



Department of Justice

STATEMENT OF

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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"**

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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/.