

Testimony of

The Honorable Patrick Leahy

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The Leahy-Hatch substitute amendment to S. 864, the Anti-Atrocity Alien Deportation Act of 2002, is intended to close loopholes in our immigration laws that have allowed war criminals and human rights abusers to enter and remain in this country. I have been appalled that this country has become a safe haven for those who exercised power in foreign countries to terrorize, rape, murder and torture innocent civilians. A report issued last week by Amnesty International claims that nearly 150 alleged human rights abusers have been identified living here, but warns that this number may be as high as 1,000.

Observers have noted the irony that in the wake of the September 11, 2001 attacks, hundreds of foreigners have been rounded up though not charged with any terrorism-related crime. Yet, at the same time, "hundreds, if not thousands, of foreign nationals who have been plausibly accused of the most heinous human rights crimes, including torture and assassination, either have lived or still live freely in the U.S." William Schulz, "The Torturers Among Us," New York Review, p. 22, April 25, 2002.

Legislative Background. I introduced this bill, with Senators Lieberman and Levin, in May, 2001. I had introduced similar legislation in the last Congress, and was pleased when the proposal garnered bipartisan support in both the House and the Senate. The legislation passed the Senate, on November 5, 1999, as part of the Hatch-Leahy "Denying Safe Havens to International and War Criminals Act," S.1754, but unfortunately was not acted on by the House before the end of the 106th Congress. Nevertheless, Representatives Foley and Ackerman have provided leadership in moving this legislation in the House, by introducing the measure in the last Congress as H.R.2642 and H.R.3058, and again in this Congress, on April 4, 2001, as H.R. 1449. The Problem. The problem of human rights abusers seeking and obtaining refuge in this country is real, and requires an effective response with the legal and enforcement changes proposed in this legislation. The loss last year by the United States of its seat on the U.N. Human Rights Commission was highly embarrassing and unfortunate, but by ensuring that our country is no safe haven for human rights abusers, we can lead the world by our actions.

For example, three Ethiopian refugees proved in an American court that Kelbessa Negewo, a former senior government official in the military dictatorship that ruled Ethiopia in the 1970s, engaged in numerous acts of torture and human rights abuses against them when they lived in that country. Negewo oversaw and participated in the torture of opposition political figures in Ethiopia, and then moved to the United States only to work at the same Atlanta hotel as one of the very victims whom he had tortured. The court's descriptions of the abuse are chilling, and included whipping a naked woman with a wire for hours and threatening her with death in the presence of several men. The court's award of compensatory and punitive damages in the amount of \$1,500,000 to the plaintiffs was subsequently affirmed by an appellate court. See Abebe-Jira v.

Negewo, 72 F.3d 844 (11th Cir. 1996). Yet, while Negewo's case was on appeal, the Immigration and Naturalization Service granted him citizenship.

This situation is an affront to the foreign victims of torture who have come to this country to flee such persecution, and to the American victims of such torture and their families. As Professor William Aceves of California Western School of Law has noted, this case reveals "a glaring and troubling limitation in current immigration law and practice. This case is not unique. Other aliens who have committed gross human rights violations have also gained entry into the United States and been granted immigration relief." 20 Mich. J. Int'l.L. at 657.

Indeed, another case actually involves American victims. In 1980, four American nuns were raped and murdered by the Salvadoran National Guard. Two former officials in the government of El Salvador who allegedly covered-up the murders currently reside in Florida.

Unfortunately, criminals who wielded machetes and guns against innocent civilians in countries like Haiti, Chile, Yugoslavia and Rwanda have been able to gain entry to the United States through the same doors that we have opened to deserving refugees. We need to lock that door to those human rights abusers who seek a safe haven in the United States. To those human rights abusers who are already here, we should promptly show them the door out.

We have unwittingly sheltered the oppressors along with the oppressed for too long. We should not let this situation continue. We waited too long after the last world war to focus prosecutorial resources and attention on Nazi war criminals who entered this country on false pretenses, or worse, with the collusion of American intelligence agencies. Thousands of declassified CIA documents were made public last year, as a result of the Nazi War Crimes Disclosure Act that I was proud help enact in 1998. These made clear the extent to which the United States relied on and helped Nazi war criminals. As Eli M. Rosenbaum, the head of the Justice Department's Office of Special Investigations, noted at the time, "These files demonstrate that the real winners of the Cold War were Nazi criminals." We should not repeat that mistake for other aliens who engaged in human rights abuses before coming to the United States. We need to focus the attention of our law enforcement investigators to prosecute and deport those who have committed atrocities abroad and who now enjoy safe harbor in the United States.

When I first introduced this bill in 1999, the Pulitzer prize-winning paper, the Rutland Herald, opined on October 31, 1999, that:

"For the U.S. commitment to human rights to mean anything, U.S. policies must be strong and consistent. It is not enough to denounce war crimes in Bosnia and Kosovo or elsewhere and then wink as the perpetrators of torture and mass murder slip across the border to find a home in America."

The Clinton Administration recognized the deficiencies in our laws. One Clinton Administration witness testified in February, 2000:

"The Department of Justice supports efforts to enhance our ability to remove individuals who have committed acts of torture abroad. The department also recognizes, however, that our current immigration laws do not provide strong enough bars for human rights abusers. . . . Right now,

only three types of human rights abuse could prevent someone from entering or remaining in the United States. The types of prohibited conduct include: (1) genocide; (2) particularly severe violations of religious freedom; and (3) Nazi persecutions. Even these types of conduct are narrowly defined."

Hearing on H.R. 3058, "Anti-Atrocity Alien Deportation Act," before the Subcomm. on Immigration and Claims of the House Comm. On the Judiciary, 106th Cong., 2d Sess., Feb. 17, 2000 (Statement of James E. Costello, Associate Deputy Attorney General).

The Bill. The Anti-Atrocity Alien Deportation Act would provide a stronger bar to human rights abusers and close loopholes in our current laws. The Immigration and Nationality Act (INA) currently provides that (i) participants in Nazi persecutions during the time period from March 23, 1933 to May 8, 1945, (ii) aliens who engaged in genocide, and (iii) aliens who committed particularly severe violations of religious freedom, are inadmissible to the United States and deportable. See 8 U.S.C. § 1182(a)(2)(G) & (3)(E) and § 1227(a)(4)(D). The bill would expand the grounds for inadmissibility and deportation to (1) add new bars for aliens who have engaged in acts, outside the United States, of "torture" and "extrajudicial killing" and (2) remove limitations on the current bases for "genocide" and "particularly severe violations of religious freedom."

The definitions for the new bases of "torture" and "extrajudicial killing" are derived from the Torture Victim Protection Act, which implemented the United Nations' "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." These definitions are therefore already sanctioned by the Congress. The bill incorporates the definition of "torture" codified in the federal criminal code, 18 U.S.C. § 2340, which prohibits:

"an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 18 U.S.C. § 2340(1).

"Severe mental pain or suffering" is further defined to mean:

"prolonged mental harm caused by or resulting from (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality." 18 U.S.C. § 2340(2).

The Torture Victim Protection Act also included a definition for "extrajudicial killing." Specifically, this law establishes civil liability for wrongful death against any person "who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to extrajudicial killing," which is defined to mean "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation."

The bill would not only add the new grounds for inadmissibility and deportation, it would expand two of the current grounds. First, the current bar to aliens who have "engaged in genocide" defines that term by reference to the "genocide" definition in the Convention on the Prevention and Punishment of the Crime of Genocide. 8 U.S.C. 1182(a)(3)(E)(ii). For clarity and consistency, the bill would substitute instead the definition in the federal criminal code, 18 U.S.C. § 1091(a), which was adopted pursuant to the U.S. obligations under the Genocide Convention. The bill would also broaden the reach of the provision to apply not only to those who "engaged in genocide," as in current law, but also to cover any alien who has ordered, incited, assisted or otherwise participated in genocide. This broader scope will ensure that the genocide provision addresses a more appropriate range of levels of complicity.

Second, the current bar to aliens who have committed "particularly severe violations of religious freedom," as defined in the International Religious Freedom Act of 1998 (IFRA), limits its application to foreign government officials who engaged in such conduct within the last 24 months, and also bars from admission the individual's spouse and children, if any. The bill would delete reference to prohibited conduct occurring within a 24-month period since this limitation is not consistent with the strong stance of the United States to promote religious freedom throughout the world. As Professor Aceves opines:

"This provision is unduly restrictive. . . The 24-month time limitation for this prohibition is also unnecessary. A perpetrator of human rights atrocities should not be able to seek absolution by merely waiting two years after the commission of these acts." William J. Aceves, *supra*, 20 Mich. J. Int'l L., at 683.

In addition, the bill would remove the current bar to admission for the spouse or children. This is a serious sanction that should not apply to individuals because of familial relationships that are not within an individual's control. None of the other grounds relating to serious human rights abuse prevent the spouse or child of an abuser from entering or remaining lawfully in the United States. Moreover, the purpose of these amendments is to make those who have participated in atrocities accountable for their actions. That purpose is not served by holding the family members of such individuals accountable for the offensive conduct over which they had no control.

Changing the law to address the problem of human rights abusers seeking entry and remaining in the United States is only part of the solution. We also need effective enforcement. As one expert noted:

"[s]trong institutional mechanisms must be established to implement this proposed legislation. At present, there does not appear to be any agency within the Department of Justice with the specific mandate of identifying, investigating and prosecuting modern day perpetrators of human rights atrocities. The importance of establishing a separate agency for this function can be seen in the experiences of the Office of Special Investigations." 20 Mich. J. Int'l L., at 689.

We need to update OSI's mission to ensure effective enforcement. Our country has long provided the template and moral leadership for dealing with Nazi war criminals. The Justice Department's specialized unit, OSI, which was created to hunt down, prosecute, and remove Nazi war criminals who had slipped into the United States among their victims under the Displaced

Persons Act, is an example of effective enforcement. Since the OSI's inception in 1979, over sixty Nazi persecutors have been stripped of U.S. citizenship, almost fifty such individuals have been removed from the United States, and more than 150 have been denied entry.

OSI was created almost 35 years after the end of World War II and it remains authorized only to track Nazi war criminals. Specifically, when Attorney General Civiletti, by a 1979 Attorney General order, established OSI within the Criminal Division of the Department of Justice, that office was directed to conduct all "investigative and litigation activities involving individuals, who prior to and during World War II, under the supervision of or in association with the Nazi government of Germany, its allies, and other affiliated governments, are alleged to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion." (Attorney Gen. Order No. 851-79). The OSI's mission continues to be limited by that Attorney General Order.

Little is being done about the new generation of international human rights abusers and war criminals living among us, and these delays are costly. As any prosecutor -- or, in my case, former prosecutor -- knows instinctively, such delays make documentary and testimonial evidence more difficult to obtain. Stale cases are the hardest to make. We should not repeat the mistake of waiting decades before tracking down war criminals and human rights abusers who have settled in this country. War criminals should find no sanctuary in loopholes in our current immigration policies and enforcement. No war criminal should ever come to believe that he is going to find safe harbor in the United States.

The Anti-Atrocity Alien Deportation Act would amend the Immigration and Nationality Act, 8 U.S.C. § 1103, by directing the Attorney General to establish an Office of Special Investigations (OSI) within the Department of Justice with authorization to denaturalize any alien who has participated in Nazi persecution, torture, extrajudicial killing or genocide abroad. Not only would the bill provide statutory authorization for Office of Special Investigation, it would also expand its jurisdiction to deal with any alien who participated in torture, extrajudicial killing and genocide abroad - not just Nazis.

The success of OSI in hunting Nazi war criminals demonstrates the effectiveness of centralized resources and expertise in these cases. OSI has worked, and it is time to update its mission. The knowledge of the people, politics and pathologies of particular regimes engaged in genocide and human rights abuses is often necessary for effective prosecutions of these cases and would best be accomplished by the concentrated efforts of a single office, rather than in piecemeal litigation around the country or in offices that have more diverse missions.

These are the sound policy and practical reasons that experts in this area recommend that the United States "establish an office in the Justice Department similar to the one that has tracked Nazi war criminals, with an exclusive mandate to carry out the task of investigation [of suspected human rights abusers]." William Schulz, *supra*, at p. 24.

I appreciate that this part of the legislation has proven controversial within the Department of Justice, but others have concurred in my judgment that the OSI is an appropriate component of the Department to address the new responsibilities proposed in the bill. Professor Aceves, who has studied these matters extensively, has concluded that OSI's "methodology for pursuing Nazi war criminals can be applied with equal rigor to other perpetrators of human rights violations. As

the number of Nazi war criminals inevitably declines, the OSI can begin to enforce U.S. immigration laws against perpetrators of genocide and other gross violations of human rights." 20 Mich. J. Int'l. 657.

Similarly, the Rutland Herald noted that the INS has never deported an immigrant on the basis of human rights abuses, by contrast to OSI's active deportations of ex-Nazis, while maintaining a list of 60,000 suspected war criminals with the aim of barring them from entry. Based on this record, the Rutland Herald concluded that the legislation correctly looks to OSI to carry out the additional responsibilities called for in the bill, noting that:

"It resolves a turf war between the INS and the OSI in favor of the OSI, which is as it should be. The victims of human rights abuses are often victimized again when, seeking refuge in the United States, they are confronted by the draconian policies of the INS. It's a better idea to give the job of finding war criminals to the office that has shown it knows how to do the job."

Unquestionably, the need to bring Nazi war criminals to justice remains a matter of great importance. Funds would not be diverted from the OSI's current mission. Additional resources are authorized in the bill for OSI's expanded duties.

Significantly, the bill further directs the Attorney General, in determining what action to take against a human rights abuser seeking entry into or found within the United States, to consider whether a prosecution should be brought under U.S. law or whether the alien should be deported to a country willing to undertake such a prosecution. Despite ratifying the Convention Against Torture in 1994 and adopting a new law making torture anywhere in the world a crime, federal law enforcement has not used this authority. In fact, one recent observer noted that, "the US has never prosecuted a suspected torturer; nor has it ever extradited one under the Convention Against Torture, although it has surrendered one person to the International Criminal Tribunal for Rwanda." William Schulz, *supra*, at p. 23 - 24.

As one human rights expert has noted:

"The justifiable outrage felt by many when it is discovered that serious human rights abusers have found their way into the United States may lead well-meaning people to call for their immediate expulsion. Such individuals certainly should not be enjoying the good life America has to offer. But when we ask the question 'where should they be?' the answer is clear: they should be in the dock. That is the essence of accountability, and it should be the central goal of any scheme to penalize human rights abusers."

Hearing on H.R. 5238, "Serious Human Rights Abusers Accountability Act," before the Subcomm. on Immigration and Claims of the House Comm. On the Judiciary, 106th Cong., 2d Sess., Sept. 28, 2000 (Statement of Elisa Massimino, Director, Washington Office, Lawyers Committee For Human Rights).

Finally, the bill directs the Attorney General to report to the Judiciary Committees of the Senate and the House on implementation of the new requirements in the bill, including procedures for referral of matters to OSI, any revisions made to INS forms to reflect amendments made by the

bill, and the procedures developed, with adequate due process protection, to obtain sufficient evidence and determine whether an alien is deemed inadmissible under the bill.

We must honor and respect the unique experiences of those who were victims in the darkest moment in world history. We may help honor the memories of the victims of the Holocaust by pursuing all human rights abusers and war criminals who enter our country. By so doing, the United States can provide moral leadership and show that we will not tolerate perpetrators of genocide, extrajudicial killing and torture, least of all here.