign law enforcement authorities in the area of human rights and international humanitarian law enforcement. For example, ICITAP has continued its work this year with Bosnia's State Investigation and Protection Agency to help develop policies and procedures, strengthen operational internal control units, and conduct investigations of organized crime, war crimes, and terrorist-related criminal acts. In Serbia, ICITAP has provided training and assistance to inspectors from the Ministry of Interior's War Crimes Investigative Service and the Witness Protection Unit. Further, ICITAP's war crimes advisor in Serbia collaborates across borders with the War Crimes Unit of the European Union's (EU) mission in Kosovo. In Montenegro, ICITAP provided assistance in drafting a new criminal procedure code which creates the legislative and normative framework for more efficient criminal procedure and human rights protection. The Montenegrin Parliament adopted the new code on July 27, 2009.

STRENGTHENING THE DEPARTMENT'S ENFORCEMENT PROGRAM

Although the Department is proud of all of our efforts to prosecute human rights violators and war criminals and build global capacity to address these atrocities, we can and will do more to pursue justice and achieve deterrence in these cases. In fact, one of my top priorities upon taking office in April was ensuring that we undertook a comprehensive review of the Criminal Division's efforts in this area. That review was recently completed, and I have carefully studied its results. Our findings reinforced my strong confidence in the overall excellence of the Criminal Division's efforts, and especially in the great talent and dedication brought to this very challenging and trying work, every day, by gifted professionals in the Division. The review also

identified, however, some areas of opportunity for the Division that would, in my judgment, enhance the effectiveness and efficiency of our enforcement efforts.

As illustrated by the successes I have already described, pursuing human rights violators and war criminals and ensuring justice requires a coordinated strategy with close partnerships among not only components of the United States government, but also between the United States government and our foreign law enforcement partners. To help facilitate that close partnership, the Criminal Division will be refocusing our efforts and restructuring the offices that currently do the work in this area. Central to this effort is our plan to combine the resources, skills, and expertise of all of our attorneys working on these cases to make us even more effective in pursuing violators and denying them safe haven in the United States.

The National Security Division, through its Counterterrorism Section, is also committed to pursuing human rights violators and war criminals. It also has many attorneys with significant experience and expertise in this area, including the prosecutor of the first war crimes case before the International Tribunal for the Former Yugoslavia, who currently serves as the Counterterrorism Section's Principal Deputy Chief.

Both CRM and NSD work together and closely with our law enforcement partners at the FBI, ICE, and other agencies, and we know that those agencies share our deep commitment to this effort.

CONCLUSION

The prosecutions that the Department of Justice, in cooperation with its law enforcement partners, mounts against perpetrators of human rights and law of war violations represent a foundational aspect of the Department's unwavering commitment to the pursuit of justice. These cases exemplify the Department's commitment – above all else – to strengthening the rule of law around the globe. I pledge to continue that pursuit with vigor and determination.

Seeking justice in these cases is not just a high priority for me, as it has been for my predecessors in the Division, or an important objective for the Department of Justice. It is a solemn obligation.

We have an obligation to do all that we can to ensure that the United States is seen as a global leader in efforts to foster respect for human rights. Imperiled peoples and individuals in many lands are *depending* on America to accomplish that goal. The fundamental human dignity of these countless men, women, and children is under daily – and often lethal – assault. It is incumbent upon us to work tenaciously to protect them and to provide justice to victims of human rights abuses and war crimes where we are able. We in the Department of Justice are committed to doing just that – in part through vigorous and unrelenting enforcement of U.S. laws against those who flee to our shores after perpetrating human rights violations or war crimes abroad and by continuing to expand the Department's multifaceted efforts to support the human rights work of law enforcement authorities around the world.

Four months ago, at Buchenwald, President Obama declared, "This place teaches us that we must be ever vigilant about the spread of evil in our own time, that we must reject the false comfort that others' suffering is not our problem and commit ourselves to resisting those who would subjugate others to serve their own interests."³ Pursuing the perpetrators of human rights violations and war crimes in the hope of preventing the repetition of such crimes is undoubtedly a central component of that vigilance about which the President spoke. The Department of Justice is committed to ensuring that no human rights violator or war criminal ever again finds safe haven in the United States. We will continue to marshal our resources to guarantee that no stone is left unturned in pursuing that goal, and we look forward to working with the Congress, and with this Subcommittee in particular, to achieve it.

Thank you for affording me this opportunity to testify today. I would be pleased to take your questions.

³ From: Office of the Press Secretary, The White House, Remarks by President Obama, German Chancellor Merkel, and Elie Wiesel at Buchenwald Concentration Camp, June 5, 2009, www.whitehouse.gov/the_press_office/Remarks-by-President-Obama-German-Chancellor-Merkel-and-Elie-Wiesel-at-Buchenwald-Concentration-Camp-6-5-09/.

Statement of Senator Tom Coburn, M.D.*"No Safe Haven: Accountability for Human Rights Violators, Part II"*

Subcommittee on Human Rights and the Law

United States Senate Committee on the Judiciary

October 6, 2009

I would like to start by thanking the witnesses for being here today to join in this ongoing discussion about what we can and should be doing to keep human rights violators from finding safe haven in the United States.

Although the Subcommittee on Human Rights and the Law has only existed for two Congresses, we have already passed legislation addressing issues such as trafficking, child soldiers, and genocide. Hearings called by Chairman Durbin have shed light on other egregious human rights abuses that occur around the world today. While crafting solutions to address all of these atrocities has proven to be quite a challenge, the one thing we ought to be able to do is ensure that criminals who perpetrate offenses against humanity are never allowed to find safe haven within the borders of the United States.

Chairman Durbin held a similar oversight hearing in this subcommittee two years ago to give Congress a better understanding of Executive Branch efforts on this front. Although a scheduling conflict prevented me from attending that hearing, I reviewed the transcript and found the testimony and discussion helpful. I was encouraged to learn of the work done by the Human Rights Violators Unit and the Human Rights Law Division within Immigration and Customs Enforcement (ICE) at the Department of Homeland Security, as well as the work done by the Office of Special Investigations and the Domestic Security Section at the Department of Justice. I look forward to hearing about the progress that has been made in those offices since our last oversight hearing, and I look forward to hearing for the first time from the FBI and State Department about these issues.

While our last oversight hearing helped shed light on the enforcement of human rights laws in the United States, one question that I did not feel was adequately answered was how many human rights violators are estimated to be in the United States today? This seems to be a threshold question, as we seek to determine the kind and amount of resources to devote to pursuing those perpetrators. I hope to hear updated numbers from today's witnesses. I also hope to hear more about your ongoing efforts — especially about the coordination between each of your agencies. I hope you will speak candidly with us about other tools you may need

to more effectively do your jobs, and about the challenges — both practical and legal — that you face.

Let me stress that I view today's hearing as another step in an ongoing dialogue about how best Congress and the Executive Branch can partner together to achieve a common goal. A collaborative effort is the best way to undertake such a monumental challenge. The Subcommittee worked well with the last Administration, and I am anxious to hear, for the first time, this Administration's views on human rights violators seeking safe haven in the United States.

That said, I would note that the testimony of each witness here today arrived well past the Committee's deadline. I understand that this is not necessarily the fault of the individuals on today's panel, but I must say that I am disappointed that the Administration would allow this to happen for its first interaction with the Human Rights Subcommittee. I trust this delay does not represent the placement of human rights enforcement as a priority in the Executive Branch.

I look forward to hearing our witnesses, and I thank the Chairman for convening today's important hearing.

June 24, 2009

The Honorable Richard J. Durbin, Chairman
Subcommittee on Human Rights and the Law
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin:

We write to express our strong support for the Crimes Against Humanity Act of 2009. This legislation would fill an existing gap in U.S. law by allowing U.S. prosecutors to hold the perpetrators of mass atrocities accountable for their acts. While often less publicized than genocides, crimes against humanity are as devastating to their victims and as worthy of vigorous and unbending attention from the United States government. We must ensure that perpetrators of mass atrocities cannot evade justice by coming to the United States. We applaud your leadership in ensuring that the United States is well equipped to fight these grave crimes and we urge Congress to enact the bill with all due speed.

The United States government has long been at the forefront of global efforts to seek accountability for the perpetrators of the worst crimes known to humankind. In the years after World War II, the United States was an essential player in the formation of the Nuremberg Tribunal and the Genocide Convention, two key pieces of the foundation for all international justice efforts that have followed. Since then, in Bosnia, Rwanda, Cambodia, Sierra Leone, and Darfur, among others, the U.S. government has steadfastly supported justice for victims of crimes against humanity, war crimes, and genocide, whether by supporting national justice systems or by assisting in the creation of special tribunals.

The bill defines crimes against humanity as widespread and systematic attacks directed against a civilian population that involve murder, enslavement, torture, rape, arbitrary detention, extermination, hostage taking, or ethnic cleansing. This category includes some of the most atrocious crimes committed in recent history—the campaigns of mutilation and murder of civilians in Sierra Leone and Uganda, the systematic rape of women in ethnic areas of Burma and in the Democratic Republic of the Congo, the ethnic cleansing in Bosnia and Kosovo. These crimes might look like genocide to a layperson, but they are a distinct category of crime and separate legislation is needed to provide United States courts with jurisdiction to prosecute those who commit them if they are present in the United States.

Such legislation has not existed before today, despite the U.S. government's sustained efforts to ensure accountability for crimes against humanity elsewhere. Alleged perpetrators of those crimes have therefore been able to escape prosecution in the United States. Though U.S. law prohibits grave human rights violations such as genocide and

torture, alleged perpetrators of crimes against humanity may escape accountability due not to their innocence of unforgivable acts but to loopholes in the U.S. criminal code.

The Crimes Against Humanity Act of 2009 would close this illogical gap in U.S. law. Just as they may pursue those who have committed related and similarly horrific crimes, U.S. prosecutors would have the authority to ensure that those in the United States who have committed crimes against humanity may not evade accountability merely by fleeing to our country.

The United States has provided a means to prosecute those who commit genocide and torture as well as those who use child soldiers in war. Those who commit the similar crimes that constitute crimes against humanity should face no better future. We therefore urge Congress to enact this bill without delay.

Sincerely,

The Advocates for Human Rights
 Africa Action
 AIDS-Free World
 Armenian Assembly of America
 Caring for Kaela
 Center for Justice and Accountability
 Center for Victims of Torture
 EarthRights International
 Enough Project
 The Episcopal Church
 Equality Now
 Citizens for Global Solutions
 Genocide Intervention Network
 Harvard Immigration and Refugee Clinical Program
 Human Rights First
 Human Rights Watch
 International Justice Mission
 Jubilee Campaign USA, Inc.
 National Immigrant Justice Center
 National Immigration Forum
 Open Society Policy Center
 Physicians for Human Rights
 Refugees International
 Robert F. Kennedy Center for Justice & Human Rights
 Rocky Mountain Survivors Center
 Save Darfur Coalition
 United Methodist Church, General Board of Church and Society
 United Nations Association of the United States of America
 U.S. Campaign for Burma
 V-Day



STATEMENT OF ARTHUR M. CUMMINGS
EXECUTIVE ASSISTANT DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Good afternoon, Chairman Durbin, Ranking Member Coburn and Members of the Subcommittee. I am pleased to be here with you today to discuss the FBI's efforts as they relate to human rights enforcement.

Philosopher George Santayana once said, "Those that fail to learn from history are doomed to repeat it." While the modern notion of human rights came into focus more clearly in the days after World War II and with the creation of the United Nations, the idea of human rights was alive and well even before the Magna Carta was ever penned. Sadly, though, human rights violations remain the rule rather than the exception in many countries.

For example, the State Department's 2009 Human Rights Report found that while these rights tend to thrive in democratic, civil societies and that there is indeed a greater demand for personal and political freedom, there are also significant governmental efforts to deny those freedoms in many countries. According to the State Department, in Africa, several countries have played a stabilizing role on the continent as they embraced the rule of law but in other parts, human rights abuses have continued. Asia also had a mixed record on human rights. In Europe and Eurasia, the influx of immigrants from economically strained areas has contributed to an increase in nationalism and hate crimes.

For its part, the FBI is committed to supplementing the international community's efforts to advance human rights. Our mission is to identify human rights violators in the U.S. and bring them to justice for violations committed within and outside of the United States. We investigate violators for both human rights and traditional criminal violations. For example, together with U.S. Immigration and Customs Enforcement (ICE), we investigated Roy M. Belfast, aka "Chuckie Taylor," son of the former Liberian dictator Charles Taylor. Chuckie Taylor was found guilty in federal court on multiple counts of torture and violent crime offenses for his role in commanding the paramilitary Anti-Terrorist Unit in Liberia between 1999 and 2003. In addition, together with the U.S. Army Criminal Investigations Division, the FBI investigated Steven D. Green, a Ft. Campbell, Kentucky soldier who was eventually convicted of sexually assaulting a 14-year old Iraqi girl and murdering both the girl and her family.

FBI JURISDICTION

Since 1988, Congress has enacted a series of statutes that have expanded the FBI's investigative jurisdiction of human rights issues in the international arena. For example, Chapter 50A of Title 18 was enacted in 1988, adding the offense of genocide to the U.S.

criminal code. Torture was included in 1994 and war crimes in 1996. Most recently, in October 2008, the Recruitment of Child Soldiers was added in Chapter 118.

Executive Order 13107, which outlined the implementation of human rights treaties, required each Executive agency to “designate a single contact officer who will be responsible for overall coordination of the implementation” of the Order. The Order also required agencies to “maintain current awareness of United States international human rights obligations that are relevant to their functions” and to “perform such functions so as to respect and implement those obligations fully.” FBI responsibilities in this regard include the investigation of allegations of genocide, torture, war crimes, and the recruitment of child soldiers, and the development of a collaborative working relationship with ICE.

Although our authority in this area has grown with the enactment of the aforementioned laws, our reach remains limited by legal restrictions. For example, for many well-known international human rights atrocities, the statutes of limitations have run or the atrocities took place before the laws were enacted, thereby implicating the *ex post facto* clause of the Constitution. In addition, it is often difficult to identify cases with the requisite nexus to the United States. Human rights offenses under Title 18 of the U.S. code generally require the human rights violator to be a U.S. national, to have committed the offense against a U.S. national, or to be present in the U.S. The identification of targets that satisfy this nexus is challenging because the majority of these abuses occur in foreign countries where access to witnesses and evidence is often limited. In addition, the violator is often protected by a regime that is sympathetic to the violator or politically embarrassed by the allegations of human rights abuses. Nonetheless, the FBI has had success in bringing human rights violators to justice, and expects to have success in the future as well.

FBI’s HUMAN RIGHTS ENFORCEMENT STRATEGY

The FBI recognizes that respect for human rights helps to secure the peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises. With additional funding for human rights enforcement provided by Congress in the FY2009 budget, we are expanding our investigative efforts in this area and establishing a Human Rights Offenses Program. As part of this program, the FBI will utilize four key strategies – joint investigations, training, intelligence collection, and assistance to international investigative bodies - to fulfill our commitment to the enforcement of human rights laws and the promotion of human rights principles.

First, utilizing “rule of law” principles, the FBI will, together with our domestic and international law enforcement partners, investigate priority human rights cases using established investigative techniques and protocols. Second, the FBI will train its own personnel and those of our foreign counterparts to ensure that human rights investigations are conducted in a manner consistent with “rule of law” principles. These trainings will strengthen our investigative efforts and promote institutionalized respect for human rights. Third, the FBI will aggressively collect domestic and international intelligence on human rights violators and violations through its 56 field offices, 60 foreign Legal Attaches, network of sources within and outside of the United States, and relationships with domestic and international law

enforcement partners. Fourth, in response to requests from international and foreign investigative bodies, the FBI will provide assistance that advances efforts to enforce human rights laws in foreign and international legal fora.

The FBI plans to dedicate supervisory personnel at FBI Headquarters to manage the Human Rights Offenses Program. A program manager will ensure that the FBI's domestic field offices and foreign Legal Attaches are fully engaged in advancing our human rights mission. In addition, FBI plans to dedicate a number of additional personnel at Headquarters to support the program. Together, the team managing the Human Rights Offense Program will conduct a domain assessment of human rights violations that will enable the FBI to determine how to focus its investigative and intelligence-gathering efforts in an efficient and informed manner, provide day-to-day support to domestic field agents and overseas Legal Attaches, coordinate with prosecutors at the Department of Justice, and coordinate with ICE and other agencies on potential joint investigations.

With this dedicated corps of personnel, the FBI intends to issue human rights intelligence requirements to its 56 domestic field offices and its 60 foreign Legal Attaches. We will develop performance measures and hold periodic reviews to ensure that agents and analysts in the field are actively addressing human rights cases. We plan to identify human rights coordinators in each office, and work with the Department of Justice Criminal Division to conduct trainings that will enable us to develop a body of experts who are dedicated to the investigation and prosecution of human rights abuses.

Eventually, the FBI hopes that based on its domain analysis, it will be in a position to forward deploy dedicated Assistant Legal Attaches (ALATs) in countries with a history of human rights violations that fall within the scope of U.S. human rights laws. These ALATs would be expected to establish contacts with human rights officials in the Embassies and local non-government organizations, collect intelligence on human rights, and support human rights investigations.

Through these efforts, the FBI expects to increase its contribution to the international community's ongoing effort to bring human rights violators to justice. With the benefit of lessons learned and the development of best practices, the manager of the Human Rights Offenses Program will adjust the FBI's strategy as necessary to maximize the program's effectiveness.

Chairman Durbin, Ranking Member Coburn and Members of the Subcommittee, I appreciate the opportunity to come before you today and share the work that the FBI is doing to address human rights violations. I am happy to answer any questions.



DEPARTMENT OF STATE

**STATEMENT
OF
DAVID T. DONAHUE**

**DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA
SERVICES, BUREAU OF CONSULAR AFFAIRS,
DEPARTMENT OF STATE**

**BEFORE THE
SUBCOMMITTEE ON HUMAN RIGHTS AND LAW OF THE
SENATE COMMITTEE THE JUDICIARY**

**HEARING
ON
DENYING SAFE HAVEN IN THE UNITED STATES TO HUMAN
RIGHTS VIOLATORS**

OCTOBER 6, 2009

Mr. Chairman, Ranking Member Coburn, and distinguished Members of the Subcommittee, thank you for the opportunity to come before you today to discuss the matter of visas and human rights violators.

Within the Department of State, the Bureau of Democracy, Human Rights and Labor has the overall lead on human rights issues. Information on human rights violators is gathered chiefly by our embassies abroad, by Foreign Service personnel reporting to the various regional bureaus and to functional bureaus such as the Bureaus of International Narcotics and Law Enforcement; and Population, Refugees, and Migration. Within the Department, the Bureau of Consular Affairs issues or denies visas according to statute utilizing information obtained through a visa application, an interview and database checks. The Bureau of Democracy, Human Rights and Labor is responsible for administering the process of the Leahy Amendment vetting and for other human rights-related foreign policy issues. I am here to discuss with you the role of the Bureau of Consular Affairs: the actual visa adjudication based on statute, the visa application, the visa interview, and the check of interagency databases.

Our consular officers at overseas visa processing posts comprise America's first line of defense in preventing travel to the United States of those persons who are not eligible to enter the country. Every year at posts around the world, trained consular officers review applications for over eight million potential travelers. Most of our applicants are legitimate, and those who are not are denied visas. In our primary consular training, consular officers receive information about all visa ineligibilities that they may need to apply the law overseas, including the ineligibilities that exist for human rights violations.

Determinations of visa ineligibility are based on law. As the Honorable Members are aware, there is currently no broad-based visa ineligibility for human rights violators per se. However, there are several visa ineligibilities within the Immigration and Nationality Act (INA) that are related to human rights concerns. These are found in Section 212(a) and include an ineligibility: for foreign government officials who have committed particularly severe violations of religious freedom¹; for individuals who have committed or conspired to commit a human trafficking

¹ Section 212(a)(2)(G) of the INA

offense²; for individuals involved in Nazi-related persecutions from 1933 to 1945³; for individuals who have engaged in genocide; for individuals who have committed acts of torture or extrajudicial killings; and for individuals who have engaged in the recruitment or use of a child soldier⁴.

Additionally, Presidential Proclamations under Section 212(f) of the Immigration and Nationality Act that suspend entry into the United States or place restrictions on those whose entry would be detrimental to the interests of the United States have been effective in denying visas to human rights violators. Presidential Proclamations have been used to deny visas to individuals from Burma, Cuba, Zimbabwe, and the Balkan states, among other countries. It is also possible for a human rights violator to be ineligible on other, more defined grounds. For example, if a person has had two or more criminal convictions for which the aggregate sentence of confinement was five years or more⁵ or who has committed a crime involving moral turpitude⁶, they will be denied. Finally, some individuals who commit human rights violations are refused under the broad terrorism-related ineligibility provisions of the INA.

² Section 212(a)(2)(H)(i) of the INA

³ Section 212(a)(3)(E)(i) of the INA

⁴ Section 212(a)(3)(G) of the INA

⁵ Section 212(i)(2)(B) of the INA

⁶ Section 212(a)(2)(A)(i)(I) of the INA

There may also be other acts that one would consider violations of human rights for which U.S. law provides no visa ineligibility. For example, an individual who has engaged in religious persecution, but was not serving as an official of a foreign government at the time, would not be ineligible under the religious persecution provision of the INA.

Consular officers use three basic tools in applying the law in the visa adjudication process: the application, the interview, and interagency databases, including biometric databases. Our application forms specifically ask iterations of questions that solicit whether the applicant has committed torture, genocide, extra-judicial killings, political killings, violations of religious freedom, Nazi-related persecutions, or other crimes or acts of violence. After amending the Foreign Affairs Manual and sending out a guidance cable to all posts, we are now finalizing with the Office of Management and Budget a change in our application forms to add a question about employing child soldiers. The entire visa application must be answered by each applicant before the interview with a Consular officer.

Furthermore, the Department has designed and is implementing use of a new electronic application. This form asks more detailed questions on topics that could demonstrate an applicant is ineligible for a visa. Our online application forms not only require applicants to answer these questions, but also require applicants to provide a written explanation to any question to which they answer "yes." The online form makes application information available to Consular officers and to our interagency partners before a visa interview takes place. This form is now being used by approximately 10% of our nonimmigrant visa applicants and we plan to deploy it world-wide by early next year. We will also pilot an electronic application form for immigrant visa applicants this fall which asks the same detailed questions.

After reviewing the entire visa application form and applying their knowledge and understanding of the local history and society where the applicant lives, consular officers may issue or deny a visa, or use the interview to pursue a line of questioning that may lead to or confirm a suspicion of ineligibility. With the additional information gleaned from that interview, there may be sufficient grounds to determine an ineligibility then and there, or the officer may request an advisory opinion from the Visa Office.

Finally, perhaps the most effective method for officers to detect a human rights ineligibility occurs when an applicant's biographic and biometric information are checked against interagency databases. Applicant biographic information is checked through the State Department's Consular Lookout and Support System (CLASS) database, which includes many records from the Department of Homeland Security's Traveler Enforcement Compliance System (TECS). Biometric information, both fingerprints and digitized photographs, is checked against the Department of Homeland Security's Automated Biometric Identification System (IDENT), the State Department's extensive Facial Recognition program, and the Federal Bureau of Investigation's Criminal Justice Information System databases. The interagency sharing environment is robust and occurs in real time with many thousands of records being exchanged each day.

We are working with the Bureau of Democracy, Human Rights and Labor to ensure that all records with personal identifying information (i.e., names and dates of birth, plus, where possible, countries of birth) in its new Leahy Amendment vetting database, called INVEST, will be incorporated into the Bureau of Consular Affairs' CLASS database. INVEST, which is

being developed now, will contain all data available to the Department on Leahy Amendment vetting results. While we note that the Leahy Vetting standards of gross human rights violations may not always lead to a visa ineligibility under the law, this information can assist our officers in directing their interviews to determine if a visa ineligibility does exist and will be of invaluable assistance in our efforts to deny the entry into the United States of human rights violators.

Consular officers depend on reporting officers, various Department bureaus, especially regional bureaus and the Bureau of Democracy, Human Rights and Labor, the Department of Homeland Security, and the Federal Bureau of Investigation to develop information that can be entered into CLASS to inform consular officers of possible ineligibilities. The consular officer will consider a visa applicant's eligibility for a visa in light of any derogatory information on record in the databases mentioned that may pertain to the applicant. Some cases will require guidance from the Visa Office via the Security Advisory Opinion (SAO) and Advisory Opinion (AO) processes. The SAO process requires a consular officer abroad to refer selected visa applications for additional review by Washington-based law enforcement and intelligence agencies. The SAO process is generally used

for individuals who may be ineligible under section 212(a)(3) of the Immigration and Nationality Act, including individuals who may have been involved in genocide, extrajudicial killings, torture, or the recruitment or use of child soldiers. The Department processes approximately 260,000 SAOs per year. The Advisory Opinion process is similar to the SAO process and involves obtaining a legal opinion from the Department regarding visa classification or possible ineligibility on non-security grounds, including particularly severe violations of religious freedom.

At the present time, we have lookouts entered into our CLASS system for nine individuals based on possible participation in a particularly severe violation of religious freedoms, 330 individuals based on possible involvement in trafficking in persons, 12,812 based on possible involvement in Nazi-related persecutions, 3,016 individuals based on possible involvement in genocide, and 707 individuals based on possible involvement in torture or extrajudicial killings. These lookouts represent information that could potentially lead to an ineligibility finding but for which no definitive ineligibility determination has yet been made. Individuals who are subject to lookouts may have been denied under other grounds or may not have yet applied for a visa. If any alien subject to a lookout entry applies for a visa, a

determination of eligibility would include consideration of the information pertaining to the possible human rights violations.

In the last five years we have revoked one visa to an official who was involved in particularly severe violations of religious freedoms, revoked the visas of a family that was involved in trafficking in persons, and refused one individual for being involved in trafficking in persons. A total of 2,758 visas have been denied on the basis of Presidential Proclamations under Section 212(f), as well as hundreds of visas to those involved in Nazi-related persecutions. As mentioned, Presidential Proclamations are based on a variety of factors and are not limited to human rights violations.

Furthermore, we have worked in close cooperation with the Department of Homeland Security to improve the database interface between CLASS and TECS to ensure that consular officers are able to review human rights related records contained in TECS through the CLASS system.

Mr. Chairman, Members of the Committee, I know that your subcommittee has grappled with this issue for many years. Your leadership

on this topic is admirable and inspiring. To receive a fuller picture of the Department of State's work regarding human rights violators, I encourage the Subcommittee to discuss the issue with representatives from our regional bureaus, representing our embassies, which supply the bulk of our human rights reporting, and our Bureau of Democracy, Human Rights and Labor, which leads the Department's work on human rights issues and which oversees the INVEST system used for Leahy Amendment vetting.

While we have had success in denying visas to human rights violators, we believe we can do more. We are dedicated to ensuring that anyone who has committed violations that would make him or her inadmissible under our statutory provisions does not receive a visa. As noted, we are looking forward to the exchange of data between INVEST and CLASS. I also am instructing consular section chiefs to make sure they maintain regular contact with our human rights officers at posts abroad to ensure that anyone who has been identified by the reporting officer as a potential human rights violator has a lookout entered into CLASS. We will also remind our consular officers overseas of the tools available to them to deny visas to human rights violators.

In conclusion, let me reiterate, the Bureau of Consular Affairs and our visa adjudicating officers at our 219 visa processing posts around the world are and will continue be engaged on human rights issues as they affect the entry of foreigners into the United States. With this, I will conclude my testimony and answer your questions. Thank you.

DAVID T. DONAHUE

David T. Donahue has been Deputy Assistant Secretary for Visa Services since September 2008. Prior to that, he was Director of the Office of Policy Coordination and Public Affairs in the Bureau of Consular Affairs. He joined the Foreign Service in 1983. He was Minister Counselor for Consular Affairs in Mexico City from 2005 – 2007. Previous to that he was Consul General in Manila, Philippines (2002-2005) and Islamabad, Pakistan (1999-2002). He was chief of the consular section in Singapore (1995-1999) and served consular tours in Port of Spain, Trinidad and Tobago (1986-88) and Karachi, Pakistan (1984-1986). Mr. Donahue served as Deputy Refugee Coordinator in Islamabad, Pakistan from 1993 – 1995. In Washington, Mr. Donahue was a watch officer in the Operations Center (1988-1989), Bangladesh Desk Officer (1989-1991) and Course Coordinator for Basic

Consular Training (ConGen Rosslyn) at the Foreign Service Institute (1991-1993). Mr. Donahue is a native of Indiana. Prior to the Foreign Service, he was a teacher and a customer service manager for a mail order company. He graduated from St. Meinrad College in Indiana in 1976.

Statement of

The Honorable Richard J. Durbin

United States Senator
Illinois
October 6, 2009

Opening Statement of Senator Dick Durbin

Chairman, Subcommittee on Human Rights and the Law
Hearing on "No Safe Haven: Accountability for
Human Rights Violators in the United States, Part II"
October 6, 2009

This hearing of the Human Rights and the Law Subcommittee will come to order. Welcome to "No Safe Haven: Accountability for Human Rights Violators in the United States, Part II."

Two years ago, this Subcommittee held the first-ever Congressional hearing on the enforcement of human rights laws in the United States. At that hearing, we learned that the government was investigating over 1000 suspected human rights violators from almost 90 countries who have found safe haven in the United States. Today, we will examine what the government has done since our 2007 hearing and what more it can do to address this serious problem.

For decades, the United States has led the fight for human rights around the world. But when human rights violators are able to live freely in our country, America's credibility as a human rights leader is undermined.

Throughout our history, America has provided sanctuary to victims of persecution. Sadly, some refugees arrive from distant shores to begin a new life, only to encounter those who tortured them or killed their loved ones.

Two years ago, this Subcommittee heard compelling testimony from Dr. Juan Romagoza, who endured a 22-day ordeal of torture at the hands of the National Guard in El Salvador. Dr. Romagoza received asylum in our country but later learned that the two generals who were responsible for his torture had also fled to the United States.

The Human Rights Subcommittee has worked to ensure our government has the authority and resources to bring perpetrators to justice and to vindicate the rights of people like Dr. Romagoza.

Since our hearing two years ago, this Subcommittee has produced landmark legislation to reform and modernize our human rights laws. The Genocide Accountability Act, the Child Soldiers Accountability Act and the Trafficking in Persons Accountability Act, three bills Senator Coburn

and I authored, have all been enacted into law. These laws give the government the authority to prosecute perpetrators of genocide, child soldier recruitment and use, and human trafficking. This builds on the Anti-Atrocity Alien Deportation Act, important legislation authored by Judiciary Committee Chairman Pat Leahy in 2004 that allows the government to deport perpetrators of torture and extrajudicial killing.

I worked with Senator Mikulski and Senator Shelby on the Appropriations Committee to secure funds in fiscal year 2009 for the FBI and the Justice Department to hire additional agents and attorneys to investigate and prosecute human rights abuses. The fiscal year ended last week, and I was disappointed to learn that the FBI has not yet hired any new agents to investigate human rights violations.

I want to commend Immigration and Customs Enforcement, also known as ICE, and the Justice Department for their success over the last two years in bringing human rights violators to justice.

Since our hearing, ICE has deported a number of human rights violators. In addition to these significant cases, I was especially pleased to learn that last Friday ICE filed charges against the two generals responsible for the torture of Dr. Juan Romagoza. Dr. Coburn and I have been urging the government to deport the generals since our hearing two years ago. I look forward to the day when these two men are no longer on U.S. soil.

In May, the government deported John Demjanjuk to Germany, where he will be tried for his involvement in the murder of more than 29,000 people at the Sobibor extermination camp in Nazi-occupied Poland. I want to commend the Justice Department for prevailing in a long and difficult legal struggle so that John Demjanjuk can face the judgment he so richly deserves. This case sends a message that the United States is determined to bring human rights violators to justice, even if it is decades after they commit their crimes.

In another important victory, last year the Justice Department obtained the first-ever federal conviction for a human rights offense. Chuckie Taylor, the son of former Liberian president Charles Taylor, was sentenced to 97 years in prison for committing torture in Liberia.

This was a groundbreaking case, but one case is not enough. We must ask ourselves why so many human rights abusers are still able to find a safe haven in the United States.

Unfortunately, there are still legal loopholes that allow human rights violators to escape accountability. For example, under current law, perpetrators of crimes against humanity who find safe haven in our country cannot be prosecuted. So, Marko Boskic, who participated in the Srebrenica massacre in Bosnia and was living in Massachusetts, was charged with visa fraud, rather than crimes against humanity. Earlier this year, I introduced the Crimes Against Humanity Act, which would make it a violation of U.S. law to commit a crime against humanity. I look forward to working with my colleagues to pass this bill and give the Justice Department an additional tool to bring human rights abusers to justice.

Our government should also use existing authority and resources more efficiently to increase the likelihood that human rights violators will be held accountable. Senator Coburn and I introduced

the Human Rights Enforcement Act, which would combine the two offices in the Justice Department with jurisdiction over human rights violations to create a new consolidated and streamlined human rights section.

I was pleased to learn that the Justice Department is planning such a consolidation even before the enactment of our bill and look forward to learning more today about the new human rights section.

We have made great progress in the last two years but there is much more to be done – and we must remember what is at stake. The United States is still the city on a hill. The world is watching us closely. When we bring human rights violators to justice, foreign governments are spurred into action, victims take heart, and future perpetrators think twice.

Statement of Human Rights First**United States Senate Committee on the Judiciary,
Subcommittee on Human Rights and the Law
Hearing on Human Rights Violator Accountability****October 12, 2009**

Human Rights First welcomes the Senate Judiciary Subcommittee on Human Rights and the Law's second hearing on accountability for human rights violators. Since the first such hearing was held nearly two years ago, accountability for human rights violators in the United States has been markedly strengthened by the enactment of the Genocide Accountability Act of 2007 and the Child Soldiers Accountability Act of 2008, each initiated by this Subcommittee. And in late 2008, federal prosecutors earned the first conviction under the anti-torture statute, 18 U.S.C. § 2340A, further vitalizing the effort to ensure that human rights violators do not find impunity on U.S. soil.

That effort, however, remains incomplete. U.S. courts do not yet have jurisdiction over other grave human rights abuses, although the Subcommittee has the opportunity to remedy part of that gap by promptly supporting and passing the Crimes Against Humanity Act of 2009, introduced by Chairman Durbin in June. U.S. agencies also must be granted—and must use—sufficient resources to thoroughly investigate and prosecute these crimes. As these agencies aggressively pursue human right violators in the United States, it is essential that the victims of human rights abuses—those refugees and asylum seekers who arrive on our shores seeking to escape such atrocities—are not inadvertently punished by overly broad measures in the immigration laws. Human Rights First urges the Subcommittee on Human Rights and the Law to continue its work on accountability to ensure that the important steps taken so far herald an era of intense U.S. leadership on promoting and protecting human rights.

Since 1978, Human Rights First has worked to promote laws and policies that advance universal rights and freedoms. Human Rights First has also sought to protect people at risk and to defend the dignity of each individual through respect for human rights and the rule of law. Our Crimes against Humanity Program is dedicated to preventing and eliminating crimes against humanity, war crimes, and genocide by challenging and holding accountable perpetrators and their enablers. Our Refugee Protection Program safeguards the rights of refugees through direct legal services and advocacy, and we help asylum seekers—many of whom are the victims of the crimes we seek to prevent and eliminate—find safety in the United States.

The United States government has long been at the forefront of global efforts to seek accountability for the perpetrators of the worst crimes known to humankind. Following World War II, the United States was an essential player in the formation of the Nuremberg Tribunal and the Genocide Convention, two key pieces of the foundation for all subsequent international justice efforts. Since then, in Bosnia, Rwanda, Cambodia, and Sierra Leone, among others, the U.S. government has steadfastly supported justice

for victims of crimes against humanity, war crimes, and genocide, by supporting national justice systems or by assisting in the creation of special tribunals.

This commitment resulted in major advances in international justice. We applaud the Senate Judiciary Subcommittee on Human Rights and the Law, led by Chairman Durbin and Ranking Member Coburn, for identifying and acting on ways for the United States to improve its own record of holding accountable those on its soil who have perpetrated some of the world's worst crimes while also ensuring that the United States' commitment to the protection of refugees is not undermined. In the last two years, this Subcommittee has taken significant steps toward fully closing the impunity gap by expanding jurisdiction to cover genocide—through the Genocide Accountability Act of 2007—and use or recruitment of child soldiers—through the Child Soldiers Accountability Act of 2008. The enactment of these bills with strong bipartisan support during the last administration made substantial progress toward ensuring that perpetrators of these grave crimes will not escape justice in the United States.

The Genocide Accountability Act and the Child Soldier Accountability Act are critical steps toward consistent accountability, but we urge the Committee not to rest on these achievements. Holding accountable only perpetrators of these crimes would leave unscathed perpetrators of similarly horrific crimes. Until statutory authority is expanded to hold accountable all perpetrators of the gravest human rights violations—such as those who commit crimes against humanity—the United States will be forced to rely on imprecise tools to remove those perpetrators from U.S. soil. Right now, overburdened immigration authorities are called on to use visa fraud charges as a means of punishing human rights violators. While this imperfect and blunt tool eventually sends these perpetrators home, it does not do justice for the crimes they have committed.

The Crimes Against Humanity Act of 2009, introduced by Senator Durbin in June 2009, would therefore fill an existing gap in U.S. law. While often less publicized than genocides, crimes against humanity are as devastating to their victims and as worthy of vigorous and unbending attention from the United States government.

The bill defines crimes against humanity as widespread and systematic attacks directed against a civilian population that involve murder, enslavement, torture, rape, arbitrary detention, extermination, hostage taking, or ethnic cleansing. This category includes some of the most atrocious crimes committed in recent history—the campaigns of mutilations and murders of civilians in Sierra Leone and Uganda, the systematic rape of women in areas of Burma and in the Democratic Republic of the Congo, the ethnic cleansing in Bosnia and Kosovo. These crimes might look like genocide to a layperson, but they are a distinct category of crime and separate legislation is needed to provide United States courts with jurisdiction to prosecute those who commit them if they are present in the United States.

Such legislation does not yet exist, despite the U.S. government's sustained efforts to ensure accountability for crimes against humanity elsewhere. Alleged perpetrators of those crimes have therefore been able to escape prosecution in the United States. Though

U.S. law prohibits grave human rights violations such as genocide and torture, alleged perpetrators of crimes against humanity may escape accountability due not to their innocence of unforgivable acts but to loopholes in the U.S. criminal code.

Human Rights First urges the Subcommittee on Human Rights and the Law to ensure that the Crimes Against Humanity Act is promptly passed in the Senate. We also urge the Subcommittee to use its persuasive power to see the Crimes Against Humanity Act introduced and passed in the House and then signed into law.

Human Rights First also urges the Subcommittee to continue to monitor the use of and need for resources devoted to investigation of grave human rights abuses. We hope that, with greater prosecutorial reach, and additional resources as necessary, the witnesses who testify two years hence will have much many more than one successful case to report on.

Human Rights First thanks Chairman Durbin, Ranking Member Coburn, and the Subcommittee for holding this important hearing, and we look forward to continuing to work with you to ensure that the United States leads the world in ensuring accountability for human rights violators.

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
 New York, NY 10118-3299
 Tel: 212-290-4700
 Fax: 212-736-1300
 Email: hrwnyc@hrw.org

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Nichole Alexander, Development & Outreach Director
Carroll Bogert, Associate Director
Emma Daly, Communications Director
Barbara Guglielmo, Finance & Administration Director
Peggy Hicks, Global Advocacy Director
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"No Safe Haven: Accountability for Human Rights Violators, Part II"

Senate Judiciary Subcommittee on Human Rights and the Law Hearing
 Tuesday, October 6, 2009

Written Statement for the Record

Elise Keppler, international justice senior counsel, Human Rights Watch

Human Rights Watch appreciates the invitation to submit a statement for the record on this important subject. Since the first hearing on accountability for human rights violators approximately two years ago, significant gains have been achieved, in great part due to work by members of this subcommittee. At the same time, further efforts are needed for the United States to effectively contribute to ensuring perpetrators of the most serious violations of human rights and humanitarian law face justice. Human Rights Watch believes this subcommittee has an important role to play in building on progress to date.

The importance of prosecutions in the United States for atrocities committed abroad

Domestic U.S. prosecutions for serious human rights violations committed abroad are vital to ensuring individuals responsible are held to account and that the United States is not a safe haven for perpetrators of these crimes. In countries where serious crimes—including genocide, war crimes, crimes against humanity, and torture—are committed, domestic courts are all too often unable or unwilling to prosecute the crimes. International and hybrid international-national war crimes tribunals have been and will continue to be essential to ensuring justice in these situations. Nevertheless, international and hybrid tribunals only try a relatively small number of alleged perpetrators, including due to limitations on their jurisdiction to particular time periods or abuses committed in particular countries. In addition, extradition of an alleged offender to his or her country of nationality for domestic prosecution may not be possible due to obstacles such as a risk of torture or an unfair trial in that country. All of these factors underscore the importance of domestic prosecutions for serious crimes committed abroad.

The Department of Justice took a significant step in this direction in 2006 when the department brought its first case under the federal extraterritorial torture law (18 USC §2340A). The case—which was against Charles "Chuckie" Taylor, Jr., the son of the former Liberian president Charles Taylor,

for torture committed in Liberia—illustrates the importance of domestic prosecutions for human rights violations committed abroad in helping to close accountability gaps. After emerging from fourteen years of conflict during which civilians were terrorized, Liberia faces major obstacles to prosecuting past abuses and has yet to pursue any such cases. Meanwhile, no existing international or hybrid tribunal has jurisdiction over serious crimes committed in Liberia. The trial and conviction of Chuckie Taylor in the United States for torture has thus provided a rare instance of accountability for atrocities committed during Liberia's years of conflict that ended in 2003.

Adequate laws

A key requirement for U.S. prosecutions for human rights violations committed abroad is domestic law that makes the violations crimes. In the past two years, significant progress in ensuring adequate laws are in place has been made. Specifically, the Genocide Accountability Act—introduced by Senators Richard Durbin, Tom Coburn, Patrick Leahy, and John Cornyn of this subcommittee—was enacted in December 2007. The Child Soldiers Accountability Act—also introduced by Senators Durbin and Coburn—was enacted in October 2008. These laws substantially increase the opportunities to bring perpetrators of serious crimes to account by making it a crime for any person present in the United States, regardless of citizenship, to commit genocide or child recruitment anywhere in the world. Previously, the only serious crimes in violation of international law that were crimes in the United States when committed abroad were torture (18 USC §2340) and war crimes (18 USC §2441); moreover, only torture was punishable where neither the alleged offender nor victim is a U.S. citizen.

Nevertheless, some of the worst abuses in violation of international law—crimes against humanity—are still not domestic crimes in the United States. In June, Senators Durbin, Leahy and Russ Feingold introduced the Crimes Against Humanity Act of 2009, which makes widespread and systematic attacks against a civilian population involving murder, enslavement, torture, rape, arbitrary detention, extermination, hostage taking, or ethnic cleansing a crime when committed anywhere by a U.S. citizen or any person present in the United States regardless of nationality. The Crimes Against Humanity Act of 2009 represents an important effort to make crimes against humanity committed abroad punishable offenses in the United States. This is vital to fill a major gap in existing law, and we support the bill's enactment. At the same time, we note with concern that the bill diverges from internationally-accepted definitions of crimes against humanity, most notably by requiring that attacks be “widespread and systematic” as opposed to “widespread or systematic.” It would be preferable for U.S. law to more closely mirror international definitions, including because the proposed definition could make it more difficult to bring charges for crimes against humanity.

Further efforts by Congress will also be important to ensure that serious crimes are fully covered by federal law. For example, the current law on war crimes should be revised to cover the entire scope of these crimes under international law, and to cover war crimes when committed by non-U.S. citizens, as the torture, child recruitment, and genocide laws do.

In addition, liability for serious crimes on the basis of what is known as command responsibility should be explicitly available. Command responsibility arises when leaders—those in positions of command—knew or should have known about the commission of

serious crimes and failed to prevent their commission or failed to punish those responsible. This basis of liability has been integral to successful cases in international criminal tribunals against leaders who bear responsibility for the crimes, but are not directly participating in the crimes. Human Rights Watch believes that individuals can already be prosecuted in the United States on the basis of command responsibility: the basis of liability is expressly recognized in the U.S. military code, has been upheld by the U.S. Supreme Court in cases brought after World War II, and has been recognized in several civil cases in federal courts involving human rights violations. Nevertheless, prosecutors may benefit from an explicit and direct recognition of this basis of criminal liability. Illustrative of the importance of a clear legal basis for a perpetrator to be held liable on the basis of command responsibility is a decision of the International Criminal Tribunal for Rwanda, which refused to transfer a war crimes case to Rwanda as there was no explicit basis for command responsibility liability in Rwandan law.

Putting laws on serious violations of human rights into practice

While enacting adequate laws is the essential first step, ensuring justice for abuses requires that the laws be energetically applied. The dearth of cases applying federal laws on serious international crimes committed abroad underscores the importance of steps to ensure cases are actively pursued.

The Department of Justice's first case under the extraterritorial torture law against Charles "Chuckie" Taylor, Jr. in 2006 represented a major move forward. On October 30, 2008, after a jury trial in which more than twenty witnesses testified, Taylor was convicted of torture committed in Liberia while he headed a security unit under his father's presidency. He was subsequently sentenced to 97 years in prison. He is currently appealing the verdict.

Human Rights Watch believes the case against Chuckie Taylor should be the first of many involving federal laws on serious international crimes. Notably, the torture law had been in effect for more than ten years before the first case under it was brought, and prosecutions under other existing law on serious crimes committed abroad at the time (war crimes) had never to our knowledge been initiated. Meanwhile, we are aware of no new cases since the case against Chuckie Taylor having been brought under any of the laws that make serious abuses committed abroad federal crimes.

Current cases that should be explored include possible torture charges against eighteen paramilitary leaders who have been extradited from Colombia to the United States since May 2008 on drug charges. Human Rights Watch and other human rights groups have documented extensive human rights abuses by forces led by these paramilitaries, including torture committed after 1994 when the extraterritorial torture law went into effect. To date, the human rights abuses in which these paramilitaries have been implicated have not featured in the cases against the paramilitaries, nor have any charges related to the human rights abuses been filed in the United States to our knowledge. This is of all the more concern as some of these paramilitaries were in the process of participating in a domestic accountability process on human rights abuses committed in Colombia at the time of their extradition. While the United States has made some attempts to facilitate the continuation of that process, due to the extraditions the paramilitaries have lost many of the incentives they had to cooperate with the Colombian proceedings. There is thus a risk that redress for victims and documentation of abuses will be lost as a result of the extraditions.

With regard to overall efforts to prosecute serious crimes in various countries, U.S. authorities have indicated that a number of investigations relating to federal laws on serious crimes have been initiated and while criminal charges were not brought, immigration charges were made. As previously highlighted by government officials and Human Rights Watch to this subcommittee, cases involving serious crimes committed abroad can involve major challenges. This is due to a combination of factors, such as language barriers, unfamiliar political and historical contexts, and the need to conduct extraterritorial investigations. Nevertheless, prosecutions for serious crimes are far preferable to immigration charges because serious crimes prosecutions target the nature and gravity of abuses committed and, as a result, better promote justice for victims and an accounting of the violations. Moreover, cases can and have been successfully pursued, as the case against Chuckie Taylor in the United States and prosecutions of serious crimes committed abroad in Western Europe demonstrate.

Recently, Congress has taken a significant step to strengthen the prospects of human rights enforcement by allocating \$3.3 million for fiscal year 2009 to increase investigation and prosecution of serious crimes committed abroad. We understand these funds are to be utilized in substantial part to increase the number of attorneys working in the Department of Justice's Domestic Security Section (DSS), which is responsible for investigating and prosecuting human rights violations, and to increase the number of Federal Bureau of Investigation agents focused on investigations involving serious crimes committed abroad. These are important developments, especially as we understand DSS was previously only staffed with approximately seven attorneys. Senators Durbin and Coburn have also introduced the Human Rights Enforcement Act of 2009, a major feature of which is to bring DSS and the Office of Special Investigations, which focuses on investigating, denaturalizing, and removing human rights abusers in the United States, into one section in the Department of Justice's Criminal Division. This could be very valuable, as research by Human Rights Watch on prosecutions in Western Europe of human rights violations committed abroad suggests that concentrating experience and expertise on investigating and prosecuting serious crimes in one department can be instrumental to promoting effective cases.

Today's hearing provides an important opportunity to hear from the Departments of Justice and Homeland Security and the Federal Bureau of Investigation about the efforts they have made in the past two years to strengthen the prospects for prosecutions of genocide, torture, war crimes, and child recruitment committed abroad, the challenges they have experienced in trying to pursue these cases, and what other measures may be required to overcome the obstacles. In particular, drawing lessons from the prosecution of Chuckie Taylor and other investigations into serious crimes committed abroad to date will be important. We commend the efforts of this subcommittee thus far to promote accountability for human rights violators and look forward to continued initiatives by the subcommittee to ensure appropriate laws and necessary support for additional prosecutions for human rights violators in the United States.

Thank you.

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "No Safe Haven: Accountability For Human Rights Violators
In The United States, Part II"
Subcommittee On Human Rights And The Law
October 6, 2009**

I am always looking for ways in which we can improve the investigation and prosecution of international human rights abusers, including those who seek safe haven in the United States. That is what led me to develop and fight for the Anti-Atrocity Alien Deportation Act for several years before it was finally enacted in 2004. That is what I did in supporting and implementing legislation for the Convention Against Torture, which resulted in the successful prosecution of a man known as Chuck Taylor. That is what I have done in my work on the State and Foreign Operations Appropriations Subcommittee.

I worked to create the Human Rights and the Law Subcommittee last Congress, and to recreate it again this Congress, and have worked with Senator Durbin as he has ably chaired it.

It is vital that the United States reclaim its historic role as a world leader on issues of human rights. President Obama and Secretary Clinton are working hard to make that a reality.

This country should not provide a refuge for those who commit human rights violations. Congress took an important step when we passed the Anti-Atrocity Alien Deportation Act. That statute closed loopholes in our immigration law, making it easier to keep out perpetrators of human rights abuses, and to deport those who are already here. It established by statute the Office of Special Investigations (OSI) within the Department of Justice, an office that previously existed only under the discretionary authority of the Attorney General. The Anti-Atrocity Alien Deportation Act expanded OSI's mission from denaturalizing Nazi war criminals, to investigating, extraditing, or denaturalizing any alien who participated in genocide, torture, or extrajudicial killing abroad. This law has prompted, among other accomplishments, the deportation of Kelbessa Negewo to Ethiopia, where he is now serving a life sentence for torture and multiple killings.

Senators Durbin and Coburn are now working to build on the foundation created by the Anti-Atrocity Alien Deportation Act. The Human Rights Enforcement Act of 2009, a bill I have cosponsored, seeks to improve our ability to identify and prosecute human rights abusers. It proposes consolidating two sections within the Department of Justice: the Office of Special Investigations, and the Domestic Security Section, which is charged with criminally prosecuting human rights abusers.

I look forward to hearing from Lanny Breuer, the Assistant Attorney General in charge of the Criminal Division, about what he thinks and recommends should be done. Our purpose is not to try not to micromanage the Justice Department. Rather, we all wish to vigorously protect human rights.

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U.S. Immigration and Customs Enforcement

STATEMENT

OF

JOHN MORTON

ASSISTANT SECRETARY

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING

“NO SAFE HAVEN:
ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATORS, PART II”

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Tuesday, October 6, 2009 – 10:00 a.m.
226 Dirksen Senate Office Building

Chairman Durbin, Ranking Member Coburn, and distinguished members of the Subcommittee:

I am pleased to have the opportunity to address this Subcommittee on the role U.S. Immigration and Customs Enforcement (ICE) continues to play in ensuring that the United States does not become a safe haven for human rights abusers. As the primary criminal investigative component in the Department of Homeland Security (DHS), ICE remains firmly committed to this mission and dedicates staff from many of our programs to advancing it, including special agents in the Office of Investigations (OI) and the Office of International Affairs (OIA), attorneys from the Office of the Principal Legal Advisor (OPLA) and officers from Office of Detention and Removal Operations (DRO).

Today, ICE is handling more than 1,000 human rights removal cases. These removal cases are at various stages of investigation and litigation and involve suspects from approximately 95 different countries, primarily those in Central and South America, the Balkans, and Africa. In addition, ICE currently has more than 180 active human rights investigations, which could ultimately support criminal charges or administrative removal proceedings. Since Fiscal Year 2004, the attorneys in OPLA have obtained final removal orders for, and officers in DRO have successfully removed, more than 300 suspected or known human rights violators from the United States.

Initially, I would like to mention the matter of Carlos Eugenio Vides-Casanova and Jose Guillermo Garcia, two Salvadoran government officials residing in the United States who have been of longstanding interest to this Subcommittee. I am well aware of these cases and I am committed to seeking justice. Despite the best efforts of government employees responsible for these cases, charges against these men stalled in the last administration. Since

becoming the Assistant Secretary, I have moved forward with a specific and determined plan, and ICE has lodged administrative charges against these individuals.

Working in tandem with our primary partner, the Department of Justice, we have enjoyed some significant successes. I would like to elaborate on just a few of these cases.

- Chuckie Taylor, the son of Liberian dictator Charles Taylor, committed numerous human rights abuses, including torture, while running the infamous Anti-Terrorist Unit during his father's violent regime. The investigation, prosecution and conviction of Chuckie Taylor reflected a cooperative partnership among ICE, the Department of Justice, the Federal Bureau of Investigation, and the Department of State. On January 8, 2009, a District Court Judge sentenced Taylor to 97 years in a federal prison after his conviction by jury.
- In the spring of 2007, in Boston, ICE agents investigated Carlos de Graca Lopes, a citizen of Cape Verde who entered the United States on a fraudulently obtained visitor's visa. Lopes was a prison warden in Cape Verde until an indictment was issued against him in his home country for various crimes, including the torture of prisoners in his care. He fled and entered the United States. ICE agents exercised their administrative authority to arrest Lopes. The United States Attorney's Office in Boston subsequently charged Lopes with 14 counts of visa fraud (18 U.S.C. § 1546), false statements (18 U.S.C. § 1001), and perjury (18 U.S.C. § 1621). Lopes pled guilty to 13 of the 14 counts and was sentenced to serve three years in prison. Fortunately, the District Court Judge imposed a sentence substantially higher than the sentencing guidelines recommended. In doing so, he stated that his intent was to deter others and "send the message that the United States will not be a safe or cost-free haven for those who are alleged to have abused human rights." ICE

attorneys had previously obtained a final order of removal for Lopes. Thus, when Lopes completes his term in federal prison, DRO will remove Lopes from the United States to Cape Verde, where he faces prosecution for his substantive offenses.

- ICE has continued to advance successfully the effort to bring to justice two Lieutenants in the Peruvian army, Juan Manuel Rivera-Rondon and Telmo Ricardo Hurtado-Hurtado. In 1985, both were principal perpetrators in a crime now known as the “Accomarca Massacre.” These men and their associates slaughtered 67 men, women, and children. Several weeks after that massacre, Hurtado-Hurtado discovered that some victims had survived and thus returned to kill an additional seven people who were witnesses to his crimes. Following an investigation of human rights abuses by the Peruvian Truth and Reconciliation Commission, Peruvian prosecutors charged Hurtado-Hurtado and Rivera-Rondon for their roles in this massacre. In 2006, ICE opened an investigation into both Hurtado-Hurtado and Rivera-Rondon, who were residing in the United States. Although extradition could not be achieved at that time, the Department of Justice provided information to ICE to determine if the men could be removed. ICE agents exercised their administrative authority, and arrested Rivera-Rondon in Baltimore in March 2007 and ICE attorneys successfully litigated the case before an immigration judge, and subsequently the Board of Immigration Appeals. In August 2008, Rivera-Rondon was deported to Lima, Peru, where he remains in custody pending trial. Working with the United States Attorney’s Office in Miami, ICE agents arrested Hurtado-Hurtado, who was charged with visa fraud (18 U.S.C. § 1546). He subsequently

pled guilty and served six months in prison. He is now in the custody of the United States Marshals Service while he appeals his extradition to Peru.

- ICE helped remove former Nazi death camp guard John Demjanjuk from the United States. Following extensive litigation concluding in 2004, the Department of Justice successfully revoked John Demjanjuk's citizenship due to his participation at four Nazi death camps, including the Sobibor extermination camp, where he participated in the death of thousands of Jews murdered by asphyxiation with carbon monoxide. At the conclusion of additional litigation, ICE's Office of Detention and Removal Operations took Demjanjuk into custody without incident on May 11, 2009, and successfully removed him on the same day via medical air ambulance to Germany, where Demjanjuk faces prosecution.
- ICE is currently seeking a removal order against Captain Nedjo Ikonic, who commanded a Special Police Company involved in the murder of more than 7,000 Bosnian Muslim men and boys at Srebrenica in July 1995—the largest mass-killing in Europe since the end of World War II. Like many others in military and police units involved in these crimes, Ikonic sought immigration benefits and entered the United States. In an investigation involving our partners in the U.S. Attorney's Office in Milwaukee, Wisconsin, investigators from the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, and investigators from the Bosnia Prosecutor's Office's Special Department for War Crimes in Sarajevo, ICE developed the necessary evidence to indict Ikonic for visa fraud (18 U.S.C. § 1546). In September 2007, he pled guilty to two counts of visa fraud and is still serving a one-year prison sentence in federal prison. ICE instituted proceedings to remove Ikonic from the United States while he is serving his

sentence with the intent to remove him to Bosnia. On September 23, 2009, Ikonik accepted a final order of removal to Bosnia. Late last year, war crimes prosecutors in Sarajevo obtained a detention order and international arrest warrant based on planned genocide charges against Ikonik for his role in Srebrenica.

- More recently, ICE traveled to Kigali, Rwanda, to investigate Prudence Kantengwa, an individual suspected of inciting and assisting in the 1994 Rwandan genocide. In December 2008, ICE's investigation resulted in a 15-count indictment in the District of Massachusetts against Kantengwa for visa fraud (18 U.S.C. § 1546), perjury (18 U.S.C. § 1621), and obstruction (18 U.S.C. § 1505). This matter remains pending.
- Jean-Marie Vianney Mudahinyuka illegally entered the United States in 2000. After settling in the Chicago area, six witnesses identified Mudahinyuka as a perpetrator of the Rwandan genocide, and one allegedly witnessed him committing murder and rape. ICE agents conducted an extensive investigation and arrested Mudahinyuka in May 2004 on federal immigration fraud charges. During the arrest at his Romeoville, Illinois, residence, Mudahinyuka assaulted an ICE agent and grabbed the agent's weapon. In June 2005, Mudahinyuka was convicted in federal court in Chicago for committing immigration fraud and assaulting a federal officer. He was sentenced to 51 months in federal prison and was transferred to ICE custody after he completed his sentence. An Immigration Judge subsequently ordered him removed. Upon his removal, ICE DRO officers will turn Mudahinyuka, who is wanted on an international arrest warrant, over to the custody of the Rwandan National Police to face charges of genocide and war crimes.

Our successes, and our ongoing daily efforts, underscore ICE's deep commitment to the No Safe Haven initiative to deny human rights violators safe haven in the United States using all of ICE's legal authorities. In April 2008, to be more proactive in our effort to prevent human rights abusers from entering the United States and to locate and remove those who have entered, ICE established the Human Rights Violators and War Crimes Center Pilot Project. This pilot project created a center to leverage existing personnel, missions and authorities that our agency already possessed to more effectively and efficiently harness our efforts against human rights abusers. The center synchronizes the expertise and talents of our investigators, legal experts, researchers and analysts, intelligence professionals and our international attachés. The center pulls together the broad spectrum of skills, authorities, and abilities already resident within ICE.

As part of the project, ICE created Regional Support Teams consisting of agents, attorneys, criminal researchers and historians with expertise in specific regional target areas or conflicts. These Regional Support Teams are a valuable resource and enhance our domestic enforcement activities. Based on the success of the pilot program, we now have fully implemented and established the Human Rights Violators and War Crimes Center ("Center") within the Office of Investigations. Several of our partners—for instance, the Department of Justice—participate in the Center through frequent attendance at weekly meetings and the constant facilitation of information-sharing between agencies. We hope that this participation will continue to expand. As our own space and resources allow, we will invite additional partners from within the Department of Homeland Security and from the Department of State to participate.

Likewise, in an effort to respond more proactively to prevent the entry of foreign human rights abusers into the United States, in June 2008, we created the Human Rights Target

Tracking Initiative. This initiative works to identify and target foreign human rights abusers and war crimes suspects before they enter the United States, and to take the necessary steps to ensure that they can be prevented from gaining admission. Working closely over the past year with our partners in the Bureau of Consular Affairs at the Department of State as well as U.S. Customs and Border Protection, we have identified and corrected a number of technical issues that prevented records pertaining to foreign human rights abusers maintained by ICE in the Treasury Enforcement Communications System (TECS) from being available to State Department Consular Officers at our embassies abroad via their Consular Lookout and Database Support System (CLASS). These ICE records are now visible to consular officers abroad, and should significantly advance our shared goal of preventing human rights abusers from improperly receiving nonimmigrant visas.

Since the inception of this initiative, ICE has generated over 507 records of human rights violator suspects covering select past and present human rights abuses in Central and South America, Africa, Europe, the Middle East, and Asia. Five individuals listed in these records were detained by U.S. Customs and Border Protection when they attempted to enter the United States. Based on the demonstrated potential of this initiative, a Target Tracking Team has been established and is now formally incorporated into the Human Rights Violators and War Crimes Center.

Since ICE last appeared before this Committee on November 14, 2007, we have more than doubled our headquarters staffing and currently have a team of 21 individuals working within the Human Rights Violators and War Crimes Center structure.

To enhance ICE's ability to deny human rights abusers a refuge in the United States, in October 2008, the Human Rights Violators and War Crimes Unit analyzed its practices. The review determined that the ICE Field Offices investigated human rights violators and war

crimes cases in a decentralized manner. Each of ICE's 26 Special Agents in Charge had the discretion to assign these cases to an agent in any programmatic area, whether related to national security, benefit fraud, smuggling, or some other focus. This analysis also revealed that the investigative techniques and methodologies used in human rights investigations often mirrored the approaches used in national security-related investigations. As such, the Human Rights Violators and War Crimes Unit was transferred to the ICE Office of Investigation's National Security Unit, and the field offices were instructed to assign human rights-related investigations to national security agents. This centralized the investigations within one programmatic area. Furthermore, ICE has provided specialized training to this cadre of agents, as well as to our attorneys, through formal annual conferences and informal region-specific training to further develop investigative abilities.

Since becoming the ICE Assistant Secretary, I have asked the Office of Investigations (OI) to examine different ways of improving the ways in which we dedicate resources to human rights. An option under review includes utilizing ICE Special Agents within the Center structure to actively initiate investigations and co-manage these investigations with field agents using the established collateral investigation process. Criminal Research Specialists and assigned Historians within the Center could then support these agents with operational and tactical level research as needed. This could also allow the Center to dispatch Special Agents, Criminal Research Specialists, and Historians to the field to support on-going investigations as needed. This is a new frontier for federal law enforcement: developing cases within the headquarters, farming the investigations to field offices and deploying resources to support the investigations. We believe such a model will work well with these cases, where expertise and the singular focus of the agents are hallmarks of our past successful investigations. We

continually prioritize our investigative activities based on risk, and will review existing investigative resources to see how we can improve our efforts in this important area.

Assistance from a broad range of non-governmental organizations (NGOs) is a key component in successful human rights-related investigations and prosecutions. ICE has benefited many times from the assistance of NGOs. For example, ICE has had assistance identifying potential suspects, witnesses, and victims, as well as providing crime scene information and language support. ICE has developed, and maintains a good relationship with, several dozen local, regional, and international organizations who work in the arena of human rights. As part of our continuing efforts to enhance our capacity to prevent the admission of known or suspected human rights violators, as well as to increase the effectiveness of ongoing domestic enforcement activities, ICE has developed a comprehensive outreach strategy to government entities and NGOs. Our outreach program allows ICE to expand these contacts through our 26 SAC offices and 54 attaché offices. The Human Rights Violators and War Crimes Unit outreach program has created new relationships with targeted organizations and has strengthened our existing relationships, ultimately furthering our ability to deny human rights violators and war criminals a safe haven in the United States.

The success ICE has enjoyed to date cannot be achieved without partnering with both domestic and foreign law enforcement agencies and NGOs. Human rights violator investigations require our agents, researchers, historians, analysts, and lawyers to travel the globe collecting evidence and interviewing victims and witnesses. Within our own agency, we have a network of 54 ICE attachés that have allowed us to foster strong international relationships in over 43 countries. Where ICE attachés are not present, we work with FBI legal attachés and agents in the Department of State, Bureau of Diplomatic Security.

When preparing cases for potential criminal indictment and prosecution, we partner closely with a variety of Department of Justice components, including the Domestic Security Section, the Office of Special Investigations, the Counter-Terrorism Section, United States Attorney's Offices, and the Office of International Affairs. I have been pleased to work with Lanny Breuer and his staff in substantive efforts to create one section within the Criminal Division that prosecutes, both criminally and civilly, human rights cases. I applaud the initiative undertaken by the Assistant Attorney General in this regard. ICE will be well served as a law enforcement agency by the new section. Finally, as ICE seeks to identify and prevent the admission of foreign human rights abuse and war crimes suspects, we work with our departmental partners at U.S. Citizenship and Immigration Services and U.S. Customs and Border Protection, as well as with several bureaus in the Department of State, including the Bureau of Consular Affairs, the Bureau of Population, Refugees and Migration, the Bureau of Democracy, Human Rights and Labor, and the Bureau of Intelligence and Research.

ICE also maintains close relationships with a number of United Nations-sponsored tribunals, including the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone. Other international partners include various war crimes and human rights-related agencies in Argentina, Australia, Bosnia and Herzegovina, Canada, Finland, Germany, Peru, Rwanda, and the United Kingdom. We maintain an even wider network through our coordination with INTERPOL's Fugitive Investigative Support Unit. In April of this year, subject matter experts from ICE, along with our counterparts from the Department of Justice, participated in INTERPOL's Fourth International Expert Meeting on Genocide, War Crimes and Crimes against Humanity, to provide the United States perspective on best practices related to investigation and enforcement issues.

While recognizing our combined work to date, ICE recognizes that much remains to be done to ensure that the United States does not become a safe haven for human rights abusers. While the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 broadened the category of human rights abusers who are inadmissible to, or removable from, the United States under the Immigration and Nationality Act (INA), significant gaps still remain. The Intelligence Reform and Terrorism Prevention Act added two new categories of individuals who are subject to removal: those who have participated in acts of torture, and those who have participated in extrajudicial killings. More recently, the Child Soldiers Accountability Act of 2008 added grounds to deny admission or remove individuals who have recruited or used children as soldiers.

While the INA bars many more individuals who ordered, incited, assisted, or otherwise participated in a much broader range of persecution from receiving certain forms of lawful immigration status (such as asylee or refugee status), there is no specific immigration charge of inadmissibility or removability for engaging in other serious acts of persecution. Therefore, some of these individuals still may be eligible for other forms of immigration benefits, including business or tourist visas or visas secured through a family member or an employer.

To obtain visas and enter the United States, many human rights abusers perpetrate fraud against the United States during the application process. Unless this fraud is exposed within five years, ICE is confronted with a serious obstacle to prosecution. The statute of limitations for visa fraud is only five years, although the statute of limitations for related crimes such as naturalization fraud is 10 years. Even the crimes of genocide and other war crimes carry a five year statute of limitations when the violation does not result in death. The crime of torture carries only an eight year statute of limitations if the acts did not result in death or serious bodily injury or the foreseeable risk of such. Frequently, we find ourselves in a position where

we must forgo criminal charges related to the visa and immigration fraud because evidence of the offender's misrepresentations did not come to light within the statute of limitations.

While we have enjoyed some success in obtaining sentences commensurate with the gravity of the crimes these offenders committed abroad, we are still confronted with the fact that most of the offenses we charge relate to visa fraud, false statements, and naturalization fraud fall at the extreme low end of sentencing guidelines. Not infrequently, individuals who have been convicted of these offenses receive minimal sentences of zero to six months, and then are placed into removal proceedings. These minimal sentences have almost no deterrent effect on future offenders and can be particularly frustrating to victims and survivors—particularly in cases where the offender is removed to a country that has pardoned, amnestied, or otherwise granted impunity to those who have committed such grievous acts. Respectfully, when we are dealing with human rights abusers, including those who commit the most heinous crimes, the burden should be on the human rights violator to argue for a lesser sentence, as opposed to on the government to argue for a greater one. A graduated scale of increases in sentencing guidelines related to the underlying conduct would ensure justice in these cases and provide for sentencing that reflects the seriousness of these crimes.

Over the past 25 years, the United States has sheltered over a million refugees fleeing armed conflict, ethnic cleansing, persecution and torture. Each of these refugees bears the burden of a personal ordeal that often reflects the loss of possessions, homes, family members, or even entire communities. They arrive with little more than the hope of rebuilding their shattered lives. Invariably, most choose to remain here. They and their children add another thread to the tapestry of our diverse, yet shared, immigrant history as a nation. As the Assistant Secretary of ICE, I recognize the unique responsibility my agency bears in protecting those who came to our shores seeking to escape those who perpetrated such atrocities. With

our partners within the Department of Homeland Security and in the Departments of Justice and State, we use every tool at our disposal to ensure that those who have committed such acts abroad never evade justice and accountability for their crimes by hiding among their victims here.

Perhaps our shared vision is best described by Nobel Laureate and Holocaust survivor Elie Wiesel. In August 2008, ICE was honored to receive him as our guest during our annual human rights conference in New York. He spoke of his life and his experiences—both as a victim of Nazi-era crimes and as a witness to modern day acts of persecution and genocide. Of the many impressions that he left with members of ICE that day, perhaps none was more striking than his view of the role that we collectively play in bringing such offenders to justice. Mr. Wiesel noted that the investigation and prosecution of human rights violators and war criminals was not merely an assignment given to us by our managers; it reflected a role assigned by history itself in the name of the countless and often anonymous victims who perished at the hands of those who perpetrated these crimes.

Chairman Durbin and Ranking Member Coburn, I applaud your continued leadership on these important issues. I congratulate you both on the enactment, exactly a year ago this week, of the Child Soldiers Accountability Act, which you were both instrumental in getting passed. I look forward to working with you both and the Subcommittee on this new law and other legislation in the future.

On behalf of Secretary Napolitano and the dedicated employees at ICE who are committed to fulfilling this shared vision, I thank you again for the opportunity to address this Subcommittee. I would be pleased to answer any questions you may have.

