

Reply from the U.S. Department of Justice to Congressional letter



U.S. Department of Justice

Office of Legislative Affairs

---

Assistant Attorney General

Washington, D.C. 20530

April 5, 2012

The Honorable Joe Walsh  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Walsh:

This responds to your letter to the Attorney General dated March 1, 2012, in which you urge the Department of Justice to exercise jurisdiction under federal law to prosecute and punish those individuals recently released by the Government of Israel who are responsible for murdering and injuring American citizens in terrorist acts in Israel. The Department of Justice shares your commitment to pursuing those who have murdered or injured Americans in terrorist attacks, whether committed in the United States or overseas, and bringing them to justice. We are sending an identical letter to the other Members who joined in your letter.

When Americans are victims of terrorist attacks in other countries, the Department of Justice pursues justice for those victims along several tracks. In the immediate wake of an attack, the Federal Bureau of Investigation (FBI), working through the U.S. Embassy and its legal attachés around the world, offers to deploy special agents and other resources to render assistance. The FBI has Rapid Deployment Teams that are trained specifically to respond on a moment's notice to such incidents. If the country accepts the offer of assistance, depending on the particular needs of the situation, the FBI provides its expertise and experience, for example, in crime-scene processing, rendering safe explosive devices, applying computer forensics techniques, and interviewing witnesses and interrogating suspects.

In addition, the FBI opens its own international terrorism investigation and, as appropriate and in conjunction with federal prosecutors, makes requests to the country's law enforcement officials for access to evidence and witnesses and other sources of information to support prosecution in the United States. The greater the FBI's involvement in the on-the-ground investigation, the more likely evidence will be collected in a manner that would preserve the option of prosecution in the United States. In conjunction with investigative efforts, working through the FBI's Office for Victim Assistance (OVA) and the National Security Division's Office of Justice for Victims of Overseas Terrorism (OVT),<sup>1</sup> the Department also seeks to

---

<sup>1</sup> The Office of Justice for Victims of Overseas Terrorism (OVT) was created by Section 126 of the Department of Justice Appropriations Act, 2005, which directed the Department of Justice "to establish an Office of Justice for Victims of Overseas Terrorism." Pub. L. No. 104-447, Div. B, Title I (Dec. 8, 2004). The statute provided no further guidance as to the Office's purpose and mission. The Conference Report accompanying the Act

## Reply from the U.S. Department of Justice to Congressional letter

The Honorable Joe Walsh  
Page Two

identify and contact American victims and their families to provide services and to keep them informed, consistent with operational needs, about developments in these matters.

In many instances, the country in which an attack occurs pursues justice for all of the victims in its own system. That is what occurred following many of the attacks in Israel with American victims that you reference in your letter. Israeli authorities have identified and captured or killed many of the terrorists and the terrorist leaders who were responsible for the deaths of American citizens. Some of these terrorists have been sentenced to multiple life terms or extensive periods of incarceration in Israeli prisons for their terrorist acts.

As noted in your letter, the Government of Israel recently released prisoners as a result of Egyptian-brokered negotiations with Hamas to secure the return of an Israeli soldier. Among the prisoners released were individuals convicted of attacks that included American victims. Prior to the releases, the United States Embassy in Tel Aviv, together with the Department of Justice and the Department of State, urged Israel not to release prisoners responsible for attacks on United States citizens.

The Department is committed to making every effort to bring appropriate charges against those released prisoners responsible for attacks in Israel that included American victims. In furtherance of this commitment, the United States Attorney's Office for the District of Columbia, working with the National Security Division's Counterterrorism Section, and the FBI are reviewing those attacks in which released prisoners were implicated for further investigation and potential prosecution. Additionally, in a recent meeting with Israeli Attorney General Yehuda Weinstein, Attorney General Holder raised the prisoner releases and the importance of cooperation in pursuing justice for the American victims.

---

stated that OVT was established, "as recommended by the Koby Mandell Act of 2003, to ensure that the investigation and prosecution of deaths of American citizens overseas are a high priority within the Department of Justice." Report 108-792, H.R. 4818, at page 780.

When former Attorney General Alberto R. Gonzales established OVT, he determined that the office "shall not have operational responsibility for the investigation and prosecution of terrorist attacks against Americans overseas." Memorandum, Office of the Attorney General, dated May 6, 2005, at page 2 (Attachment A). Rather, Attorney General Gonzales directed, "The FBI will continue to serve as the lead investigative agency in these cases. The Counterterrorism Section of the Criminal Division [now the National Security Division] will have primary responsibility for the institution and coordination of prosecutions, in conjunction with the United States Attorney's Offices, as appropriate . . ." *Id.*

In furtherance of its mission to ensure that these cases remain a high priority within the Department, OVT has worked to identify the United States victims of overseas acts of terrorism wherever in the world the acts are carried out, advocate for victims' rights in both United States-based and foreign prosecutions (including by providing victims information about foreign and domestic criminal justice proceedings and supporting United States citizen victim attendance at and participation in foreign criminal justice proceedings), arrange victim briefings with Department and other government officials, and ensure that victims' interests and views are considered by decision-makers. OVT's efforts have benefited many victims, including those victimized by attacks in Israel, the West Bank, and Gaza, by helping them in their pursuit of accountability in the aftermath of devastating violence.

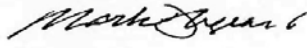
Reply from the U.S. Department of Justice to Congressional letter

The Honorable Joe Walsh  
Page Three

However, there are significant impediments to bringing prosecutions in the United States for attacks that occur overseas. The crime scenes are located in places that are not under the United States' control and, therefore, the United States is entirely dependent on the sovereign country where the attack occurred for assistance and cooperation in these investigations. Terrorist attacks in Israel, the West Bank, and Gaza present particular challenges, which were detailed in a Department views letter addressed to Senator Orrin Hatch, in his capacity as Chairman of the Senate Committee on the Judiciary, on H.R. 3036, concerning the "Department of Justice Appropriation Authorization Act, Fiscal Years 2004 through 2006." See Hatch Letter, dated Sept. 27, 2004, at 22 (Attachment B). The letter notes that for Israeli officials, the focus following an attack is often, understandably, on clearing the crime scene to minimize disruption, taking steps to prevent a further attack, and neutralizing the operatives responsible, rather than on collecting evidence consistent with the standards required for prosecution in the United States. As stated in the letter, obstacles relating to the chain of custody of evidence and admissibility of confessions often preclude United States prosecution. Nevertheless, as noted above, the U.S. Attorney's Office for the District of Columbia and the FBI are reviewing the information available and seeking additional information with respect to cases involving those released.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

  
for Ronald Weich  
Assistant Attorney General

Enclosures

Attachment A



OJVOTAGMemo.p  
df

Reply from the U.S. Department of Justice to Congressional letter

Attachment B



Views letter Koby  
Mandell Act ...