U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 8, 2008

The Honorable Richard J. Durbin
Chairman
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the November 14, 2007, appearance before the Subcommittee of Deputy Assistant Attorney General Sigal Mandelker at a hearing entitled "No Safe Haven: Accountability for Human Rights Violators in the United States." We hope that this information is helpful to the Subcommittee. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Keith B. Nelson
Principal Deputy Assistant Attorney General

cc: The Honorable Tom Coburn
Ranking Minority Member

Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate

Hearing Concerning
"No Safe Haven: Accountability for
Human Rights Violators in the United States"

November 14, 2007

Questions of Senator Richard Durbin

Sigal Mandelker, Deputy Assistant Attorney General, Criminal Division, Department of Justice

1. You testified that one of the main challenges in prosecuting human rights violators is that DOJ can only prosecute individuals for crimes committed in a particular time period, either because of the statute of limitations or the ability to prosecute only for crimes committed after the enactment of a law. When I asked your position on whether we should eliminate all statutes of limitations for atrocity crimes under U.S. law, you responded that you would get back to me on this question. Please respond.

It is difficult to comment in the abstract on a general category of "atrocity crimes." The offense of genocide, found at 18 U.S.C. § 1091 and recently amended by the Congress, for example, is not subject to a uniform statute of limitations. The Government may charge an offense under subsection (a)(1) (offenses involving death) at any time. For an offense under subsections (a)(2) through (a)(6), however, the Government must ordinarily prosecute the offense within five years of its commission. Given the gravity of the offenses under subsections (a)(2) through (a)(6), the Department of Justice previously recommended to the Congress that this limitation be removed.

2. You testified that DOJ is currently investigating a number of naturalized U.S. citizens for having committed genocide, torture or extrajudicial killings.

a. Please state how many such individuals DOJ is investigating and from what countries/regions they came.

The Justice Department does not generally release the number of potential cases that are presently under investigation. We can tell you that a number of individuals are being investigated who are suspected of participating in genocide, torture, or extrajudicial killings for, inter alia, denaturalization purposes. The subjects of these investigations include individuals suspected of participation in crimes perpetrated in Africa, Europe, Asia, and Latin America.

b. How many naturalized U.S. citizens have ever been investigated for committing serious human rights abuses?

Since 1979, over a thousand naturalized U.S. citizens have been investigated by Department of Justice components on suspicion of possible participation in serious human rights abuses committed abroad, a majority of those in the context of our Office of Special Investigations' (OSI) long-standing World War II program. Where we have found sufficient admissible evidence to bring denaturalization proceedings, we have done so.

c. How many naturalized U.S. citizens have ever been investigated for committing serious human rights abuses pursuant to the jurisdiction provided to OSI in the Intelligence Reform and Terrorism Prevention Act of 2004 to investigate persons who participated in genocide or, when committed under color of law of a foreign nation, torture or extrajudicial killings?

The Department, in partnership with U.S. Immigration and Customs Enforcement (ICE), has a number of ongoing investigations for both criminal and civil denaturalization for committing serious human rights abuses pursuant to the jurisdiction provided to OSI in the Intelligence Reform and Terrorism Prevention Act of 2004 to investigate naturalized U.S. citizens suspected of participating in genocide, torture, or extrajudicial killings. As noted above, the Justice Department does not generally release the number of cases that are under investigation.

d. How many individuals have ever been denaturalized for committing serious human rights abuses?

The Department is aware of approximately 85 cases in which individuals who participated in the perpetration of serious human rights abuses have been denaturalized.

e. How many naturalized U.S. citizens have ever been denaturalized pursuant to the jurisdiction provided to OSI in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) to denaturalize persons who participated in genocide or, when committed under color of law of a foreign nation, torture or extrajudicial killings?

The first non-WWII case litigated by OSI since IRTPA's enactment to denaturalize a naturalized United States citizen is currently at the pre-trial stage. The indictment alleges, inter alia, that the defendant concealed from U.S. immigration authorities his service in the Vojska Republike Srpske (Army of the Serb Republic), which perpetrated atrocities in Bosnia and Herzegovina.

3. Is the human rights situation in the home country of the suspected human rights abuser taken into account in the process of deciding whether to prosecute or remove a suspected human rights abuser?

The Government may consider many factors when deciding whether to prosecute or remove a person suspected of committing human rights abuses. These factors may include, inter *alia, (1) the stability of the country to which the person would be removed; (2) the extent to which the foreign government in question can effectively prosecute the underlying human rights abuses; and (3) whether there are any concerns related to our treaty obligations.*

4. What steps does the U.S. government take to ensure that, if a suspected human rights abuser is removed to her home country, she will be prosecuted for her crimes and the prosecution will comply with internationally-recognized standards?

Removals of aliens are effected by ICE in the Department of Homeland Security, and contested removal cases are litigated before immigration judges and the Board of Immigration Appeals by ICE attorneys. In the World War II cases, in which OSI has borne principal responsibility for both denaturalization and removal, the Department of Justice has customarily taken the initiative to share its evidence with competent foreign authorities and has worked with the Department of State to encourage foreign governments to mount vigorous investigations and, whenever possible, to prosecute these individuals.

5. You testified about the removal to Ethiopia of Kelbessa Negewo. While still in the U.S., Negewo was convicted in absentia by an Ethiopian court and sentenced to life in prison. Negewo was accused of horrible crimes, but what assurances do you have that his conviction complied with human rights standards?

As noted above, removals of aliens are effected by ICE and contested removal cases are litigated before immigration judges and the Board of Immigration Appeals by ICE attorneys. The Negewo removal case was litigated by ICE, and that agency carried out his removal. The same question about the Negewo case has been posed by Chairman Durbin to ICE, and we understand that ICE is providing a response.

6. You testified about the challenges resulting from prosecuting human rights abusers for crimes committed in another country. One significant challenge is securing and protecting witnesses.

a. What steps does the government take to protect witnesses?

It is true that a significant challenge in the prosecution of human rights abusers for crimes committed in another country is the safety of witnesses. The challenges arise for many reasons: the very nature of the crimes, the support of a human rights abuser from third parties, and the fact that the witnesses very often remain outside the jurisdiction of the United States. In some cases, difficulties in securing live testimony of witnesses from outside the United States may effectively foreclose the Government's ability to bring a prosecution in Federal court.

Nonetheless, the Government takes steps to protect witnesses including, where possible, the same steps we would take in any criminal case where a witness's safety was of concern. In all criminal cases, those steps can include witness relocation, provision of law enforcement *protection, and requests for protective orders from courts to ensure that the identities of witnesses are not revealed to third parties.*

b. Under current immigration law, does the government have the ability to bring witnesses to the United States to testify?

Yes. The Department of Homeland Security has authority to parole witnesses into the United States under the Immigration and Nationality Act.

7. What is the interagency coordination process for deciding whether to prosecute a suspected human rights abuser for human rights abuses, prosecute a suspected human rights abuser for immigration offenses or to remove or extradite such an individual?

The Department of Justice works directly with the Department of Homeland Security with regard to investigative and prosecution matters and with the Departments of Homeland Security and State on removal and extradition matters.

8. You testified that OSI and U.S. Customs and Border Protection (CBP) have succeeded in stopping over 180 suspected World War II criminals at U.S. ports of entry and preventing them from entering the country. When I asked you at the hearing how many modern-day war criminals OSI had prevented from entering the United States, you said you would have to defer to CBP on that question. What role, if any, does OSI play in collaborating with CBP to prevent modern-day suspected human rights abusers from entering the United States? Is this role different from the role OSI played in preventing suspected World War II criminals from entering the United States?

The Attorney General's 1979 Order creating OSI assigned to that office responsibility for enforcing the U.S. immigration and nationality laws against participants in World War II-era Axis-sponsored acts of persecution. Those laws included the pertinent exclusion provisions of the Immigration and Nationality Act. With the creation of the Department of Homeland Security in 2003, the Attorney General's authority to effect exclusions was transferred to the Secretary of Homeland Security. OSI nevertheless continues to provide to the Department of Homeland Security information about both World War II-era and modern-day human rights abusers that can be used to prevent their entry into the United States.

An example of OSI's collaboration with the Department of Homeland Security to prevent the entry of human rights violators is the case of Bozo Jozepovic, a naturalized Canadian citizen who was interdicted while trying to drive a truck into Washington State from British Columbia in May 2006. Jozepovic's name had come to OSI's attention a year earlier, in May 2005, in the course of an OSI investigation. Documents examined by OSI at that time included one reflecting that Jozepovic had been charged with having participated, while serving in the Bosnian Croat Military Police, in the murder of seven Muslim male civilians near the town of Kakanj on or about June 9, 1993. Six of the seven victims had been beaten to death with axes, hammers, and *other instruments. OSI provided the known details of the matter in 2005 to U.S. Immigration and Customs Enforcement (ICE), so that Jozepovic's name could be added to the border security "watchlist," in order to ensure that, as a suspected human rights violator, he would be prevented from entering the country. On May 23, 2006, OSI was contacted by a CBP official in Blaine, Washington, who advised that CBP had just detained Jozepovic, who was attempting to enter the U.S. as the operator of a commercial vehicle. OSI devised questions for CBP to pose to Jozepovic. When those questions were put to Jozepovic, he denied membership in the Bosnian Croat armed forces and also the specific allegations of participation in human rights violations. He was refused entry, and he subsequently applied for a hearing in an attempt to have the exclusion decision overturned. Jozepovic later tried to enter the U.S. at a different Washington State border crossing and was again refused. He was taken into custody on this occasion, and his case proceeded as a removal action. In the meantime, OSI investigated Jozepovic's case, as did ICE. An OSI investigative historian was subsequently asked by ICE to testify in the removal hearing (which was prosecuted by ICE attorneys), and he did so, testifying on the origins and import of the wartime documents and witness statements he had found. On December 13, 2007, Immigration Judge Edward Kandler sustained all charges for removing Bozo Jozepovic from the United States. The immigration judge found that Jozepovic committed or assisted in the murder of seven Muslim men in Poljani, Bosnia, and Herzegovina, on June 9, 1993. This is only the second case in which an immigration judge has sustained an extrajudicial killing charge under IRTPA. Jozepovic waived appeal and was removed to Canada.*

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November 14, 2007

Questions from Senator Jon Kyl to Sigal P. Mandelker

1. In its recent report (07-91 5), the GAO recommended greater collaboration and information sharing between departments and agencies with responsibilities concerning human trafficking. What specific actions has the Attorney General taken to implement the GAO's recommendations to: Establish joint strategies with other departments or agencies to share data and information as well as to collaborate on human trafficking issues; Agree on roles and responsibilities regarding human trafficking data collection, investigations, and prosecutions; and Establish compatible policies, procedures, and other means to operate across agency or department boundaries? If no action has been taken, what actions have been planned and what is the timetable for implementing such plans?

The Department of Justice concurs with the GAO's evaluation that human trafficking crimes present special challenges that are multi-faceted, complex, and resource intensive. The GAO correctly finds that the Justice Department and its partners work together to rescue the victims of this terrible crime and investigate and prosecute human traffickers. As GAO reports. since 2001 the Justice Department has significantly increased the number of human trafficking prosecutions and investigations. The Department has significantly increased the number of human trafficking cases it has prosecuted. Likewise the FBI and, since 2003, Department of Homeland Security (DHS) have investigated record numbers of human trafficking matters. This success has been the result of regular collaboration between the Justice Department, DHS, the Department of Labor (DOL), the 42 Human Trafficking Task Forces funded by the Justice Department's Bureau of Justice Assistance, and our other partners. GAO is also correct in finding that the Justice Department and DHS have engaged in extensive outreach, training, and technical assistance to other Federal and State law enforcement, non-governmental organizations, and foreign governments. As discussed more fully below, the Justice Department agrees with GAO that routine collaboration among the various partners is a key factor in the continued success of this program.

The GAO report states that interagency coordination on trafficking occurs primarily on a reactive, case-by-case basis and that "individual agency goals on trafficking are linked to individual agency missions, rather than to a common government-wide outcome for combating trafficking crimes." However, the Justice Department, DHS, the State Department (DOS), and the other agencies identified by GAO engage in regular strategic and proactive collaboration, in *addition to what GAO calls "case-by-case" or "reactive" collaboration. Senior Government officials regularly meet at the Senior Policy Operating Group (SPOG) to identify broad Government-wide common outcomes or "end goals." Senior Justice Department, DHS, DOS and the other law enforcement agency officials have met and developed subordinate goals. For example, the Justice Department and DHS senior officials have met and created memoranda of understanding that identify "joint strategies" and "agreed on roles." The Justice Department, working with our other partners, designed and implemented a proactive task force model that includes regular collaboration among each task force's representatives, including DOJ, FBI, ICE, DOS, DOL, IRS, State law enforcement, and non-governmental organizations, among others. Likewise, DOJ, DHS, DOS, the CIA and other agencies proactively collaborated to form the Human Smuggling and Trafficking Center, with the functions described in the GAO report.*

Moreover, DOJ's specific law enforcement activities are aimed to achieve the end goals and operational results determined through our collaboration with our law enforcement partners at DHS, DOL, DOS, and elsewhere. For example, DOJ and its partners proactively established the victim-centered task force model for investigating and prosecuting human trafficking crimes. In each specific investigation and prosecution, FBI agents and DOJ attorneys implement and utilize this model, as GAO describes in its report. As GAO recognized, this system has been successful and resulted in record numbers of investigations and prosecutions.

GAO recommends that the Attorney General and the Secretary of Homeland Security, in conjunction with the Secretaries of Labor, State, and other agency heads develop and implement a "strategic framework" to coordinate U.S. efforts to investigate and prosecute human trafficking cases. We agree that continued proactive collaboration would be beneficial to further success in our efforts to investigate and prosecute human trafficking crimes. We have already taken steps to increase our collaborative efforts. That said, the unique challenges in these matters, identified by GAO in its report, counsel for flexibility in determining the methods of collaboration among our law enforcement partners.

2. What is the Attorney General's position on the removal of statutes of limitation from criminal provisions regarding atrocities and human rights violations as recommended by David Scheffer in his statement before this subcommittee?

It is difficult to comment in the abstract on a general category of "atrocity crimes." The offense of genocide, found at 18 U.S.C. § 1091 and recently amended by the Congress, for example, is not subject to a uniform statute of limitations. The Government may charge an offense under subsection (a)(1) (offenses involving death) at any time. For an offense under subsections (a)(2) through (a)(6), however, the Government must ordinarily prosecute the offense within five years of its commission. Given the gravity of the offenses under subsections (a)(2) through (a)(6), the Department previously recommended to the Congress that this limitation be removed.

3. How many aliens who are suspected of having engaged in atrocities or human rights violations have been criminally charged in the United States and what charges were brought against them? What was the outcome of these cases?

As noted above, it is difficult to comment in the abstract on a general category of "atrocity" or "human rights" offenses. To date, there have been no criminal prosecutions in Federal court for genocide. We note that, until Congress's recent passage of legislation amending the genocide statute, there were limited jurisdictional bases upon which a substantive genocide charge could have been brought. However, the Department, through the Criminal Division's Office of Special Investigations, has brought numerous civil denaturalization charges against World War II perpetrators. In addition the first prosecution for torture under 18 U.S.C. § 2340A, against Roy M. Belfast, Jr., a/k/a Chuckie Taylor, is currently pending in the Southern District of Florida. As alleged in the indictment, however, Taylor was born in the United States. Other individuals suspected of having engaged in human rights violations have been charged for other crimes, including immigration-related crimes.