



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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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.