



Department of Justice

STATEMENT OF

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DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

FOR A HEARING ENTITLED

**“HOLDING CRIMINALS ACCOUNTABLE:
EXTENDING CRIMINAL JURISDICTION FOR GOVERNMENT
CONTRACTORS AND EMPLOYEES ABROAD”**

PRESENTED

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**Statement for the Record of
Lanny A. Breuer
Assistant Attorney General
Criminal Division
Department of Justice**

**For a Hearing Entitled
“Holding Criminals Accountable: Extending Criminal Jurisdiction for Government
Contractors and Employees Abroad”**

**Before the
Committee on the Judiciary
United States Senate**

I. INTRODUCTION

Chairman Leahy, Ranking Member Grassley, and distinguished Members of the Committee: Thank you for inviting me to speak with you today about the proposed Civilian Extraterritorial Jurisdiction Act, or CEJA.

I am honored to appear before you on behalf of the Department of Justice, where I am privileged to lead the Criminal Division’s nearly 600 lawyers in enforcing the Federal criminal laws. Together with the Nation’s 94 U.S. Attorneys’ Offices, the Criminal Division’s Human Rights and Special Prosecutions Section investigates and prosecutes individuals under the existing Military Extraterritorial Jurisdiction Act, or MEJA, for crimes those individuals commit overseas. We have had great success in bringing cases under MEJA, and are committed to continuing to enforce MEJA vigorously.

As much as we have been able to accomplish under existing law, however, MEJA leaves significant gaps in our enforcement capability. In particular, under MEJA, certain civilian U.S. Government employees can commit crimes abroad, yet not be subject to the jurisdiction of U.S.

courts. For example, a civilian Government contractor whose employment is unrelated to the mission of the Department of Defense – but is related to the mission of another U.S. Government agency – cannot currently be prosecuted under MEJA, even if he or she clearly committed a crime. CEJA would address this significant shortcoming by extending U.S. jurisdiction to all non-Department of Defense employees and contractors who commit crimes overseas.

II. BACKGROUND

The Military Extraterritorial Jurisdiction Act, 18 U.S.C. § 3261, *et seq.*, is the principal Federal statute used to prosecute certain U.S. Government employees, contractors, and their dependents who commit crimes overseas. As originally enacted, in 2000, MEJA applied only to certain narrow classes of individuals associated with the Department of Defense. In 2004, however, Congress amended MEJA, expanding it to cover civilian employees and contractors (and their dependents) of agencies other than the Department of Defense, but only to the extent that the employee’s or contractor’s employment “relates to supporting the mission of the Department of Defense overseas.”

Since MEJA was enacted, the Justice Department has successfully prosecuted numerous MEJA cases involving former Department of Defense employees or individuals accompanying them overseas. In *United States v. Steven Green*, for example, the Justice Department secured a conviction in Louisville, Kentucky against a former Army soldier for the brutal rape and killing of a 14-year old Iraqi girl and the murders of three of her family members while the soldier was on active duty in Iraq. In *United States v. Rico Williams*, the Justice Department obtained a conviction in the District of Columbia against a former Air Force senior airman for a gang-initiation beating that ended in the death of an Army Sergeant in Germany. And in *United States*

v. Dwain Williams, we obtained a jury conviction in Valdosta, Georgia against an individual accompanying a military service member overseas for the aggravated sexual abuse of a child in Japan.

The Justice Department has also successfully prosecuted Defense Department contractors employed overseas. In *United States v. Christopher Drotleff, et al.*, for example, we obtained jury convictions in Norfolk, Virginia of two Department of Defense contractors for involuntary manslaughter of a civilian in Afghanistan. In *United States v. Sean T. Brehm*, we secured a conviction from a Department of Defense contractor on charges of assault with a deadly weapon in Afghanistan. And in *United States v. Jorge Thornton*, we secured a conviction from a Department of Defense contractor for abusive sexual contact while working at a U.S. military Forward Operating Base in Iraq. We have also investigated and prosecuted non-Department of Defense contractors whose work related to “supporting the mission of the Department of Defense overseas.”

The Justice Department also successfully and aggressively uses every other tool now available to us to prosecute crimes committed abroad by U.S. Government personnel and U.S. Government contractors (which can include both U.S. citizens and citizens of other countries). We can and do prosecute crimes committed within the special maritime and territorial jurisdiction (SMTJ) of the United States. In *United States v. Andrew Warren*, for example, a former official with the Central Intelligence Agency (CIA) was sentenced in the District of Columbia to 65 months in prison for abusive sexual contact committed while on U.S. Embassy property in Algiers, Algeria. We also bring many prosecutions for crimes committed in violation of Federal criminal statutes with clear extraterritorial application, such as procurement fraud.

Where we can hold U.S. Government personnel and contractors accountable for crimes committed while they are working on behalf of the U.S. Government, we will do so.

II. LEGISLATIVE NEED

These successes notwithstanding, there are significant limits to our ability to prosecute sometimes egregious criminal conduct committed overseas by people working on behalf of the U.S. Government. The criminal statutes with clear extraterritorial jurisdiction make up only a subset of the Federal criminal laws, and the special maritime and territorial jurisdiction of the United States is limited. Additionally, we can only charge a violation of MEJA when we can prove that the defendant's employment "relates to supporting the mission of the Department of Defense overseas." Whether any particular defendant falls within the scope of MEJA, therefore, depends upon highly specific facts and circumstances relating to his or her employment and, in practice, this statutory language has proven difficult to apply. Cases that would otherwise be straightforward can turn into complex investigations focusing not just on the underlying criminal conduct, but also on the scope of the defendant's employment, his or her specific work duties, and other jurisdiction-related facts. These inquiries about the scope of a particular defendant's employment can be extremely challenging and resource-intensive given that they often need to be conducted in war zones or under other difficult circumstances.

Furthermore, in some instances, the relevant information concerning a defendant's employment and how it relates to the Defense Department's mission may be classified. Although the Justice Department may use procedures set out under the Classified Information Procedures Act, such procedures may not be adequate to protect national security information and also establish to a jury beyond a reasonable doubt that a defendant is subject to MEJA. In

practice, this means that certain civilian U.S. Government employees and contractors can commit serious crimes overseas without fear of U.S. prosecution.

The unfortunate consequence of the current state of the law is that, for example, a Department of Defense contractor who murders a colleague in Iraq may be prosecuted under MEJA, while a contractor with another U.S. agency who commits the very same crime may not be, since he or she may not be covered by MEJA. Similarly, an employee with a non-Department of Defense agency who rapes a foreign national in the employee's diplomatic residence may be prosecuted for committing a crime within the special maritime and territorial jurisdiction of the United States, while the same person might not be able to be prosecuted if he commits the same crime in the victim's apartment.

CEJA is needed to close these gaps in the law. In the first hypothetical situation I just described, under CEJA, the Government contractor could be prosecuted for murder regardless of whether his or her employment had anything to do with the Department of Defense's mission. And in the second hypothetical situation I described, the U.S. Government employee could be prosecuted for rape regardless of where the crime occurred, and without the need for an inquiry into the precise nature of the defendant's employment.

Given the evolving nature of our engagement in various countries such as Iraq and Afghanistan, and given the large number of employees and contractors being utilized by agencies other than the Department of Defense, we view the enactment of CEJA as crucial to ensuring accountability and demonstrating to other countries that we do not give U.S. Government employees license to commit crimes overseas.

III. PROPOSED LEGISLATION

Mr. Chairman, we are pleased that you plan to introduce new legislation to close the gaps in the law. We look forward to working with your staff to make the legislation as strong as possible. In particular, to minimize potential sovereignty concerns of other countries, we hope that the legislation will preserve the authority of the relevant Chiefs of Mission and clarify that any law enforcement activities overseas related to CEJA will be conducted consistent with appropriate guidance from the Justice Department in consultation with the Department of State. It is essential that any legislation include a statutory carve-out to ensure that the legislation does not impose criminal liability on authorized intelligence activities of the United States Government. The absence of an explicit exemption for authorized intelligence activities conducted abroad would negatively impact the United States' ability to conduct such activities.

We share your goal of passing a robust and comprehensive CEJA statute that provides clear and unambiguous jurisdiction to prosecute non-Department of Defense personnel for overseas misconduct, without wasting valuable resources on unnecessary litigation and urge you to draft it in a way that focuses on the most serious, violent crimes committed abroad.

IV. CONCLUSION

Since MEJA's passage in 2000, we have aggressively enforced MEJA against Department of Defense employees, contractors, and individuals accompanying them. We have also investigated a number of matters involving non-Department of Defense persons when we can establish that their employment "relates to supporting the mission of the Department of Defense overseas" or where we had extra-territorial jurisdiction under other statutes. However, under the current law, certain U.S. Government employees can commit crimes overseas without

being prosecuted. The United States may not have jurisdiction and the host nation may not have the capability or willingness to prosecute. CEJA would fix this significant problem by extending U.S. jurisdiction to all non-Department of Defense employees who commit specified crimes overseas. We fully support this legislative goal, and look forward to working with the Committee as it further refines the bill.

Thank you for the opportunity to appear before you today. I would be pleased to take any questions you may have.