



U.S. Immigration and Customs Enforcement

STATEMENT

OF

ANDRE R. WATSON
ASSISTANT DIRECTOR
HOMELAND SECURITY INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

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

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

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216 HART SENATE OFFICE BUILDING

Introduction

Chairman Durbin, Ranking Member Grassley, and distinguished members of the Senate Judiciary Committee: I am pleased to have the opportunity to address this Committee on the critical role U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) continues to play in ensuring that the United States does not become a safe haven for human rights violators, and to highlight areas in which legislation would assist us in more effectively pursuing criminal investigations and prosecutions. As the primary criminal investigative component in the Department of Homeland Security (DHS), HSI has a broad investigative mandate and unique authorities to secure the homeland from transnational crime and threats. With more than 6,800 special agents located in hundreds of offices in the United States and around the world, HSI investigates, disrupts, and dismantles terrorist, transnational, and other criminal organizations that threaten our nation's security. One of HSI's top priorities remains the investigation and prosecution of human rights violators and war criminals and preventing them from seeking refuge in the United States. HSI brings its exclusive authorities and capabilities to the government's efforts to identify and stop war criminals, human rights violators, and other threats before they arrive in the United States.

Human Rights Violators and War Crimes Center

One of the primary ways HSI accomplishes this mission is through robust engagement at the Human Rights Violators and War Crimes Center (hereinafter referred to as the Center), an interagency Center led by HSI. In addition to HSI personnel, the Center includes representatives from the ICE Office of the Principal Legal Advisor (OPLA), ICE Enforcement and Removal Operations (ERO), the Federal Bureau of Investigation (FBI) International Human Rights Unit (IHRU) (co-located in its entirety within the Center), the Department of State (DOS) Bureau of Consular Affairs and Diplomatic Security Service, the Department of Defense U.S. Army Criminal Investigation Division, the Department of Justice (DOJ), Criminal Division, Human Rights and Special Prosecutions Section (HRSP), and DOJ Civil Division, Office of Immigration Litigation. The Center was established in 2008 - although Congress has yet to codify it - to dedicate resources to our mission of ensuring the United States does not become a haven for human rights violators and to enhance our ability to investigate and prosecute human rights violator cases.

The Center focuses on its mission in two ways: (1) by identifying, investigating, prosecuting, and removing human rights violators and war criminals found within the jurisdiction of the United States; and (2) by preventing entry into the United States of known or suspected human rights violators and war criminals. The Center also works with foreign law enforcement and international partners and tribunals to further global accountability. The Center brings together special agents, criminal research specialists, attorneys, and historians with expertise in specific regional areas and conflicts. These team members, joined by our Center partners, are organized into regional support teams (RST) that cover the geographic areas of the Americas, Europe, Africa, the Middle East, and Asia. By pursuing accountability for past atrocities, the Center contributes to the urgent work of preventing future atrocities.

Female Genital Mutilation/Cutting Investigative Support Team

The Center has two specialized investigative support teams (IST) whose reach is not limited to a specific geographical area. The first is the Center's Female Genital Mutilation/Cutting (FGM/C) investigative support team that works closely with federal, state, and foreign law enforcement partners, as well as child protective officials, non-profit organizations, medical and educational professionals, and FGM/C survivors, to protect women and girls by investigating cases of FGM/C and conducting outreach and training to end the practice. FGM/C is a human rights abuse, a form of gender-based violence, and, when performed on children, a form of child abuse. It is against federal law (18 U.S.C. § 116) to perform FGM/C in the United States on a girl under the age of 18, or for the parent, caretaker, or guardian of a girl under the age of 18 to facilitate or consent to FGM/C being performed on her. It is also against the law to send or attempt to send a minor outside the United States for FGM/C to be performed. We thank Congress for its leadership in passing the STOP FGM Act that tightened loopholes in the existing statute, and we urge you to enact a comparable provision within the Immigration and Nationality Act (INA) so that those who perform FGM/C against a minor are ineligible for immigration benefits.

In 2017, the Center and HSI launched an FGM/C-related public engagement and outreach program called Operation Limelight USA (OLLUSA) that aims to educate the public about the potential harms and consequences of FGM/C and about U.S. laws governing the practice. OLLUSA uses specially trained teams, comprising HSI special agents and Victim Assistance Program personnel, U.S. Customs and Border Protection (CBP) officers, and nongovernmental organizations (NGOs), to initiate informal discussions about U.S. laws with families traveling on flights to or from regions where FGM/C is prevalent and to provide them with educational materials about the harms of the practice. OLLUSA and Center-wide trainings continued despite the global pandemic. In Fiscal Year (FY) 2021, HSI trained 1,899 individuals, to include government as well as NGO personnel, on FGM/C. In FY 2023, the Center plans to expand OLLUSA to 19 airports in the United States.

Global Magnitsky Investigative Support Team

The second IST is the Center's Global Magnitsky Investigative Support Team (GloMag IST), which was created in 2018, following the issuance of Executive Order (E.O.) 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption." E.O. 13818 builds upon and implements the Global Magnitsky Human Rights Accountability Act, and targets perpetrators of corruption and serious human rights abuse. The GloMag IST identifies and nominates individuals and/or entities for Global Magnitsky sanctions as part of an inter-agency process that includes the Departments of Treasury, Justice, and State. The team also produces investigative referrals for HSI field offices when there is a potential for criminal, civil or administrative action.

The recent designation of the Bangladesh Rapid Action Battalion (RAB) is one example of the GloMag IST's role in identifying and nominating entities for Global Magnitsky sanctions. In December 2021, pursuant to E.O. 13818, the Department of Treasury's Office of Foreign Assets Control (OFAC) designated RAB as an entity responsible for or complicit in serious human rights abuse, or one that has directly or indirectly engaged in serious human rights abuse. OFAC also designated Benazir Ahmed, among others, as a foreign person who is or has been a leader or official of the RAB. The RAB was founded by the Bangladeshi

government in 2004, and comprised members of the police, army, navy, air force, and border guards who worked under the RAB from their respective units. NGOs allege that the RAB and other Bangladeshi law enforcement are responsible for torture as well as more than 600 disappearances since 2009, and nearly 600 extrajudicial killings since 2018. The Center's GloMag IST worked with OFAC and other inter-agency partners to support the designations of Benazir Ahmed and the RAB.

Human Rights Target Tracking Team

The Center is also home to the Human Rights Target Tracking Team (HRT3), which comprises research and intelligence professionals dedicated to identifying suspected human rights violators and war criminals while such individuals are still abroad and preventing their entry into the United States in violation of the INA. The Center has worked closely over the past several years with our partners in CBP and the DOS's Bureau of Consular Affairs to identify known or suspected human rights violators and to place lookouts on them in appropriate databases. HRT3 has created more than 78,000 records of suspected human rights violators. These records permit consular officers overseas, CBP officers at United States' ports of entry, and U.S. Citizenship and Immigration Services officers adjudicating benefit applications with relevant information to assist them in determining whether an individual should be permitted to enter the United States.

Since 2008, over 350 suspected human rights violators were prevented from entering the United States either through visa revocations or refusals by DOS or by stops at ports of entry by CBP officers based on these records and information sharing. However, a known or suspected human rights abuser may only be subject to a lookout in government systems if they are potentially inadmissible or deportable under the INA or other immigration-related laws. Current grounds of inadmissibility include severe violations of religious freedom, participation in genocide, recruitment of child soldiers, acts of torture, extrajudicial killing, and Nazi persecution. There are no grounds of inadmissibility in the INA for those who engage in FGM/C, crimes against humanity, war crimes or the persecution of others on account of race, religion, membership in a particular social group or political opinion. While Presidential Proclamation 8697, which suspends entry of noncitizens for certain acts of widespread or systematic violence against a civilian population, war crimes, crimes against humanity and other serious violations of human rights, is an exercise of INA section 212(f), that proclamation is derived from the INA rather than codified in the INA. As such, there is a population of human rights violators who are not expressly statutorily barred from entering the United States, nor are they statutorily barred from adjusting their status to that of a lawful permanent resident.

Foreign Collaboration

Assistance from our international partners is a key component in successful human rights-related investigations and prosecutions. HSI has the largest international investigative presence of all DHS components and comprises hundreds of HSI special agents assigned to 93 offices in 56 countries. Our foreign footprint uniquely positions HSI to support the Center's work, including by working with foreign officials to obtain vital evidence and information in support of domestic investigations and prosecutions. The Center reciprocates support whenever possible to further the global fight against impunity for human rights violators. It maintains strong working relationships with several dozen local, regional, and international

organizations who work in the arena of human rights. Our relationships with a number of United Nations-sponsored tribunals, include the residual mechanism for the International Criminal Tribunal for the former Yugoslavia, the residual mechanism for the International Criminal Tribunal for Rwanda, the Residual Special Court for Sierra Leone and the Independent Investigative Mechanism for Myanmar. Other international partners include various war crimes and human rights-related agencies in Australia, Bosnia and Herzegovina, Canada, Croatia, Finland, Germany, Guatemala, Peru, The Gambia, and the United Kingdom. We maintain an even wider network through our coordination with INTERPOL, EUROPOL and EUROJUST, the European Union's (EU) network of prosecutors. The Center regularly participates in EUROJUST's biannual Genocide Network meeting at The Hague to discuss investigations and prosecutions of genocide, war crimes, and crimes against humanity. Prosecutors and investigators from the EU, the United Kingdom, United States, and Canada discuss current crime bases, investigations, and share best practices.

Investigative Efforts and Challenges

HSI is committed to its mission and the role it and the Center plays in broader efforts for accountability. HSI currently has more than 160 active human rights investigations and is handling more than 1,750 human rights-related leads involving suspects from approximately 95 countries, primarily in Central and South America, the Balkans, and Africa. Since 2003, HSI arrested more than 480 individuals for human rights-related violations under various criminal and/or immigration statutes. The Center strives to fulfill its mission but would benefit from additional statutory authorities. This is illustrated in the investigation, criminal conviction, and removal to Guatemala of Francisco Cuxum Alvarado in January 2020. In the early 1980s, Cuxum Alvarado was part of a civilian militia known as a Civil Defense Patrol (PAC) that, with the military, perpetrated acts targeting an ethnic minority, the Maya Achi of Rabinal, in the department of Baja Verapaz, which the Guatemalan Truth Commission found constituted genocide. The acts included massacres, scorched-earth tactics, forced disappearance, forced displacement, torture, and sexual violence as a weapon of war. A total of 20 percent of the population of Rabinal was killed by military or paramilitary forces (more than 4,400 individuals) between 1981-1983; another 16 percent suffered other acts of violence. In 2018, the Guatemalan government charged Cuxum Alvarado with crimes against humanity for participating in the wartime sexual violence against Maya Achi women in and around Rabinal.

The United States, however, has never enacted either a criminal or administrative statute addressing crimes against humanity. Accordingly, following a criminal investigation led by HSI Boston, with the specialized assistance of the Center's Latin America historian, the U.S. Attorney's Office in Boston, Massachusetts prosecuted Cuxum Alvarado for reentry after deportation in violation of 8 U.S.C. § 1326. In December 2019, the U.S. District Court for the District of Massachusetts sentenced Cuxum Alvarado to six months of prison and reinstated his prior deportation order. Cuxum Alvarado's conviction and removal by ICE to Guatemala permitted the Guatemalan national to stand trial and face his accusers in his home country. On January 24, 2022, Cuxum Alvarado was convicted of crimes against humanity by a High-Risk Court in Guatemala City, Guatemala, and sentenced to 30 years imprisonment. HSI's investigation and the subsequent criminal conviction were instrumental in ensuring Cuxum Alvarado would face justice in Guatemala for crimes against humanity as opposed to enjoying impunity in the United States.

The recent Cuxum Alvarado case is one example of HSI's ability to remove those who commit crimes against humanity, despite the lack of a specific statutory bar for such people residing in the United States. Another such investigation and prosecution involved the 1994 Rwandan genocide in which Hutu extremists raped and murdered hundreds of thousands of moderate Hutu and Tutsi. Beatrice Munyenyezi entered the U.S. in March 1998, after making false statements to obtain her status; she adjusted her status to lawful permanent resident on January 19, 2001, and on July 18, 2003, became a naturalized U.S. citizen. Agents from HSI's Boston field office spent over six years investigating Munyenyezi, traveling to Rwanda nine times to identify and interview witnesses about her role in the 1994 Rwandan genocide in which she participated, aided, and abetted in the persecution and murder of Tutsi people. In 2010, HSI Boston agents arrested Munyenyezi for unlawful procurement of U.S. citizenship.

The United States Attorney's Office in Boston, Massachusetts prosecuted Munyenyezi, and on February 21, 2013, the U.S. District Court found Munyenyezi guilty of two counts of Unlawful Procurement of Citizenship or Naturalization in violation of 18 U.S.C. § 1425 (unlawfully procuring, or attempting to procure, naturalization or citizenship). Her conviction was the first in the United States for concealing one's personal participation in the Rwandan genocide. On July 15, 2013, the court sentenced Munyenyezi to 10 years in federal prison and in April 2021, after serving her sentence in federal prison, ICE removed her and turned her over to Rwandan law enforcement officials. Rwandan prosecutors have charged Munyenyezi with murder as a genocide crime, conspiracy and incitement to commit genocide, planning of genocide, complicity in genocide, extermination, and complicity in rape. Her trial in Rwanda is anticipated to begin later this year. Prosecutors in the United States could not, however, have charged Munyenyezi with genocide under the criminal genocide statute, 18 U.S.C. § 1091, as it applied only to genocidal acts committed in the United States or committed by U.S. nationals until Congress amended the statute in 2009.

Another significant HSI-led criminal case highlighting the need for additional criminal statutes involved Mohammed Jabbateh, aka "Jungle Jabbah." Jabbateh served as a general in the United Liberation Movement for Democracy in Liberia (ULIMO), a rebel group that battled for control of Liberia during the first Liberian civil war in the 1990s. On three occasions, HSI agents from Philadelphia, the Center's Africa researcher, and members of the U.S. Attorney's Office for the Eastern District of Pennsylvania traveled to Liberia and interviewed over 30 eyewitnesses. At trial, prosecutors presented two weeks of testimony from some two dozen witnesses, including 17 Liberian victims.

The jury heard evidence that Jabbateh, as a ULIMO commander, either personally committed or ordered ULIMO fighters under his command to commit crimes against humanity and war crimes. These crimes included murder, torture, and maiming of civilian noncombatants; the sexual enslavement of women; the execution of prisoners of war; the desecration of corpses and ritual consumption of human flesh; and the killing of persons because of race, religion, nationality, ethnic origin or political opinion. Prosecutors were not, however, able to charge Jabbateh with these substantive crimes against humanity as noted before due to the lack of a crimes against humanity statute in the United States. Nor could prosecutors charge him with war crimes, as the war crimes statute, 18 U.S.C. § 2441, applies only to members of the armed forces of the United States and U.S. citizens. On October 18, 2017, a jury found Jabbateh guilty of two counts of violating 18 U.S.C. § 1546 (fraud), and two counts of violating 18 U.S.C. § 1621 (perjury). Jabbateh was ultimately sentenced to 30 years in prison, the longest sentence for a human rights violator to date for immigration fraud and

perjury. Our investigation and the successful prosecution of Jabbateh by the United States Attorney's Office for the Eastern District of Pennsylvania are emblematic of a cooperative partnership among HSI and the DOJ.

Our successes, and our ongoing daily efforts, underscore the Center's deep commitment to denying human rights violators haven in the United States using all legal authorities available. While acknowledging and celebrating our work to date, the Center understands that much remains to be done and respectfully requests Congress's assistance through enactment of more robust statutes. While the INA bars individuals who ordered, incited, assisted, or otherwise participated in a broad range of persecution from receiving certain forms of lawful immigration status (such as asylee or refugee status), there is no specific immigration charge under which an individual can be removed for engaging in acts of persecution outside of the United States. Similarly, there is no specific immigration charge in the INA for those who participate in crimes against humanity, war crimes, or FGM/C outside the United States. Therefore, some of these individuals still may be admissible to the United States and eligible for other forms of immigration benefits, including business or tourist visas or status through a family member or an employer.

To obtain visas and enter the United States, many human rights violators perpetrate fraud during the application process. The statute of limitations for visa fraud is 5 years, although the statute of limitations for related crimes such as naturalization fraud is 10 years. Unless this fraud is exposed within five years, HSI and other partners at the Center are confronted with a serious obstacle to prosecution. Even the grave crimes of genocide and other war crimes merely carry the generic five-year statute of limitations when the violation does not result in death. The crime of torture carries an eight-year statute of limitations if the acts did not result in death or serious bodily injury or the foreseeable risk of such. Frequently, we find ourselves in a position where the U.S. Government must forgo criminal charges related to the visa and immigration fraud because evidence of the offender's misrepresentations did not come to light within the statute of limitations. Expanding or even eliminating the statute of limitations would greatly assist us in seeking justice in these cases.

Finally, Congress has not codified the Center. Codifying the Center would ensure that dedicated funding is expended as appropriated by Congress, solidify the United States' standing internationally as a leader in identifying and prosecuting human rights violators, and memorialize the U.S. government's commitment to ensuring the United States does not become a safe haven for those who commit these heinous atrocities.

Conclusion

Over the past 25 years, the United States has sheltered over a million refugees fleeing armed conflict, ethnic cleansing, persecution, and torture. I recognize the unique responsibility my agency holds to protect those who come to our country seeking to escape those who perpetrated such atrocities. By pursuing accountability for past atrocities, we believe HSI, together with our partners at the Center, contributes to the urgent work of preventing future atrocities and ensures the United States is not a safe haven for human rights violators.

Chairman Durbin and Ranking Member Grassley, I applaud your continued leadership on these important issues. Thank you again for the opportunity to address this Committee and I would be pleased to answer any questions you may have.