



Department of Justice

STATEMENT OF

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CRIMINAL DIVISION

DEPARTMENT OF JUSTICE

BEFORE THE

TOM LANTOS HUMAN RIGHTS COMMISSION

FOR A HEARING ENTITLED

**“DEPARTMENT OF HOMELAND SECURITY AND DEPARTMENT OF
JUSTICE LAW ENFORCEMENT OPERATIONS AGAINST HUMAN RIGHTS
VIOLATORS IN THE U.S.”**

PRESENTED

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Human Rights and Special Prosecutions Section
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“Department of Homeland Security and Department of Justice Law Enforcement
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INTRODUCTION

Mr. Co-Chairman Wolf, Mr. Co-Chairman McGovern, and distinguished Members of the Tom Lantos Human Rights Commission,

I greatly appreciate the opportunity to appear before you today to discuss the continuing commitment of the Department of Justice to assuring that the United States does not become a safe haven for human rights violators and war criminals and to seeking justice on behalf of the victims of human rights violations and war crimes. It is a privilege to address the Commission, which strives to carry on the noble work to which the late Rep. Tom Lantos devoted his life. As someone who first worked with Tom and Annette Lantos on a human rights campaign – specifically, the effort to obtain the truth from the Soviet Union about the fate of Holocaust hero Raoul Wallenberg – back in the late 1970s, when Tom Lantos was still a professor at San Francisco State University and I was a law student on the opposite coast, it is a particularly moving experience for me to appear before a congressional human rights body that now bears his name.

As the Commission is aware, the Department of Justice has been aggressively, proactively, and continuously pursuing alleged human rights violators and war criminals for more than three decades, ever since the former Office of Special Investigations (“OSI”) was created in the Criminal Division in 1979 to investigate and civilly prosecute alleged participants in genocide and other World War II-era acts of persecution sponsored by Nazi Germany and its allies. That work was a fitting, if belated, follow-on to the leading role played by the Department and its Criminal Division in both the trial of the major surviving Nazi criminals before the International Military Tribunal at Nuremberg in 1945-46 and the trial of major Japanese war criminals in 1946-48 before the International Military Tribunal for the Far East, at Tokyo. The lead U.S. prosecutor at Nuremberg was former Attorney General Robert H. Jackson, who can fairly be called the architect of that landmark in international humanitarian law jurisprudence,

and the Allies' chief prosecutor at Tokyo was former Criminal Division Assistant Attorney General Joseph Keenan. OSI, in which I worked for more than twenty-five years, won international acclaim as the world's most successful governmental agency pursuing justice in the Nazi cases. In 2003, the Criminal Division created the Domestic Security Section ("DSS") and assigned to it responsibility for, among other things, the criminal prosecution of certain post-World War II human rights violators and war criminals. DSS too was extremely successful in this work. After OSI's mission was expanded by the Congress in December 2004 to encompass some of the post-World War II human rights offenders and war criminals who immigrated to this country, DSS and OSI began to work together ever more closely. In light of this effective partnership and in furtherance of decisions made by Attorney General Holder and Assistant Attorney General Breuer during their first year in office to prioritize the Department's and the Division's human rights enforcement efforts and to enhance the efficiency and productivity of the Division's activities in this area, a decision was made by AAG Breuer in 2009 to merge OSI and DSS. In March of last year, following consultation with the Congress and passage of the Human Rights Enforcement Act of 2009, Attorney General Holder and Assistant Attorney General Breuer combined the two units to create the Human Rights and Special Prosecutions Section ("HRSP"), in which I serve as Director of Human Rights Enforcement Strategy and Policy. The Chief of our new section is Teresa McHenry, who, as the Commission is aware, has a very distinguished record of accomplishment in human rights and international humanitarian law cases both as Chief of DSS and in her prior service in the Office of the Prosecutor at the International Criminal Tribunal for the Former Yugoslavia ("ICTY").

Recent and ongoing atrocities in so many places around the globe underscore the continuing, indeed ever more urgent, need to end impunity for gross violations of human rights and for war crimes. Ensuring that human rights violators and war criminals are brought to justice is a high priority of the Department and the Criminal Division. The Department supports capacity-building efforts around the world to promote accountability and the rule of law. Here at home, the United States Government continues its efforts to prevent human rights violators and war criminals from entering the United States and to bring to justice those who have gained entry to this country, among others over whom jurisdiction may be asserted.

Today, I would like to provide the Commission with an update regarding some of the Department's major cases and law enforcement initiatives pertaining to human rights and humanitarian law enforcement. I should note that in addition to the Criminal Division, the National Security Division, the Civil Rights Division, the United States Attorney's Offices, and the Federal Bureau of Investigation ("FBI") all have important roles in the Department's overall mission in the enforcement of human rights and international humanitarian law. The Department of Justice also works closely with the Department of Homeland Security – especially U.S. Immigration and Customs Enforcement ("ICE") – and the Department of State in pursuing justice on behalf of victims of gross violations of human rights and international humanitarian law.

A MULTIFACETED APPROACH TO ENFORCEMENT

As the Commission is aware, Congress has enacted a variety of statutes that can be used against violators of human rights and war criminals. These statutes include provisions establishing Federal jurisdiction over substantive criminal offenses, such as torture, war crimes, genocide and recruitment or use of child soldiers, as well as provisions that criminalize immigration fraud, naturalization fraud, and false statements. Our legal arsenal also includes civil denaturalization actions, which can pave the way for the initiation of removal proceedings by ICE. Another important legal tool is the Military Extraterritorial Jurisdiction Act (“MEJA”), which permits the Department to prosecute some former U.S. military personnel and current or former contractors for crimes committed outside the United States, including murder, manslaughter, assaults and other violent crimes. Similarly, specified conduct can be prosecuted under the United States’ Special Maritime and Territorial Jurisdiction (“SMTJ”) under appropriate circumstances.

Direct prosecution for substantive human rights or humanitarian law violations is not always possible. For example, the conduct may have occurred prior to the effective date of the pertinent statute, or the perpetrator may not fall within the particular jurisdictional requirements of a given statute. In these situations, the Department and its law enforcement partners look to other viable bases for prosecution, including some of the statutes that I have just mentioned. If criminal prosecution in the United States is not an option, there may be other ways to bring human rights violators and war criminals to justice, such as civil denaturalization and subsequent removal from the United States under administrative proceedings before the immigration courts as well as extradition to other countries that can prosecute the offenders.

Of course, our first line of defense against human rights violators seeking safe haven here is to prevent them from entering the United States in the first place. Components of the Department of Justice – primarily, the Criminal Division, National Security Division, and the FBI – have provided names of suspected war criminals and human rights violators to the Department of Homeland Security and the Department of State to have them entered into border control systems with a view towards denying visas to perpetrators and denying them entry at our borders. Those two agencies bear lead responsibility for preventing the entry of such persons into the United States. On August 4, President Obama issued a proclamation that further expands our authority to deny entry into the United States of aliens criminally involved in war crimes, crimes against humanity or other serious violations of human rights.

It is also important to recognize that there is a general preference in the international community for prosecution of serious human rights violations in the country in which atrocities occurred. In appropriate cases, the Department of Justice seeks to extradite or remove human rights violators to the foreign jurisdictions in which the acts were committed. The Department of Justice works closely with the Department of State to build the capacity of foreign governments and international tribunals to investigate and prosecute perpetrators of genocide, war crimes, and crimes against humanity, and to negotiate or renegotiate extradition treaties as appropriate.

Domestic Prosecutions

Leveraging the enhanced resources and strong Department and Division backing given to HRSP upon its creation last year, the new section quickly achieved important successes. For example, HRSP and the United States Attorney's Office for the Southern District of Florida, with important assistance from the Criminal Division's Office of International Affairs, prosecuted one of the participants in the 1982 massacre of the inhabitants of the village of Dos Erres, Guatemala, one of the most notorious human rights crimes in Central American history. Gilberto Jordan, a naturalized United States citizen who immigrated to this country in 1985, was prosecuted for unlawfully procuring U.S. citizenship. The case was the result of a successful partnership among OSI (later its successor, HRSP), ICE's Homeland Security Investigations in West Palm Beach, Florida, the U.S. Attorney's Office for the Southern District of Florida, ICE's Human Rights Violators and War Crimes Unit and its Office of International Affairs.

Gilberto Jordan pled guilty, and at his plea hearing, he admitted that he had been a member of the Guatemalan military unit that perpetrated the atrocity, during which men, women and children of the village of Dos Erres were savagely murdered. Many victims, including babies, were thrown into a deep dry well in the village. Women and girls were systematically raped before being killed. More than 160 skeletal remains were later exhumed in the village. Jordan specifically admitted that the first victim he killed at Dos Erres was a baby, whom he threw down the well while the child was still alive. Although the United States lacked jurisdiction to try Jordan for murder or substantive human rights violations directly, evidence of the underlying crimes was relevant to the misrepresentations made by the defendant when he applied for U.S. citizenship. (He falsely denied that he had ever served in the military or committed any crimes for which he had not been arrested.) In September 2010, Jordan was sentenced to the statutory maximum term of 10 years in prison.

In another prosecution from 2010, Zeljko Boskovic was indicted, based on an ICE-led investigation, on charges of visa fraud and making a false statement to a Federal agency. The case was tried jointly by HRSP and the United States Attorney's Office for the District of Oregon. Boskovic, a citizen of Bosnia and Herzegovina, successfully applied to enter the United States as a refugee in 1998. When he applied to immigrate to the United States, Boskovic had claimed that he did not participate in the Bosnian civil war (1992-1996). He had also denied serving in the forces of any of the warring factions and claimed to have lived outside Bosnia during the war. Boskovic later repeated these claims when applying for his "green card."

The evidence at trial proved that these claims were false. In fact, Boskovic lived in Zvornik, Bosnia, during the war, and served in the Zvornik Brigade from July 1992 through at least February 1996. His failure to disclose his affiliation with the Zvornik Brigade was of particular concern, because the Zvornik Brigade participated in executions of unarmed Bosnian Muslim men and boys captured from the United Nations-designated "safe-area" of Srebrenica in July of 1995. Members of the Zvornik Brigade were responsible for atrocities at or near four school sites, including the Orahovac school, which was in close physical proximity to Zvornik

Brigade headquarters. Following trial in Portland last August, Boskovic was convicted by a Federal jury.

The Department is similarly committed to ensuring that former U.S. military personnel and U.S. Federal employees and contractors working overseas who commit criminal human rights violations or war crimes are investigated and prosecuted. HRSP has successfully pursued these cases as well and they are a very important part of the section's work. In March of this year, for example, two men from Virginia Beach, Virginia, were convicted of involuntary manslaughter committed while they worked as contractors in Afghanistan for the U.S. Department of Defense. Justin Cannon and Christopher Drotleff, contractors who were employed by a subsidiary of Blackwater Worldwide (now known as Xe Services LLC), were prosecuted under the MEJA by HRSP and the U.S. Attorney's Office for the Eastern District of Virginia - Norfolk Division. The case was investigated by the FBI's Washington Field Office and the U.S. Army Criminal Investigation Command.

According to evidence presented at trial, Cannon and Drotleff left their military base without authorization on May 5, 2009, to transport local interpreters. The evidence at trial established that, after the lead vehicle in the convoy crashed and was overturned on the side of the road, Cannon and Drotleff fired multiple shots into the back of a civilian car that had attempted to pass the accident scene. The passenger in the car was fatally shot and the driver was seriously injured. An individual who happened to be walking his dog in the area was also killed in the shooting. The jury found the defendants guilty of involuntary manslaughter for the death of Romal Mohammad Naiem, the front-seat passenger. They were acquitted of charges relating to the death of the person walking his dog and injuries to the driver. Drotleff was sentenced to 37 months in prison and Cannon received a sentence of 30 months in prison.

In another recent case, HRSP, along with the United States Attorney's Office for the District of Columbia, successfully prosecuted Andrew Warren, a former official with the Central Intelligence Agency, for offenses including abusive sexual contact with a woman while he was stationed in Algeria. In March of this year, Warren was sentenced to 65 months' imprisonment.

Criminal prosecutions involving offenses that were committed in another part of the world and that typically were perpetrated years earlier almost invariably present difficult challenges. However, it is indeed possible to investigate successfully and to prosecute some such cases. For example, as the Commission knows, three years ago, one of the predecessor components of HRSP (DSS), together with the United States Attorney's Office for the Southern District of Florida, and 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 under the U.S. Federal torture statute. Roy M. Belfast, a/k/a "Chuckie Taylor," who was born in the United States and is the son of former Liberian President 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 multiple, vicious acts 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 in January 2010 to 97 years' imprisonment. Belfast's conviction was affirmed by the 11th Circuit Court of Appeals in July 2010 and his petition for rehearing *en banc* was denied in October 2010. The case was investigated by ICE and the FBI.

MEJA was instrumental in the prosecution of Steven D. Green by one of HRSP's predecessor components (DSS), together with the United States Attorney's Office for the Western District of Kentucky. Based upon an investigation by the FBI and the U.S. Army Criminal Investigation Division, the Department obtained the conviction of Green, a former Ft. Campbell, Kentucky, soldier, on charges arising out of the rape of a 14-year-old Iraqi girl, Abeer Qassim al-Janabi, and the murder of the girl and her family on March 12, 2006, in and around Mahmoudiyah, Iraq. Evidence presented at trial proved that, while manning a military checkpoint, Green and other soldiers forced their way into the nearby home of the al-Janabi family. The evidence 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. The trial established 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 Roy Belfast/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. Green was sentenced to five concurrent terms of life imprisonment.

The Department's National Security Division also plays an instrumental role in the prosecution of human rights violators. In 2007, its Counterterrorism Section, along with the United States Attorney's Office for the Eastern District of North Carolina, obtained the conviction of David Passaro. Passaro 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 interrogations, Passaro beat Wali using his hands and feet, a Mag-Lite flashlight 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. On April 6, 2010, he was re-sentenced to a term of 80 months' imprisonment on the most serious charge on which he was convicted (assault resulting in serious bodily injury, 18 U.S.C. §113(a)(6)); shorter sentences, to run concurrently, were imposed for Passaro's convictions on three less serious charges.

INTERNATIONAL COORDINATION AND TRAINING

In addition to our domestic prosecution efforts employing both human rights-related charges and other criminal charges, the Department is actively engaged in work with foreign law enforcement authorities to ensure that the United States and the global community are adequately equipped to address violators. Working closely with our Department partners, including the National Security Division and the FBI, 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. For example, OIA has assisted foreign human rights enforcement efforts by arranging for testimony for prosecutions or other proceedings ongoing in Peru and Colombia, the latter in furtherance of the Colombia Justice and Peace process. OIA also handles requests for extradition of human rights violators currently in the United States. For example, on July 14, 2011, OIA, the U.S. Attorney's Office for the Southern District of Florida and the State Department successfully extradited to Peru Telmo Hurtado Hurtado, also known as "The Butcher of the Andes," a former Peruvian military officer charged with the 1985 massacre in Accomarca of 69 villagers, including pregnant women, the elderly, and infants. In addition, Bosnia and Herzegovina has sought the extradition of three individuals wanted to face charges of war crimes against civilians and war crimes against prisoners, all of whom have been arrested pursuant to the extradition requests and are currently in extradition proceedings in the United States.

The Criminal Division's Overseas Prosecutorial Development and Training section ("OPDAT") and 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 May, Serbian authorities arrested long-time ICTY fugitive Ratko Mladić, the most wanted war crimes suspect in Europe. The arrest won praise from President Obama for the Government of Serbia's "determined efforts to ensure that Mladić was found and that he faces justice," while Secretary Clinton hailed his arrest "as a statement to those around the world who would break

the law and target innocent civilians: international justice works. If you commit a crime, you will not escape judgment, you will not go free.” Mladić’s arrest was the outcome of skillful work on the part of Serbian authorities, which put to use a range of investigative, legal, and media skills that have been the subject of OPDAT trainings and assistance throughout the last 7½ years.

Assistance that OPDAT, the former 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 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 prosecution. In cooperation with OPDAT, ICITAP, OEO, and the Department of State, HRSP 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. The impact of ICITAP’s work became evident when Serbia’s Security Information Agency, assisted by the Serbian Ministry of Interior’s War Crimes Investigation Service (“WCIS”), found and arrested Ratko Mladić. ICITAP-trained officers from the WCIS participated in the actual investigation, surveillance, and arrest of Mladić, according to a public statement by the WCIS chief. Since 2005, ICITAP has embedded law enforcement advisors in the WCIS who provide mentorship, equipment donations, and training in case management, interview and interrogation, witness development, statement analysis, fugitive apprehension, and surveillance techniques. Less than six months ago, ICITAP partnered with the Organization for Security Cooperation in Europe to donate ZyLAB data-mining software to the WCIS to speed up investigations. The donation was carefully planned and scheduled to get maximum media attention, thereby keeping war crimes in the spotlight and pressure on authorities to find Mladić.

CONCLUSION

Prosecutions and a myriad of other law enforcement, legal assistance, capacity-building, and policy initiatives by the Department of Justice, undertaken in close cooperation with our law enforcement and other partners, underscore the Department’s unswerving commitment to pursuing justice on behalf of the victims of human rights atrocities and war crimes. As it has for decades, the Department of Justice is committed to using every tool available for enforcing U.S. law, strengthening the rule of law in other countries, ending impunity for human rights crimes, and ensuring that the United States is not a safe haven for human rights violators and war criminals. We look forward to working with the Congress, and with this Commission in particular, to achieve these goals so that the United States might help hasten the arrival of a time when respect for human rights is at long last the global norm and innocents no longer live in fear of assaults on their human dignity anywhere in the world. Thank you for affording me this opportunity to testify today. I would be pleased to respond to your questions.