PURSUING ACCOUNTABILITY FOR ATROCITIES

HEARING

BEFORE THE

TOM LANTOS HUMAN RIGHTS COMMISSION

UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED AND SIXTEENTH CONGRESS

FIRST SESSION

JUNE 13, 2019

Official Transcript

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TOM LANTOS HUMAN RIGHTS COMMISSION

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PURSUING ACCOUNTABILITY FOR ATROCITIES

THURSDAY, JUNE 13, 2019

HOUSE OF REPRESENTATIVES,
TOM LANTOS HUMAN RIGHTS COMMISSION,
Washington, D.C.

The Commission met, pursuant to call, at 10:00 a.m. in Room 2200, Rayburn House Office Building, Hon. James P. McGovern [co-chair of the Commission] presiding.

Mr. McGOVERN. Welcome everybody and good morning. And this is the Tom Lantos Human Rights Commission hearing on Pursuing Accountability for Atrocities.

And we may be joined by some others as this goes on. But I should tell you in advance that we have been voting until close to 1 o'clock in the morning yesterday so people may be a little bit late getting up.

But today's hearing is part of a series that the Commission began in 2018 to identify ways the Congress could help strengthen the U.S. government's capacities to prevent mass atrocities against civilian populations.

By mass atrocities, we mean large scale, deliberate attacks against civilians, including genocide, crimes against humanity, war crimes and ethnic cleansing. These crimes often occur during armed conflict, as we saw during the armed conflicts in Central America and Colombia, and as we see them today continuing in Syria. Atrocities can also be due to state directed repression, communal violence or post-war retribution as has happened with the Rohingya and in parts of Africa, or as we fear could occur with the Uyghurs.

Preventing mass atrocities is a bipartisan concern that has inspired several recent bills. Including the Elie Wiesel Genocide and Atrocities Prevention Act that became law in January of this year, and the Global Fragility Act, H.R. 2116, which the House passed in May and sent to the Senate. And I am proud to cosponsor both of them. While these important pieces of legislation mention transitional justice, they are not focused on accountability. The process of making sure that victims of terrible human rights abuses receive justice for what has been done to them.

Victims have a right to justice under international human rights law, but it is a right that is mostly honored in the breach, even though most of us believe that punishment is a deterrent, and so part of preventing atrocities ought to be punishing those who are responsible for such brutal acts.

During my years in Congress I have seen over, and over, and over again how important justice is for victims and survivors of human rights abuses and how hard it is to achieve. From the first case I worked on as a congressional aide, which was the 1989 murders of six Jesuit priests, their housekeeper, and her

daughter in El Salvador during that country's civil war, through my recent meetings with advocates from China, Colombia, Russia, Syria, Sudan and the list goes on, the demand for accountability is universal but goes unsatisfied far too often. At the same time, we know that impunity for human rights abuses fuels more abuses. According to the U.N.'s framework of analysis for atrocity crimes, lingering perceptions of injustice and the failure to recognize past crimes are two of the factors that signal a country's potential for further violence and atrocities.

So this is why we are here today, to discuss what the United States government is already doing to advance accountability for grave human rights abuses, what the obstacles are to doing more, and how Congress can help. While we will not exhaust the topic of accountability in this hearing, where there has been progress in achieving justice for victims of human rights abuses it has taken national, regional, and international efforts over decades making creative use of civil and criminal law and other mechanisms like truth commissions. But because this is the United States Congress, we will start today with U.S. law and practice. I know your testimonies include many recommendations. I look forward to hearing them.

So at this time I want to introduce the first panel -- and let me just say that before you start and I am familiar with -- let me do the -- my bio here.

We have David Rybicki was appointed deputy assistant Attorney General of the Criminal Division, United States Department of Justice in April 2017. During his tenure with the Criminal Division, Mr. Rybicki has overseen the human rights and special prosecutions section, the organized crime and gang section, and the capital case section. Mr. Rybicki joined the Department of Justice in 2007 and he earned his J.D. from Stanford Law School.

Louis Rodi serves as acting assistant director of HSI, national security investigation's division, NSID. In this capacity he oversees the Human Rights Violators & War Crimes unit, as well as the counterterrorism and criminal exploitation unit. Mr. Rodi received a Master's of Arts degree in international studies from the University of Miami and he is a member of the Senior Executive Service.

But let me just say before you start that I am familiar with the work both of your agencies do to advance accountability for atrocity crimes. Less than two weeks ago I saw the news that a Guatemalan national wanted for participating in a mass sexual assault of indigenous women in Rabinal in the 1980s was detained here in the United States on an immigration charge. I very much appreciate this case and all the work that you do and I am eager to hear how we can help you with your work going forward.

In addition, the Tom Lantos Human Rights Commission was very lucky to have Mike McVicker with ICE's human rights law section direct the Commission for 15 months in the early days of its work. It was from Mike that I first became aware of the international human rights work happening within the Department of Justice and the Department of Homeland Security.

So I also want to note that we did invite the Federal Bureau of Investigation and the Office of Global Criminal Justice at the Department of State

to appear today. Both agencies were unable to be here, but my appreciation of the U.S. government's efforts on accountability extends to them as well. So all your testimonies are accepted for the record.

At this time, I would also like to enter for the record testimony submitted by David M. Crane, chief prosecutor of the special court for Sierra Leone, founder of the Syrian accountability project and the Yemeni accountability project, and a retired member of the Senior Executive Service of United States.

[The prepared statement of Co-Chair McGovern follows:]

PREPARED STATEMENT OF THE HONORABLE JAMES P. McGOVERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETS AND CO-CHAIR OF THE TOM LANTOS HUMAN RIGHTS COMMISSION

Tom Lantos Human Rights Commission Hearing

Pursuing Accountability for Atrocities

Thursday, June 13, 2019
10:00 – 11:30 a.m.
2200 Rayburn House Office Building

Opening remarks as prepared for delivery

Good morning and welcome to this Tom Lantos Human Rights Commission hearing on *Pursuing Accountability for Atrocities.*

Today's hearing is part of a series that the Commission began in 2018 to identify ways the Congress could help strengthen the U.S. government's capacities to prevent mass atrocities against civilian populations.

By "mass atrocities" we mean large-scale, deliberate attacks against civilians, including genocide, crimes against humanity, war crimes and ethnic

cleansing. These crimes often occur during armed conflict, as we saw during the armed conflicts in Central America and Colombia, and as we see them continue today in Syria.

Atrocities can also be due to state-directed repression, communal violence or post-war retribution – as has happened with the Rohingya and in parts of Africa, or as we fear could occur with the Uyghurs.

Preventing mass atrocities is a bipartisan concern that has inspired several recent bills, including the *Elie Wiesel Genocide and Atrocities Prevention Act* that became law in January of this year, and the *Global Fragility Act* (HR 2116) which the House passed in May and sent on to the Senate. I am proud to have been a cosponsor of both.

While these important pieces of legislation mention transitional justice, they are not focused on accountability – the process of making sure that victims of terrible human rights abuses receive justice for what has been done to them.

Victims have a right to justice under international human rights law, but it's a right that is mostly honored in the breach – even though most of us believe that punishment is a deterrent, and so part of preventing atrocities ought to be punishing those responsible for such brutal acts.

During my years in Congress, I have seen over and over again how important justice is for victims and survivors of human rights abuses, and how hard it is to achieve.

From the first case I worked on as a congressional aide – the 1989 murders of six Jesuit priests, their housekeeper and her daughter in El Salvador during that country's civil war – through my recent meetings with advocates from China, Colombia, Russia, Syria, Sudan and the list goes on, the demand for accountability is universal but goes unsatisfied far too often.

At the same time, we know that impunity for human rights abuses fuels more abuses. According to the UN's *Framework of Analysis for Atrocity Crimes*, lingering perceptions of injustice and the failure to recognize past crimes are two of the factors that signal a country's potential for further violence and atrocities.

This is why we are here today – to discuss what the U.S. government is already doing to advance accountability for grave human rights abuses, what the obstacles are to doing more, and how Congress can help.

We will not exhaust the topic of accountability in this hearing. Where there has been progress in achieving justice for victims of human rights abuses, it has taken national, regional and international efforts over decades, making creative use of civil and criminal law and other mechanisms like truth commissions.

But because this is the United States Congress, we will start today with U.S. law and practice. I know your testimonies include many recommendations, and I look forward to hearing them.

At this time I would like to introduce the first panel of witnesses.

Let me just say before you start that I am familiar with the work of both your agencies to advance accountability for atrocity crimes. Less than two weeks ago I saw the news that a Guatemalan national wanted for participating in the mass sexual assault of indigenous women in Rabinal in the 1980s was detained here in the U.S. on an immigration charge. I very much appreciate this case and all the work you do, and am eager to hear how we can help you going forward.

In addition, the Tom Lantos Human Rights Commission was very lucky to have Mike McVicker with ICE's Human Rights Law Section direct the Commission for 15 months in the early days of its work. It was from Mike that I first became aware of the international human rights work happening within the Department of Justice and the Department of Homeland Security.

Also I want to note that we did invite the Federal Bureau of Investigation and the Office of Global Criminal Justice at the Department of State to appear today. Both agencies were unable to be here, but my appreciation of the U.S. government's efforts on accountability extends to them as well.

All your testimonies are accepted for the record.

At this time I also enter into the record:

- Testimony submitted by David M. Crane, Chief Prosecutor of the Special Court for Sierra Leone, founder of the Syrian Accountability Project and the Yemeni Accountability Project, and a retired member of the Senior Executive Service of the United States.

- Additional materials as received.

Please proceed.

Mr. McGOVERN. So having said that, we will begin with Mr. Rybicki.

STATEMENTS OF DAVID RYBICKI, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; AND LOUIS A. RODI III, ACTING ASSISTANT DIRECTOR, NATIONAL SECURITY INVESTIGATIONS DIVISION, HOMELAND SECURITY INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

STATEMENT OF DAVID RYBICKI, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. RYBICKI. Mr. Chairman, on behalf of the Department of Justice, thank you for inviting me to testify today.

Pursuing justice on behalf of victims of atrocities is a mission of great importance. As the Deputy Assistant Attorney General in the Criminal Division who supervises a key participant in that mission, the Human Rights and Special Prosecutions section known as HRSP, I am pleased to address the Department's ongoing efforts against the perpetrators of atrocity crimes and other human rights and humanitarian law offenses. Bringing the perpetrators of atrocity crimes and other human rights violations to justice has been a priority at the Department for more than 4 decades since the former office of special investigations was created in 1979 to take legal action against participants in Nazi-era acts of persecution.

Today the Criminal Division's human rights enforcement efforts are centered at HRSP, which works closely with U.S. Attorneys offices, other sections within DOJ and our law enforcement partners, including the FBI's international human rights unit and HSI.

DOJ pursues accountability for human rights violations on multiple fronts, including supporting U.S. government efforts to prevent perpetrators from gaining entrance to our country. When perpetrators do enter the United States, we work aggressively to identify, investigate, and prosecute these individuals. In cases in which domestic prosecution is not possible or appropriate, we seek to denaturalize, extradite or otherwise transfer suspects to stand trial abroad or support DHS in its removal efforts.

Our work principally targets human rights abusers who have engaged in genocide, torture, war crimes, recruitment or use of child soldiers, female genital mutilation, and immigration and naturalization fraud relating to concealment of these offenses.

DOJ is committed to bringing criminal prosecutions against such individuals where we have jurisdiction to do so. As I will discuss later however, the jurisdictional reach of some of our statutes is one of the challenges we face. Notwithstanding those challenges, we have had significant success.

In May 2019, for example, HRSP secured a 37-month sentence for an Ethiopian human rights abusers who had obtained U.S. citizenship illegally.

During the period known as the "red terror" in Ethiopia, the defendant severely abused detainees on account of their political opinion. The defendant later made his way to the U.S. and was ultimately discovered here by one of his victims. In this case, as in most of our immigration and naturalization cases, the Department argued for a sentence significantly above the sentencing guidelines range of zero to 6 months to ensure that this kind of egregious violation of our immigration laws is punished appropriately.

Other successes include a 57-month sentence against a Bosnian detention camp guard who, among other abuses, used a knife to carve a cross into a Muslim prisoner's chest. We also brought a groundbreaking series of criminal prosecutions targeting former members of a Guatemalan special forces unit that massacred approximately 200 inhabitants of the village of Dos Erres, Guatemala, in one of the most notorious atrocities in Central American history.

We continue our work to wind up Nazi-era matters as well, including a success this past August when the United States accomplished the removal to Germany of Nazi persecutor Jakiw Palij through a highly effective interagency effort by DOJ, ICE and the State Department. We are proud of this work and other work I discuss in greater detail in my written submission.

As I mentioned earlier, we face a number of challenges in bringing these cases. Some of the statues we work with have significant jurisdictional, temporal, and evidentiary limitations. Some theories of liability, such as command responsibility, may be available in international law or U.S. civil law, but are generally not available in a criminal context. Some prosecutions also may be barred by short statutes of limitations.

In addition, experience has shown that these kinds of investigations are extremely complex. The activities at the heart of our cases occurred in foreign countries, often many years ago, and frequently took place in the context of political instability, war or social upheaval.

Notwithstanding these challenges, DOJ remains deeply committed to fulfilling our mission to bring human rights violators and perpetrators of atrocity crimes to justice using any lawful tools at our disposal. We are also committed to working with DHS and our other interagency partners in furthering efforts to ensure that America is not a safe haven for human rights violators.

I thank this Commission for the invitation to appear today and for its commitment to these important issues. And I am pleased to take any questions you have.

[The prepared statement of Mr. Rybicki follows:]

PREPARED STATEMENT OF DAVID RYBICKI

Department of Justice

STATEMENT OF

DAVID RYBICKI
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE

TOM LANTOS HUMAN RIGHTS COMMISSION

AT A HEARING ENTITLED

"PURSUING ACCOUNTABILITY FOR ATROCITIES"

PRESENTED

June 13, 2019

STATEMENT OF
DAVID RYBICKI
DEPUTY ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

BEFORE THE
TOM LANTOS HUMAN RIGHTS COMMISSION

AT A HEARING ENTITLED
"PURSUING ACCOUNTABILITY FOR ATROCITIES"

PRESENTED
JUNE 13, 2019

Thank you for inviting the Department of Justice to testify at this hearing. Pursuing justice on behalf of victims of atrocity crimes is a mission of great and manifest importance. As the Deputy Assistant Attorney General in the Criminal Division who supervises a key participant in that mission – the Human Rights and Special Prosecutions Section – I am pleased to address the Justice Department's ongoing efforts against the perpetrators of atrocity crimes and other human rights and humanitarian law offenses.

It is especially fitting that this hearing on the subject of the U.S. Government's efforts to hold accountable the perpetrators of atrocity crimes and other human rights violations is being held before a commission named after the late Tom Lantos, the only Holocaust survivor ever to serve in the Congress of the United States. His life was saved in wartime Budapest, Hungary, through the legendary efforts of Raoul Wallenberg, a courageous American-educated Swedish diplomat. Wallenberg's herculean efforts to rescue Hungarian Jews were significantly funded by the United States government and, in recognition of his extraordinary heroism in the face of evil, he was posthumously made an honorary United States citizen by Act of Congress in 1981 – an action that was endorsed by the Reagan Administration in part based on the recommendation of the Department's Criminal Division. Congressman Lantos, one of the thousands of Hungarian Jews whose lives were saved by Wallenberg and his team, devoted his postwar life to pursuing the tragically still-elusive goal of making the post-Holocaust imperative "Never Again" a reality. For many years, Congressman Lantos co-chaired this Commission's predecessor, the Congressional Human Rights Caucus, with former Congressman Frank Wolf. It is a privilege to appear before a body with such a remarkable history of distinguished leadership.

Bringing the perpetrators of atrocity crimes and other human rights violations to justice has been a high priority and a time-honored commitment at the Department of Justice for more than four decades, ever 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 prosecutors, tried surviving Nazi leaders at Nuremberg.

Today, as I will describe in some detail, the Criminal Division's human rights enforcement efforts are centered in the Division's Human Rights and Special Prosecutions Section ("HRSP"), which was formed as a result of the 2010 merger of OSI and the Division's Domestic Security Section ("DSS") in order 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). Those cases sometimes involve human rights crimes.

The Department pursues human rights violators and war criminals because respect for human dignity is fundamental to who we are as a nation and because impunity for these perpetrators puts at risk the lives of countless innocent persons abroad, including the brave men and women of our armed forces who serve in conflict zones overseas. In the words of President Trump's National Security Strategy, "America's core principles, enshrined in the Declaration of Independence, are secured by the Bill of Rights, which proclaims our respect for fundamental individual liberties…." "We will," the Strategy continues, "continue to champion American values and offer encouragement to those struggling for human dignity in their societies." In keeping with those core principles, the President declared in his 2018 International Holocaust Remembrance Day statement that "[e]very generation must learn and apply the lessons of the Holocaust to prevent new horrors against humanity from occurring..." "We will bear witness," he said on that solemn day of remembrance, and added: "[W]e will act." Consistent with this pledge, the National Security Strategy sends a stern warning to the perpetrators of atrocity crimes and anyone who would dare even to contemplate committing such offenses: "We will hold perpetrators of genocide and mass atrocities accountable."

The federal government pursues this accountability mission on multiple fronts. Our first goal is to prevent perpetrators from gaining entrance to our country. This is accomplished primarily by attempting to identify such individuals before they try to enter the United States and by adding their names to the interagency border control system. In addition, the government takes proactive measures targeted at identifying any such persons who have already gained entry, so that criminal prosecution or other appropriate law enforcement action can be taken in this country. In cases in which domestic prosecution is not possible or is not the most desirable course of action, we seek to denaturalize, arrest, extradite, or otherwise transfer suspects to stand trial abroad or accomplish their departure through removal proceedings. Lastly, the Justice Department, acting in conjunction with the Department of State, continues to take important initiatives aimed at enhancing the capacity of foreign governments to investigate and prosecute criminal cases against participants in genocide, war crimes, and crimes against humanity – including investigations and prosecutions of suspects the U.S. Government removes.

The Department of Justice vigorously pursues this multifaceted mission, in cooperation with our domestic and foreign law enforcement partners, as part of a coordinated, whole-of-government, interagency effort to deny safe haven in this country to human rights violators. To that end, HRSP and the FBI employ specialists on the model of the investigative approach that has enabled the Department to win more cases against World War II Nazi criminals over the past 40 years than has any other country in the world. HRSP and FBI are also part of the Human Rights Violators and War Crimes Center. Hosted by ICE's Homeland Security Investigations ("HSI"), the Center brings together a select group of Special Agents, attorneys, intelligence specialists, historians, and criminal research specialists to work collaboratively on human rights and war crimes investigations. Working together in this setting facilitates the provision of mutual assistance among the participating Homeland Security and Justice Department components in developing cases.

Our work principally targets human rights abusers who have engaged in such acts as genocide, torture, war crimes, the recruitment or use of child soldiers, female genital mutilation, and immigration fraud relating to concealing these kinds of abuses. At the Department, human rights enforcement matters are handled primarily by HRSP, the FBI, and United States Attorney's Offices around the country. Important work is also done by, among others, the Criminal Division's Office of International Affairs, International Criminal Investigative Training Assistance Program, Office of Overseas Prosecutorial Development, Assistance and Training, and Office of Enforcement Operations ("OEO"), the Department's National Security Division, and the Civil Division's Office of Immigration Litigation. Our principal interagency partners include ICE HSI and components of the Department of State here and overseas.

HRSP develops these cases in partnership with U.S. law enforcement agencies, principally ICE HSI and the FBI. Since ICE is represented at this hearing, I will not duplicate the testimony that the Department of Homeland Security is presenting, but I would like to briefly describe the FBI's important role. HRSP works closely with FBI's International Human Rights Unit ("IHRU"). IHRU's mission is to mitigate the most significant threats posed by international human rights violators through intelligence collection and targeted enforcement action in collaboration with domestic and international accountability efforts. The IHRU grew out of the Genocide War Crimes Program, which was created in 2009 by the FBI's Counterterrorism Division. In November 2014, the unit was realigned under the Bureau's Criminal Investigative Division and renamed the International Human Rights Unit. The IHRU leverages the law enforcement and intelligence efforts of all 56 FBI field offices and 63 FBI legal attaché offices throughout the world in order to investigate and hold perpetrators of mass atrocities and serious human rights violations accountable to the rule of law in the U.S. or a foreign country's judicial system. FBI Special Agents and analysts have investigated numerous cases involving human rights violators, including torture prosecutions, MEJA prosecutions, and immigration fraud prosecutions.

Next, I would like to elaborate on the key areas I have mentioned – identification, exclusion, criminal prosecution, international extradition, denaturalization, removal, and foreign

capacity-building – and to provide examples of important recent successes. As I will explain, the legal authorities available to the Department in these cases are both criminal and civil, and the tools we employ depend upon the facts of each case.

First, extensive efforts have been made to identify and exclude participants in genocide, war crimes, and other heinous violations of human rights and humanitarian law. For example, laborious investigations conducted in archives here and abroad over past decades have enabled the Department to identify and add to the border control system managed by the Departments of State and Homeland Security the names of many thousands of individuals suspected of complicity in World War II-era Nazi and Japanese crimes. Working with agents of U.S. Customs and Border Protection ("CBP"), our efforts succeeded in stopping more than 180 suspected Axis criminals at U.S. ports of entry. Many more were denied visas. Names of participants in post-WWII human rights violations have similarly been added to the border control system, and suspected human rights violators have been interdicted at the border. For example, in December 2017, Canadian authorities commenced citizenship revocation proceedings again Bozo Jozepovic, a Croatian immigrant from Bosnia, whose name had been added to the watchlist system by the Criminal Division as a suspected human rights violator and who was stopped trying to enter the United States at a Blaine, Washington, border crossing. In a removal proceeding litigated by ICE attorneys based on evidence largely amassed by the Criminal Division, a U.S. immigration judge found that Jozepovic committed or assisted in the murder of seven Muslim men in Poljani, Bosnia and Herzegovina, in 1993. The allegations in the Canadian government's citizenship case track those that were proved in the U.S. proceeding.

Second, the Department is committed to bringing criminal prosecutions against individuals for substantive human rights-related violations, where we have jurisdiction to do so. Some of the statutes have significant jurisdictional, temporal, and evidentiary limitations. For example, jurisdiction over perpetrators of genocides committed prior to the 2007 amendment of the Title 18 genocide statute is limited to cases in which genocide has either been committed in the United States or committed abroad by a U.S. national. The war crimes statute can be employed only when either a victim or the perpetrator is a U.S. national or member of the U.S. armed forces. The torture statute does not provide jurisdiction based on the nationality of the victim, so even if a U.S. person was the victim of torture, the U.S. does not have jurisdiction unless the perpetrator is a U.S. citizen or present in the United States. In addition, some theories of liability, such as command responsibility, may be available in civil law but are generally not available in a criminal context. However, the Department makes extensive use of all of the 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 continue to enjoy safe haven in the United States and that they are held accountable for their crimes.

When evidence is found implicating U.S. residents or citizens in such acts, we move to investigate and take legal action. Even when offenders are not subject to prosecution in the United States – for example, when the crimes were committed before applicable federal statutes

were enacted, as was the case with World War II-era Nazi criminals – the U.S. Government can often employ other effective enforcement tools, such as extradition to foreign countries or 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 by ICE.

For example, HRSP, in partnership with ICE HSI, developed a groundbreaking series of criminal prosecutions targeting former members of a Guatemalan special forces unit, the Kaibiles, that massacred nearly all of the inhabitants of the village of Dos Erres, Guatemala, brutally murdering at least 162 unarmed civilians in one of the most notorious atrocities in Central American history. Many of the female victims were raped before they were murdered. HRSP and, later, HSI, identified some of the perpetrators living in the United States. Several of them were prosecuted, convicted, and imprisoned for fraud offenses and others were deported by ICE to Guatemala. HRSP's criminal cases against former Kaibiles members were brought in partnership with United States Attorney's Offices and all yielded convictions. Two defendants were sentenced to the maximum term of ten years' imprisonment for unlawful procurement of naturalization – Gilberto Jordan, sentenced in 2010 in the Southern District of Florida, and Jorge Sosa, sentenced in 2014 in the Central District of California. The courts also entered orders revoking their U.S. citizenship. In 2017, in a third case prosecuted by HRSP and the United States Attorney's Office for Maryland, a participant in the Dos Erres massacre, Jose Ortiz Morales, a resident of Maryland and citizen of Guatemala, pleaded guilty and was sentenced for attempted unlawful procurement of naturalization.

United States Attorney's Offices throughout the country also prosecute human rights violator cases, often with HRSP providing assistance. For example, in April 2018, Mohammed Jabbateh, a former Liberian warlord also known as "Jungle Jabbah" who had been living in East Lansdowne, Pennsylvania, was sentenced to 30 years in prison by a U.S. district judge in the Eastern District of Pennsylvania. Jabbateh was found guilty in October 2017 on two counts of fraud in immigration documents and two counts of perjury. During the height of Liberia's first civil war from 1992 to 1995, Jabbateh, while serving as commander of a warring faction known as the United Liberation Movement of Liberia for Democracy, committed various acts of horrific brutality including rapes, sexual enslavement, slave labor, murder, mutilation, and ritual cannibalism. He also used children as soldiers.

The United States Attorney's Office for Massachusetts has brought a number of human rights cases, including against persons who lied about their activities in the Rwandan genocide that occurred 25 years ago and resulted in the killings of hundreds of thousands of people. Most recently, in April of this year, Jean Leonard Teganya was found guilty by a jury of immigration fraud and perjury. Teganya illegally entered the U.S. in 2014 and later applied for asylum, failing to disclose his involvement in the Rwandan genocide. He awaits sentencing.

A recent example of an HRSP criminal prosecution is the case of Milan Trisic, a Bosnian Serb who was residing in Charlotte, North Carolina. In March 2018, Trisic was sentenced to 18

months in prison following his criminal conviction for obtaining a Permanent Resident Card (I-551), commonly referred to as a "green card," by making materially false statements on his initial application for refugee status, which served as the basis for his obtaining permanent resident status. As part of his guilty plea, Trisic admitted that he served in the Army of the Serb Republic as a member of the Bratunac Brigade when Bosnia and Herzegovina was in the midst of a civil war. Trisic further admitted that he engaged in various unlawful activities while serving with the Bratunac Brigade, such as the unlawful beating, detention, and transportation of Muslim prisoners. Additionally, Trisic admitted that the Bratunac Brigade was one of the military units responsible for the notorious 1995 Srebrenica massacre that resulted in the deaths of between 7,000 and 8,000 Bosnian Muslim men. Upon completion of his term of imprisonment, Trisic will be transferred to ICE custody for removal to Bosnia and Herzegovina. The case was prosecuted by HRSP in partnership with U.S. Attorney's Office for the Western District of North Carolina.

Another example is the case of Mergia Negussie, a naturalized U.S. citizen residing in Alexandria, Virginia. On May 23, he was sentenced to 37 months in prison for having fraudulently obtained U.S. citizenship. The case was prosecuted jointly by HRSP and the U.S. 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.

In another case prosecuted since the Department last appeared before this Commission, in 2016 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, a significant departure from the sentencing guidelines range of 0-6 months. 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.

In the WWII-era Nazi cases, the U.S. Government has never possessed domestic jurisdiction over the underlying crimes that were committed in Europe. These cases thus demonstrate the utility of civil denaturalization – i.e., revocation of citizenship – and removal strategies. The burden of proof on the government in civil denaturalization cases is substantially identical to the criminal beyond-a-reasonable-doubt standard, but there are no statutes of limitations applicable to the civil proceedings, unlike in criminal naturalization fraud and visa fraud prosecutions. As a result of the tenacious work of HRSP and its predecessor OSI component, Criminal Division prosecutors have won cases against scores of participants in Axis-sponsored acts of persecution. Those persons have been denaturalized and/or removed or extradited to stand trial abroad. The most recent extradition victory was a decision rendered in 2014 by a federal magistrate in the case of a Philadelphia man, Johann Breyer, who had been charged in Germany with serving as an accessory to the murders of some 246,000 Jewish men, women, and children while serving as an SS guard at the infamous Auschwitz-Birkenau death camp. The case was a collaborative effort among HRSP, the Division's Office of International Affairs, and the U.S. Attorney's Office for the Eastern District of Pennsylvania.

The Division's enforcement program in the Nazi cases is widely considered to be the most successful law enforcement operation of its kind in the world, earning praise and awards from numerous Jewish organizations and Holocaust survivor groups. HRSP's work in these cases continues, but since the vast majority of the perpetrators of Nazi crimes – and most of the potential survivor-witnesses – are no longer alive at this very late date, the section's WWII-related workload is now only a small part of its human rights accountability portfolio. Our most recent success in the Nazi cases occurred just this past August, when the U.S. Government accomplished the removal to Germany of previously denaturalized Nazi persecutor Jakiw Palij, a landmark accomplishment that was the product of a highly effective inter-agency effort by DOJ, ICE, and the Department of State. The quality of our ongoing, though necessarily diminishing, work in the Nazi cases is reflected by the fact that the United States was one of only two countries (along with Germany) to win the coveted "A" rating of the Simon Wiesenthal Center in its annual report last year on worldwide law enforcement efforts in the Nazi cases.

Civil denaturalization, followed by removal, remains an important tool in post-WWII human rights violator cases as well. For example, the Civil Division's Office of Immigration

Litigation brought a civil denaturalization case in Washington, D.C., last year against Edin Dzeko. The suit was brought in partnership with the U.S. Attorney's Office for the District of Columbia. HRSP provided important assistance in the development of the case. In August, a U.S. district judge denaturalized Dzeko, based in part on his admission that he had misrepresented and concealed his military service on immigration forms and lied under oath at his naturalization interview. Dzeko was part of an elite unit of the Army of the Republic of Bosnia and Herzegovina that attacked the village of Trusina in 1993, in what is known as the Trusina massacre. The unit allegedly targeted Bosnian Croats who resided in the village because of their Christian religion and Croat ethnicity, killing 22 unarmed individuals including women and the elderly. Dzeko is currently serving a prison sentence in Bosnia and Herzegovina where, in 2014, he was convicted of war crimes. The Bosnian court found that Dzeko played a key role in the Trusina massacre, serving as part of a firing squad that executed six unarmed prisoners of war and civilians and that he shot and killed a crippled elderly couple.

Our successes in these prosecutions notwithstanding, experience has consistently shown that investigations of suspected perpetrators of genocide, war crimes, or crimes against humanity is extremely complex, whether the investigations concern those offenses directly or instead involve immigration-related violations prosecuted criminally or civilly. This is not surprising, as the activities at the heart of these cases occurred in foreign countries, often many years ago, and they frequently took place in the context of complex political instability, war, or social upheaval. Moreover, access to crime scenes may be limited or even non-existent and our ability to gather evidence typically relies significantly on the cooperation of foreign governments. Witnesses – if any survive – may face reprisals for testifying or may themselves be perpetrators as to whom precautions must be taken to ensure that if they are brought to the United States to testify, they do not gain an opportunity to seek safe haven here themselves. In the unlikely event that pertinent written records were prepared by the perpetrators, they may have been destroyed, be otherwise inaccessible, or present vexing chain-of-custody problems. Obtaining sufficient evidence that is admissible in a U.S. court of law therefore is a time-consuming and challenging undertaking, and it typically requires highly specialized prosecutorial, historical, and linguistic expertise.

Third, the Justice Department helps facilitate the criminal prosecution abroad of the perpetrators of genocide, war crimes, and crimes against humanity found in this country. For example, in 2012, Sulejman Mujagic, a citizen of Bosnia and Herzegovina residing in Utica, New York, was charged by a federal grand jury with physical and mental torture committed during the armed conflict that followed the breakup of the former Yugoslavia. The case was handled by HRSP and the U.S. Attorney's Office for the Northern District of New York. Before the torture case proceeded to its conclusion in the United States, Bosnia sought Mujagic's extradition, after charging him with having summarily executed an unarmed Bosnian Army soldier and tortured a second soldier after the two prisoners had been captured by Mujagic and his men while he was serving as a platoon commander in the Army of the Autonomous Province of Western Bosnia. The Department litigated the extradition case to achieve Mujagic's extradition to Bosnia and sought dismissal of the torture indictment. Because the crimes took

place in Bosnia, that country had the ability to prosecute for both the alleged torture and murder. A federal district judge in the Northern District of New York ruled that Mujagic could be extradited to Bosnia to stand trial and, after his extradition, he was convicted in Bosnia.

The United States has also extradited other accused human rights violators to stand trial abroad, both in WWII Nazi cases and others. The Division's Office of International Affairs ("OIA") has played a central role in these extraditions. Extradition matters are coordinated within the Justice Department by that office, which also responds each year to thousands of requests and inquiries from foreign law enforcement authorities for assistance in their investigations and prosecutions. The U.S. Government works diligently to locate international fugitives and return them to the countries in which their alleged crimes were committed. Extradition, however, is contingent upon receipt of a request from a foreign government with which the United States has an extradition treaty.

Finally, in cooperation with the State Department, the Department of Justice has long devoted considerable resources to enhancing the capacity of foreign governments to investigate and prosecute serious crimes, including atrocities. Components of the Criminal Division provide much of DOJ's assistance to foreign law enforcement and justice authorities. As noted, OIA takes the lead in executing foreign requests for evidence or other legal assistance and has responded to dozens of requests for assistance in matters relating to genocide, war crimes and crimes against humanity. Similarly, the Office of Overseas Prosecutorial Development, Assistance and Training ("OPDAT") and the International Criminal Investigative Training Assistance Program ("ICITAP") take the lead for the Department in providing capacity-building and security-sector assistance to foreign partners.

OPDAT was established to harness the Department of Justice's resources to develop foreign justice sector institutions and to enhance the administration of justice abroad. OPDAT builds strong foreign partners who can work with the United States to enhance cooperation in transnational cases and fight crime before it reaches our shores. OPDAT has Resident Legal Advisors ("RLAs"), Intermittent Legal Advisors ("ILAs"), and International Computer Hacking and Intellectual Property Advisors ("ICHIPs") posted around the world, providing expert assistance and case-based mentoring to foreign counterparts to develop justice systems that can combat transnational crime, corruption, and terrorism consistent with international human rights standards and in furtherance of U.S. national security.

OPDAT supports the Department's and the U.S. Government's interests by promoting the rule of law and respect for human rights, by preparing foreign counterparts to cooperate more fully with the United States in combating transnational crime and terrorism, and by improving foreign judicial assistance to the investigative and prosecutorial elements of the Department of Justice. As a general rule, internationally accepted standards are a primary focus of OPDAT programs. In areas such as human rights, trafficking in persons, public corruption, gender-based violence, and transnational organized crime, international and regional conventions and

agreements are routinely explained and the need for compliance with international obligations is emphasized.

Working with funding from the State Department and the Department of Defense, OPDAT uses a best practices methodology to develop effective criminal codes and procedures, improve institutional structures and relationships, and enhance the professional capabilities of prosecutors, judges, defense attorneys, and select law enforcement officers to establish more responsive and responsible criminal justice systems abroad. OPDAT has approximately 65 RLAs, ILAs, and ICHIPs posted in approximately 50 countries at any given time.

OPDAT has provided capacity-building assistance in the investigation and prosecution of war crimes to the various countries and jurisdictions of the former Yugoslavia. This has included provision of training; advice on legislation; assistance in the development of witness protection programs and witness exchange agreements; capacity-building in the area of victim-witness assistance; videoconferencing equipment (to allow witnesses in criminal cases, including war crimes cases, to testify safely from one country to another); and assistance to promote the exchange of information and cooperation between and among the countries and jurisdictions in the region.

ICITAP has similarly provided assistance directly to foreign law enforcement authorities in the former Yugoslavia. Equipment, software, and training that ICITAP supplied has significantly enhanced the capacity of local authorities to identify and investigate complex and politically charged crimes. In Croatia, ICITAP, in coordination with OPDAT, provided specialized training to members of the criminal justice system who are directly responsible for the investigation and prosecution of war crimes cases. That training focused on evidence collection, courtroom presentation, and witness protection. The work undertaken in this field by OPDAT and ICITAP draws extensively on the resources of federal investigating agencies and U.S. Attorney's Offices. It is an integral part of the Justice Department's commitment to assisting cognizant authorities abroad. The assistance that we have provided in the former Yugoslavia, as elsewhere, is focused on increasing the ability of these countries and jurisdictions to prosecute cases involving genocide, war crimes, and crimes against humanity.

OPDAT has provided assistance in the area of war crimes and crimes against humanity in other regions of the world as well. For example, OPDAT assigned a Resident Legal Advisor to Rwanda to provide assistance to the Rwandan criminal justice sector. The program focused on investigations and prosecutions involving the most serious genocide-related offenses. The Resident Legal Advisor provided advice and support to the prosecution sector in its efforts to evaluate and prosecute those detainees who were alleged to have planned and orchestrated the 1994 genocide. The OPDAT program in Rwanda provided advice, support, and technical assistance to improve the capacity of Rwandan justice officials to gather evidence and prosecute cases based on rule of law principles.

In Colombia, the Justice Department has provided assistance to the Colombian Prosecutor General's Human Rights Unit, which consists of a National Unit in Bogota and 15 regional units in the Colombian cities of Medellin, Cali, Bucaramanga, Villavicencio, Neiva, Cucuta, and Barranquilla. This Unit is responsible for the investigation and prosecution of violations committed either by illegally armed groups or government officials.

Conclusion

In our extensive work on human rights cases, we never forget that the lives of innocent persons around the world remain imperiled by the threat of genocide and other atrocity crimes. We know that succeeding in deterrence through enforcement of laws applicable to perpetrators of such crimes is one important means of affording vulnerable populations a measure of protection from such cruelties. As we investigate and prosecute these cases, we remain ever-mindful of the words famously spoken by former Attorney General, and later Supreme Court Justice, Robert Jackson, in his opening address at the Palace of Justice in Nuremberg in 1945: "The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."

Thank you for affording me this opportunity to testify today. I would be pleased to respond to your questions.

Mr. McGOVERN. Thank you very much.
Mr. Rodi.

STATEMENT OF LOUIS A. RODI III, ACTING ASSISTANT DIRECTOR, NATIONAL SECURITY INVESTIGATIONS DIVISION, HOMELAND SECURITY INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Mr. RODI. Mr. Chairman, and distinguished members of the Commission, thank you for the opportunity to discuss the work the Human Rights Violators and War Crimes Center performs in holding human rights abusers accountable, and how that work contributes to preventing future atrocities.

The Center is an interagency task force led be U.S. Immigration and Customs enforcement. The Center is also comprised of a number of partners to include the FBI, the Department of Justice, the Departments of State and Defense and the intelligence community. ICE established the center in 2008 to dedicate resources to our mission of ensuring the United States does not become a safe haven for human rights abusers.

The Center focuses on its mission in two primary ways, by identifying, investigating, prosecuting and removing human rights violators, and war criminals found within the jurisdiction of the United States, and by preventing suspected violators from entering the U.S. It also works with foreign law enforcement, international partners, and tribunals to further global accountability.

The Center brings together special agents intelligence specialists, analysts, historians, and attorneys with expertise in specific regional areas or conflicts. These team members, joined by our Center partners, are organized into investigative regional support teams which cover the entire globe.

In 2016, the Center created a team dedicated to the elimination of female genital mutilation of girls in the United States. And in 2018, the Center created and investigative team dedicated to developing targets who were responsible for human rights violations that could be sanctioned under the Global Magnitsky Human Rights Accountability Act.

The Center is also home to the human rights target tracking team. By placing lookouts in appropriate databases, this team works with our interagency partners to prevent human rights violators from entering the U.S. and obtaining U.S. immigration benefits.

Dedicated funding provided by Congress in 2016 resulted in a significant increase in resources dedicated to the Center's work. In 2014, ICE's Homeland Security Investigations, HSI, had eight investigators and intelligence specialists assigned the center. Today, HSI has 23 dedicated agents, analysts, intelligence specialists, and historians researching, investigating and supporting the important work at the Center. Including our partners, the Center now has a team of 50 people dedicated to our mission. This dedicated funding has led to a higher number of criminal indictments and arrests of human rights violators.

The Center's commitments to its missions is illustrated in various cases from around the world. I would like to highlight one of these cases and have elaborated on several others in my written statement. Mohammed Jabbateh served as a general in a rebel group that battled for control of Liberia in the 1990s. During the investigation, HSI agents, Center researchers, and members of the U.S. Attorney's Office traveled to Liberia to interview over 30 eyewitness who provided first-hand accounts of acts of torture, rape, cannibalism, and murder committed by Jabbateh and his followers.

Our investigation and successful prosecution of Jabbateh by the U.S. Attorney's Office in Philadelphia resulted in his conviction and subsequent sentence in April 2018 to 30 years' incarceration. Well above the sentencing guidelines for these crimes, and the highest sentence ever received for an immigration fraud conviction related to a human rights violator.

It is important to acknowledge a broad range of intergovernmental bodies and NGOs who have assisted ICE with identifying potential suspects, witnesses, victims, as well as providing crime scene information. In some cases, evidence from criminal proceedings in a foreign country has been key to litigating cases in the United States. Judicial proceedings following our investigations underscore the role U.S. courts play in seeking accountability for human rights abuses committed abroad, as well in the broader efforts of justice and atrocities prevention.

Today ICE is handling more than 1,600 human rights-related cases. They involve suspects from approximately 95 countries, primarily in Central and South America, the Balkans and Africa. HSI has more than 170 active human rights investigations. Since 2003, ICE has successfully removed more than 990 known or suspected human rights violators from the U.S.

Through the 75,000 subject records created, HSI has prevented over 300 suspected violators from entering the U.S. The Center continues to grow and expand its mission. HSI is currently developing Operation War Crimes Hunter, a repository of photos of individuals suspected of participating in human rights abuses.

The Center's developing prevention records and potential leads by utilizing information received from civil society and NGOs regarding human rights abuses and atrocities committed by the Syrian regime.

While we acknowledge and celebrate our collaborative work to date, we understand that much remains to be done. Weaknesses in our immigration statutes may allow human rights violators to enter the U.S. and obtain immigration benefits. At times we are confronted with serious obstacles in our investigations based on the statute of limitations for crimes such as immigration or naturalization fraud.

In many instances the U.S. government must forego criminal charges because evidence of the offender's misrepresentation did not come to light within the statute of limitation. Nevertheless, our success has underscored the Center's deep commitment to denying human rights violators safe haven in the United States.

Chairman and members of the committee, I applaud your continued leadership on these important issues. Thank you again for the opportunity to address this Commission. I would be pleased to answer any questions.

[The prepared statement of Mr. Rodi follows:]

PREPARED STATEMENT OF LOUIS A. RODI III

U.S. Immigration and Customs Enforcement

STATEMENT

OF

LOUIS A. RODI III
ACTING ASSISTANT DIRECTOR

NATIONAL SECURITY INVESTIGATIONS DIVISION
HOMELAND SECURITY INVESTIGATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

REGARDING A HEARING ON

"PURSUING ACCOUNTABILITY FOR ATROCITIES"

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
TOM LANTOS HUMAN RIGHTS COMMISSION

THURSDAY, JUNE 13, 2019
10:00a.m.
2200 Rayburn House Office Building

Introduction

Commission Co-Chairs McGovern and Smith and distinguished members of the Commission:

On behalf of the Department of Homeland Security, thank you for the opportunity to discuss the work the Human Rights Violators and War Crimes Center (Center) performs in holding human rights abusers accountable, and how that work contributes to preventing future atrocities. The U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI), Human Rights Violators and War Crimes Unit (HRVWCU), and the ICE Office of the Principal Legal Advisor (OPLA) Human Rights Law Section (HRLS) lead the interagency Center. ICE Enforcement and Removal Operations (ERO) also supports it.

The Center is also comprised of the Federal Bureau of Investigations (FBI)'s International Human Rights Unit (IHRU), co-located in its entirety within the Center; the U.S. Department of State's (DOS) Bureau of Consular Affairs and Diplomatic Security Service; the U.S. Department of Defense (DOD)'s U.S. Army Criminal Investigations Division; the U.S. Department of Justice (DOJ) Criminal Divisions' Human Rights and Special Prosecutions Section (HRSP) and Civil Division's Office of Immigration Litigation (OIL).

The Center was established in 2008 to dedicate resources to our mission of ensuring the United States does not become a safe haven for human rights abusers and to increase our effectiveness and efficiency in investigating and prosecuting cases involving human rights violators. The Center focuses on its mission in two primary ways: by identifying, investigating, prosecuting, and removing human rights violators and war criminals found within the jurisdiction of the United States; and by preventing the entry into the United States of known or suspected human rights violators and war criminals.

The Center also works with foreign law enforcement, international partners, and international tribunals to further global accountability.

The Center brings together special agents and intelligence research specialists, analysts, historians and attorneys with expertise in specific regional target areas or conflicts. These team members, joined by our Center partners, are organized into investigative regional support teams (RST) which cover the geographic areas of the Americas, Europe, Africa, the Middle East, and Asia. In 2016, the Center created a team dedicated to the elimination of female genital mutilation (FGM) of girls in the United States. In 2018, the Center created an investigative team dedicated to developing targets who are responsible for human rights violations that could be sanctioned under the Global Magnitsky Human Rights Accountability Act.

The Center is also home to the Human Rights Target Tracking Team (HRT3), comprised of intelligence research specialists dedicated to accurately identifying suspected human rights violators and war criminals while the individuals are still abroad. HRT3 works with United States government partner agencies to prevent the entry of these individuals into the United States in violation of the *Immigration and Nationality Act* (INA) as well as to preclude them from obtaining immigration benefits overseas.

The Center has worked closely over the past several years with our partners in U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) to identify known or suspected human rights violators and to place lookouts on them in appropriate databases so that consular officers overseas, CBP officers at United States ports of entry, and USCIS officers will have relevant information to assist in determining whether an individual should be permitted to enter the United States.

Dedicated funding, first provided by Congress in the *Consolidated Appropriations Act of 2016*, has greatly enhanced the Center's ability to increase investigative and legal efforts to combat crimes against humanity, human rights abuses, and war crimes. This funding resulted in a significant increase in resources dedicated to the Center's work.

In 2014, ICE HSI had eight investigators and intelligence research specialists assigned to the HRVWCU. Today, ICE HSI has 23 dedicated agents, analysts, intelligence research specialists and historians researching, investigating, and supporting the important work of the Center. Including our partners, the Center now has a team of 50 individuals dedicated to our mission. With this support, ICE HSI tripled its number of criminal arrests in fiscal year (FY) 2017 and 2018, compared to criminal arrests in FY 2016. Additionally, ICE HSI doubled the number of investigations that have led to indictments of human rights violators in this same time period.

In 2016, ICE conducted its inaugural Human Rights Violators and War Crimes Advanced Investigative Training course at the Federal Law Enforcement Training Centers in Georgia. This training brought together special agents, attorneys and other law enforcement professionals to learn about the investigative techniques unique to cases involving human rights violators. It established a core group of investigators and attorneys whose expertise enhanced the existing pool of law enforcement personnel specializing in these types of investigations. The Center continues to provide this advanced training course on an annual basis. Most importantly, these dedicated funds allowed the Center to fund investigative teams to travel overseas in cases that had languished. In-country investigations at the site of the atrocities are crucial to obtaining evidence and to identifying witnesses who can corroborate allegations against specific individuals suspected of engaging in human rights abuses.

The Center's commitment to its mission and the role it plays in broader efforts for accountability is illustrated in various cases in Africa, the Americas, and the Balkans. While most of the Center's work is focused on modern day war crimes, we continue to pursue, in partnership with HRSP, the remaining World War II Nazi leads developed by DOJ.

In August 2018, through close cooperation with our partners at the DOJ and DOS, ICE removed to Germany Jakiw Palij, a former Nazi labor camp guard at the SS Training Camp in Trawniki in Nazi-occupied Poland.

I would like to elaborate on a few examples of our successful criminal cases. The first case involved Mohammed Jabbateh, aka "Jungle Jabbah," who served as a General in the United Liberation Movement for Democracy in Liberia (ULIMO), a rebel group that battled for control of Liberia in the 1990s, during the first Liberian civil war. On three occasions, ICE HSI agents from Philadelphia, the Center's Africa researcher, and members of the United

States Attorney's Office for the Eastern District of Pennsylvania traveled to Liberia to interview over 30 eyewitnesses. These eyewitnesses provided firsthand accounts of acts of torture, rape, cannibalism, and murder committed by Jabbateh and his band of soldiers. Our investigation and the successful prosecution of Jabbateh by the U.S. Attorney's Office are reflective of the cooperative partnership between ICE and the DOJ. On October 18, 2017, a jury found Jabbateh guilty of two counts of violating 18 U.S.C. § 1546 (immigration fraud), and two counts of violating 18 U.S.C. § 1621 (perjury). On April 19, 2018, the District Court in the Eastern District of Pennsylvania sentenced Jabbateh to 30 years' incarceration, well above the sentencing guidelines for these crimes. This sentence, the highest thus far for immigration fraud committed by a human rights violator, was possible due to the work by ICE and HRSP to amend the sentencing guidelines to provide for upward departures when the defendants engaged in human rights violations.

Another significant investigation and criminal prosecution involved the 1994 Rwandan genocide in which Hutu extremists raped and murdered hundreds of thousands of Tutsis and moderate Hutus. In March 2011, ICE received information from the Rwandan government, as well as from the International Criminal Tribunal for Rwanda (ICTR), that Gervais "Ken" Ngombwa, a United States citizen residing in the United States, led massacres in the Nyamata area, including at the church and commune office where an estimated 10,000 men, women, and children attempting to seek refuge were murdered. A majority of those killed had sought refuge inside the church walls where they were slaughtered with guns, machetes, and other weapons. Following a multi-year Center and HSI Cedar Rapids investigation, including several investigative trips to Rwanda, the United States Attorney's Office for the Northern District of Iowa successfully prosecuted Ngombwa, who was convicted of one count of violating 18 U.S.C. § 1425 (unlawfully procuring, or attempting to procure, naturalization or citizenship); one count of violating 18 U.S.C. § 371 (conspiracy to unlawfully procure citizenship); and one count of violating 18 U.S.C. § 1001 (making a materially false statement to agents of the Department of Homeland Security). Ngombwa's United States citizenship was automatically revoked, pursuant to 8 U.S.C. § 1451(e). In March 2017, Ngombwa was sentenced to 15 years' incarceration. This case succeeded due to strong cooperation between the Center, HSI Cedar Rapids, the HSI Pretoria (South Africa), one of ICE's 68 Attaché offices located at United States diplomatic posts worldwide, the United States Attorney's Office for the Northern District of Iowa, DOJ's Office of International Affairs, DOS, and the ICTR.

The investigation, criminal conviction, and extradition to Spain of Inocente Orlando Montano in November 2017 highlights the Center's role in broader efforts for accountability. Montano, who served in several command posts and ultimately as El Salvador's Vice Minister for Public Security during the country's 1980-1992 civil war, was part of the small core group of elite officers responsible for the 1989 murder in San Salvador of six Spanish Jesuit priests, their housekeeper, and the housekeeper's teenage daughter. With the specialized assistance of an expert witness and the Center's historian for the Americas, an investigation led by HSI Boston and prosecuted by the U.S. Attorney's Office in Boston, Massachusetts resulted in Montano's conviction of three counts of violating 18 U.S.C. § 1546 (immigration fraud) and three counts of violating 18 U.S.C. § 1621 (perjury). The trial documented over 1,150 human rights violations committed by units or troops under Montano's command, including 65 extrajudicial killings, 51 disappearances, and 520 cases of torture. In August 2013, the United States District Court for the District of Massachusetts sentenced Montano to 21 months incarceration and issued a judicial order of removal to El Salvador. Montano's incarceration

afforded Spain sufficient time to perfect an extradition request for the crime of terrorist murder. This was significant as El Salvador had previously refused to cooperate with Spanish arrest warrants for other defendants living in El Salvador. The Secretary of State certified Montano's extradition to Spain and, despite Montano's appeal, the United States Supreme Court declined to hear his case. ICE HSI's investigation and the subsequent criminal conviction were instrumental in ensuring Montano would face justice in Spain as opposed to enjoying impunity in El Salvador.

There have also been a number of successes in cases involving the war in the former Yugoslavia in the 1990s. The Center continues to initiate law enforcement action against individuals who assisted in the genocide at Srebrenica in 1995. While there have been tremendous successes in identifying and removing particular targets from the United States, there continue to be litigation challenges which the Center is working to overcome. The Center will continue to prioritize the cases of both direct perpetrators and aiders and abettors.

In addition to the Srebrenica cases, the Center and its partners continue to hold human rights violators from the Balkans accountable. For instance, Slobodan Mutic, a former member of the breakaway ethnic Serb forces in Croatia, allegedly murdered two citizens of Croatian ethnicity in the town of Petrinja, Croatia, in January 1992. The Center's Balkan historian performed substantial original historical research and located a large number of wartime and postwar records in present-day Croatia which substantiated Mutic's alleged crimes. The Center worked with HSI Cleveland and our DOJ partners at the United States Attorney's Office in Cleveland, Ohio to indict the case. As a result, Mutic pleaded guilty to one count of violating 18 U.S.C. § 1546 (immigration fraud) for failing to disclose his role in the ethnically motivated murders; he was sentenced to 2-years' incarceration. ICE coordinated with Croatian officials to return Mutic to Croatia where he is being tried for his wartime acts.

Slobo Maric, a former member of the Bosnian army, was a shift leader of a detention facility in Bosnia that housed captured Bosnian Croat soldiers. He selected detainees for other guards to abuse, directly participated in abusing several prisoners, and sent prisoners to dangerous and deadly work details on the front line of the conflict. The case was investigated by HSI Jacksonville and the Center and prosecuted by DOJ's HRSP and the United States Attorney's Office for the Middle District of Florida. In March 2017, Maric was sentenced by the United States District Court for the Middle District of Florida to 18 months incarceration for unlawfully procuring, or attempting to procure, naturalization or citizenship in violation of 18 U.S.C. § 1425. These charges were the result of his failure to disclose during his naturalization process his membership in the Army of Bosnia and Herzegovina and crimes that he committed in Bosnia and Herzegovina during the war in the 1990s. The Court immediately revoked his United States citizenship, and Maric is now in immigration removal proceedings. The Bosnian government has charged Maric for his criminal conduct.

In addition to the successes discussed above in criminal matters, immigration laws have also been a powerful tool to deny safe haven to human rights violators in the United States, and in so doing, to contribute to the global fight to prevent future atrocities. For example, Center-supported cases resulted in the removal of two former Ministers of Defense of El Salvador, Carlos Vides Casanova in April 2015 and José Guillermo Garcia Merino in January 2016. Both were removed based on grounds that they had "assisted or otherwise participated" in multiple instances of torture and extrajudicial killings in El Salvador during the 1980s. These cases

relied on the testimony of torture survivors as well as the testimony of an expert witness and a former United States Ambassador to El Salvador. The case against Casanova resulted in a published decision by the Board of Immigration Appeals (BIA) concluding that in his role as a commander during the civil war in El Salvador, Casanova assisted or otherwise participated in extrajudicial killings and torture. The decision specifically recognized by name two Salvadoran torture survivors who testified in court, as well as nine victims of extrajudicial killing, six of whom were United States citizens. The victims included four churchwomen, Ita Ford, Maura Clarke, Dorothy Kazel, and Jean Donovan who were killed in December 1980, as well as Michael Hammer and Mark Pearlman, who were killed together with a Salvadoran colleague in January 1981. The decision also found Casanova removable for his role in the torture and extrajudicial killing of "countless unnamed" civilians.

Similarly, the BIA's opinion in the Garcia Merino case held that he knew or should have known about extrajudicial killing and torture, under the theory of command responsibility, and that he fostered an institutional atmosphere in which defenseless civilians were victimized. The court ruled, among other findings, that through Garcia Merino's acts and omissions, especially in failing to properly investigate and hold perpetrators accountable, he had "assisted or otherwise participated" in the extrajudicial killings of Archbishop Oscar Romero; approximately 1,000 civilians, many of whom were children, at the El Mozote massacre; and the six United States citizens described above.

It is important to acknowledge a broad range of intergovernmental bodies and nongovernmental organizations (NGOs) who have assisted ICE with identifying potential suspects, witnesses, and victims, as well as providing crime scene information and language support. Their intrepid work is essential to so many successful human rights investigations and prosecutions. For example, as a result of efforts by NGOs to uncover and document incidents of extrajudicial killings in Colombia referred to as "false positives," the Center identified two perpetrators residing in the United States - Hector Alejandro Cabuya de León and Lt. Col. Oscar Gomez Cifuentes. "False positives" are killings of civilians falsely reported by military units as "positive" killings of guerrillas in combat. These killings increased dramatically in Colombia in both scale and frequency between 2002 and 2008. Both Cabuya de León and Gomez Cifuentes were removed by ICE in 2017, following an investigation by ICE HSI aided by the expertise of the Center.

In some cases, evidence from criminal proceedings in a foreign country has been key to litigating cases in the United States. Enrique Ariza Rivas was a former director of intelligence in Colombia's now dissolved Administrative Department of Security (DAS). He had been charged in Colombia with aggravated psychological torture of a journalist and various other crimes relating to unlawful wiretapping. Documents obtained from the Colombian government were used in ICE's immigration case. ICE ultimately removed Enrique Ariza Rivas to Colombia in April 2017.

A final set of cases I would like to mention underscores the role United States courts play in seeking accountability for human rights abuses committed abroad, as well as in the broader efforts of justice and atrocities prevention.

Jose Ortiz Morales is a former member of a Guatemalan Special Forces military unit known as the Kaibiles that indiscriminately killed more than 200 men, women, and children in

a massacre in the Guatemalan hamlet of Las Dos Erres in December 1982. In September 2017, Morales was sentenced to 11.5 months incarceration for violating 18 U.S.C. §1425 (unlawfully procuring, or attempting to procure, naturalization or citizenship) following an investigation by HSI Baltimore and the Center. Morales, who has been indicted in Guatemala for his alleged participation in these war crimes, is the fifth Las Dos Erres target identified and investigated by ICE. The other perpetrators investigated by ICE HSI include Gilberto Jordan, featured in the 2016 documentary film, *Finding Oscar* and Jorge Vinicio Sosa Orantes. Both men were sentenced to 10 years incarceration for violating 18 U.S.C. § 1425 (unlawfully procuring, or attempting to procure, naturalization or citizenship) and both remain imprisoned today. These successes were a team effort, with ICE and HRSP in partnership with the U.S. Attorneys Offices for the Southern District of Florida and the Central District of California. ICE deported two additional perpetrators, Pedro Pimentel Rios in 2011 and Santos Lopez Alonzo in 2016. Pimentel Rios was convicted in Guatemala in 2012 for his participation in the Las Dos Erres massacre and sentenced to 6,060 years; Lopez Alonzo was convicted in Guatemala in 2018 and sentenced to 5,160 years. Despite these convictions, we remain concerned about efforts in Guatemala and El Salvador to grant amnesty to human rights violators that could result in the release of these convicted war criminals, and/or the suspension of on-going investigations and trials such as the trial of Garcia Merino for his involvement in the El Mozote massacre in El Salvador.

Today, ICE is investigating more than 1,600 human rights-related cases in part due to resources allocated by Congress specifically to further the work of the Center. These cases are at various stages of investigation and litigation, including removal proceedings. They involve suspects from approximately 95 countries, primarily in Central and South America, the Balkans, and Africa. ICE HSI has more than 170 active human rights investigations, which could ultimately support criminal charges or removal proceedings. Since 2003, the attorneys in ICE OPLA have obtained final removal orders and in ICE ERO have successfully removed more than 990 known or suspected human rights violators. HRT3 has issued more than 75,000 records of suspected human rights violators for individuals from more than 110 countries. Over 300 suspected human rights violators have been prevented from entering the United States based on these records through either visa revocations or visa refusals by DOS or by stops at ports of entry by CBP officers.

The Center continues to grow and expand its mission. To identify proactively perpetrators of modern-day atrocities, HRT3 is developing the "War Crimes Hunter" database, a photo-based database of suspected human rights violators who have actively participated in human rights abuses. The Center anticipates that HRT3 will utilize open source media sites to download images and video files of alleged perpetrators in current conflict zones and then, working with other governmental partners, cross-references the images with governmental biometric databases to determine whether these alleged perpetrators can be identified. ICE is working with oversight offices to ensure that this program is implemented consistent with legal, privacy, civil rights and civil liberties requirements.

Additionally, the Center is developing prevention records and potential leads by utilizing information received from civil society and NGOs regarding human rights abuses and atrocities committed by the Syrian Regime, and other non-state actors, during the Syrian Revolution.

The Center's FGM response team works closely with federal, state, and foreign law enforcement partners, as well as child protective officials, non-profit organizations, medical and educational professionals, and survivors, to protect young girls by investigating cases of female genital mutilation/cutting (FGM/C) and conducting outreach and training to end the practice. FGM/C is a serious human rights abuse, a form of gender-based violence, and, when done to children, a serious form of child abuse. ICE HSI and the FBI jointly investigate violations of the federal criminal FGM statute, 18 U.S.C. § 116. On April 12, 2017, Dr. Jumana Nagarwala, a United States citizen and Detroit-area doctor, was indicted by a federal grand jury for performing FGM/C on at least two 7-year old girls, the first indictment to charge a violation under 18 U.S.C. § 116. In November 2019, the United States District Court for the Eastern District of Michigan dismissed the counts related to 18 U.S.C. § 116(a), finding that Congress lacked Constitutional authority to enact the FGM statute as written. In addition to utilizing our authorities to investigate cases of FGM/C, ICE HSI and ICE OPLA also use the provisions of the INA to prevent and deter FGM/C when possible. In at least two instances, FGM/C was prevented after parents suspected of trying to send their daughters overseas for FGM/C were interviewed by ICE HSI and FBI and notified about U.S. laws and the potential consequences of subjecting their daughters to this form of child abuse.

In 2017, the Center and HSI New York launched an FGM/C-related outreach program called Operation Limelight USA. Operation Limelight USA aims to safeguard and prevent young girls from being subjected to FGM/C by educating airline passengers about the potential harms of FGM/C and United States laws governing the practice. The Operation utilizes specially-trained teams, consisting of ICE HSI special agents, CBP officers, and NGOs, to initiate informal discussions about United States laws with families traveling to or from regions where FGM/C is prevalent and to provide them with educational materials about the harms of the practice. This summer the Center plans to expand Operation Limelight USA to 14 airports around the United States.

The Center's Global Magnitsky (GloMag) Regional Support Team, created in 2018, leverages agency enforcement powers pertaining to illicit trade and money laundering activities to identify foreign persons who are responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights, or who have committed acts of corruption. Once identified, the GloMag team works with our colleagues at the Departments of Treasury, Justice, and State to recommend individuals and entities upon whom the President may impose sanctions. One of the first individuals sanctioned under the Global Magnitsky Human Rights Accountability Act was Slobodan Tesic, whom ICE HSI identified following a lengthy investigation. Tesic provided bribes and financial assistance to officials to secure arms contracts and spent nearly a decade on the United Nations (UN) Travel Ban List for violating UN sanctions against arms exports to Liberia; he was among the biggest dealers of arms and munitions in the Balkans.

As the Center grows and its mission expands, assistance from our international partners remains a key component in successful human rights-related investigations and prosecutions. The Center reciprocates the support it receives whenever possible to further the global fight against impunity for human rights abusers. It maintains strong working relationships with several dozen local, regional, and international organizations who share our commitment to pursuing accountability for atrocities. Our relationships with a number of UN-sponsored tribunals include the International Residual Mechanism for Criminal Tribunals, which carries

out essential functions formerly carried out by the International Criminal Tribunal for the former Yugoslavia and the ICTR, and the Special Court for Sierra Leone. Other international partners include various war crimes and human rights-related agencies in Australia, Bosnia and Herzegovina, Canada, Finland, Germany, Guatemala, Peru, Rwanda, the United Kingdom, and New Zealand. We maintain an even wider network of international partners 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, the United States, and Canada discuss and share current crime bases, investigations, and best practices.

Our successes, and our ongoing daily efforts, underscore the Center's deep commitment to denying human rights violators safe haven in the United States using all of the legal authorities available. While we acknowledge and celebrate our collaborative work to date, we understand that much remains to be done. 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 prevented from entering, or be removed from, the United States for engaging in acts of persecution. Similarly, there is no specific ground of inadmissibility or removability for those who participate in crimes against humanity, war crimes, or in FGM/C. 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 against the United States during the application process. The statute of limitations for 18 U.S.C. § 1546 (immigration fraud) is five years, although the statute of limitations for related crimes such as 18 U.S.C. § 1425 (naturalization fraud) is 10 years. Unless this fraud is exposed within five years, the Center is confronted with a serious obstacle to prosecution. Title 18 U.S.C. § 2441 (war crimes) carries a five-year statute of limitations when the violation does not result in death. Title 18 U.S.C. § 2340A (torture) carries an 8-year statute of limitations if the acts did not result in death or serious bodily injury or the foreseeable risk of such. In many instances, the United States government must forgo criminal charges because evidence of the offender's misrepresentations did not come to light within the statute of limitations.

Over the past 25 years, the United States has sheltered over a million refugees fleeing armed conflict, violent oppression, persecution, and torture. I recognize the unique responsibility our agency bears to protect those who come to our country to escape their perpetrators. By pursuing accountability for past atrocities, we believe 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. Co-Chairmen McGovern and Smith, I applaud your continued leadership on these important issues. Thank you again for the opportunity to address this Commission, and I would be pleased to answer any questions you may have.

Mr. McGOVERN. Thank you very much. And before I get into questions, let me apologize to the audience, you know, Hillary Clinton says it takes a village. I say, it takes a bigger room. But you are more than -- feel free to come up and sit around here, but -- I feel bad everybody is standing in the back. In any event, it is inspiring that so many people have come out because this is an important topic.

And I want to thank you both of you for your testimony. I appreciate it very much. We are going to abbreviate this a little bit because we are gonna probably have votes at 11:30 and we may have 30 or 40 votes. So we are going to make sure we get everybody in here. So if we don't get to all the questions we may actually submit some questions in writing as well.

But let me ask you, what are the factors that guide DHS and DOJ decisions on what suspected human rights violator cases to investigate and ultimately to prosecute? And how do legal and evidentiary challenges affect your decisions?

Mr. RYBICKI. Thank you for the question, Congressman. There is a number of factors that are at play in criminal prosecutions I think that wouldn't necessarily be considerations for other players in this space like NGOs. Obviously we have to bring our cases in the Federal criminal court, rules of evidence apply, and all of our cases have to be proven to the very stringent, beyond a reasonable doubt standard. So we consider all of those issues when we look at information that comes to our attention and when we are investigating human rights violations whether they be genocide, torture, war crimes or the other substantive statutes that we work with.

As you mentioned, there are difficulties in investigating these cases. They are extremely complicated cases. And our prosecutors, our human rights prosecutors face challenges that other Federal prosecutors typically don't. A crime scene more often than not in the case of our human rights cases is going to in a war zone or someplace where the Federal prosecutor or investigators will have great difficulty gaining access to evidence of potential human rights violations. If they are able to gain access it will usually be long after any violations have occurred.

Frequently there are problems obtaining documents from hostile governments, chaotic situations, or corrupt police forces, or other foreign government agencies. Oftentimes it is difficult to establish the admissibility of documents from foreign governments in U.S. criminal courts. And then in terms of other evidence like witness testimony, oftentimes given the lag between a human rights violation and our ability to investigate the violation, witnesses will be difficult, if not impossible to locate. They will be dead oftentimes or in many cases that we have had in the past the witnesses will themselves have been involved in perpetrating atrocities, crimes, or human rights violations. And those are individuals that we have to be very careful about bringing to the United States to testify in a criminal proceeding.

So those are all the kinds of considerations and challenges that our prosecutors face when looking at our statutes. And so often if we can't use those statutes, we use whatever other tools we can and have at our disposal to seek accountability.

Mr. McGOVERN. Mr. Rodi, you can go ahead.

Mr. RODI. So in regards to the question as where do we get our cases, the primary avenue for our cases is the victims themselves. When victims come forward with the information of alleged acts of persecution, torture, war crimes, that sort of thing, that is a starting point for us to begin an investigation. With that information, we have a whole team dedicated to investigating the statements by these witnesses.

We have teams of researchers at the Center, we have historians. Thankfully we have been able to hire a number of historians based on the funding provided in 2016, we have intelligence analysts. And of course we have our partners at the Center who bring a lot of information to the table. We work with NGOs, we work with other government agencies within the Federal Government to develop our leads and to follow up on the further investigations. And of course one we package that information up, we send it out to the field for further investigation.

Mr. McGOVERN. Thank you. So news reporting earlier this year indicated that the FBI's International Human Rights Unit, IHRU, may be eliminated and its responsibility shifted to other offices. Is that accurate? Is that are you hearing that as well? I mean, because in your testimony you note that IHRU leverages the efforts of all 56 FBI field offices and 63 legal attache offices around the world. And if it might be eliminated, how might the elimination affect FBI participation in ICE's Human Rights Violators & War Crimes Center?

Mr. RYBICKI. Congressman, the -- I don't think any final decisions have been made in that regard in terms of what FBI participation will be in the Center following a reorganization. But I can tell you that I have been in my job for the last 2 years supervising HRSP and the work that they do, and I have come to know our colleagues at FBI, and other parts of DOJ, and U.S. Attorney's offices, and at HSI, and I am very confident that irrespective of whatever structural reorg that FBI undertakes in this respect, we are going to be able to fulfill our mission going forward. They have subject matter experts and consummate professionals at FBI that have made their -- the calling of their career these kinds of cases. And those people are going to be working these cases moving forward.

So if the org chart changes, I am not concerned that we will be able to fulfill our mission with the quality people that we have.

Mr. McGOVERN. Mr. Rodi?

Mr. RODI. Sir, the Human Rights Violators & War Crimes center is a shining example of interagency collaboration within the U.S. government. Having the FBI collocated within the Center has allowed ICE to work side by side with our law enforcement partners in our joint mission.

The reduced participation of any members of the Center would be detrimental to the mission. The FBI's no exception to that.

Mr. McGOVERN. So if I am hearing you correctly, are you hearing the same rumors that we are hearing, that that office might be eliminated? Is that part are you hearing similar rumors?

Mr. RYBICKI. I have not heard that specifically.

Mr. McGOVERN. All right.

Mr. RYBICKI. And like I said, I don't think any final decisions have been made in terms of what kind of structural reorganization FBI is undertaking right now.

Mr. McGOVERN. I just have a couple more questions. So DOJ officials have described human rights cases as sometimes, quote, "difficult, time consuming and resource intensive." End quote. In large part because of the sizable time gap that -- and you just talked about that, Mr. Rybicki -- between the crimes when they were committed and when they are investigated and when they are prosecuted. Did DOJ and DHS have sufficient resources to pursue these cases? And what, if anything, could done in terms of changes to law or policy to help overcome the time gap difficulties?

Mr. RODI. Sir, to answer your questions in terms of resources, I would have to say that these cases are very expensive to conduct. They require extensive travel, witness location, translation services, and of course we could do more with more resources. Travel for agents to conduct interviews, travel for witnesses to come to the United States, victims' support services for witnesses, all cost a lot. For example, a trip for two agents to travel to Rwanda to find and interview witnesses costs over $65,000. That is 20 percent of our annual budget.

Mr. RYBICKI. I think there are concrete steps that Congress can take to help us prosecute the mission -- the mission better. Congressman. As you know, the FGM statute was recently held by a Federal district court to be unconstitutional. And that is a significant hit to one of tools in our arsenal in terms of combatting that specific kind of human rights violation.

The Department has submitted specific legislative text to Congress regarding our suggestions about how Congress can amend section 116 of the criminal code so that the FGM statute will pass constitutional muster. So we would urge Congress to take a look at that section to and to address the shortcomings that the court found in that case in Detroit. We are happy to work with you on that. But that is a step that Congress can take right now to assist us in prosecuting those important cases.

Mr. McGOVERN. The State Department's Office of Global Criminal Justice heads U.S. efforts to cooperate with foreign justice systems and international tribunals to ensuring accountability for perpetrators of atrocity crimes globally. Do your agencies coordinate and cooperate with the Office of Global Criminal Justice, and if so, how?

Mr. RYBICKI. Absolutely, Congressman. That office in the State Department is one of our many interagency partners. They serve as a clearinghouse for information across the Federal Government. Much of that

information ultimately is going to make its way into potential federal and criminal investigations and prosecutions. And much of the work that they do is really invaluable to how we collect information and build our cases. So that office at State is a key partner in our whole of government approach to maintaining accountability for human rights violators.

Mr. RODI. Sir, in terms of the State Department, we do have the State Department's part at the Center. We work mainly with Consular Affairs and also the Department of State Diplomatic Security Service as well.

Mr. McGOVERN. And what about the other way around, the work that you are doing? I mean, do you provide information to, you know, international -- other international justice activities to help them pursue justice? I mean, do you work with them that way as well, not just getting information from them, but giving information to them?

Mr. RYBICKI. Absolutely. We have international partners and our prosecutors and leadership at HRSP, including myself, routinely meet with our international partners in The Hague through the Eurojust organs as part of the E.U. to share, know-how, compare notes, and look at the kinds of investigations they are doing, seeing whether or not issues that they are uncovering can translate to U.S. criminal prosecutions and vice versa.

And we have a good track record in the past of taking a look at our cases. And if we can't accomplish what we want to in a U.S. criminal court, seeking extradition and getting human rights violators from the United States into a foreign tribunal where they can face accountability for whatever fact-specific reasons involving that case, prosecution is more difficult here.

Mr. McGOVERN. And I have one last question before I turn it over my colleague, Congresswoman Omar. I am really thrilled that she is here.
What measures can DOJ and or DHS to hold a perpetrator accountable when he or she is a U.S. citizen or a green card holder? For example, in the case of Sri Lanka, the former defense secretary -- I don't even want to begin to pronounce his name or I will just mess it up -- and the U.S. citizen, and then Sarath Fonseka, a U.S. green card holder, are alleged to be responsible for atrocities in that country.

And then added to that -- I mean, you know I spent a lot of time in the 1980s on human rights issues in El Salvador. There are many people who were guilty of atrocities, who cooperated with U.S. intelligence services during that war, but nonetheless came to the United States and were granted asylum or given legal status. How does that work as well? I mean, if in fact you have somebody who is in the United States who is guilty of atrocities but came here as part of a deal with another U.S. agency, how does that work?

Mr. RYBICKI. Congressman, to address the first part of your question, the Department has a lot of tools at its disposal. And all of our substantive human rights statutes, war crimes, genocide, torture, child soldiers, we have jurisdiction over U.S. citizens, whether or not, for example, the torture statute. The jurisdiction that Congress has given us allows us to prosecute U.S. citizens who have committed acts of torture abroad. And the Department has in fact used that

statute to prosecute a U.S. citizen, Chucky Taylor, the son of the former Liberian dictator, who received a 97-year sentence for those atrocity crimes that he perpetrated. So we have a track record here.

All of our human rights statutes apply to U.S. citizens. And given the facts of any case, we will certainly look at the prosecution of U.S. nationals.

With respect to bringing witnesses here from foreign countries, I would say it is really a case specific consideration that prosecutors have to use. Of course we will talk with our immigration enforcement partners at DHS. And there is also internal dialogue at the Department as to what is the specific evidentiary value of the witness, what is the U.S. government's previous relationship with the witness, and how would the witness enter the United States, whether on a specialized visa, would the witness be paroled into the United States?

So it is really dependent upon the witness's role in the case and the specific facts of that case.

Mr. McGOVERN. I guess what I am getting at -- and thank you for your answer -- but in cases where, you know, let's -- in the case of El Salvador, during the 1980s was our ally we supported the Salvadoran military during that war. And yet we know that there were mass crimes that occurred, terrible human rights atrocities occurred in that country during that time. There were some -- and we had taken sides in that war. But there were some individuals associated with the military who were granted access to the United States. And I think worked out deals with other agencies, I think for their own -- they thought when the war ended, it would be better not to be in that country. But nonetheless, may have been guilty of perpetrating these crimes.

You are separate and detached from, let's say the CIA made a deal with somebody to come to the United States in exchange for information. That is not a deterrent for you to be able to pursue that case if evidence comes out that that individual was involved in atrocities. Would it?

Mr. RYBICKI. Well, it would depend, like I say. And in terms of actually allowing that individual access to the United States, I would have to defer to my colleagues at DHS, because that is not something that the DOJ regulates directly.

Mr. RODI. Sir, if we uncover crimes committed by a person that was given a special deal by an intelligence agency, we would coordinate with that intelligence agency to find out exactly what the deal is, what was the deal, what was the information provided. And we would take it obviously it would be a case by case basis. But if this person committed a crime, and we have substantive evidence that the person committed a crime, regardless of whatever deal was made, we are going to pursue the case. That is our job. That is what we do. We investigate.

And if we find evidence of crimes that were committed, regardless of whether or not the person received a deal to get here, we are going to investigate that case. We will deconflict with the intelligence agency who gave them the

deal. But ultimately, our job is to pursue the evidence against that person for committing the crime.

Mr. McGOVERN. Thank you. I am happy to turn this over to Congresswoman Ilhan Omar from Minnesota.

Ms. OMAR: Thank you, Chairman McGovern. And your co-chair Mr. Smith, I am sure he will join us. Thank you so much for being here. And thank you all for joining us as well.

The United States has been a leader on international justice and accountability for atrocities since Nuremberg. This is something we should all be proud of. And even if our record isn't always perfect, I believe applying rule of law to foreign affairs is fundamental to our values and our interests. It is central to my vision for how our foreign policy should be run.

I have been disturbed by this administration's active hostility to the norms and institutions of international justice and accountability. And I will have some questions in regards to some specific policies for this panel.

But first, I wanted to look at some of the structural barriers that we are dealing with and how we might be able to expand the toolbox that you have to pursue accountability for war crimes, crimes against humanity and genocide.

So Mr. Rybicki, I want to start with you. If war crimes against -- if war crimes against humanity or genocide are committed by U.S. citizens abroad, sort of in the same line of what my colleague was asking, does the Department of Justice have jurisdiction to investigate and prosecute?

Mr. RYBICKI. Yes, Congresswoman. Our war crimes statute, genocide statute, and torture statutes all apply to U.S. citizens.

Ms. OMAR. Wonderful. Can you give us specific examples of when we have been able to use it?

Mr. RYBICKI. Yes, the example that I just provided to the congressman regarding Chucky Taylor and his conviction for -- under the torture statute, he was a U.S. citizens who committed acts of torture abroad and received a very lengthy sentence.

The other statutes that I mentioned have not resulted in prosecutions of U.S. citizens, but we have ongoing investigations of course using those statutes. And we consider them important tools that Congress has given us to address human rights abuses committed by U.S. citizens.

We have other tools other than those statutes that can compensate. And these are jurisdictional tools that Congress has given us involving our ability to prosecute U.S. citizens abroad. For example, the Military Extraterritorial Jurisdiction Act, or MEJA jurisdiction, has given DOJ the power to prosecute, for example, a U.S. serviceman who was convicted and sentenced to life without the possibility of parole for the rape and murder of an Iraqi child and the murder of her family.

So that is an example of a serious human rights violation that the Department charged against a U.S. citizen, that did not involve specifically the human rights statutes. So like I say, we are focused more on the nature of the

violations, rather than a specific code section and what that code section can give us. We use all the tools that we have.

Another tool in addition to MEJA jurisdiction is the special Maritime and Extraterritorial Jurisdiction of the United States. That allows us to reach outside of the United States and prosecute conduct committed by U.S. citizens abroad.

Ms. OMAR. And what are the barriers when it comes to diplomatic immunity? So I am -- obviously, for the case with the U.S. citizen who was the defense secretary of Sri Lanka, or I am thinking about Haftar in Libya who recently in the news was recorded in saying, do all you can, and kill as many people as you can, or something to that effect. And we know that there are many U.S. citizens who become -- who become -- who go back to serve in their country in diplomatic ways. And so are there barriers in prosecuting those that might have diplomatic immunity.

Mr. RYBICKI. Congresswoman, I can't talk about specific cases or investigations, of course. But what I can say is that we are mustering all the tools that I previously mentioned, whether they are substantive human rights statutes, whether they are immigration, naturalization laws for non-U.S. citizens obviously, or whether it is the special jurisdictional tools that Congress has given us to look at extraterritorial conduct. We use all of those things when we are considering how we can seek accountability for U.S. citizens who are committing atrocities crimes or other humanitarian law violations outside of the United States.

Ms. OMAR. And in regards to coordination with the FBI, DHS, and the State Department, can any of these departments initiate investigation and does one of them have veto power over potential investigations?

Mr. RYBICKI. I didn't hear the last part of your question, congresswoman.

Ms. OMAR. Does any agency have veto power over potential investigations?

Mr. RYBICKI. Oh, veto power. Well, we are the criminal investigators at DOJ. And typically in my experience that is going to be mean that we are either working with our folks at FBI or we are working with HSI. I am not aware of any veto power over whether or not DOJ can initiate an investigation.

Ms. OMAR. So Mr. Rodi, in regards to what Mr. McGovern was asking, if we've decided that there is a potential interest in bringing someone who might be accused of a war crime, and they may have made a deal with some agency, and one agency decides that they might want to pursue. Does that agency get to say, no, you can't touch this person, I guess that is what I am trying to get at. Is that a practice?

Mr. RODI. We work collaboratively, we coordinate with each other. No agency has veto power over the other. If there are strong concerns one way or another, what direction the investigation should go or should we look the other way. We are never going to look the other way in terms of a crime. But we will listen to our partners as to the underlying reasons why a person is here.

I can give you an example. There are -- many people like you suggested people who have committed war crimes can now become part of a government in

a foreign country, the regime change. And that person has diplomatic status, diplomatic immunity, and they travel to the United States for various diplomatic functions on A visa, a diplomatic visa.

Let's say that person wants to come here to visit the United States and they apply for a B visa, a visitor visa, because they want to go to Disneyland or they want to come shopping. Well we can prevent that from happening, because there are grounds of inadmissibility for the crimes -- the alleged crimes that that person may or may not have committed. We can deny that type of visa visitor, but if they remain on an A visitor -- an A visa, a diplomatic visa, our hands are tied. That person can enter freely on that diplomatic immunity. But other types of visas we do have a say and we are going to make our recommendations for refusal of that visa.

Ms. OMAR. President Trump has recently mentioned the possibility of granting executive pardons to U.S. personnel convicted under the U.S. law for atrocity crimes. What is your opinion on such pardons?

Mr. RODI. I can't really speak to that.

Mr. RYBICKI. Congresswoman, I am familiar that there have been media reports in that respect. I haven't read them. I don't know what they are based on. And so I would be reluctant to comment on rumors or unspecified reporting.

Ms. OMAR: And do such pardons or statements supporting such pardons affect the position of the United States that perpetuation of atrocity crimes must be brought to justice?

Mr. RYBICKI. Congresswoman, DOJ has a very delineated and specific role. Where we are the criminal prosecutors. We are not diplomats in the formal sense. And we perform our work apolitically. The career men and women of the Department investigate crimes and prosecute those crimes without respect to political considerations. And so whatever the political branches may be doing, it is not something that effects our work.

Ms. OMAR. Mr. Rodi, when DHS puts suspected or accused violators of human rights in removal proceedings, can you describe the coordination with the governments of their home countries?

Mr. RODI. Sure. It is a case by case basis. It depends on where the person is being removed to. But we do notify that country that we are removing that person for the violations that they were accused of, that was resulting in their removal. We coordinate with those foreign governments. Some foreign governments will prosecute these people for the crimes that they committed in their countries, others will not. It depends on the political situation in those countries. If there is a general amnesty, for example, for a time of conflict where atrocities were committed and those people are removed to those countries, then it is out of our hands. Other countries, the former Yugoslavic Republics for example, are very willing to prosecute some of these folks when they are removed.

Ms. OMAR. And earlier you referenced a statute of limitation for prosecution. What is the time on that?

Mr. RODI. So for visa fraud, 18 U.S.C. 1546, the statute of limitation is 5 years. And that statute isn't from the time we discover it, it is from the time that it occurred. So if we don't discover that fraud has been committed in the visa application until after that 5 year period, that has tied our hands. For nationalization fraud, the statute of limitation is 10 years and the same would apply.

Ms. OMAR. There was a case a while back of a general from Somalia who was accused of crimes doing -- you may not have the details, and I am not asking what happened in the case. This is, like, a hypothetical question that I will get to. He was accused of crimes that was committed under the Siad Barre regime. And I remember there being a specific limitations on prosecuting him as a U.S. citizen. And I just wonder what kind of limitations could arise that we could figure out a way to legislate against? Have you seen cases like that where there is a citizen, they have been accused of atrocities, but we have been unable to prosecute because of A, B and C.

Mr. RODI. Well, in the realm of immigration related matters. So if the citizen's a naturalized citizen, we are going to review the A file. We are going to review the conditions of naturalization. We are going to review the application. If there was fraud committed in the application ,and we can go as far back as when they applied initially to be a permanent resident first, and then follow on to become a citizen.

But if the violation or if we didn't receive information regarding the violation until after the toll of the statute of limitations has passed, then we can't prosecute for that crime. We have to find out that the violation was committed within that time period of the statute. So let's say the person committed -- filled out their naturalization application 15 years ago, and we are finding out about it now. Because the statute of limitations is 10 years, we can't charge that violation for the naturalization fraud.

Ms. OMAR. Do you know why these sort of statute of limitations have been set?

Mr. RODI. I don't know.

Ms. OMAR. Or if we've thought about changing them, because it just seems arbitrary.

Mr. RYBICKI. Congress created the laws. But I will say this, given your hypo, a case that I mentioned in my opening remarks is kind of a similar real world example. We had a defendant who during the 1970s committed human rights violations in Ethiopia. He subsequently comes to the United States. He subsequently obtains subsequently U.S. citizenship. He is seen by one of his victims. Well, when he committed the human rights violations he wasn't a U.S. citizen and his victims were not U.S. citizens, and they occurred in the 1970s. So our substantive statutes are now out. We can't use those.

However, we can use the important tools in the immigration context to charge him with criminal immigration naturalization fraud and obtain some measure of accountability in that situation.

Ms. OMAR. Only if it is within the statute of limitations?

Mr. RYBICKI. For the immigration violations. The statutes, his conduct predated the existence of our human rights laws. And even if they didn't, the nationality of the victims and the defendants would preclude our use of the substantive statutes. That is why the teamwork between DOJ and DHS on these matters is so key, because if we can't use human rights laws, we can't use false statements or perjury or something in our toolbox in Title 18, oftentimes we can use immigration violations and obtain significant penalties for human rights violators.

Ms. OMAR. Thank you. I am going to yield back. I think this is another example of sometimes how a statute of limitations could be a hindrance. I understand there is a purpose for them because there might be loss of memory, loss of evidence and all of these things. It is the same in regards to a lot of rape cases. And when I was in the Minnesota house, we worked on trying to get rid of some of the statute of limitations for sexual assault.

I think it may be important that we reevaluate and think about getting rid of some of these statute of limitations so that victims might have more justice and people know they can't trump on our laws.

Mr. McGOVERN. Well, thank you. I want to thank you both for being here. And I think this is an incredibly important topic, because as I said in the beginning, victims have a right to justice. And if that doesn't occur, then we have impunity. And we know that impunity for human rights abuses fuels more human rights abuses. And even if not by that individual person, the next person that comes along believes they can get away with it.

And again in this context we are trying to prevent mass atrocities from occurring. I mean our strong ability to be able to hold these people accountable I think is incredibly important.

And so I appreciate you both being here. Thank you for your testimony. Thank you for your work. Are we may have some follow up questions in writing, but I appreciate you being here this morning, so thank you.

We will go to our next panel, C. Dixon Osburn, is the executive director of the Center for Justice and Accountability, an international human rights organization based in San Francisco to hold perpetrators of atrocity crimes accountable through litigation, policy, advocacy, and transitional justice.

And Beth Van Schaack, is the Leah Kaplan Visiting Professor of Human Rights at Stanford Law School. Prior to returning to academia she serves as deputy to the ambassador-at-large for war crimes issues in the Office of Global Criminal Justice, of the U.S. State Department where she advised the Secretary of State and Under Secretary for civilian security, democracy, human rights, on formulation of U.S. policy regarding the prevention, accountability for mass atrocities.

So we welcome you both here, either one of you can start out. Mr. Dixon, do you want to begin?

Put your microphone on.

STATEMENTS OF C. DIXON OSBURN, EXECUTIVE DIRECTOR, THE CENTER FOR JUSTICE AND ACCOUNTABILITY AND BETH VAN SCHAACK, LEAH KAPLAN VISITING PROFESSOR OF HUMAN RIGHTS, ACTING DIRECTOR, HUMAN RIGHTS AND CONFLICT RESOLUTION CLINIC, STANFORD LAW SCHOOL

STATEMENT OF C. DIXON OSBURN, EXECUTIVE DIRECTOR, THE CENTER FOR JUSTICE AND ACCOUNTABILITY

Mr. DIXON. What do a candy maker, Uber driver, and school bus driver have in common? They are all individuals living in the United States that the Center for Justice & Accountability has accused of committing atrocity crimes abroad.

Good morning, Chairman McGovern, Representative Omar, distinguished members of the Tom Lantos Human Rights Commission. Thank you for holding this timely hearing as we commemorate the 75th anniversary of D Day and the 70th anniversary of the Geneva Conventions.

World War II's clarion call of "never again" has yet to be achieved. My name is Dixon Osburn. I am the executive director of the Center for Justice and Accountability.

The candy maker was Colonel Inocente Montano, one of the 20 individuals who the Center for Justice and Accountability alleges is responsible for the Jesuits massacre in 1989.

In 2008, CJA and the Spanish association for human rights filed criminal charges in Spain against the former president of El Salvador and 19 other members of the military for the massacre. The Spanish court issued indictments against all accused. And all but one of defendants lived in El Salvador. The one who did not was Colonel Inocente Montano, the former vice minister of public security who had been living outside of Boston.

As a result of indictment in Spain and CJA's advocacy, the Department of Homeland Security filed immigration fraud charges against Montano. He was sentenced to 21 months in prison. Subsequently the Department of Justice secured his extradition to Spain where criminal Montano currently awaits trial. A special note of thanks to Chairman McGovern for your long-standing commitment to justice and the accountability for the people of El Salvador.

The Uber driver was Virginia resident, Colonel Yusef Abdi Ali, whom on May 21, 2019, this year, a Virginia jury found responsible under the Torture Victim Protection Act for the torture of our client, Farhan Warfaa, who suffered barbaric torture as part of a systematic and widespread attack against his clan under the Siad Barre regime in Somaliland.

The school bus driver is a Boston resident Jean Morose Viliena, the current -- the current mayor of a town in Haiti whom we allege lead an armed group of supporters and a campaign of terror against media activists and human rights defenders. That case is still ongoing.

The Center for Justice and Accountability is a nonprofit international human rights organization. Our mission is to deter torture, war crimes, crimes against humanity and other severe human rights abuses around the world through litigation and other advocacy strategies.

We litigate in the United States under the Alien Tort statute, the Torture Victim Protection Act and other civil statutes. We are a part of a global movement of NGOs that play a critical role in ending impunity.

As of 2017, there were 68.5 million people around the world who had been displaced as a result of persecution, conflict, violence, or human rights violations. It has been estimated that there are more than 1.3 million survivors of politically motivated torture currently living in the United States. It is also estimated that there are 1,750 human rights violators from 95 countries here in the United States.

Thousands of human rights violators have found safe haven in the United States, including those with substantial responsibility for heinous atrocities. These abusers often live in the same immigrant communities as their victims.

What is at stake here today, at this hearing, is ensuring a comprehensive response to impunity. It is imperative that Congress continue to expand legislation to strengthen efforts to hold human rights violators accountable through both civil and criminal avenues.

To that end, we urge this Commission to consider the following, one, expand the Torture Victim Protection Act, to close an atrocity loophole by including a civil cause of action for war crimes, genocide and crimes against humanity.

Number two, adopt a crimes against humanity bill. Crimes against humanity was a crime charged at Nuremberg and has been supported by the United States since then and the crimes established at other tribunals.

Three, modernize current atrocity crime statutes so that they apply to non-state actors and apply retroactively, so that they eliminate the statute of limitations and ensure consistent application of the rules of jurisdiction.

Four, include command responsibility as a basis for liability and all existing criminal human rights laws to ensure decisionmakers are held responsible.

Five, increase the number of mutual legal assistance treaties between the United States and other nations to make investigations easier and less costly.

Six, increase funding for the agencies responsible for international criminal accountability, including the FBI International Human Rights Unit, DOJ'S Human Rights Special Prosecution Unit, ICE's Human Rights Violators Unit, and the State Department's Office of Global Criminal Justice. Reject the proposed efforts to reorganize or dismantle the FBI's International Human Rights Unit.

The United States must lead in the global effort to prevent mass atrocities and to hold accountable those responsible. If we do not want the United States to be a safe haven for war criminals, we must pass and enforce laws that hold them accountable.

In short, pursuing accountability for mass atrocities is in our moral, legal, political, national security and financial interests. Fortunately, ending safe havens for war criminals and confronting mass atrocities abroad has received strong bipartisan support, including as Chairman McGovern said, the recent passage of the Elie Wiesel Genocide and Atrocities Prevention Act. Yet more can be done, more should be done.

I want to thank you very much for this opportunity to speak. And I look forward to your questions.

[The prepared statement of Mr. Osburn follows:]

PREPARED STATEMENT OF C. DIXON OSBURN

TESTIMONY OF

C. DIXON OSBURN
EXECUTIVE DIRECTOR
THE CENTER FOR JUSTICE & ACCOUNTABILITY

BEFORE THE

TOM LANTOS HUMAN RIGHTS COMMISSION
UNITED STATES HOUSE OF REPRESENTATIVES

PURSUING ACCOUNTAILITY FOR ATROCITIES

JUNE 13, 2019

Testimony of
C. Dixon Osburn
Executive Director
The Center for Justice & Accountability

Before the
Tom Lantos Human Rights Commission
United States House of Representatives

Pursuing Accountability for Atrocities

June 13, 2019

Good morning Chairman McGovern, Chairman Smith and distinguished members of the Tom Lantos Human Rights Commission. I would like to thank you and the Members of the Commission for holding this important hearing on the efforts to pursue accountability for mass atrocity crimes. I would also like to applaud the Tom Lantos Commission on your extraordinary leadership in promoting, defending and advocating for internationally recognized human rights.

My name is Dixon Osburn. I am the Executive Director of the Center for Justice and Accountability (CJA) based in San Francisco. I spent 26 years in Washington, D.C. championing human rights on a bipartisan basis, including advocating for the release of the Senate Intelligence Committee's report on the CIA's detention and interrogation program after 9/11; advocating for the release of prisoners from Guantanamo who had been cleared for release by the intelligence agencies; and leading the effort to repeal don't ask, don't tell.

Mr. Chairman, I request that this written testimony be made part of the record.

About the Center for Justice & Accountability

The Center for Justice and Accountability is a nonprofit international human rights organization. CJA's mission is to deter torture, war crimes, crimes against humanity, and other severe human rights abuses around the world through litigation and other advocacy strategies.

CJA was founded in 1998 on the principle, first used during the Nuremberg trials after World War II, that certain crimes are so egregious that they represent offenses against all humankind.

For 20 years, CJA has sought to bring human rights abusers to justice. We represent survivors of torture and other human rights abuses in civil litigation in the United States using the Alien Tort Statute, the Torture Victim Protection Act, and other civil statutes.

For example, on May 21, 2019, a Virginia jury found Col. Yusuf Abdi Ali responsible under the Torture Victim Protection Act for the torture of semi-nomadic Somali herder Farhan Warfaa, a client of CJA. Col. Tukeh was a high-ranking military commander in Siad Barre's decades-long military dictatorship in Somalia. The jury awarded Mr. Warfaa $500,000 in

damages, including $100,000 in punitive damages. This was the third case where CJA has pursued accountability for the atrocities committed by the Barre regime, prior U.S. courts having found former Somalia Minister of Defense General Mohamed Ali Samantar and investigations chief of the Somali National Security Service Colonel Abdi Aden Magan, both of whom were living in the United States, liable for torture and killing during the Barre regime

On January 31, 2019, the U.S. District Court for the District of Columbia held Syria's government liable for the targeting and killing of an American journalist, Marie Colvin, as she reported on the shelling of Homs in 2012, the earliest days of a war that has killed ½ million people. CJA represented the family of Marie Colvin. The case was brought under the Foreign Sovereign Immunity Act which allows suits against sovereign states in the limited circumstance where the state is listed as a state sponsor of terrorism and an American citizen has been harmed. The decision could help ease the way for war-crimes prosecutions arising from the Syria conflict.

In addition to litigating cases in the United States, CJA has defended the Mayan-Ixil community from Guatemala in cases in both Spain and Guatemala, seeking accountability for a genocide that killed thousands; and we have represented 145 Cambodian Americans before the international hybrid tribunal in cases against former leaders of the Khmer Rouge regime, which led to the death of 1,700,000 people.

NGOs around the world play a critical role in pursuing accountability for atrocity crimes. Our sister organizations Civitas Maxima in Geneva and the Global Justice Research Project in Monrovia, Liberia, for example, have researched and prepared criminal dossiers against individuals identified by Liberia's Truth and Reconciliation Commission as responsible for atrocities committed during Liberia's two civil wars. Their work has assisted the U.S. government in successfully prosecuting Philadelphia residents Thomas Woeweyu and Mohammed Jabbate for immigration fraud and other charges. CJA has filed a Torture Victim Protection Act case against another Philadelphia resident, Moses Thomas, whom we allege was responsible for the massacre of 600 men, women and children seeking safety in a Red Cross designated site at the St. Peter's Lutheran Church in Monrovia. These U.S. cases not only send the signal that those who commit the worst human rights crimes cannot find safe haven in the United States, they have inspired civil society organizations in Liberia to demand that the government of President Weah finally adopt the recommendation of the Truth and Reconciliation Commission to establish a war crimes tribunal to address past atrocities. Liberia has not yet established a war crimes tribunal.

<u>The Problem: Impunity for Gross Human Rights Violations</u>

The core problem CJA and our colleagues at the Department of Justice (DOJ) and the Department of Homeland Security (DHS) address is a lack of accountability for perpetrators of gross human rights violations. By allowing human rights abusers to live with impunity, survivors and their communities are denied their right to truth, justice and redress.

By the end of 2017, there were 68.5 million people who had been displaced as a result of persecution, conflict, violence, or human rights violations.[1] It is estimated that more than 1,300,000 survivors of politically-motivated torture currently reside in the United States.[2] It is also estimated that there are 1,750 human rights violators in the United States from 95 different countries.[3] Thousands of human rights abusers have found safe haven in the United States, including those with substantial responsibility for heinous crimes. These abusers often live in the same immigrant communities as their victims, causing extreme distress and undermining justice and accountability movements in the countries where the abuses occurred.

U.S Leadership in Pursuing Accountability for Atrocities

Since World War II, the U.S. has been a leader in pursuing accountability for mass atrocity crimes. From the Nuremberg and Tokyo Tribunals after World War II, to the tribunals and special courts for the former Yugoslavia, Rwanda, and Cambodia, the U.S. has led in establishing and funding efforts to investigate and punish those guilty of war crimes, genocide and crimes against humanity. The United States also is the only nation that has established a position for Ambassador-at-Large for War Crimes.

It is also the case that the United States' leadership is lagging in important respects. Ensuring that there is no safe haven for perpetrators of atrocities, however, has enjoyed bipartisan support. CJA applauds the recent passage of the Elie Wiesel Genocide and Atrocities Prevention Act.

CJA applauds the Department of Justice for the successful prosecution for torture of Emmanuel "Chuckie" Taylor, Charles Taylor's son and the former leader of Liberia's notorious Anti-Terrorism Unit.[4] It is worth noting, however, that since it was enacted in 1994, this is the first and only time this statute has been used. No human rights prosecutions have been brought to date under the Genocide Accountability Act or the Child Soldiers Accountability Act.

We also applaud the removal of Salvadoran General Vides Casanova in 2015 and General García in 2016 for their role and responsibility for the torture of our clients and countless others. They now face criminal prosecution in El Salvador.

We also support efforts, consistent with U.S. treaties and international obligations, to extradite human rights abusers to other countries to stand trial in national courts, including the extradition of Colonel Inocente Montano in 2017 whom we allege is one of those responsible for the Jesuits Massacre in El Salvador. I want to take a moment to acknowledge and thank Representative McGovern for his tireless efforts in pursing justice for the people of El Salvador dating back to the investigation of the Jesuits Massacre by the Moakley Commission.

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[1] https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html

[2] https://www.cvt.org/news-events/press-releases/us-home-far-more-refugee-torture-survivors-previously-believed

[3] https://www.ice.gov/human-rights-violators-war-crimes-unit

[4] *U.S. v. Belfast*, 611 F.3d 783 (11th Cir. 2010) *cert. denied*, 131 S. Ct. 1511 (2011).

Over the years we have worked closely with attorneys, agents and historians within DOJ and DHS on human rights enforcement efforts. We support efforts to direct more resources to human rights prosecutions and to expand the tools available so they may effectively prosecute human rights abusers in the U.S. and support human rights prosecutions in national courts and other internationally recognized forums.

I would now like to offer specific policy recommendations.

Recommendations

It is imperative that Congress continue to expand legislation to strengthen efforts to hold human rights violators accountable through both civil and criminal avenues. For criminal prosecution, the Department of Justice must have available all tools in the toolbox to effectively prosecute perpetrators who have sought safe haven in the United States. To that end, we urge this Commission to consider the following legislative and regulatory measures.

1. *Amend the Torture Victims Protection Act.* Adopted in 1992, the TVPA permits civil causes of action for torture and extrajudicial killing, but does not provide a civil cause of action for other mass atrocities, including war crimes, genocide and crimes against humanity. A TVPA amendment could close the mass atrocity loophole, and provide an important tool for victims and survivors to hold accountable perpetrators of atrocity crimes. A TVPA amendment should also extend application to individual non-state actors, so that members of ISIS and other such groups if found in the U.S. could not escape liability.

2. *Adopt a Crimes Against Humanity Bill.* "Crimes against humanity" was a crime charged at Nuremberg and has been supported by the United States since then in the crimes established at other tribunals. Twenty-six out of the twenty-eight NATO members prohibit crimes against humanity under national law. Only the United States and Iceland do not.[5] In addition, other key strategic allies prohibit crimes against humanity, including: Israel, Mexico, Brazil, Colombia, Australia, South Korea, Philippines, South Africa, Kenya, and many more.[6] 104 of the U.N.'s 193 member states have national legislation prohibiting crimes against humanity.[7] Any crimes against humanity bill should grant jurisdiction to U.S. courts to prosecute perpetrators of human rights abuses who reside in the United States.[8]

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[5] Source: Arturo J. Carrillo & Annalise K. Nelson, *Comparative Law Study and Analysis of National Legislation Relating to Crimes Against Humanity and Extraterritorial Jurisdiction*, 46 GEO. WASH. INT'L L. REV. 481, 482 (2014).
[6] *Id.* at 518.
[7] *Id.*
[8] *See* Testimony of Pamela Merchant before the Subcommittee on Human Rights and the Law Committee on the Judiciary, U.S. Senate, "From Nuremberg to Darfur: Accountability for Crimes Against Humanity." June 24, 2008.

3. *Pass a criminal extrajudicial killing statute.* An extrajudicial killing statute would fill a gap in the current criminal torture statute, and its addition to that statute would significantly aid prosecutors. It would also bring the U.S. criminal code in line with international law. Extrajudicial killing is prohibited both in the Geneva Conventions and in customary international law.[9] Moreover, Congress already defined and created tort liability for extrajudicial killings under color of foreign law in the Torture Victim Protection Act.[10]

4. *Modernize current atrocity crimes statutes.* Current atrocity crime statutes should be updated so that they:
    - *Apply to non-state actors.* The torture statute, for example, does not apply to non-state actors, like ISIL or Boko Haram (18 U.S.C. § 2340A).
    - *Apply retroactively.* Consistent with international law, the application of the Torture Statute and other atrocity laws should be retroactive. There should be no *ex post facto* concerns for torture, extrajudicial killing, genocide and crimes against humanity, which have been considered punishable crimes since the Nuremberg trials. The Torture Statute's current effective date of November 1994 renders the statute ineffective for all abuses committed, for example, in Latin America and Africa during the eighties and early nineties.[11]
    - *Eliminate statute of limitations.* As with common law murder, there should be no statute of limitations on torture or other human rights crimes.[12]
    - *Ensure consistent application of rules of jurisdiction.* Per Ambassador David Scheffer, "There should be consistent application of the rules of jurisdiction in the coverage of atrocity crimes in the federal criminal code, including application to all U.S. citizens, to U.S. government employees and contractors, and to all aliens present in U.S. territory for the commission of atrocity crimes anywhere in the world."[13] For example, the war crimes statute should be amended to apply when a foreign perpetrator or victim is found in the United States. Currently, the war

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[9] *See* Note by the Secretary-General, Extrajudicial, Summary or Arbitrary Executions, A/61/311, Sept. 5, 2006, at <www.extrajudicialexecutions.org/reports/A_61_311.pdf> *last viewed* Dec. 19, 2008; Geneva Convention Relative to the Treatment of Prisoners of War; August 12, 1949 (Geneva Convention III"), Arts. 129, 130; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (Geneva Convention IV"), Arts 146, 147. *See also* Nigel S. Rodley, The Treatment of Prisoners in International Law, at 192.

[10] 28 U.S.C. § 1350 Note (2006).

[11] 18 U.S.C. §§ 2340-2340A (2006).

[12] Today, there is no statute of limitations if the torture results in death or creates a foreseeable risk of death or serious bodily injury. 18 U.S.C. §2340A(a), 18 U.S.C. §3281, 18 U.S.C. §3286(b) and 18 U.S.C. §2332b(g)(5)(B). In a torture case where death or serious bodily injury does not occur, the statute of limitations is eight years. 18 U.S.C. §3286(a). The eight-year statute of limitations may be suspended an additional three years if the evidence is located in a foreign country. 18 U.S.C. §3292. The Child Solders Act has a ten year statute of limitation. The Genocide Accountability Act has no statute of limitations.

[13] David Scheffer, "Closing the Impunity Gap," *Northwestern Journal of International Human Rights*," Volume 8, Issue 1 (Fall 2009).

crimes statute only applies outside the U.S. only when the perpetrator or victim is a U.S. national (18 U.S.C. § 2441).

5. *Incorporate command responsibility as a basis for liability* in all existing criminal human rights laws to enhance the focus on high-level officials. Command responsibility is a well-established U.S. theory of liability which covers military officers or civilian superiors for crimes committed by their subordinates and who knew or should have known about these abuses and failed to take steps to stop the abuses or punish the offenders. It has been developed and applied in criminal trials in the U.S. and later internationally, as well as in civil litigation.[14]

6. *Increase The Number of Mutual Legal Assistance Treaties Between the United States and Other Nations.* Mutual legal assistance treaties allow designated agencies in each country the power to summon witnesses, to compel the production of documents and other real evidence, to issue search warrants, and to serve process. When addressing transnational crimes, like atrocity crimes, the mutual assistance both increases the investigative ability and decreases the investigative cost. The U.S. currently has nineteen in force and another thirteen not yet in force.[15] Congress should request a review that prioritizes countries where the U.S. would most benefit from such a treaty and the feasibility of securing those commitments from both parties.

7. *Increase Funding for Agencies Responsible for International Criminal Accountability.* Congress should fund more fully the FBI International Human Rights Unit,[16] DOJ's Human Rights Special Prosecutions Unit, ICE's Human Rights Violators Unit, the State Department's Office of Global Criminal Justice, as well as those responsible for implementing the Global Magnitsky Act, including the Office of Foreign Asset Control, State's Bureau of Democracy, Rights and Labor, and State's Bureau of International Narcotics and Law Enforcement Affairs. Those agencies with prosecutorial responsibilities should prioritize international human rights prosecutions under the Torture Act, War Crimes Act, Child Soldiers Accountability Act, and Genocide Accountability Act, and related human rights statutes. We applaud efforts to prevent the dissolution of the Office of Global Criminal Justice. We encourage Congress to also oppose proposed efforts to dismantle the FBI's International Human Rights Unit.

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[14] *See, e.g., Yamashita v. Styer,* 327 U.S. 13-15 (1946) (application of command responsibility doctrine in a criminal case); *Kordic and Cerkez*, No. IT-95-14/2-T, Feb. 26, 2001, para. 401 (International tribunal: "[T]hree elements must be proved before a person may incur superior responsibility for the crimes committed by subordinates: (1) the existence of a relationship of superiority and subordination between the accused and the perpetrator of the underlying offence; (2) the mental element, or knowledge of the superior that his subordinate had committed or was about to commit the crime; (3) the failure of the superior to prevent the commission of the crime or to punish the perpetrators."); *Ford v. Garcia.* 289 F.3d 1283, 1288 (11th Cir. 2002).

[15] https://corporate.findlaw.com/law-library/mutual-legal-assistance-in-criminal-matters-treaties.html

[16] https://foreignpolicy.com/2019/02/18/the-fbi-is-dismantling-its-war-crimes-unit/

8. *Amend Immigration Restrictions*. While we believe the current travel ban based on Presidential Proclamation No. 9645, 82 Fed. Reg. 45161 (2017) violates both domestic and international law, and should be repealed, it and broader immigration restrictions particularly impede legal efforts to hold accountable serious human rights violators living in the United States, when trial participants (plaintiffs, witnesses, experts) cannot get visas to travel to the United States for the purpose of testifying and providing evidence against human rights violators.

Conclusion: Benefits of A More Robust Atrocity Accountability Efforts

Today's hearing is timely as we commemorate the 75th anniversary of D-Day and the 70th anniversary of the Geneva Conventions. World War II's clarion call of "Never Again" has not yet been achieved. The United States must lead in the global effort to prevent mass atrocities and to hold accountable those responsible. It is not only a moral imperative, it is in our self-interest.

If we do not want the United States to provide safe haven for war criminals, we must pass and enforce laws that hold them accountable.

If we seek enduring peace and stability, which is part of the Sustainable Development Goal #16,[17] we must hold accountable those whose crimes against humanity disrupted peace and stability. Accountability is a key to prevent future atrocities as what is done with impunity may be repeated without fear.

If we seek to prevent costly war, the rule of law can ameliorate. A recent study by the World Bank and the United Nations found that every $1 spent to prevent violence had saved $16 over two decades.[18]

In short, pursuing accountability for mass atrocities is in our moral, legal, political, national security, and financial interests.

Thank you very much for this opportunity to submit testimony.

[17] https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html
[18] https://www.un.org/press/en/2018/ga12031.doc.htm

Mr. McGOVERN. Thank you very much.

Ms. Van Schaack.

STATEMENT OF BETH VAN SCHAACK, LEAH KAPLAN VISITING PROFESSOR OF HUMAN RIGHTS, ACTING DIRECTOR, HUMAN RIGHTS AND CONFLICT RESOLUTION CLINIC, STANFORD LAW SCHOOL

Ms. VAN SCHAACK. Good morning, I am professor Beth van Schaack of Stanford law. And I was also the deputy to the ambassador at large for war crimes in the Office of Global Criminal Justice. So I will draw my experience as human rights lawyer, a professor, and also a diplomat working in these areas.

It is really an honor to appear before you today. I have long been an admirer of this committee, of this commission. Number one, with respect to your steadfast commitment to the human rights, but also the spirit of bipartisanship that has really motivated it in these troubled times.

Mr. McGOVERN. And if I could just say, my co-chair, Congressman Chris Smith from New Jersey, couldn't be here today because of a personal matter he had to take care of. But yes, you are right, this is a bipartisan commission.

Ms. VAN SCHAACK. Genuinely so.

Mr. McGOVERN. Thank you.

Ms. VAN SCHAACK. So Following Dixon's scene-setter, I thought I would delve into some more specifics of some of the proposals that have been discussed in the earlier panel and today. And at the risk of appearing greedy, I've developed a wish list of 10, which I will work through quickly. I would be happy to take questions on any of them. Some of them are very discrete and technical, in terms of the statute of limitations, for example. Others are a little more far reaching and ambitious, but I think all of them would contribute to the United States' ability to exercise leadership in this space, to ensure accountability and to prevent against impunity.

So number one, Congresswoman Omar, you mentioned crimes against humanity. We have no crimes against humanity statute. We can prosecute torture, female genital cutting, genocide, trafficking, terrorism, a whole range of international offenses, but no crimes against humanity statute. This is a glaring gap. So if there is a massacre of civilians, for example, that doesn't rise to the level of genocide, we can't prosecute that as such.

If there is a policy of enforced disappearances where you can't prove the victims have been tortured, we can't prosecute that as such. Or if there is an ethnic cleansing campaign based upon religious persecution, if you can't prove genocidal intent, we cannot prosecute that as such.

In 2010 Senator Durbin introduced a bill that was a solid opportunity. It never moved forward, but it could be revisited. So that is one area I would like to see.

Turning to our jurisdictional framework, for all of these other crimes I have mentioned, including piracy, trafficking, et cetera, we can prosecute offenders who are, quote, "present in, found in, or brought into the United States." Our war crimes statute is a glaring exception to that. We can only prosecute war crimes either committed by or against U.S. citizens. So, for most war criminals hailing from Syria who are committing crimes against their compatriots, we have no jurisdiction over those acts.

We could easily expand the War Crimes Act to include so called "present in jurisdiction," which would remove this patchwork approach, regularize our penal code and really signal that we are committed to prosecuting all international crimes in equal measure.

The third, Dixon and Mr. Rybicki already mentioned the problem of command responsibility. We can prosecute individuals under a whole range of theories of responsibility, complicity, conspiracy, et cetera. Those don't necessarily reach superiors who are under a legal duty to supervise their subordinates and hold them accountable when they commit abuses.

We have command responsibly in other areas of U.S. law. So the Military Commission Act actually has a terrific formulation of that crime, as does our law of war manual that the Department of Defense has created. So it should be a relatively easy lift to apply that more broadly across our penal code. And these are the individuals who are likely to have the resources to come to the United States so they might actually fall within our jurisdiction.

Four, I imagine that a legislative proposal for this is in effect but as was mentioned the female genital cutting mutilation statute was declared unconstitutional. This deficiency could easily be cured with language to the effect of "that the defendant or victim traveled in, used a channel of instrumentality -- or channel or instrumentality of interstate or foreign commerce or the act otherwise affected interstate foreign commerce." I think that is an easy fix. It should be done quickly so that we can better protect the women and girls in this country from the practice.

Fifth, our genocide statute as originally drafted had a more limited reach, we have now expanded it to include present and jurisdiction. But those jurisdictional changes are not retroactive. As a result, we have no jurisdiction over genocidaires who hailed from Rwanda, one of the most egregious genocides of our generation. We can only prosecute them for these immigration offenses. That is important, but it pales in comparison to holding them as responsible for the underlying offense, which is genocide.

Six, and turning to our immigration remedies as been mentioned, we have a number of very specific grounds to prevent the arrival of individuals and to enable the removal of individuals, but we don't have a general persecutor bar. This is something that has been explored but has for whatever reason never moved forward. If we could have a statute that allowed for any individual who participates in the persecution of others on a range of grounds, including religious persecution, ethnic, racial, et cetera, that would make it much easier to block those individuals from coming. And if they manage to find their way here, make

it easier to remove them. And we could add female genital mutilation to that statute as well, if we were so inclined.

The mention of statute of limitations is incredibly important. We have ordinary visa fraud and then we have extraordinary visa fraud. There is no reason we couldn't extend the statute of limitations for individuals who conceal their involvement in international crimes, then it would be a 20-year statute of limitations, and maybe leave ordinary visa fraud at the lower level, so you don't have the abuses that you sort of hinted at in one of your questions.

Seventh, although this hearing is mostly focused on governmental authorities and our criminal accountability, civil redress is incredibly important. I worked on those Salvadoran cases involving General Garcia and Vides Casanova who were found in Florida. Those were the only remedies we had at the time because our criminal law didn't reach backward.

Congress has enabled victims of a whole range of international law -- violations, terrorism, trafficking, modern forms of slavery -- to bring civil redress, but the Supreme Court has significantly truncated the reach of the Alien Tort statute. So I too would like to see the Torture Victim Protection Act expanded to include other causes of action, war crimes, genocide, crimes against humanity at a minimum. And Congress could also amend or put something in the record that shows that the Alien Tort statute is expressly extraterritorial so it can reach conduct that happened abroad.

Eight, if you will bear with me, turning to institutional issues, I just want to add my remarks to the two previous panelists about the importance of retaining the FBI's war crimes office. They have been an incredible partner, they are essential to all of these investigations, and dispersing that expertise elsewhere in the Bureau, it is really going to limit our ability to lead on these issues.

Ninth, while many of these proposals that we have discussed today are important and needed, there are existing human rights authorities that have been underutilized. And that, I think implicit in questions from both of you.

There is only two cases that have invoked our torture statute, one resulted in the historic verdict, the other to a very favorable and appropriate extradition to Bosnia, where the prosecution moved forward. All of our other statutes are moribund, they have never been utilized. And so the question is,what is causing that? And I really encourage Congress, and I think this Commission is a great example of Congress exercising its oversight to try and get to the bottom of what are the obstacles, and what more can Congress do, civil society actors, others to make these cases more possible to move forward, so that we are not having to rely on these immigration remedies, and in fact, we can prosecute individuals for their underlying offenses.

It might help to hold hearings where DOJ and DHS can speak more candidly about what the problem is, have some reporting opportunities for DOJ and DHS to describe efforts and why those efforts have been thwarted. I leave it to you to think what the best way to exercise this oversight is, but it would be great to see some of these statutes utilized in a substantive way.

And finally, wearing my ex State Department hat, and you mentioned this in one of your questions, Congressman McGovern, but we still have a role to play in promoting accountability abroad, both from the perspective of international institutions but also partner nations that are trying to do these cases the best that they can, like El Salvador with respect to the El Mozote massacre. We need to be supporting those efforts. We can do so through resources, through seconding personnel, through rule of law training, through empowering NGOs that are working in those areas. And while the international community has not created additional ad hoc tribunals in the way that they did in the mid-1990s, there are a whole range of really innovative accountability mechanisms, including the IIIM that is dedicated to Syria, UniTab that is dedicated to Iraq, the Special Criminal Court in the Central African Republic, NGOs and nongovernmental organizations like the Commission on International Justice & Accountability that is creating war crimes dossiers, that then they can hand off to our partners in Europe who are prosecuting dozens of these cases that we can be supporting as well.

So that work I think needs to continue. And the Office of Global Criminal Justice is really the point person for that work. So maintaining the support for that organization I think is important.

So with that list, I will rest. Putting these new authorities in place will ensure that the U.S. has the tools that it needs to address the next cohort of persecutors who are inevitably going to make it here one way or the another after committing their crimes or repression in other states.

And I am hopeful that these proposals will find favor and inspire you and your colleagues to continue to strengthen the U.S. legal framework from all perspectives, criminal law, civil law, immigration law and diplomacy.

And I welcome questions.

[The prepared statement of Ms. Van Schaack follows:]

PREPARED STATEMENT OF BETH VAN SCHAACK

Testimony Of
Professor Beth Van Schaack

Leah Kaplan Visiting Professor of Human Rights
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Before The

Tom Lantos Human Rights Commission
United States House of Representatives

on

Pursuing Accountability for Atrocities

June 13, 2019

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I. Introduction

Good morning Chairman McGovern, Chairman Smith, and distinguished members of the Tom Lantos Human Rights Commission. I am Professor Beth Van Schaack; I teach human rights and international justice at Stanford Law School. I joined the faculty after serving as Deputy to the Ambassador at Large for War Crimes Issues in the U.S. State Department under the Obama Administration. Early in my career, I worked as a war crimes prosecutor with the International Criminal Tribunal for the former Yugoslavia and as a human rights lawyer with the Center for Justice & Accountability, now under the direction of my co-panelist.

I would like to thank you and the Members of this Commission for including me in this critically important hearing and for giving me the opportunity to suggest several concrete and discrete proposals that would strengthen the United States' ability to prosecute perpetrators of atrocities found on U.S. territory and permit the more effective use of our immigration laws and criminal fraud penalties to hold accountable perpetrators of mass atrocities. Together, these proposals would also prevent the United States from serving as a safe haven for human rights abusers.

Many of these proposals could be implemented through the passage of a criminal law technical amendments act; others would require a more elaborate drafting exercise. All would expand the ability of the United States to exercise leadership in atrocity prevention and response along a number of dimensions: Ensuring that the United States has a comprehensive and robust penal regime to address perpetrators in its midst; modeling what the responsible exercise of the range of jurisdictional bases should entail; taking U.S. treaty obligations seriously through conforming implementing legislation; and promoting the complementarity norm by enabling U.S. courts to prosecute the core international crimes. Putting these authorities in place now will ensure that the United States has the tools it needs to address the next cohort of persecutors who attempt to find safe haven in the United States after committing international crimes in today's conflicts and repressive states.

Mr. Chairman, I request that this written testimony be made part of the record.

II. Repairing Title 18's Blind Spots

A quick survey of Title 18 reveals three obvious gaps in the federal penal code: The United States lacks a statute penalizing crimes against humanity, the war crimes statute has only a limited jurisdictional reach and does not conform to U.S. obligations under the 1949 Geneva Conventions, and the list of chargeable forms of responsibility excludes express mention of superior responsibility. Furthermore, the United States could offer enhanced protections to U.S. persons abroad—including citizens and domiciliaries—by making better use of the principle of passive personality jurisdiction. In terms of other discrete "fixes," recent jurisprudence has invalidated the United States' statute criminalizing female genital mutilation, vitiating the deterrent value of the law and leaving thousands of girls in our communities at risk of being subject to the procedure.

Finally, the genocide statute does not apply to events that predate its passage, which has hindered the United States' ability to prosecute *génocidaires* in our midst.

These gaps and prosecutorial limitations significantly hinder the reach of the United States' prosecutorial authorities and have led to instances of impunity, and incomplete accountability, where perpetrators found here cannot be prosecuted for their substantive crimes and must be dealt with through immigration and other remedies—a distant second-best option when grave international crimes are at issue. I am hopeful that these proposals will find favor with the Commission and your colleagues and inspire them to strengthen the U.S. legal framework around atrocity crimes from all possible perspectives: criminal law, immigration law, and civil law.

A. Enact a Law Penalizing Crimes Against Humanity

U.S. federal authorities can prosecute war crimes,[1] genocide,[2] torture,[3] the recruitment and use of child soldiers,[4] a comprehensive array of terrorist acts,[5] piracy,[6] and many manifestations of human trafficking and modern forms of slavery.[7] They cannot, however, prosecute crimes against humanity—a central pillar of international criminal law since the World War II era and arguably one of the most grave crimes known to humankind.

Crimes against humanity are a constellation of acts made criminal under international law when they are committed as part of a widespread or systematic attack against a civilian population. The statutes of the modern war crimes tribunals, which the United States was instrumental in establishing, almost all contain provisions allowing for the prosecution of crimes against humanity.[8] The majority of our allies have also enacted crimes against humanity statutes,[9] often—but not always—as a result of ratifying the Rome Statute establishing the International Criminal Court.[10]

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[1] 18 U.S.C. § 2441 (1996). The original War Crimes Act was amended by the Military Commission Act of 2006.
[2] The Genocide Convention Implementation Act of 1987 (the Proxmire Act), 18 U.S.C. §1091 (1988). Congress in 2007 passed the Genocide Accountability Act to expand jurisdiction to allow for the prosecution of any individual, regardless of nationality, who commits genocide anywhere in the world so long as the person is found within the United States.
[3] 18 U.S.C. § 2340 (1996). *See, e.g., United States v. Belfast* 611 F.3d 783 (11th Cir 2010).
[4] 18 U.S.C. § 2442 (2008).
[5] 18 U.S.C. § 2332 *et seq.*
[6] 18 U.S.C. § 1651 (1948).
[7] 18 U.S.C. § 1581 *et seq.*
[8] Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, art. 6(c), Aug. 8 1945, 59 Stat. 1546, 82 U.N.T.S. 279; Charter for the International Military Tribunal of the Far East, art. 5(c), Jan. 19, 1946, T.I.A.S. 1589, 4 Bevans 20 (1968); Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 5, S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993); Statute of the International Criminal Tribunal for Rwanda, art. 3, S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994); Statute of the Special Court for Sierra Leone, art. 2, Jan. 16, 2002, 2178 U.N.T.S. 145; Statute of the Iraqi High Tribunal, art. 12, Oct. 18, 2005. The one exception is the Special Tribunal for Lebanon, which focuses exclusively on terrorism crimes under Lebanese law. Statute of the Special Tribunal for Lebanon, appended to S.C. Res. 1757, U.N. Doc. S/RES/1757 (May 30, 2007).
[9] *See* AMNESTY INTERNATIONAL, UNIVERSAL JURISDICTION: A PRELIMINARY SURVEY OF LEGISLATION AROUND THE WORLD—2012 UPDATE (Oct. 2012), available at https://www.amnesty.org/download/Documents/24000/ior530192012en.pdf; Beth Van Schaack & Zarko Perovic, *The Prevalence of "Present-In" Jurisdiction*, PROC. ANNUAL MEETING AMERICAN SOCIETY INT'L L. 237 (April 2013).
[10] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter *Rome Statute*].

A draft crimes against humanity bill has been produced, but it never emerged from committee. In 2008, Senator Dick Durbin (D-IL) held the first congressional hearing devoted to crimes against humanity (entitled "From Nuremberg to Darfur: Accountability for Crimes Against Humanity"), which identified the crimes against humanity "loophole" in U.S. law.[11] Accordingly, with Senators Patrick Leahy (D-VT) and Russ Feingold (D-WI) as cosponsors, Senator Durbin introduced legislation in 2009 (S.1346) that would have allowed for the exercise of jurisdiction over many of the crimes against humanity recognized by international criminal law.[12] In introducing his draft legislation, Durbin invoked the role played by the United States in the first prosecutions for crimes against humanity following World War II.[13]

Rather than define crimes against humanity identically to the way in which it is defined in most international court statutes, Senator Durbin's bill cleverly incorporated existing federal crimes contained within Title 18 (e.g., rape, murder, enslavement, and torture) alongside some predicate acts without ready analogs within Title 18. To these were added other federal crimes, such as hostage taking/kidnapping and trafficking, which are not generally included in international formulations of crimes against humanity but which find affinity with the more standard constitutive acts. The draft statute granted jurisdiction over these crimes when certain conditions were met that distinguish crimes against humanity from ordinary crimes under international law, namely: the knowing commission of such acts within the context of a widespread or systematic attack against a civilian population. Although this borrowing approach differed from the way other nations have incorporated crimes against humanity within their penal codes, which tend to mirror the Rome Statute's formulation, it had the benefit of relying on extant U.S. law and not hewing too closely to the definition within a treaty that the United States has not ratified.

The bill did not get out of committee. The *coup de grâce* from the perspective of many of its prior supporters, including members of Department of Justice who treasure their prosecutorial discretion, was that a revised version of the bill gave the Secretary of State, the Secretary of Defense, and the Director of National Intelligence what amounted to a veto on crimes against humanity charges going forward.[14] The bill died after being reported out of the Judiciary Committee in 2010, having lost the support from the human rights community.

This persistent gap in U.S. law is significant because it means that an individual who commits a peacetime massacre of civilians abroad and then makes his or her way to United States could not be criminally prosecuted for that act. This horrific crime would not constitute a war crime because it is not connected with an armed conflict (a necessary predicate for a war crimes prosecution). In any case, it could not be prosecuted under the United States' war crimes statute

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[11] "From Nuremberg to Darfur: Accountability for Crimes Against Humanity," Hearing before the Subcommittee on Human Rights and the law of the Committee on the Judiciary, U.S. Senate Hearing 110-786 (June 24, 2008), available at www.gpo.gov/fdsys/pkg/CHRG-110shrg48219/html/CHRG-110shrg48219.htm.

[12] *See* S.1346 (111th): Crimes Against Humanity Act of 2010, available at https://www.govtrack.us/congress/bills/111/s1346.

[13] Press Release: "Durbin, Leahy, and Feingold Introduce Legislation Making Crimes Against Humanity a Violation of US Law" (June 24, 2009), available at www.durbin.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=f46c9bff-261a-4b41-a14c-383379c05364.

[14] *See* S.1346, *supra*, § 519(1)(B) (allowing suit only if "the Secretary of State, the Secretary of Defense, and the Director of National Intelligence do not object to the prosecution.").

unless the perpetrator or victim was a U.S. citizen (more on this below). Likewise, this atrocity could not be prosecuted as an act of genocide, unless it could be proven that the victims constituted members of a protected group and that the perpetrator acted with the specific intent to destroy that group, a high evidentiary bar. When it comes to cases of enforced disappearances—where it is often impossible to prove that the victim has been tortured or summarily executed—ethnic cleansing absent genocidal intent, or religious persecution, the U.S. is similarly hamstrung from a prosecutorial perspective. Under extant law, federal authorities are thus reduced to utilizing immigration law to prosecute for fraud individuals who commit such grave crimes (assuming it can be proven that the perpetrator undeservedly received some type of immigration benefit) or to simply deporting them back to the country where they committed their depredations, potentially entrenching further insecurity and instability there.

If the United States had a crimes against humanity statute, the perpetrators of these types of atrocities could be prosecuted here in the United States so long as U.S. law enforcement could get physical custody of them. In addition, a crimes against humanity statute would have the benefit of applying to non-state actors—such as members of Al Qaida, the Lord's Resistance Army (LRA), and the Islamic State of Iraq and the Levant (ISIL)—in contradistinction to the crime of torture, which under U.S. law requires the perpetrator to be acting under color of law.[15] If Congress were to draft such a statute, it should include an expansive array of jurisdictional grounds to ensure that it is not a dead letter upon passage.

B. Expand the Jurisdictional Bases to Prosecute War Crimes to Include "Present In" Jurisdiction in Keeping with Other International Crimes Statutes

Turning to questions of jurisdiction, most of the United States' existing international crimes statutes authorize the exercise of jurisdiction over a perpetrator who is found or present in the United States.[16] Such "present-in" jurisdiction exists over a range of terrorism crimes (e.g., the provision of material support to terrorism, receiving terrorist training, and engaging in terrorist bombings),[17] genocide,[18] the recruitment and use of child soldiers,[19] torture,[20] various forms of trafficking[21] and other modern forms of slavery,[22] and the ancient crime of piracy.[23]

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[15] *See* 18 U.S.C. § 2340(1) (requiring proof that the defendant acted under color of law).
[16] It is well established that the individual may be forcibly brought within the United States in order to satisfy this jurisdictional requirement. *See United States v Yunis* 924 F.2d 1086 (D.C. Cir. 1991).
[17] *See e.g.*, 18 U.S.C. § 2332b (1996); 18 U.S.C. § 2339A-D (1994). Many of the cases brought under these authorities, such as those involving members of Al-Shabaab, have little in the way of a direct nexus to the United States other than the fact that terrorism constitutes a global threat. *See United States v Ahmed*, 2011 U.S. Dist. LEXIS 123182, 4-5 (S.D.N.Y. 2011) ("Both the material support and the military-type training statutes explicitly grant extraterritorial jurisdiction, as follows: extraterritorial jurisdiction may be exercised when the 'offender is brought into . . . the United States'").
[18] 18 U.S.C. § 1091(e) ("There is jurisdiction over the offenses … if … regardless of where the offense is committed, the alleged offender is … (D) present in the United States.").
[19] 18 U.S.C. § 2442(c) (allowing for jurisdiction if "the alleged offender is present in the United States, irrespective of the nationality of the alleged offender").
[20] 18 U.S.C. § 2340A(b) (allowing for jurisdiction if "the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender").
[21] *See, e.g.*, 18 U.S.C. § 1596 (2008).
[22] *See, e.g.*, 18 U.S.C. § 1581 (1948).
[23] 18 U.S.C. § 1651 (1948).

In some instances, this expanded form of jurisdiction is in keeping with the provisions of an international treaty to which the United States is a party, such as the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.[24] In other instances, the United States has exceeded its treaty obligations. For example, the United States can assert present-in jurisdiction over genocide, although this is not mandated by the Convention on the Prevention and Prosecution of the Crime of Genocide.[25] This policy choice no doubt reflects the gravity of the crimes in question, the perceived utility of present-in jurisdiction, a permissive customary international law rule, and modern expectations that states should enact robust penal regimes for atrocity crimes.[26]

This suite of statutes stands in stark contrast to the U.S. War Crimes Act, which allows for the exercise of nationality jurisdiction only: the victim or perpetrator must be a U.S. national (as defined by the Immigration and Nationality Act of 1952 (INA)) or a member of the U.S. armed forces. When Congress was considering enacting the War Crimes Act in the mid-1990s, the Departments of Defense[27] and State[28] testified that Congress should adopt present-in jurisdiction in order to be in compliance with the 1949 Geneva Conventions.[29] This position was consistent with the United States' understanding at the time the treaties were opened for signature.[30] When

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[24] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 5-7, Dec. 10, 1984, 1465 U.N.T.S. 85. *See also* The Torture Victim Protection Act of 1991, Sen. Rep. No. 102- 249 (Nov. 26, 1991) ("according to the doctrine of universal jurisdiction, the courts of all nations have jurisdiction over 'offenses of universal interest.'") (citations removed).

[25] Convention on the Prevention and Punishment of the Crime of Genocide art. VII, Dec. 9, 1948, 78 U.N.T.S. 277.

[26] *See* RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 402 (AM. LAW INST. 2018) (noting that the United States has not asserted its penal jurisdiction to the full extent allowed by international law).

[27] Testimony of John H McNeill, Senior Deputy General Counsel, during the Hearing before the Subcommittee on Immigration and claims of the Committee on the Judiciary, House of Representatives, on H.R. 2587, War Crimes Act of 1995 (12 June 1996) [hereinafter Hearing on H.R. 2597]; Letter from General Counsel Judith Miller, War Crimes Act of 1996, House of Representatives, Committee on the Judiciary, Report to accompany H.R. 3680, Report 104-698 (24 July 1996), www.pegc.us/ LAW_ / hr.104- 698.pdf [hereinafter Report 104- 698]

[28] Hearing on H.R. 2597 (n 35) (testimony of Michael J. Matheson, Principal Deputy Legal Adviser); Report 104- 698 (n 35) (letter by Barbara Larkin, Acting Assistant Secretary, Legislative Affairs). See also Joint letter from John Bellinger and William Haynes to Jakob Kellenberger on Customary International Law Study (2007) 46 I.L.M. 514 (letter by State Legal Adviser and DOD General Council noting that 'Article 146 of the Fourth Geneva Convention requires all States Parties to extradite or prosecute an individual suspected of a grave breach, even when a State lacks a direct connection to the crime').

[29] *See, e.g.*, Convention (IV) Relative to the Protection of Civilian Persons in Time of War arts. 146-7, Aug. 12, 1949, 75 U.N.T.S. 287 (obliging states parties to codify the prohibition against grave breaches of the treaties and prosecute all offenders, regardless of nationality).

[30] Members of the U.S. delegation to the Geneva Conventions drafting conference representing the Departments of State and Justice wrote this in a contemporaneous article:

> In brief, by analogy to the law of piracy, this provision would impose upon even a neutral country the duty to hunt out and try, or permit the extradition of, persons accused of "grave breaches," regardless of their nationality or the nationality of their victims. The purpose of this provision is to deprive such persons of the sanctuary which they have heretofore found in certain neutral countries. In the case of the United States, whose regular courts generally exercise jurisdiction only over crimes committed within their territorial jurisdiction, legislation may be required to provide for the trial, or permissively to allow the extradition, of persons who are accused of having committed grave breaches in a conflict to which the United States was not a party.

the War Crimes Act was being drafted, however, the Department of Justice—reversing the views it held when the treaties were first drafted—resisted the inclusion of a more expansive jurisdictional framework on the ground that extraterritorial cases are difficult to prosecute.[31]

Extending present-in jurisdiction to war crimes would bring greater coherence to the U.S. penal code, and eliminate the current patchwork approach, while at the same time signaling a U.S. commitment to enable its courts to prosecute all atrocity crimes in equal measure. It would also be in keeping with the legal frameworks of our coalition partners.[32] Although the Geneva Conventions do not mandate the exercise of present-in jurisdiction over war crimes committed in non-international armed conflicts, any amendment to the War Crimes Act should apply the same jurisdictional regime to all war crimes, regardless of conflict classification. This would obviate the need for U.S. courts to engage in complex conflict classification exercises and recognize that today's conflicts increasingly involve non-state actors and transnational dimensions. Indeed, language in the form of a conforming amendment to the War Crimes Act could be included in a new crimes against humanity statute to ensure that the jurisdictional regimes are consistent with each other and across Title 18.

C. Empower U.S. Courts to Prosecute Offenders Under the Doctrine of Superior Responsibility

Turning to forms of criminal responsibility, under U.S. federal law, individuals may be prosecuted as principals and accomplices,[33] as accessories after-the-fact,[34] under theories of attempt,[35] and when they commit crimes as part of a conspiracy.[36] However, there is no superior responsibility statute that applies to federal crimes generally or to the suite of atrocity crimes in particular—an unfortunate accountability gap that makes it difficult to prosecute leaders who have a duty under law to supervise their subordinates and to punish infractions. Because the doctrine of superior responsibility already finds expression in other areas of U.S. law—including U.S. military, tort, and immigration law—devising an appropriate standard that could also apply to all the atrocity crimes within Title 18 should be a straightforward drafting exercise.

The clearest articulation of the doctrine in U.S. law appears in the Military Commissions Act of 2006, which governs the prosecution before military commission of certain enemy combatants, including those superiors whose subordinates commit offenses.[37] This definition

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R. T. Yingling and R. W. Ginnane, *The Geneva Conventions of 1949*, 46 AM. J. INT'L L. 393, 426 (1952).

[31] Department of Justice, *War Crimes Act of 1996 (P.L. 104-192)* (July 10, 2015), available at https://www.justice.gov/jmd/war-crimes-act-1996-pl-104-192 (compiling legislative history).

[32] *See* American University, Washington College of Law, War Crimes Research Office, *Universal Jurisdiction Project*, available at https://www.wcl.american.edu/impact/initiatives-programs/warcrimes/our-projects/universal-jurisdiction-project/ (cataloguing the war crimes statutes of U.N. member states).

[33] 18 U.S.C. § 2(a) (1948) ("Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.").

[34] 18 U.S.C. § 3 (1948).

[35] *See e.g.*, 18 U.S.C § 1113 (1948) (attempt to commit murder or manslaughter).

[36] 18 U.S.C. § 371.

[37] 10 U.S.C. § 950q (2006) ("Any person punishable under this chapter who . . . (3) is a superior commander who, with regard to acts punishable by this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof, is a principal."). The U.S. military commissions convened following World War II also prosecuted senior officials for command responsibility. *See, e.g.*, "The High Command Case," 10

could simply be incorporated by reference to apply to crimes against humanity and other atrocity crimes litigation. The federal courts have also adjudicated superior responsibility cases in the context of suits under the Alien Tort Statute and the Torture Victim Protection Act.[38] Under U.S. immigration law, alien superiors can be excluded or removed from the United States if they failed to prevent or punish crimes committed by their subordinates.[39] For example, the Immigration and Nationality Act considers as inadmissible any alien "who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in" an act of torture or any extrajudicial killing[40]—a formulation that has been interpreted to include superior responsibility.[41] The doctrine is also well established in international criminal law (and is prosecutable before all the international criminal tribunals),[42] international humanitarian law,[43] the Department of Defense's new LAW OF WAR MANUAL,[44] customary international law,[45] and foreign law, including the codes of our closest allies.[46] Including superior responsibility as a punishable form of

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TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, 3 (1951).

[38] *See e.g.*, *Chavez v Carranza*, 559 F.3d 486, 499 (6th Cir 2009); *Hilao v. Estate of Marcos*, 103 F.3d 767, 777 (9th Cir 1996); *Ford v Garcia*, 289 F.3d 1283, 1286, 1289-90 (11th Cir 2002). *See generally* Beth Van Schaack, *Command Responsibility: The Anatomy of Proof in* Romagoza v. Garcia, 36 U.C. DAVIS L. REV. 1213 (2003).

[39] *See, e.g.*, Presidential Proclamation 8697—Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses (Aug. 4, 2011) (suspending entry to "[a]ny alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence against any civilian population.").

[40] 8 U.S.C. § 1182(a)(3)(E)

[41] *See, e.g.*, *In re D- R-*, 25 I. & N. Dec. 445 (BIA 2011). In *D- R-*, the Board of Immigration Appeals ruled that a police officer of the Republic of Srpska was subject to removal because as a commander, "he knew, or, in light of the circumstances at the time, should have known, that subordinates had committed, were committing, or were about to commit unlawful acts," including extrajudicial killings. *Id.*

[42] *See, e.g.*, *Prosecutor v. Delalić*, Case No. IT-96-21-T, Judgement of the Int'l Crim. Trib. Former Yugo., Tr. Chamber (Nov. 16, 1998), aff'd in part and rev'd in part, Prosecutor v. *Delalić*, Judgement, App. Chamber (Feb. 20, 2001).

[43] Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts arts 86-87, June 9, 1977, 1125 U.N.T.S. 3. Although the United States has articulated several criticisms of this treaty (mostly concerned with the standard for granting combatant status to certain fighters), it has not taken issue with the treaty's formulation of superior responsibility. *See* Message from the President of the United States Transmitting Protocol II to the Senate (Jan. 29, 1987), www.loc.gov/rr/frd/Military_Law/pdf/protocol-II-100-2.pdf. Indeed, the U.S. Army Field Manual & Regulations incorporated a parallel formulation of superior responsibility.

[44] Department of Defense, *Law of War Manual*, § 18.23.3 (June 2015). This provision has a long pedigree in U.S. military field manuals. *See* DEPARTMENT OF THE ARMY, THE LAW OF LAND WARFARE, FM 27-10, § 501 (July 1956).

[45] In their monumental study of the customary international law governing armed conflicts, the International Committee of the Red Cross (ICRC) has identified the following customary rule:

> Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.

The International Committee of the Red Cross, *Customary International Humanitarian Law*, Rule 153, www.icrc.org/customary-ihl/eng/docs/v2_rul_rule153.

[46] The ICRC has collected international formulations of the doctrine as well as state practice; see www.icrc.org/customary-ihl/eng/docs/v2_rul_rule153.

responsibility would extend the reach of U.S. law to individuals who may not commit atrocities themselves but instead allow their subordinates to do so with impunity. It would ensure that the United States can prosecute superiors—and not just the rank and file—particularly given that the former are more likely to have the financial and other means to travel to the United States.

D. Better Protect U.S. Citizens and Residents Abroad by Expanding the Exercise of Passive Personality Jurisdiction

The "passive personality principle" permits the exercise of domestic jurisdiction when the victim is a national (or domiciliary) of the prosecuting state on the theory that states are entitled, if not expected, to protect their residents abroad.[47] The exercise of passive personality jurisdiction was historically more rare and more contested because it predicated penal jurisdiction on the fortuity of the victim's nationality.[48] Notwithstanding this initial resistance, the concept has become less controversial and more commonplace as states increasingly promulgate terrorism treaties containing the principle and adopt legislation aimed at protecting their nationals from acts of violence abroad.[49] The drafters of the Fourth RESTATEMENT OF FOREIGN RELATIONS LAW now confirm that "[i]nternational law recognizes a state's jurisdiction to prescribe law with respect to certain conduct outside its territory that harms its nationals" or even its domiciliaries.[50] Generally, it is not necessary to show that the victims have been targeted because of their place of habitual residence.[51]

Under U.S. law, the passive personality principle is a prominent feature of our suite of terrorism statutes[52] as well as the War Crimes Act of 1996.[53] Other international crimes statutes—notably torture and genocide—only allow for an indictment if the alleged perpetrator is found or present in the jurisdiction. This makes extradition difficult because U.S. courts lack jurisdiction if the alleged perpetrator is not present in the United States and yet they cannot secure the person's extradition without an indictment in hand. And, it is not enough to simply charge the person with another crime and then draft a superseding indictment. According to the international law doctrine of specialty, the receiving state can only prosecute an individual for the crime that served as the basis for the extradition.

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[47] INTERNATIONAL BAR ASSOCIATION, REPORT OF THE TASK FORCE ON EXTRATERRITORIAL JURISDICTION 147-148 (2009), *available at* http://tinyurl.com/taskforce-etj-pdf. *See, e.g.*, *United States v. Yunis*, 681 F.Supp. 896, 901 (D.D.C 1988) ("[the passive personality principle] recognizes that each state has a legitimate interest in protecting the safety of its citizens when they journey outside national boundaries"), aff'd 924 F.2d 1086 (D.C. Cir. 1991).

[48] The United States, for example, originally rejected the passive personality principle in the 1887 *Cutting's Case*, a successful diplomatic protest following Mexico's effort to prosecute a U.S. national for allegedly libeling a Mexican national in a U.S. publication. U.S. Dep't of State, 1887 For. Rel. 751 (1888), *reprinted in* 2 J.B. MOORE, INTERNATIONAL LAW DIGEST 232 (1906).

[49] *See, e.g.*, 18 U.S.C. § 2332 (criminalizing the killing of a U.S. national abroad). *See generally*, John G. McCarthy, *The Passive Personality Principle and Its Use in Combatting International Terrorism*, 13 FORDHAM INT'L L. J. 298 (1989).

[50] RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 411 (AM. LAW INST. 2018).

[51] *See United States v. Yunis*, 924 F.2d 1086, 1091 (D.C. Cir. 1991) (noting that the U.S. victims were not the intended target of the terrorist act).

[52] *See, e.g.*, 18 U.S.C. § 2332a (criminalizing the use of a weapon of mass destruction against a U.S. national abroad).

[53] 18 U.S.C. § 2441(b) (allowing for jurisdiction so long as "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").

Imagine a scenario in which a U.S. citizen or resident is tortured abroad outside of a situation of armed conflict (so the act would not constitute a war crime). The tragic death of journalist Jamal Khashoggi comes immediately to mind. The United States cannot exercise jurisdiction over these acts of torture unless an overseas perpetrator is found "present in" the United States. Theoretically, the United States could indict the presumed perpetrator for something else (although nothing comes to mind), secure their extradition on that crime, and then convince the sending state to waive specialty if U.S. authorities decide to add a torture count. These complications would all be eliminated if the torture statute were amended to allow for the exercise of passive personality jurisdiction when U.S. persons are subjected to torture overseas.[54] With a technical amendment, Congress could extend passive personality jurisdiction to all international crimes statutes as needed and thus better protect U.S. nationals and residents abroad.

E. Amend the Statute Penalizing Female Genital Mutilation to Satisfy the Commerce Clause

The first case to be brought under the new statute penalizing the commission of female genital mutilation (FGM) unfortunately resulted in a determination that the statute was unconstitutional.[55] Section 116(a) of Title 18 makes it a criminal offense to "knowingly circumcise[], excise[], or infibulate[] the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years."[56] A district court in Michigan ruled that the statute was not "necessary and proper" to implement a treaty ratified by the United States.[57] In defense of the legislation, the United States had cited the International Covenant on Civil and Political Rights (ICCPR), which contains a number of provisions aimed at protecting the physical integrity of persons within the United States from assault, but the court determined that the FGM statute was not "rationally related" to implementing those obligations.[58] The court also held that the statute exceeded Congress's powers under the Commerce Clause of the U.S. Constitution,[59] because there was insufficient evidence in the record that FGM was an economic activity or that it affected interstate commerce. Although several of the victims in that case had been taken across state lines in order to be subjected to FGM, the statute as written lacked a jurisdictional element allowing prosecution where the charged offense had a connection with, or effect on, interstate commerce.

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[54] *See* 18 U.S.C. § 3077(2) (defining "U.S. persons").
[55] *United States v. Jumana Nagarwala et al.*, 350 F. Supp.3d 613 (E.D. Mich. 2018).
[56] 18 U.S.C. § 116. The Transport for Female Genital Mutilation Act, P.L. 112-239 (Jan. 2, 2013), made it a crime to knowingly transport a girl outside of the United States for the purpose of committing FGM. *See* 18 U.S.C. § 116(d). Congress might also consider amending the *actus reus* of this crime to cover the whole range of ways that FGM can be committed, including through cauterization for example. Language could be added to the effect that it is also a crime to "otherwise cause bodily harm to the female genitalia for non-medical reasons."
[57] *Missouri v. Holland*, 252 U.S. 416 (1920).
[58] International Covenant on Civil and Political Rights arts.7, 9, Dec. 19, 1966, 999 U.N.T.S. 171. This argument might have been strengthened had the United States ratified the Convention on the Elimination of Discrimination Against Women (CEDAW), Mar. 1, 1980, 1249 U.N.T.S. 13, or the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.
[59] *See United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

The Department of Justice declined to appeal on the ground that it lacked a reasonable defense to these constitutional infirmities.[60] It has since proposed prudent and straightforward amendments that would require proof of a nexus between the conduct at issue (performing FGM on minors) and interstate commerce. These might include evidence that the defendant or victim traveled in, or used, a channel or instrumentality of interstate or foreign commerce in furtherance of FGM—including through communication, or payment—or that the act of FGM otherwise occurred in, or affected, interstate or foreign commerce.[61] Congress should quickly implement these amendments in order to better protect the thousands of girls and young women here in the United States who are at risk of being subjected to FGM.[62] Medical authorities estimate that half a million girls and women are affected by FGM, and it is crucial that the Department of Justice has the tools it needs to prosecute FGM practitioners who engage in or profit from the mutilation of children.[63]

F. Render the Genocide Statute Retroactive

The United States' genocide statute was originally enacted in 1988.[64] At the time, however, it only applied to U.S. nationals who committed genocide abroad or to aliens who committed genocide in the United States. With passage of the Genocide Accountability Act of 2007 and the Human Rights Enforcement Act of 2009, the genocide statute was amended to include present-in jurisdiction so that U.S. courts can now adjudge any alien accused of committing genocide anywhere in the world provided that alien is subsequently brought into, or found, in the United States.[65] These amendments closed a vast jurisdictional gap that created a safe haven for alleged alien perpetrators of genocide who managed to enter U.S. territory. As a result of this prior loophole, individuals responsible for the 1994 Rwandan genocide—which resulted in the murder of upwards of 700,000 Tutsi citizens, in many cases with rudimentary farm implements—who are later found here in the United States cannot be prosecuted for genocide but only for any immigration violations they committed in the process of coming here.[66]

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[60] The House of Representatives sought to appeal this decision. *See United States v. Nagarwala, et al.*, Motion of the U.S. House of Representatives to Intervene (Apr. 30, 2019), available at https://www.speaker.gov/wp-content/uploads/2019/05/Nagarwala-Motion-to-Intervene-As-Filed.pdf.

[61] The Department of Justice's full proposal with recommended statutory language is available here: https://www.justice.gov/oip/foia-library/osg-530d-letters/4_10_2019/download.

[62] It remains important to have a federal statute even though about three-quarters of states have enacted anti-FGM laws. Equality Now, *US Laws Against FGM—State-by-State*, https://www.equalitynow.org/fgm_in_the_us_learn_more.

[63] Howard Goldberg, MD, *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk*, 131 PUBLIC HEALTH REPORTS (March-April 2016), https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Special%20Situations/fgmutilation.pdf; Arefa Cassoobhoy, MD, MPH; Deborah L. Ottenheimer, MD & Ranit Mishori, MD, MHS, *Under the Radar: Female Genital Mutilation in the United States: What Clinicians Should Know*, MEDSCAPE (March 6, 2019), https://www.medscape.com/viewarticle/909508.

[64] Genocide Convention Implementation Act of 1987 (the Proxmire Act), P.L. 100-606 (1988).

[65] The amendments originally allowed for the exercise of jurisdiction over individuals brought into, or found within, the United States. Genocide Accountability Act of 2007, P.L. 110-151 (2007). This was later amended to the simpler "present in" formulation. Human Rights Enforcement Act of 2009, P.L. 111-122 (2009).

[66] For example, the United States had to prosecute Rwandan sisters Prudence Kantengwa and Beatrice Munyenyezi, the latter of whom was accused of manning a roadblock that identified Tutsi individuals to be killed, for immigration fraud, perjury, and obstruction of justice because the genocide in Rwanda predated the 2007 amendment to the

Because the crime of genocide was already on the books in 1988, Congress could render the new jurisdictional provisions retroactive without running afoul of the U.S. Constitution's *ex post facto* clause.[67] Amending the genocide statute would be consistent with the ICCPR, which at Article 15 recognizes that there are no *ex post facto* concerns when a state enacts an international crimes statute that applies to prior conduct so long as the conduct in question was already criminal under international law.[68] This too is a discrete fix that could easily be effectuated through technical amendments.

III. Tighten U.S. Immigration Law to Bar All Human Rights Abusers

A. Enact a Comprehensive Persecutor Bar

In addition to these substantive criminal law statutes, Congress has enacted a range of immigration statutes aimed at the perpetrators of atrocity crimes. Although there are legal barriers to entry into the United States for many such individuals, these filters are incomplete and imperfect. Indeed, in 2011, officials from the Department of Homeland Security (DHS) testified before this Commission that there were almost 2,000 perpetrators in the United States.[69]

For example, the United States can bar the entry of individuals who participated in Nazi persecution, acts of genocide, or the commission of any act of torture or extrajudicial killing.[70] The latter conduct renders individuals inadmissible and removable only if the person was acting under the direction of, or in association with, a foreign government. In addition, there is a strong bar for aliens who have engaged in terrorist activities, broadly defined.[71]

However, there is no general persecutor bar that would apply to other human rights abuses—including war crimes, crimes against humanity, or the persecution of others on account

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genocide statute extending present-in jurisdiction over the crime. *See* Michele McPhee, *The Monster Next Door*, BOSTON (March 24, 2015), https://www.bostonmagazine.com/news/2015/03/24/rwandan-genocide/.

[67] U.S. Const., Art. 1, § 9. *See Republic of Austria v. Altmann*, 541 U.S. 677 (2004).

[68] ICCPR, *supra*, at art. 15. According to this provision:

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. … Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

[69] Statement of John P. Woods, Deputy Assistant Director, National Security Investigations Division, Homeland Security Investigations, U.S. Immigration and Customs Enforcement, Before the House Committee on Foreign Affairs, Tom Lantos Human Rights Commission, *No Safe Haven: Law Enforcement Operations Against Human Rights Violators in the US* (Oct. 12, 2011), available at https://humanrightscommission.house.gov/events/hearings/no-safe-haven-law-enforcement-operations-against-foreign-human-rights-violators-us. *See also* Annie Hylton, *How the U.S. Became a Haven for War Criminals*, NEW REPUBLIC, Apr. 29, 2019, https://newrepublic.com/article/153416/us-became-haven-war-criminals.

[70] 8 U.S.C. 1182(a)(3)(E).

[71] 8 U.S.C. 1182(a)(3)(B).

of race, religion, nationality, membership in a particular social group, or political opinion.[72] Nor are individuals who commit certain human rights abuses as part of an armed group exercising *de facto* control or authority inadmissible or deportable (in contradistinction to state actors). Furthermore, there are no grounds to render inadmissible or deportable individuals who commit, ordered, assist, or otherwise participate in FGM. Without a specific ground for inadmissibility or removability, those who have committed these deplorable acts remain admissible and can even adjust their status, obtain visas to visit this great country, and otherwise seek to remain in the United States. Indeed, and paradoxically, an individual can be rejected for refugee status if he or she is a participant in persecution and yet qualify for an ordinary immigrant visa.[73]

Accordingly, Congress could expand these provisions within Title 8 of the U.S. Code to strengthen the tools' available under immigration law. Such provisions could be rendered retroactive so they would apply to offenses committed before the date of the enactment of any amendment. Removing references to state action or color of law of any foreign nation here and elsewhere in the U.S. Code's human rights provisions would ensure that the United States' atrocity crimes legislation reflects the rise of extremist non-state actors who commit human rights abuses and that government actors are not held to higher standards than terrorist or other armed groups.[74]

B. Extend or Eliminate the Statute of Limitations of Immigration Offences

Collectively, U.S. immigration authorities allow the U.S. government to denaturalize, deport, remove, or pursue related remedies against individuals who committed fraud during an immigration proceeding or process, including while completing visa forms to come to the United States.[75] The default statute of limitations for non-capital federal crimes is five years, and ten years for some types of immigration fraud.[76] Extending this statute of limitations would better enable U.S. authorities to prosecute these acts given that perpetrators may live undercover for years before being recognized and brought to the attention of law enforcement. This short fuse hinders the utility of these statutes in the atrocity crimes context, an impediment to accountability that can easily be rectified.

In addition, since many of the international crimes at issue do not have a statute of limitation, it could be argued that such limitations could be removed for related acts of immigration fraud. Thus, the statute of limitations could be eliminated for identified offences that involve the

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[72] In the 1970s, a broad persecutor bar was under consideration but a competing bill was enacted that applies only to individuals associated with Nazi Germany. *See* Legislative History, Immigration and Nationality Act—Nazi Germany, P.L. 95-549, 124 CONG. RECORD 4700 (1978).

[73] 8 U.S.C. § 1101(42) ("The term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.").

[74] The Torture Victim Protection Act, for example, also requires proof that the defendant "acted under actual or apparent authority, or color of law, of any foreign nation." 28 U.S.C. § 1350 note (2)(a). Instead, such provisions could reach conduct "whether committed under color or law or in furtherance of a plan or policy of an armed group" or some such.

[75] *See* 18 U.S.C. § 1425 (1948) (Procurement of Citizenship or Naturalization Unlawfully); 18 U.S.C. § 1546 (1948) (Fraud and Misuse of Visas, Permits, and Other Documents); 18 U.S.C. § 1001 (1948) (false statements); and 18 U.S.C. § 1621 (1948) (perjury). For a fuller list of such statutes, see www.justice.gov/criminal/hrsp/statutes/immigration.html.

[76] *See* 18 U.S.C. § 3282(a) (2006) (default five-year statute of limitations for non-capital offenses); 18 U.S.C. § 3291 (1994) (ten-year limitation for various enumerated crimes involving nationality, citizenship, and passports).

concealment or misrepresentation of human rights violations, including terrorism, trafficking, torture, genocide, war crimes, the use of child soldiers, and crimes against humanity.

C. Focus on Criminal Charges for Substantive Offenses Where Possible

The United States invokes these immigration fraud statutes when it is impossible to prosecute a person for the underlying substantive crime due to a deficiency in substantive law (e.g., if the conduct in question involves a mass killing that is not genocide or does not involve torture), some jurisdictional bar (such as the lack of present-in jurisdiction over the offense), a constitutional infirmity (such as the prohibition against *ex post facto* prosecutions), evidentiary deficits, or other impediments. Indeed, DHS has catalogued dozens of cases of human rights violators being dealt with through immigration and related remedies for lack of more robust penal options.

These immigration remedies offer an expedient solution to the presence of a perpetrator in our midst by preventing the United States from becoming a safe haven for human rights abusers. However, such remedies are unsatisfying when the underlying criminal conduct rises to the level of genocide, war crimes, crimes against humanity, or other forms of persecution. Administrative proceedings, and even criminal convictions for immigration fraud, do not carry the stigma of the substantive penal law or allow for the imposition of penalties commensurate with the underlying criminal conduct. Moreover, the resort to such remedies may result in merely returning a perpetrator to a national system that lacks the legal framework, juridical capacity, or political will to prosecute for the substantive crime or where the suspect's reintroduction could exert a destabilizing effect or result in the intimidation or retraumatization of victims. Expanding the reach of our atrocity crimes statutes will help reduce these instances of impunity (or imperfect accountability) for the next wave of perpetrators who manage to make their way to the United States.

IV. Enhance the Ability of Victims to Advance Civil Claims Against Perpetrators of Atrocity Crimes

Although this Commission is primarily concerned with enhancing the U.S. government's capacities to pursue accountability for perpetrators of grave human rights abuses, there are some discrete amendments to the U.S. Code that would augment the ability of victims of atrocity crimes to seek justice in U.S. courts by way of civil remedies.

A. Add Additional Causes of Action to the Torture Victim Protection Act and Remove the State Action Nexus

Congress has encouraged the advancement of civil claims for a whole range of terrorism crimes[77] as well as for human trafficking and other modern forms of slavery.[78] By contrast, there are more limited grounds on which victims of other human rights violations can bring suit. The Torture Victim Protection Act (TVPA) allows for the assertion of federal jurisdiction over acts of

[77] 18 U.S.C. § 2333 (providing for civil remedies for acts of international terrorism).
[78] 18 U.S.C. § 1595 (providing for civil remedies for all acts of peonage, slavery, and trafficking in persons criminalized within Chapter 77 of Title 18).

torture and extrajudicial killing and only when the perpetrator acts under color of law of a foreign nation.[79]

Congress could expand the reach of the TVPA by allowing civil parties to assert claims for war crimes, as defined in U.S. law,[80] and crimes against humanity. Furthermore, Congress could remove the TVPA's foreign color-of-law requirement, which would enable civil parties to bring suit against non-state actors—such as members of Al Qaida, ISIL, and the LRA—who habitually torture victims in their custody or control. In this regard, the statute criminalizing the use, recruitment, enlistment, or conscription of child soldiers offers a useful model as it applies to any militia, whether or not it is state-sponsored.[81]

B. Render the Alien Tort Statute Expressly Extraterritorial

In *Kiobel v. Royal Dutch Petroleum Co.*,[82] the U.S. Supreme Court determined that civil parties must overcome the presumption against extraterritoriality if they seek to hold perpetrators liable for torts in violation of the law of nations under the Alien Tort Statute (ATS).[83] Congress could effectively overturn this ruling and render the ATS expressly extraterritorial so that it is better harmonized with the TVPA. This would recognize the fact that when courts hear suits under the ATS, they are not projecting U.S. national law to conduct that occurred abroad; rather, they are doing their part to enforce international law by applying it to individuals who fall within the United States' personal jurisdiction. As the Supreme Court noted in *United States v. Smith*—which involved the crime of piracy, the first offense to be subject to universal jurisdiction under international law—the common law:

> recognizes and punishes piracy as an offence not against its own municipal code, but as an offence against the law of nations (which is part of the common law), as an offence against the universal law of society, a pirate being deemed an enemy of the human race.[84]

By the Supreme Court's reasoning in *Smith*, Congress could restore the ability of the victims of other enemies of the human race to seek civil redress in U.S. courts by expressly affirming that the ATS applies extraterritorially.

V. Retain and Expand Inter-Agency Institutional Capabilities

A. Work with the Department of Justice to Enable More Prosecutions for International Crimes

As discussed above, there are a number of discrete legislative amendments and enactments that could enhance the United States' ability to hold perpetrators accountable for human rights violations and abuses. That said, there are existing authorities that are underutilized. To date, the

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[79] 13 U.S.C. § 1350 note.
[80] 18 U.S.C. § 2441. This could include claims by former child soldiers. *See* 18 U.S.C. § 2442.
[81] 18 U.S.C. § 2442(d)(2) ("The term "armed force or group" means any army, militia, or other military organization, whether or not it is state-sponsored.").
[82] *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).
[83] 28 U.S.C. § 1350.
[84] *United States v. Smith*, 18 U.S. 153, 161 (1820).

United States has brought only two indictments under the federal torture statute: one case went successfully to trial and produced an historic verdict;[85] the other resulted in a favorable extradition to the *locus delicti*.[86] There have been no other cases brought under this or other human rights criminal statutes, notwithstanding evidence of the presence of human rights abusers here in the United States, including U.S. citizens.[87] By contrast, there are dozens of cases brought under the United States' terrorism and trafficking statutes, even though these cases present many of the same challenges as human rights litigation, including the need to marshal overseas witnesses and evidence.

Members of Congress should seek to understand why the imperative statutory authorities they have created have been rendered a dead letter. This could involve working with the Department of Justice to determine where the obstacles to bringing such charges are and how Congress might assist in overcoming these impediments so that these statutes are fully utilized. Oversight options available to Congress include holding more expansive hearings like this one in which Department of Justice personnel can speak frankly about the challenges of these cases; convening a dedicated commission to study prior efforts to invoke these statutes and why charges were ultimately not brought; or asking the Department of Justice to report regularly on its efforts to activate existing human rights authorities.

In addition, Congress could identify ways to encourage human rights charges to be added to terrorism cases. There is a tendency to think of human rights and counter-terrorism legislation as occupying siloed domains. The depredations of extremist groups such as ISIL prove this to be a false dichotomy. So, for example, Um Sayyaf—the wife of high-ranking ISIL leader—has been charged with participating in a conspiracy to provide material support to a designated foreign terrorist organization.[88] Inexplicably, she has not been charged with war crimes,[89] even though she played a part in the rape of U.S. aid worker Kayla Mueller, which could be charged as a war crime under the still-dormant War Crimes Act,[90] as discussed in prior hearings before this Commission.[91]

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[85] *United States v. Charles Emmanuel*, 2007 U.S. Dist. LEXIS 48510 (S.D. Fl. 2007) (upholding the constitutionality of the federal torture statute). "Chuckie" Taylor—the son of former Liberian President Charles Taylor (himself serving what amounts to a life sentence)—was sentenced to 97 years' imprisonment. Carmen Gentile, *Son of Ex-President of Liberia Gets 97 Years*, N.Y. TIMES (Jan. 9, 2009).

[86] The United States indicted Bosnian national Sulejman Mujagic for torture; it later extradited him to Bosnia-Herzegovina to stand trial for a wider array of war crimes than could be prosecuted here. *See* Department of Justice, *Bosnian National Extradited to Stand Trial for Murder and Torture* (June 3, 2013), www.justice.gov/opa/pr/bosnian-national-extradited-stand-trial-murder-and-torture.

[87] Beth Van Schaack, ***BREAKING:*** *Sri Lankan Presidential Hopeful Sued in Federal Court for Human Rights Violations*, JUST SECURITY (Apr. 8, 2019), https://www.justsecurity.org/63564/breaking-sri-lankan-presidential-hopeful-sued-in-federal-court-for-human-rights-violations/.

[88] 18 U.S.C. § 2339B.

[89] *United States v. Nisreen Asssad Ibrahim Bahar (a/k/a "Um Sayyaf")*, Case No. 1:16-mj-63, Affidavit in Support of Criminal Complaint and Arrest Warrant (Feb. 8, 2016), available at https://www.justsecurity.org/wp-content/uploads/2016/02/Umm-Sayyaf-Criminal-Complaint-Affidavit.pdf.

[90] *See* 18 U.S.C. § 2441(d)(1) (prohibiting the commission of war crimes against U.S. citizens in a non-international armed conflict).

[91] *See* "Seeking Justice for Atrocities: How the International Criminal Court Could Advance Accountability in Iraq and Syria," Tom Lantos Human Rights Commission, Feb. 10, 2016, available at https://humanrightscommission.house.gov/events/hearings/seeking-justice-atrocities-how-international-criminal-court-could-advance.

If the regrettable rise of ISIL has taught us anything, it is that terrorism and human rights violations go hand-in-hand, a reality that should be reflected in any criminal charges brought under U.S. law. And yet, our investigative and prosecutorial teams are often structured in such a way that does not encourage this sort of cross-over investigation and indictment. As a result, the human rights dimensions of acts of terrorism remain invisible in domestic prosecutions.

B. Preserve the Federal Bureau of Investigations' Specialized War Crimes Unit

Finally, Congress should endeavor to preserve the Federal Bureau of Investigations' specialized war crimes unit in the face of proposals to merge it into the Department of Justice's Civil Rights Division. The FBI's International Human Rights Unit takes the lead on investigating individuals within the United States who have been accused of committing international crimes, including war crimes, torture, genocide, female genital mutilation, and the recruitment of child soldiers. It also investigates international crimes committed against or by U.S. citizens abroad and enforces immigration statutes that can be invoked against abusers who cannot be prosecuted for their underlying crimes for whatever reason. It is an essential part of an inter-agency Human Rights Violators and War Crimes Center established by DHS.

The Civil Rights Division's core mandate is dedicated to enforcing domestic civil rights authorities on behalf of vulnerable individuals and groups within the United States. It has little experience with international investigations, trying to understand complex foreign conflict situations, the execution of requests for mutual legal assistance, or the unique elements and evidentiary bases of international crimes. Removing or dispersing this concentrated war crimes expertise within the Bureau will undermine operations in the field when it comes to this most specialized of cases. Experts within the FBI's International Human Rights Unit, which include historians with expertise in global conflict situations, work up the cases and then, after handing them off, continue to provide support to investigators and prosecutors in the field, helping to link them with foreign counterparts, enable witness interviews, and connect to additional lead and background sources. New investigations will inevitably suffer absent this dedicated team of war crimes investigators in the Bureau, just as perpetrators operating in contemporary conflicts in places like Syria, Yemen, and Myanmar start seeking safe haven abroad.

VI. Conclusion

These legislative proposals would remedy longstanding gaps in U.S. law, protect against impunity, and prevent the immediate return of a perpetrator to the *locus delicti*. Many of the human rights statutes that are now found in the U.S. Code enjoyed strong bipartisan support and were, in fact, enacted during Republican administrations. I am hopeful that this Congress can follow suit.

* * *

Mr. McGOVERN. Well, thank you. Thank you both. And let me begin by saying I appreciate your dedication to these issues over the years and the work that you have done. And as I said, before I think this is incredibly important. If we are talking about preventing mass atrocities from occurring, I mean, we need to make sure that it is clear that victims have rights, and victims can get justice. And, you know, you mentioned El Salvador, which is very near and dear to my heart, because I spent a great deal of my life in the 1980s traveling back and forth on various cases, the Jesuit murders and other human rights abuses. But I always -- and, you know, you mentioned El Mozote where over 1,000, mostly children and women were massacred, and at the time the United States government denied that it happened. It wasn't until after the war and the forensics team went in and began to do an excavation that they found all these bodies covered up in a shallow grave.

And that case is particularly -- it sticks in my mind because the unit, the battalion, that carried out the massacre was created by the United States of America. And it is hard for me to believe that we were totally in the dark about what was going on at the time. I mean, we had military advisors the area at the time.

And yet, the amnesty law in El Salvador has been repealed and they are trying to pursue a case against the perpetrators to the El Mozote massacre. And I believe that the United States government still has information in our intelligence agencies, and the Department of Defense that has not been shared, detailed information about who was there. And all the reporting that went back and forth. I mean, that would be a good signal, I think. We are trying to get some language into the appropriations bills to instruct our intelligence agencies where documents haven't been declassified to be able to provide that to the people who are prosecuting that case. And it is really important because you can't get justice in that case where a 1,000 people were massacred, there is no way you are going to get justice in individual cases. So I thank you for raising that.

And I also think -- and this is why these issues are important to me -- in the case of El Salvador, we were allied with the government and the military. I think we have a special obligation now to get it right and you mentioned General Vides Casanova who was involved in the murder of the four American church women in El Salvador. And yet he seemingly had no trouble coming to the United States, you know, and getting permanent residency status. I mean, he -- we had people write controversial poetry that are denied access to the United States. This was a guy who at a minimum was involved in the coverup of the murder of four American church women. And there he is in the United States. Now luckily, that case had an ending where he has been sent back, but can you just share with us your experience and views on the U.S. government's use of extradition in relationship to accountability for grave human rights abuses? And how important is it to address the problem of international doctrine of specialty?

Ms. VAN SCHAACK. Yeah. So I think in general the preference is always that the individuals prosecuted most closely to the events in question. I mean, that is their country's history, right? They should take the lead on that. So

if they have the political will and the legal framework to do that, I think that is often preferable, that we use extradition if someone is here.

That said, if someone has lived here for a long time, their victims are also here, there may be a reason that we would want to exercise our criminal jurisdiction over that individual, assuming we have the authorities to do so, and we have gaps in them as we have discussed today. So it is always a careful balance I think as to where the most appropriate place is.

I think where we get into trouble is where we extradite someone and it is a sham proceeding in their state of origin. And that we I think want to avoid. We have to see that there is actually a genuine commitment to prosecute that individual.

Mr. McGOVERN. So both of you offered a number of recommendations.

Ms. VAN SCHAACK. To keep you guys busy.

Mr. McGOVERN. And that is what part of this hearing is about is we want to be able to get these recommendations and we want to be able to move them forward if we can. But how do you prioritize the menu of reforms that you have proposed here today? What is the top two, the top three things that we ought to do first? Because there are a lot of things that you recommended.

Mr. DIXON. So the top two or three things for the Center for Justice and Accountability, one, because we represent survivors and victims, and the only avenue that they have when perpetrators are found here in the United States is often using civil law, and that is the law that we are able to use, amending the Torture Victim Protection Act so that it includes other atrocity crimes would really assist. Now, we -- the case that I mentioned earlier of our client Farhan Warfaa who was tortured -- we were able to get the jury to find the defendant liable for the torture. But it prevented us from really painting a full picture of crimes against humanity that took place under the Barre regime. And that is a story that victims and survivors want heard and told. They want the breadth of what happened in their country told.

So the amending Torture Victim Protection Act would be number one for us. But I think for the Department of Justice, they really need all tools in the toolbox. So actually passing a crimes against humanity bill, which the United States has supported since Nuremberg, and all but one of our allies in NATO has a crimes against humanity statute on their books -- it is something that we with need to do. And it is something that actually protects members of the United States should another country want to prosecute a U.S. citizen. The fact that we have a similar law on the books here allows us to say that that is something that we would want to take care of and prosecute.

So those would be my top two.

Ms. VAN SCHAACK. I would tend to agree and I would also say some of these other bits and pieces we talked about could, I imagine, could be packaged into kind of a criminal law technical amendments act.

So I mean, the crimes against humanity act is going to be a heavy lift where I don't think either one of us is naive about that. But some of these other issues about extending the statute of limitations, maybe having the jurisdictional

provisions of the genocide act be retroactive, having a persecutor bar. Maybe those are not so much of a heavy lift and so that I would also recommend thinking about how to bundle those together in a piece of legislation that might move.

Mr. McGOVERN. And I appreciate the fact that you both drew attention to the crucial role played by nongovernmental organizations in pursuing accountability. What would be your top recommendation to sustain and strengthen nongovernmental partners in countries that you have worked in?

Mr. DIXON. That is a very good question, Representative. Let me give you an example of how we collaborate globally and then with our agencies here. We work with two sister organizations, Civitas Maxima in Geneva and the Global Justice Research project in Monrovia, Liberia. They have done incredible work documenting the crimes that took place during the two civil wars in Liberia. They have prepared criminal dossiers and they worked with DHS here to bring two immigration fraud cases against Liberians who were living in Philadelphia.

The Center for Justice and Accountability is also working with them and we brought another case against Moses Thomas also who is living in Philadelphia, and we allege that he is responsible for what was called the Lutheran Church massacre where the Liberian army went in to a Lutheran Church which was a Red Cross designated site, and massacred 600 civilians that were seeking safety. And our client survived by hiding under the dead bodies.

What would be helpful is supporting this NGO civil society to the extent that there are funds available that advance their work. To the extent that there are mutual legal assistance treaties between the U.S. and the Government of Liberia, so if the U.S. wants to pursue criminal charges in any of these cases, they have an ability to work with the government and have easier access to produce documents and witnesses.

Those are a couple of steps that the U.S. government could consider.

Mr. McGOVERN. CJA is taking the civil case against the former defense secretary of Sri Lanka with the case we mentioned earlier. Are you able to comment on this case? Or

Mr. DIXON. Yes. I mean as you alluded to, the former Secretary of Defense Rajapaksa is a dual U.S.-Sri Lanka citizen. What we allege is that in the context of the horrible massacre of 40,000 civilians in Sri Lanka that ended their civil war, one of the most emblematic cases was the murder of famed reporter editor Wickrematunge, Lasantha Wickrematunge. He was assassinated as he was leaving his house. So four men on motorcycles dressed all in black killed him in public in daylight. We think there is sufficient evidence to show that he is responsible for that. And so we filed the case and the case is ongoing right now.

Ms. VAN SCHAACK. This is a great example of a case that might be used to activate our War Crimes Act because he is a U.S. national and so he falls within that jurisdiction. And it would also be a great case if we had a command responsibility or superior responsibility statute because it is going to be hard to place him at the actual assassination. But if you can show he is up the chain of command, and had command authority over the troops or the security forces that committed abuses, you can reach superiors using a superior responsibility statute.

Mr. McGOVERN. And my final question. My colleague Congresswoman Omar, brought up the fact President Trump recently mentioned the possibility of granting executive pardons to U.S. personnel convicted under U.S. law for atrocity crimes.

I would like get your opinion on the record, what you think of that. And do such pardons or statements supporting such pardons affect the position of the United States that perpetrators of atrocity crimes must be brought to justice?

And then just one other thing, and that is I have got El Salvador on the mind today for some reason, but going back to cases like the El Mozote case, there are other people who gave the orders and executed the crimes. But what is the accountability for U.S. citizens who may have known what is going on, turned the other way, or been part of the coverup, because that is one of the things that bothers me is that so much of what was awful that happened in that country, it is hard to me to believe that there were people who were on our payroll who didn't know what was going on.

And I investigated the murder of the Jesuit priests. And I don't speak Spanish. I never investigated anything in my life, you know. I watched a Columbo movie. I think that is probably the extent of my investigative skills. But we were able to figure out that the Salvadoran armed forces, the Salvadoran high command, gave the order to kill the priests and we were able to figure out who the trigger men were. I am not the CIA or the DIA or whatever.

It is just hard for me to believe that we could have figured it out and somebody else didn't know it. And if we are going to -- there needs to be some accountability there as well. But I give that to you.

Mr. DIXON. Representative Omar mentioned that the United States does not have a pristine record on human rights accountability, including holding our own accountable. Just look back to post-9/11 and there has not been significant accountability for the decisions around torture. They try to recast it as something else, but what was committed was torture. And the United States needs to deal with its own house, as well as, you know, not in our own house. So that is one level of accountability that we have not achieved and we need to continue to raise that.

But sir, you also mentioned the suggestion of pardons for those convicted of war crimes. Yeah, the military justice system is a very strict system and they have very high standards. If they have convicted members of their own, fellow servicemembers of having committed war crimes, to have a president step in and pardon them sends the worst possible signal that you can imagine. And the world does watch. They look at the United States. It is both a beacon for tremendous hope and then a concern when international institutions and the rule of law are under attack.

Ms. VAN SCHAACK. Yeah just to reiterate. I agree I think it sends a terrible message. And it also sends a terrible message to our men and women in uniform who every day are put in incredibly difficult situations and take their international law training, and the laws of armed conflict, really seriously.

There is a rigorous justice system and if those individuals were convicted by that justice system then that -- I think it is fair to say that was a fair proceeding. But from wearing my diplomatic had, it makes it very difficult for us to continue to promote human rights and accountability abroad when we are not providing it at home.

Mr. McGOVERN. I yield to my colleague.

Ms. OMAR. Ms. Schaack?

Ms. VAN SCHAACK. Rhymes with rock. Is what I always say.

Ms. OMAR. That is good.

I wanted to talk to you a little bit about the ICC. We all have our criticisms of ICC, but I was a little disappointed, maybe that is an understatement, in Secretary Pompeo's decision to issue visa sanctions to the investigators.

Chairman McGovern and I wrote a letter asking a series of questions on why this was happening and trying to get accountability for that. I find this decision to be reckless and absurd. But, you know, this administration has been quite hostile in pursuing international mechanisms to justice. And so I am wondering what your thoughts are of that decision and do you agree with it was a grave mistake?

Ms. VAN SCHAACK. There is no question that the International Criminal Court has been subjected to criticism. The cases take too long, sometimes the judgments are inscrutable. We don't understand why the judges have ruled the way they have. But sometimes it is the court of last resort. It literally may be the only place in which any form of accountability will be happening because the courts of the state in question are closed for whatever reason, the conflict is still ongoing, for example. So it is an important part of a system of international justice that I think we have to continue to try and make succeed.

I tend to agree with you that the decision to revoke the visa of the chief prosecutor, for example, who has been a champion of justice for much of career was short-sighted. It is not clear what it actually accomplishes, vis-a-vis actually making it difficult to do her work. She does come and brief the Security Council with where we have a permanent seat. And we supported most of the cases moving forward before that institution are directly in parallel with U.S. foreign policy in those areas around accountability. It was only the Afghanistan preliminary examination that was raising some allergic reaction and that now has been closed.

So it is not clear why we need to continue to need to continue to maintain this hostile relationship what may be the court of last resort for many victims.

Ms. OMAR. And you used to help run the Global Criminal Justice office. And as McGovern said earlier, that the FBI's war crimes unit might go away because of reconfiguration of the Department, and this office is also been threatened. Do you think we need to codify it to make sure that it is safe and protected?

Ms. VAN SCHAACK. I think that would be incredibly helpful if there was some legislative hook that showed that -- and I think providing some of the

funding to GCJ, which Congress has done in the past vis-a-vis the Syria conflict is another helpful way to show the importance of that institution and to keep it centralized in a specialized office.

And I think the FBI's office is in the same boat. I always knew when I was at State who to call if I had a situation that had an investigation sort of crossover or nexus.

And if that expertise gets dissipated, I literally would not know what phone to call if I had a case involving a perpetrator who I thought was potentially coming to the United States, et cetera.

So having that centralized place is really crucial and I think legislation would help.

Ms. OMAR. What you do think it says about us that, you know, offices like the FBI war crimes office is being threatened or the Global Criminal Justice office is being threatened? How is that going to hurt our credibility?

Ms. VAN SCHAACK. Well, it is a complete opposite trend to what we are seeing amongst our allies. So what we are seeing in Europe, and Eurojust was mentioned, is actually the creation of networks. Countries are creating specialized war crime units modeled on our system in order to talk together, to better share information, to better do mutual legal assistance, as Dixon has mentioned. And yet, for us to then be dismantling those institutions and dissipating that expertise is completely counter to the trend of what our allies are doing. It will make it that more difficult for us to cooperate around cases that have transnational dimensions to them.

Ms. OMAR. It is almost as if we are like the only country that is regressing. And I say that because, you know, we have president who talking about pardoning U.S. personnel who might be accused of war crimes. We have a sitting congressman who says I shot civilians and took pictures with dead corpse, what is the big deal? And to me, I can't understand how in the United States we don't think these things are a big deal. And so I just hope that we figure out how to get ourselves back on track to the kind of progress we want to see in this country and in the world.

I wanted to talk to you a little bit about Guantanamo. We speak a lot about accountability in regards to what is happening around the world. But human rights accountability really hasn't been in the forefront for us here domestically. And when it comes to Guantanamo, it seems like the way that we have conducted ourselves might speak to a different tone internationally. Wouldn't it probably make it easy for people like Assad or organizations like the Taliban, to say, you know, how can we demand accountability, how can the United States demand accountability of us when they themselves are doing similar things? How can you say torture is wrong when you have dozens of men still locked up indefinitely in Guantanamo? And so are we handing them a propaganda win? And how do we reverse the course?

Mr. DIXON. Thank you for your question, Representative Omar. Yes, there are leaders around the world who say don't talk to us about human rights when you need to clean up your own house, including Guantanamo. Guantanamo

was a terrible stain on the history of the United States. It was created as a prison that would be outside of the laws of the United States.

I actually traveled to Guantanamo, I watched one of the hearings there and was just appalled as they had a break because all of a sudden it was learned that the CIA was listening in to the defendant's counsel talking to defendants, a complete breach of client confidentiality.

One of the things that I am proudest of in my work history is that I, at Human Rights First, worked with Senator McCain and Senator Levin to get the law changed so that the administration could start sending individuals who had been cleared by all the intelligence services could be cleared and moved to third countries. So in my time we are able to reduce the prison population from 177 to 41. But we still have 41. And the blotch on our history is that our article 3 Federal courts are more than able to handle terrorism cases. They have handled hundreds and hundreds and hundreds very successfully. And the importance of them is that they provide due process of law. It is not a make-it-up-as-you-go process which is what we are having right now.

Politically, I don't know that we are there yet, it will be up to you to try to through those political road blocks. But ideally you want individuals who have been accused of very serious crimes to actually go through the trial and have due process. And that is the only way to start turning back the clock on the stain that Guantanamo presents.

Ms. OMAR. Yeah. And I will say this because votes are called and we have to go, it really isn't always about just due process. Because I believe just because you are accused of a crime or convicted of a crime, that does not abdicate your human rights.

And so what we are doing in our regular prisons, in our Federal prisons and in places like Guantanamo, are things that we speak extremely vocally against around the world. And so we have to make sure that the values that we espouse are the values that we carry out. And so thank you.

Mr. McGOVERN. Well, thank you very much. As Congresswoman Omar mentioned, they just called votes and there's 30 votes, so we are not going to have you wait until we come back. We may have some more questions.

I just want to thank you. Look, we do a lot of hearings in this Commission dealing with current mass atrocities that are unfolding. And we try to figure out how do we deal with them once all hell has broken loose. Right? Part of what this is about, too, is to figure out things we can do maybe to discourage future mass atrocities from occurring. How do we prevent these horrific crimes against humanity from unfolding? I think this is key to it.

So you have given us a lot of recommendations, I think we want to work with you to try to put them into legislative form and to figure out how we can move some of this stuff forward to make it better.

But I think this is incredibly important for a whole bunch of reasons. One is, again, I think it helps deal with the issue of impunity and helps prevent future mass atrocities from occurring. But also I want to believe that the United States

of America stands for anything, we need to stand out loud and four square for human rights, and we ought to be leading by example.

And, you know, again, we -- from the previous panel, there've been some success stories that we can point to. We need more of them. We need to strengthen the office -- we need not to eliminate departments or agencies that are actually doing very good work on this.

This is really important I think to our image around the world as well. I want to make sure that any person guilty of war crimes doesn't think for a second that the United States is a safe haven.

And that is what bugged me about the El Salvador stuff is that so many of these creeps, these human rights violators, thought that they could come here and get safe refuge, they could live the rest of their life out here and that that was okay.

I think they probably felt that way because we were allied with them during the 1980s. But we need to make it clear that they are not welcome here. And if they come here, and we find them, they are going to be held to account.

So I thank you for being here. And we look forward to working with you in the future.

This ends the hearing. Thank you.

[Whereupon, at 11:35 a.m., the Commission was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Tom Lantos Human Rights Commission Hearing

Hearing Notice

Pursuing Accountability for Atrocities

Thursday, June 13, 2019
10:00 – 11:30 a.m.
2200 Rayburn House Office Building

Please join the Tom Lantos Human Rights Commission for a **hearing** to examine accountability for mass atrocities, with a focus on the tools and mechanisms available to the United States government.

"Mass atrocities" are defined as large-scale, deliberate attacks against civilians, and include genocide, crimes against humanity and war crimes. After World War II the international community vowed never again to stand by in the face of genocide and mass atrocities. But since then these crimes have been committed in many countries and contexts, resulting in the suffering and deaths of hundreds of thousands of people. Millions more have been forced to flee, generating profound humanitarian, political, and national security consequences.

As with all human rights violations, victims of mass atrocities have the right to truth, justice, reparation and the guarantee of no repetition. Accountability is central to the concept of justice and is considered a form of reparation as well as key for ensuring non-recurrence. Yet achieving accountability for perpetrators of atrocities is difficult and relatively rare. Witnesses will discuss efforts by U.S. prosecutors and policymakers to hold perpetrators accountable, drawing on past cases, and offer recommendations to strengthen available tools and mechanisms going forward.

This hearing is part of a series that reflects on the challenges to preventing atrocities and identifies opportunities for Congress to improve U.S. government capacities to detect and respond to grave human rights crises around the world.

Opening Remarks

- **Rep. James P. McGovern,** Co-Chair, TLHRC
- **Rep. Christopher H. Smith,** Co-Chair, TLHRC

Witnesses

Panel I

- **David Rybicki**, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice
- **Louis A. Rodi III**, Acting Assistant Director, HSI National Security Investigations, U.S. Department of Homeland Security

Panel II

- **C. Dixon Osburn**, Executive Director, Center for Justice and Accountability
- **Beth Van Schaack**, Leah Kaplan Visiting Professor of Human Rights, Stanford University

The hearing will be open to Members of Congress, congressional staff, the interested public and the media. The hearing will be livestreamed via the Commission website and will also be available for viewing on Channel 56 of the House Digital Channel service. For questions, please contact Kimberly Stanton at 202-225-3599 (for Rep. McGovern) or Piero Tozzi at 202-225-3765 (for Rep. Smith).

Sincerely,

s/

James P. McGovern
Member of Congress
Co-Chair, TLHRC

Christopher H. Smith
Member of Congress
Co-Chair, TLHRC

Tom Lantos Human Rights Commission Hearing

Witness Biographies

Pursuing Accountability for Atrocities

Panel I

David Rybicki was appointed Deputy Assistant Attorney General of the Criminal Division, United States Department of Justice, in April 2017. During his tenure with the Criminal Division, Mr. Rybicki has overseen the Human Rights and Special Prosecutions Section, the Organized Crime and Gang Section, and the Capital Case Section. Mr. Rybicki joined the Department of Justice in 2007 as an Assistant United States Attorney in the U.S. Attorney's Office for the District of Columbia and served in the Office's Civil and Criminal Divisions for nearly six years. He earned his J.D. from Stanford Law School.

Louis A. Rodi III serves as Acting Assistant Director for HSI National Security Investigations Division (NSID). In this capacity, Mr. Rodi is responsible for strategic planning, national policy implementation, and the development and execution of operational initiatives. Within NSID, he oversees HSI's National Security Programs, which include the National Security Unit that partners with FBI's Joint Terrorism Task Forces, the Human Rights Violators and War Crimes Unit, and the Counterterrorism and Criminal Exploitation Unit. Mr. Rodi received a Master of Arts Degree in International Studies from the University of Miami. He is a member of the Senior Executive Service.

Panel II

C. Dixon Osburn is the Executive Director of the Center for Justice and Accountability, an international human rights organization based in San Francisco that holds perpetrators of atrocity crimes accountable through litigation, policy advocacy and transitional justice. Previously, Mr. Osburn was the co-founder and Executive Director of Servicemembers Legal Defense Network that spearheaded the effort to repeal "don't ask, don't tell." He served as the Director of the Law & Security program for Human Rights First where he led efforts to align U.S. counterterrorism policies with the rule of law. Mr. Osburn received his JD/MBA from Georgetown University.

Beth Van Schaack is the Leah Kaplan Visiting Professor in Human Rights at Stanford Law School where she teaches in the areas of international human rights, international criminal law, and human trafficking, among other subjects. Prior to returning to academia, she served as Deputy to the Ambassador-at-Large for War Crimes Issues in the Office of Global Criminal Justice of the U.S. Department of State. In that capacity, she helped to advise the Secretary of State and the Under Secretary for Civilian Security, Democracy and Human Rights on the formulation of U.S. policy regarding the prevention of and accountability for mass atrocities, such as war crimes, crimes against humanity, and genocide. Van Schaack is a graduate of Stanford University and Yale Law School.

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Pursuing Accountability for Atrocities

Thursday, June 13, 2019 – 10:00 a.m.
2200 Rayburn House Office Building

STATEMENT SUBMITTED FOR THE RECORD

Submitted by:

David M. Crane
Founding Chief Prosecutor, Special Court for Sierra Leone, 2002-2005.
Principal, Justice Consultancy International, LLC.
Founder of the Syrian Accountability Project and the Yemeni Accountability Project.
Retired member of the Senior Executive Service of the United States.

The Third Wave-Accountability for International Crimes in an Age of Extremes

Mr. Chairman, members of this important and esteemed bi-partisan commission that honors the legacy of a true hero to human rights, Congressman Tom Lantos, it is my honor and pleasure to submit this written testimony for your consideration as you confront important issues facing us today regarding human rights, the rule of law, and accountability for those who commit international crimes.

As one of the founders of modern international criminal law, I have been seeking justice for victims of atrocity for over two decades. I have worked with many of this body in that noble effort. I count members of this commission partners in our continued quest to hold accountable those who feed upon their own citizens.

We live in an age of extremes, where kaleidoscopic dirty little wars break out across the globe and xenophobic heads of state, clutching to nationalism and populism as a base of political support, step away from an age of accountability to a threatening age of the strongman. This geo-political phenomenon, the likes of which we have

not seen since the early 1930's, threatens over seven decades of a world order cobbled together from the ashes of a great world war.

This unforeseen step away from a world order based on the rule of law and international peace and security by settling our disputes peacefully and using force only as a last resort threatens this new century and weakens our ability to hold tyrants, dictators, and thugs accountable. Many on this commission have worked hard to maintain a sense of stability through the rule of law, but our work is threatened. In some ways, we are going backwards. *Let us consider recent history.*

Historical Backdrop-The Bloody 20th Century

Almost a quarter of a billion people died of unnatural causes in the 20th century, read that ***225 million*** dying from war, disease, famine, and atrocity. Of that number, over a 100 million died at the hands of their own government. The beast of impunity fed on the edges of civilization for decades. Atrocity in Turkey, Germany, the Belgian Congo, behind the iron curtain, in Central and South America, China, the Soviet Union to name a few went unaccounted for. Humankind chose not to use the rule of law to settle the problem, but resorted to looking the other way for political expediency. Just in the Cold War alone almost 90 million people perished, more than the two world wars combined.

Ironically, in the middle of this very dark century, humankind created unwittingly a future for accountability today. In four amazing years, between 1945-1949, the international community created/drafted the United Nations, the International Military Tribunal at Nuremberg, the Universal Declaration of Human Rights, the Genocide Convention, and the revamped Geneva Conventions of 1949. These efforts would go dormant for 40 years during the Cold War, yet would be the glowing embers from which sprang the fire of justice in the 1990's, called the Age of Accountability.

From this Bloody Century an Age of Accountability

With the end of the Cold War and the shifting of political dynamics worldwide, the stresses caused great strife and a rise of international crimes. The world for the first time resorted to courts and tribunals to account for those crimes. Five courts were created that will forever show that the rule of law is a powerful and stabilizing force. They were the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts for Cambodia, and the International Criminal Court.

Important jurisprudence was established, showing the world that it had the capacity to resort to the power of the law to create international peace and security. Due to the efforts of these justice mechanisms, the jurisprudence established allows for holding accountable heads of state who commit international crimes; goes after those who harm women and children; destroy cultural property; and use rape as a tool of genocide; among many other jurisprudential points. It was a golden age, lit by the flame that burst forward in the early 1990's from the embers of Nuremberg and Tokyo.

The Light of the Rule of Law Dims in an Age of Extremes

The balance of the paradigm of international peace and security that is the hallmark of the United Nations is threatened in this surprising age of extremes or what I refer to as the age of the strongman. The entire 74-year structure of a global order that arose from the horrors of the Second World War is cracking, wobbling, and shifting in its foundation.

Nationalism not seen since the early 1930's is on the rise. In many regions of the world, leaders are turning inward, looking to their own resources to create political dynamics that will have long-term geo-political consequences. It is an unanticipated dynamic in a world that once embraced the concept of a global village.

In this climate, the rule of law is questioned, particularly at the international level. The wind in the sails of accountability that blew strongly across the globe in the age of accountability have diminished or are dead calm. The bright red thread of accountability is politics and the political will today is not one supporting international justice mechanisms.

Strongmen across the globe are belittling the rule of law and questioning our international paradigm that is the United Nations. We are in an unsettled time the future of which is cloudy and dark.

The Impact? *The Third Wave* in Accountability and Movement Forward

Accountability for international crimes is not perfect and was never to be touted as such. In many respects, it is two steps forward and one-step back, but it does move forward. Despite the challenges presented, they are just new challenges, ones that have been faced before and will continue to nip at the heels of modern international criminal law and accountability.

It is best to look at this evolution of accountability as waves hitting the rocky coast of lawlessness. The **F*irst Wave*** was the efforts by the four victorious powers after

World War II deciding to hold accountable the leaders of Nazi Germany (and concurrently in Tokyo the Japanese leaders) for their international crimes against the world. This was an important step forward and set up the ground floor for future efforts.

The International Military Tribunal at Nuremberg and the subsequent Council 10 trials there established procedures, jurisprudence, and frankly a new idea that nations can resort to the law and not the gun to account for atrocity crimes. Yet all this went very dark during the bi-polar tragedy of the Cold War that almost washed away any gains made at Nuremberg.

The ***Second Wave*** in accountability was after the Cold War and the fall of the iron curtain across central Europe. As the world began to adjust to these new realities, political and ethnic strife erupted in several parts of the world such as in Yugoslavia and Rwanda. For the first time in history, the international community reached for the law and created the first modern tribunals, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. Both ad hoc tribunals established under Chapter 7 of the UN Charter were mandated to prosecute those responsible for the war crimes, crimes against humanity, and genocide. The perpetrators faced the power of the law.

During the last decade of the 20th century, a horror story was percolating in West Africa that saw the destruction of tens of thousands of human beings in Sierra Leone, Liberia, and *Guinea. The world drawing upon this new concept of accountability, created the world's* first hybrid international tribunal, a tribunal I helped found, the Special Court for Sierra Leone.

During this period, the international community came together in Rome to create a permanent criminal tribunal to prosecute the gravest of crimes. Additionally, the world looked back and created a unique internationalized domestic court in Cambodia to account for what is now called "the killing fields".

This was the age of accountability, referred to above, where the international community attempted using various justice mechanisms to account for the tragedies of Yugoslavia, Rwanda, Sierra Leone, and Cambodia with a permanent court in The Hague to carry forward the giant steps of these other courts and tribunals. We now have the jurisprudence, the rules of evidence and procedure, and the experience to face the many new accountability challenges we now face in this age of extremes and the strongman.

As the world steps away from international accountability as the standard for atrocity accountability, the Third Wave shows the resilience of humankind's focus

on accountability. However, as the world has stepped away from tribunals and courts, new methodologies and ideas are working across the globe maintaining the standard that those who commit war crimes, crimes against humanity and genocide will be held accountable.

In the ***Third Wave***, we see the creating of international mechanisms for Syria and Myanmar that are collecting data and information on those conflicts and turning it into usable criminal information and evidence for future local, regional, or international justice mechanisms. This is an important step in maintaining the ability of the international community to investigate, indict, and try aberrant heads of state and their henchman who ignore the law and kill their own citizens.

Another step forward to fill the vacuum created by a lack of political will regarding courts and tribunals, is domestic courts in various jurisdictions, mainly in Europe; trying individuals for harms done to their citizens by those who violated domestic war crimes statutes in places such as Syria. This is a positive step in getting states parties to the Rome Statute and other nations developing their domestic capacity in trying war crimes cases. Nations such as Germany, Sweden, Denmark, and Spain are to be commended for their efforts.

The final accountability efforts in the Third Wave is the rise of grassroots efforts by nongovernmental organizations, taking the experience garnered from the Second War and the age of accountability, and professionally building criminal files on those who are committing international crimes in places such as Syria, Myanmar, South Sudan, and Yemen among other places. Organizations such as the Syrian Accountability Project, the Yemeni Accountability Project, the Syrian Justice Accountability Center, and the Commission for International Justice and Accountability are excellent examples of like-minded experts in the field of atrocity accountability coming together and building professional files on perpetrators of international crimes.

Concluding Thoughts

We have come too far and have accomplished too much together to step away from accountability. The rule of law in a robust human rights paradigm keeps the world stable. In some ways, it is the great gyroscope that balances a world in an age of extremes. This commission and the efforts of the larger committee structure within this House of Representatives must never take its eye off the horizon of hope, peace, and the law. The commission should support and encourage the efforts by many in this **Third Wave** of accountability.

In many outreach visits to my client the people of Sierra Leone, as Chief Prosecutor of the Special Court for Sierra Leone, I told them three things: that no one is above the law, the law is fair, and the rule of law is more powerful than the rule of the gun. It truly is more powerful than the rule of the gun let us keep it so.

Thank you for the opportunity to submit testimony regarding my considered judgement based on decades of experience "in the trenches" on the matter of accountability in this age of extremes.
