



# Department of Justice

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**STATEMENT OF**

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**DIRECTOR OF HUMAN RIGHTS ENFORCEMENT STRATEGY AND  
POLICY, HUMAN RIGHTS & SPECIAL PROSECUTIONS SECTION AND  
COUNSELOR FOR WAR CRIMES ACCOUNTABILITY  
U.S. JUSTICE DEPARTMENT**

**BEFORE THE**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**AT A HEARING ENTITLED**

**“FROM NUREMBERG TO UKRAINE: ACCOUNTABILITY FOR WAR CRIMES AND  
CRIMES AGAINST HUMANITY”**

**PRESENTED**

**SEPTEMBER 28, 2022**

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Thank you, Mr. Chairman, for inviting the Department of Justice to testify at this important and timely hearing. We greatly appreciate your leadership and the leadership of Senators Grassley, Leahy, and Graham in drafting several major bills during the current Congress that would strengthen the Government’s ability to secure a significant measure of accountability in the wake of the commission of war crimes and other atrocity crimes. We hope that legislation to enhance the Government’s authorities under Titles 18 and 8 of the United States Code to take legal action against the perpetrators of such egregious crimes can be enacted as soon as possible, including to end the effective impunity that some of them enjoy because of gaps in federal statutory law and to render more of the perpetrators ineligible to come to or remain in this country.

I am pleased to be here to address the Justice Department’s efforts to ensure that perpetrators of atrocities and other human rights abuses are held to account for their ghastly crimes. Given the shocking crimes that continue to be perpetrated by Russia’s forces in the course of its unprovoked war against Ukraine, this hearing could not be held at a more appropriate, urgent or, frankly, terrifying time. Every single day that passes without prosecutors around the world having all the tools that they need to pursue justice in the aftermath of those horrific events potentially enables war criminals and human rights violators to escape justice.

On May 4, Attorney General Garland and the Attorneys General of the United Kingdom, Australia, Canada, and New Zealand met with Ukraine’s then-Prosecutor General and reaffirmed their solidarity with the Ukrainian people and discussed their coordinated efforts to hold accountable individuals whose criminal actions are enabling war crimes in Ukraine. Afterwards, Attorney General Garland spoke movingly of the suffering of Ukrainians who find themselves in the crosshairs of the Russian Federation’s unprovoked war of aggression: “America, and the world, are watching very closely what is happening in Ukraine. Every day, we see the heartbreaking images and read the horrific accounts of brutality. But there is no hiding place for

war criminals,” the Attorney General declared. “The Justice Department,” he noted, “has a long history of holding accountable those who perpetrate war crimes.” The Attorney General continued: “Our commitment to working with our international partners, including Ukraine’s Prosecutor General, to investigate and prosecute those responsible for atrocities in Ukraine remains steadfast. We will be relentless in our efforts to bring to justice those who facilitate the death and destruction we are witnessing in Ukraine.”

No doubt, every person in this room has seen images of the type mentioned by the Attorney General. We have seen maternity hospitals and schools destroyed by bombs. We have seen images of mass graves. And we have heard reports of torture and other atrocities. The issue of accountability therefore could not be more pressing. The Department is committed to holding the perpetrators of such crimes fully accountable for their actions.

Towards that end, on June 21, I had the privilege of travelling to Ukraine with Attorney General Garland and other Justice Department officials to meet with the Attorney General’s Ukrainian counterpart and other officials in the Prosecutor General’s Office. During that meeting, Attorney General Garland announced that the Justice Department would take additional actions to help Ukraine identify, apprehend, and prosecute individuals involved in war crimes and other atrocities in Ukraine. Specifically, he announced the creation of the Department’s War Crimes Accountability Team to centralize and strengthen the Department’s ongoing accountability efforts in the wake of Russia’s invasion. He also announced my appointment as Counselor for War Crimes Accountability, a role that I have undertaken with assistance from colleagues from the Criminal Division’s Human Rights and Special Prosecutions (HRSP) Section, where I serve as Director of Human Rights Enforcement Strategy and Policy, and alongside professionals from other components of the Criminal Division, such as the International Criminal Investigative Training Assistance Program (ICITAP), the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), the Office of International Affairs (OIA), and the Computer Crime and Intellectual Property Section (CCIPS), and other Justice Department entities. Even before the Attorney General created the War Crimes Accountability Team, the Assistant Attorney General for the Criminal Division, Kenneth Polite, travelled to The Hague this year to confer with European officials about coordinating efforts to investigate, prosecute, and deter war crimes in Ukraine.

This initiative has brought together the Department’s leading experts in investigations involving human rights abuses, war crimes, and other atrocities, and provides Ukrainian authorities with wide-ranging technical assistance, including operational assistance and advice regarding criminal prosecutions, evidence collection, forensics, and relevant legal analysis. This initiative also builds on the work that the Department has been doing with Ukraine and other partners to counter Russian illicit finance and sanctions evasion. We are using all available resources to hold accountable individuals whose criminal actions are enabling Russia’s unjust and cruel war against Ukraine.

The War Crimes Accountability Team plays an integral role in the Department’s ongoing investigations of potential war crimes over which the United States possesses jurisdiction, such

as in the killing and wounding of U.S. journalists covering Russia's invasion or the torture or willful killing of U.S. citizens captured while fighting in Ukraine's armed forces. The U.S. war crimes statute (18 U.S.C. § 2441) confers jurisdiction when "the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States." Although the perpetrators are not currently in the United States, there are countless examples, under other federal statutes, of the Justice Department gaining custody of non-U.S. national defendants, including Russian nationals, because they visited the United States or immigrated here or because they visited a country with which the United States has an extradition treaty in force. That fact should stand as a stark warning to anyone who would dare, for example, to commit a war crime against a U.S. national, including a dual national.

The world has seen many shocking images of the killings, grievous injuries, and devastation inflicted by Russia in the course of its illegal and unprovoked war of aggression. It was a heart-rending, but also deeply inspiring, experience for me to be in Ukraine in June while its people were displaying extraordinary courage, every minute of every day, in fighting for their freedom and for their country's territorial integrity. In fact, one senior law enforcement official with whom we met was wearing his army combat fatigues.

Accountability is a critical pillar of international peace and stability. It brings a measure of justice to victims, ensures that perpetrators answer for their actions, potentially saves lives by deterring others from becoming perpetrators, and, at its best, serves to rebuild trust in national and international institutions, and in the rule of law, breaks the cycle of violence and helps to build lasting peace. Bringing the perpetrators of war crimes and human rights violations to justice has been a high priority and time-honored commitment at the Department of Justice for more than four decades, particularly since the former Office of Special Investigations (OSI) was created in 1979 to identify, investigate, and take legal action against participants in World War II-era acts of persecution sponsored by Nazi Germany and its allies. The Department's enduring commitment to seeking justice in these cases can be traced back to the immediate postwar period, when former Attorney General Robert H. Jackson and his staff, which included a sizeable cadre of Justice Department personnel, prosecuted surviving Nazi leaders at Nuremberg, Germany. In addition, Joseph Keenan, a former Assistant Attorney General for the Criminal Division, served as Chief Prosecutor at the International Military Tribunal for the Far East, leading the prosecution in Tokyo of Japanese war criminals after the Second World War.

The Criminal Division's current human rights enforcement efforts are centered in the Division's HRSP Section, which was formed as a result of the 2010 merger of OSI and the Division's Domestic Security Section (DSS) to maximize the impact of the Division's human rights enforcement efforts and promote efficiency. HRSP also prosecutes international violent crime cases, principally under the Military Extraterritorial Jurisdiction Act (MEJA) (18 U.S.C. § 3261) and the Special Maritime and Territorial Jurisdiction of the United States (SMTJ) (18 U.S.C. § 7), and it is worth noting that those cases sometimes involve human rights crimes as well.

Within the Department, HRSP works alongside the Federal Bureau of Investigation's (FBI) International Human Rights Unit (IHRU) and with United States Attorneys' Offices around the country to investigate and prosecute perpetrators of atrocities and human rights abuses where our law allows. Important work is also done by, among others, several components of the Criminal Division:

- the Office of International Affairs serves as the Department's lead in our work assisting foreign governments with their requests for the extradition of war criminals and human rights violators for trial abroad, and it obtains evidence located in the United States for foreign criminal investigators and prosecutors in addition to obtaining evidence located abroad on behalf of U.S. investigators and prosecutors;
- the Money Laundering and Asset Recovery Section (MLARS) launched its Kleptocracy Asset Recovery Initiative in 2010 to investigate and litigate to recover the proceeds of foreign official corruption. MLARS attorneys are part of the Department's recently announced Task Force KleptoCapture, an interagency law enforcement task force dedicated to enforcing the sweeping sanctions, export restrictions, and economic countermeasures that the United States has imposed, along with allies and partners, in response to Russia's February 2022 invasion of Ukraine; on July 19, my Justice Department colleague Andrew Adams, who serves as the Director of that task force, testified before this Committee on its structure, scope, strategic priorities, and work;
- the ICITAP trains law enforcement, and border security personnel in Ukraine and in many other countries;
- the Office of Overseas Prosecutorial Development, Assistance and Training promotes the rule of law and builds the capacity of prosecutors, investigators, and judges in partner countries; and
- the Office of Enforcement Operations assists on victim and witness issues.

The Department's National Security Division and the Civil Division's Office of Immigration Litigation play important roles as well in the Department's wide-ranging enforcement efforts directed against war criminals and human rights violators.

HRSP and the FBI IHRU also work as part of the Human Rights Violators and War Crimes Center, initiated in 2008 by Homeland Security Investigations (HSI) within the Department of Homeland Security. The Center brings together a select group of Special Agents, attorneys, analysts, and historians to work collaboratively on human rights and war crimes investigations. To further that work, HRSP, FBI, and DHS employ historians and other researchers as investigative specialists on the model of the approach that has enabled the Justice Department to win more cases against World War II Nazi criminals over the past 40 years than has any other country in the world. Working together in this way facilitates cooperation among the participating Homeland Security and Justice Department components in developing cases as part of a coordinated, whole-of-government, interagency effort to deny safe haven in this country to human rights violators.

In addition, the Department of Justice pursues accountability for human rights violations in cooperation with foreign law enforcement partners. Through the Genocide Network of the European Union's Eurojust agency, the United States is connected with other countries that similarly have specialized units that investigate and prosecute international crimes such as genocide, war crimes, crimes against humanity, torture, and the use or recruitment of child soldiers. Through the Genocide Network, at which the United States holds observer status, we are able to maintain close contacts with investigators and prosecutors who may be conducting investigations for human rights violations that intersect with our own matters or on which we might be able to provide support for our partners. This creates channels for streamlined communications and for cooperation where possible and appropriate with the common goal of ensuring that impunity for these heinous crimes ends. In July, I represented the Attorney General at the Ministerial Conference on Ukraine Accountability held in The Hague. We were addressed by, among others, Ukrainian President Volodymyr Zelenskyy. In a declaration issued at the close of the Ministerial, the representatives of 45 countries condemned the Russian Federation's aggression against Ukraine and its flagrant violations of international law, and they expressed their "commit[ment] to enhancing collective action to promote accountability for all alleged international crimes committed in Ukraine."

The Justice Department's human rights accountability work principally targets human rights abusers who have engaged in acts of genocide, torture, war crimes, the recruitment or use of child soldiers, and in immigration and naturalization fraud committed in concealing these abuses. The boundaries of our law enforcement purview are largely dictated by the scope of U.S. laws available to us. Our prosecutorial possibilities are subject to the limitations imposed by those laws, including statutes of limitations that, as we experienced to our great frustration, in the cases of Nazi criminals who immigrated here after World War II, prohibit criminal prosecution after a prescribed period of years has elapsed. We note that while our substantive human rights-related laws allow the United States to bring charges for war crimes, genocide, torture, and use or recruitment of child soldiers, each of these statutes has significant jurisdictional, temporal, and evidentiary limitations. As a result, prosecution for fraud, for example in procuring naturalization, is sometimes our only available recourse, as it was in nearly all the World War II Nazi cases brought by the Department.

For example, the U.S. criminal code's war crimes statute (18 U.S.C. § 2441) can be employed only when either a victim or the perpetrator is a U.S. national or member of the U.S. armed forces. Unlike the genocide (18 U.S.C. § 1091) and torture (18 U.S.C. §§ 2340-2340A) statutes, the war crimes statute does not allow us to prosecute war criminals when the sole connection to this country is that they are present in the United States after having committed their crimes abroad. This means that if a war criminal from the current conflict in Ukraine were, for example, to come to the United States today and were subsequently identified, our war crimes statute would not apply, thus potentially allowing that war criminal and others to walk the streets of our country without fear of prosecution. Given that tens of thousands of separate instances of alleged war crimes have already been registered with the Ukrainian Prosecutor General's office, it is highly likely that some perpetrators will eventually enter this country. We

are therefore pleased that the Justice for Victims of War Crimes Act would close this gap.

I'll pause here to note that the Department is aware of U.S. persons who have been harmed and even killed in Ukraine since the beginning of the war, and while we cannot comment on whether we have opened investigations on any particular matter, I would like to assure the Committee that the Department takes those allegations very seriously and that we do indeed have open investigations, as the Department has noted publicly.

Other than the war crimes statute, the United States also has laws criminalizing genocide and torture, as I have already noted, but these do not fill the gap in the War Crimes Act that I just outlined. Those laws, which have been part of our criminal code for decades, allow us to prosecute offenders who are present in the United States after having committed genocide or torture elsewhere. Both offenses are "specific intent" crimes, however, which makes them unusually challenging to prove in court. For example, the genocide statute requires proof that a defendant acted with the specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. The torture statute requires proof that a defendant acted "under the color of law" and with the specific intent to inflict "severe physical or mental pain or suffering." Thus, although these statutes are important tools, they leave gaps where the evidence might not address all the required elements. To use a graphic but, sadly, relevant example, if a foreign person executed a large number of unarmed, innocent civilians during a war, we could not prosecute that person for war crimes or genocide, even if the person were in the United States, if none of the victims were U.S. nationals or if we could not prove the specific intent to destroy a protected group.

At present, the torture statute does not permit the exercise of jurisdiction based on the nationality of the victim. Thus, even if a U.S. person – such as a civilian U.S. citizen, a dual-national civilian, a U.S. military servicemember, or a U.S. intelligence agent – becomes a victim of torture abroad "under the color of law," the United States does not have jurisdiction to charge the crime of torture unless the perpetrator is a U.S. citizen or is subsequently present in the United States. This means, for example, that if the U.S. Government amasses evidence that a particular individual located abroad tortured an American citizen overseas under color of law, absent evidence of some other applicable law, we would not have an avenue to charge the perpetrator and seek extradition.

Furthermore, unlike the vast majority of our European partners and other allies, the United States does not have a statute outlawing crimes against humanity. This leaves a particularly large gap in our ability to pursue justice and to deter the commission of atrocities. Crimes against humanity laws, which have been adopted by many other nations, among them Canada, the United Kingdom, South Africa, France, and Australia, allow for prosecutions of certain criminal acts when committed as part of an attack directed against a civilian population even if they occur outside the context of an armed conflict. Unlike genocide, crimes against humanity offenses (such as enslavement) do not require proof of specific intent to destroy a particular group, and prosecutors thereby gain more flexibility to hold perpetrators of mass atrocities accountable for their actions. And unlike war crimes, crimes against humanity do not

have to be committed in an armed conflict. Crimes against humanity could be committed, for example, in Ukraine after the conclusion of the armed conflict, carried out by Russian perpetrators or local collaborators who continue to target civilian populations for various acts of violence, retribution, detention, or other crimes.

While, as I have mentioned, our genocide, war crimes, and torture statutes have limitations that significantly impact the work of our prosecutors, the Department nevertheless makes every effort to use these and any other tools that are available to us, including other criminal and civil charges, as well as extradition, in attempting to ensure that the perpetrators of war crimes and human rights violations do not enjoy safe haven in the United States and that they are held accountable for their crimes. For example, HRSP and its United States Attorneys' Offices partners have brought four torture prosecutions, gaining a prison sentence as long as 97 years in one case. Currently, we are prosecuting a case that involves a Gambian national who is alleged to have carried out numerous acts of torture under the now-fallen regime of Yahya Jammeh in The Gambia.

When evidence is found implicating U.S. jurisdiction over grave offenses, we move to investigate and take legal action whenever possible, even when offenders are not subject to criminal prosecution in the United States. For example, if crimes were committed before pertinent federal statutes were enacted, as was the case with World War II-era Nazi criminals, the U.S. Government can sometimes employ other effective enforcement tools, such as extradition to foreign countries; institution of criminal prosecutions for visa fraud, unlawful procurement of naturalization, and making false statements; or commencement of civil denaturalization actions as a prelude to removal actions that are brought by our partners in Immigration and Customs Enforcement's (ICE) Office of the Principal Legal Advisor. In the Department's prosecutions of human rights violators for naturalization fraud and visa fraud, significant sentences of imprisonment have been imposed, as long as 30 years.

One recent prosecution is the case of Mergia Negussie, a naturalized U.S. citizen residing in Alexandria, Virginia. In 2019, he was convicted and imprisoned for having fraudulently obtained U.S. citizenship. The case was prosecuted jointly by HRSP and the United States Attorney's Office for the Eastern District of Virginia. According to admissions set forth in his plea agreement, Negussie participated in the persecution of detainees in his native Ethiopia from roughly 1977 to 1978 during a period known as the "Red Terror." As part of actions led by a council of military officers in power at the time, Negussie injured and abused detainees on account of their political opinion by beating them with weapons including belts, rods, and other objects, causing permanent scarring and injury to some of the detainees. During these beatings, Negussie questioned the detainees about their affiliation with the regime's political opponents. At his plea hearing, Negussie specifically admitted that, during his sworn naturalization interview, he falsely stated that he never persecuted persons because of their political opinion, and that he failed to disclose that he had committed a crime or offense for which he had not been arrested. In fact, as Negussie admitted, he had participated in persecution and assaults against individuals incarcerated because of their political opinion. In addition to sentencing Negussie to prison, the court revoked his U.S. citizenship.



If I may be permitted to share one more example: In a 2016 case, HRSP prosecuted Mladen Mitrovic, a Loganville, Georgia, resident who failed to disclose to U.S. immigration authorities his involvement in vicious abuses committed at a detention camp in Bosnia in 1992. At trial, one victim testified that Mitrovic had clubbed him into unconsciousness with a table leg. When the victim regained consciousness, Mitrovic then used his military knife to carve a Christian cross into the Muslim victim's chest, telling him that from then on, he was "going to be a Serb." Another detainee testified that Mitrovic had beaten him into unconsciousness on one occasion, and then targeted that victim for further violence such as kickings and beatings over the course of the several months the victim had been detained. Two other witnesses who knew Mitrovic before the war testified that they saw him march five young men over a hill near the camp. They subsequently heard automatic rifle fire and, later, Mitrovic returned to the camp, but the five young men were never seen again. Two additional witnesses at trial were a doctor and a veterinarian who had also been prisoners in the camp and had treated beating victims there. They identified Mitrovic as one of the guards who beat the prisoners, and their testimony was corroborated in part by photographs they took of one of Mitrovic's beating victims and the blood-spattered room where Mitrovic had administered the beating. The jury convicted Mitrovic and the court sentenced him to 57 months' imprisonment. The Department argued for a significant sentence to ensure that this kind of egregious violation of our immigration laws is taken seriously. The court also revoked Mitrovic's U.S. citizenship. The case was prosecuted by HRSP in partnership with the United States Attorney's Office for the Northern District of Georgia.

I am pleased to be able to say, from personal experience at the Department of Justice since 1980, that the Department has tenaciously deployed the tools available to us to bring war criminals and human rights violators to justice for more than 40 years, beginning with our efforts to find Nazi-era perpetrators, and now encompassing criminal cases arising from atrocities committed in Bosnia, Guatemala, Rwanda, Ethiopia, Liberia, The Gambia, and elsewhere.

The Department of Justice is committed to utilizing all of the statutory authorities that are available to us in support of accountability, whether in prosecutions that go forward in the United States or in cases that are investigated and tried abroad. The Department will continue to strive for whatever measure of justice we might be able to secure through our domestic prosecutions, including by deterrence through enforcement of laws applicable to perpetrators of such crimes. We believe that these efforts are among a multitude of important means of affording vulnerable populations a measure of redress for, and even some measure of protection from, the worst cruelties. Criminally prosecuting human rights violators who are within the reach of U.S. laws also ensures that our country does not become a safe haven for those who have committed the most serious crimes known to humanity.

Mr. Chairman: Our Declaration of Independence proclaims to the world that all "are endowed by their Creator with certain unalienable Rights," and that among these are "Life, Liberty and the pursuit of Happiness." These are the very rights that Russia is trying through violent means to deny to the more than 40 million people of Ukraine. The original copy of

America's Declaration of Independence is housed in the U.S. National Archives headquarters building on Pennsylvania Avenue. In front of that building sits a magnificent statue by Robert Aitken that many of us who are privileged to work at the Department of Justice walk by every day. Inscribed on that statue, in large capital letters, are words penned by William Shakespeare: "WHAT IS PAST IS PROLOGUE." In everyday parlance, what that means, of course, is that, for better or worse, history frequently repeats itself. Almost incredibly, we are seeing that truism play out right now in Ukraine, as the horrors that are being perpetrated there by the Russian Government evoke so many memories of monstrous crimes committed in Europe and elsewhere in decades and centuries past. History is, tragically, repeating itself today in Ukraine, as it suffers its *second* large-scale invasion within living memory. And it is a near certainty that the further repetition of history will ensure that we will, someday, find perpetrators of crimes committed in Russia's war of aggression here in the United States. It will be intolerable if we are not fully equipped to help bring those individuals to justice when we find them here. And it will be unconscionable if some of the many Ukrainian victims who have found – and will find – refuge in our country suffer the additional trauma of encountering their former tormenters here in the United States while we are powerless to take appropriate law enforcement action.

Congressional action to close the most serious and persistent statutory gaps in jurisdiction over war crimes and other atrocity crimes would strike a powerful blow in service of the goal of achieving accountability for offenses that, at the great Nuremberg trial, chief American prosecutor Robert H. Jackson famously termed "wrongs" that are "so calculated, so malignant, and so devastating that civilization cannot tolerate their being ignored because it cannot survive their being repeated."

Thank you, Mr. Chairman, for affording me the opportunity to testify here today. I would be pleased to respond to questions.