

Question#:	1
Topic:	GAO report
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: In its recent report (07-915), the GAO recommended greater collaboration and information sharing between departments and agencies with responsibilities concerning human trafficking. What specific actions has the Department of Homeland Security 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?

Answer:

U.S. Immigration and Customs Enforcement (ICE) supports common goal setting and works within an interagency strategic framework through the Senior Policy Operating Group (SPOG) that carries out the responsibilities of the President's Interagency Task Force to Monitor and Combat Trafficking. The Task Force, which is comprised of cabinet level members including DHS, was established by the Trafficking Victims Protection Act of 2000 and is primarily responsible for facilitating coordination among U.S. agencies, other countries, and domestic and foreign nongovernmental organizations (NGOs), and for measuring and evaluating the progress of U.S. and international counter-trafficking in persons efforts. Implemented in 2006, the ICE Trafficking in Persons Strategy (ICE TIPS) targets criminal organizations and individuals engaged in human trafficking worldwide. ICE TIPS focuses on partnerships and collaboration with other DHS agencies, foreign governments, NGOs, the Department of Justice Civil Rights Division and federal, state and local law enforcement.

Currently, the ICE Deputy Assistant Secretary for Operations is the DHS representative chair to the SPOG. The SPOG has been responsible for a number of interagency policy developments, such as the coordination of U.S. agency strategic plans to address trafficking in persons and the development of an interagency grant policy statement to help implement the President's National Security Presidential Directive on Trafficking in Persons.

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The anti-trafficking efforts overseen by the SPOG directly relate to the investigation and prosecution of individuals and criminal organizations engaged in human trafficking in the United States and abroad. Under the purview of the SPOG, ICE is a major stakeholder in the Global Trafficking in Persons (G-TIP) Initiative. ICE will continue to support interagency coordination toward common goals and strategies, such as through the SPOG and G-TIP, as long as the goals contain several objectives that specifically address the unique agency capabilities in combating human trafficking.

Additionally, ICE holds the permanent directorship of the Human Smuggling and Trafficking Center (HSTC). The HSTC provides a mechanism to bring together federal agency representatives from the policy, law enforcement, intelligence and diplomatic areas to work together on a full time basis to achieve increased effectiveness in combating human smuggling and trafficking.

Question#:	2
Topic:	command responsibility
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Does DHS interpret section 212(a)(3)(E)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(E)(iii), to include aliens who had “command responsibility” for the torture or extrajudicial killing of others? If not, why not?

Answer:

There is no express mention of command responsibility in the Immigration and Nationality Act (INA). However, section 212(a)(3)(E)(iii) of the INA, 8 U.S.C. § 1182(a)(3)(E)(iii), provides that an alien is inadmissible if, outside of the United States, that alien committed, ordered, incited, assisted or otherwise participated in the commission of torture or, under color of law, an act of extrajudicial killing. Commanders could thus fall under this rubric if the facts support such a finding. *See also* INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D) (providing for deportability for aliens described in 8 U.S.C. § 1182(a)(3)(E)(i)-(iii)).

Question#:	3
Topic:	follow up
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: When I asked you whether DHS has ever sought to remove someone from the United States on the basis of his or her command responsibility for serious human rights abuses such as torture or extrajudicial killing, you responded that you were not aware whether there had ever been such a case. Please provide a response to this question.

Answer:

There is no express mention of command responsibility in the Immigration and Nationality Act (INA). However, section 237(a)(4)(D) of the INA, 8 U.S.C. § 1227(a)(4)(D), provides that an alien is deportable if, outside of the United States, that alien committed, ordered, incited, assisted or otherwise participated in the commission of torture or, under color of law, an act of extrajudicial killing. Commanders could thus fall under this rubric if the facts support such a finding. DHS has been reviewing its cases since Congress amended the INA to add these removability grounds, but to date, has not removed anyone on this basis.

Question#:	4
Topic:	interagency coordination
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: 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?

Answer:

Similar to other criminal or administrative cases, ICE investigates information related to alleged human rights violators in order to determine if there is sufficient evidence to support criminal prosecution and/or removal. ICE works with U.S. Attorney's Offices and the ICE Office of Chief Counsel to decide upon a proper course. For criminal laws involving serious human rights violations such as genocide or torture, the Department of Justice's Domestic Security Section (DSS) must approve the decision to prosecute. For removal hearings involving the administrative charges of extrajudicial killings, torture or genocide, the ICE Human Rights Law Division (HRLD) must approve the charges to proceed administratively. Extradition matters are coordinated through the Department of Justice Criminal Division's Office of International Affairs.

Question#:	5
Topic:	regions
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: You testified that ICE's human rights cases are predominantly focused on Central and South America, Haiti, the Balkans and Africa. Why are ICE's cases focused on these regions?

Answer:

Past (or continuing) armed conflicts in Central and South America, Haiti, the Balkans and Africa have resulted in large numbers of refugees and asylum seekers and others who have entered the United States. Concealed among these various populations are individuals who have engaged in acts of persecution or other human rights abuses. Under the Immigration and Nationality Act, anyone who has 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 is statutorily barred from receiving asylum or refugee status in the United States. The Immigration and Nationality Act further provides that certain individuals who have participated in Nazi persecution, genocide or the commission of any act of torture or extrajudicial killing are inadmissible to the United States, as are foreign government officials who have engaged in severe violations of religious freedom. Many of these persons are also subject to criminal charges. While ICE investigates human rights related cases from over 85 different countries, a large part of our caseload corresponds to the larger non-immigrant, immigrant, refugee and asylum populations who presently reside in the United States and are from the aforementioned regions.

Question#:	6
Topic:	human rights
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: What does DHS currently do to prevent human rights violators from entering the U.S.?

Answer:

ICE has the ability to enter individual suspected human rights violator information into the Treasury Enforcement Communication System lookout system which interfaces with the Department of State (DOS) CLASS database. This information can be visible to overseas DOS Consular Affairs officials who are responsible for visa issuance. Additionally, this information can be visible to U.S. Citizenship and Immigration Services adjudicators, and U.S. Customs and Border Protection inspectors to aid in determining the viability of immigration benefits and the admission of suspects as they are confronted in the United States.

Question:

Upon what data sources does DHS rely to identify suspected human rights violators?

Answer:

ICE's information on known or suspected foreign human rights abusers comes from our coordination and cooperation with other nations' law enforcement agencies who investigate these issues within their own jurisdictions. ICE also receives information from our relationships with international or regional tribunals and judicial bodies that investigate these crimes.

ICE also develops information on suspected human rights violators based on our own case-related research activities and receipt of information or tips from a number of non-governmental sources, open source media reporting, and even the public-at-large.

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Question:

What steps does DHS take to ensure such data is reliable and to avoid unfairly denying entry to innocent individuals?

Answer:

In many cases, information available from outside the United States comes in the form of data obtained through links to Europol, Interpol or other regional organizations that deal with international law enforcement cooperation. In these instances, the U.S. Government has little control over the veracity or completeness of this information beyond the requirements of those organizations.

ICE recognizes the potential for inadvertent or even deliberately false records to be generated which could prevent innocent individuals from entering the U.S. in a number of circumstances. The fact that a record is created on a potential human rights abuser does not result in an automatic refusal of admission. However, it does initiate an interagency process that ensures that information is properly vetted to determine if valid grounds to deny entry actually exist. In the case of visa applicants, these interagency vetting procedures are codified in the Department of State's Foreign Affairs Manual. In the case of individuals who do not require a visa, U.S. Customs and Border Protection coordinates with the originator of the record, or with the ICE Headquarters component, Human Rights Violators/Public Safety Unit to determine if credible grounds exist to deny admission.

Question#:	7
Topic:	tracking center
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: When will the Human Rights Tracking Center be operational?

Answer:

ICE is attempting to establish a pilot Human Rights Violators Center (HRVC) with existing funding and positions. If successful, the primary focus of the HRVC would be to proactively identify and bar from entry individuals or organizations that have assisted in, ordered, or committed offenses such as genocide, war crimes, torture, extrajudicial killings, suppression of religious freedom, and persecution. The HRVC would work with other U.S. agencies, foreign governments, and nongovernmental organizations to collect information about past and current conflicts where human rights abuses have occurred in order to identify perpetrators before they enter the United States or obtain an immigration benefit.

Question:

How will the Tracking Center improve DHS's capacity to prevent human rights violators from entering the U.S.?

Answer:

In an effort to keep with ICE's core objectives to protect the United States and uphold public safety, the mission of the HRVC will be to deter or prevent the entry of human rights violators into the U.S., and to take enforcement actions against those who have engaged in criminal activity by violating the human rights of others.

- 1) The first mission is deterrence oriented by preventing suspected war criminals and human rights violators from entering or reentering the United States.
- 2) The second mission is enforcement oriented by identifying, locating, prosecuting and removing foreign national human rights abusers who have gained entry to or who are already residing in the United States.

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Another goal of the HRVC is to create a focal point for the collection and processing of information on suspected offenders from law enforcement, intelligence and open source derived information.

By creating a centralized hub to create and maintain such records, the required analytical and processing abilities will be in place to ensure records are created and updated beyond the duration of any one particular investigation. This is crucial given the fact that many of these identified offenders may not attempt to enter the U.S. for years (or even decades) after the commission of the foreign offenses.

Question:

Upon what data sources will the Tracking Center rely?

Answer:

The HRVC will have a system to ensure data quality similar to how the National Counter Terrorism Center vets and nominates suspects to be placed on a watchlist. The scope and utilization of the information will be re-oriented in order to more precisely serve the objective of preventing the entry of such suspects in the first place. The Center will rely on data sources such as open source reporting, newspaper accounts, DOS reports, and intelligence cable traffic. In the first phase, information that is available via our unclassified data holdings will be processed for the creation of records. In our second phase, protocols for the sanitization and use of classified information will be undertaken.

Representatives from appropriate USG agencies (CIA, DOS, DOJ) and DHS components (USCBP, USCIS) would be invited to participate in the HRVC.

Question:

What measures will DHS take to ensure the reliability of this data and to protect innocent people from being denied entry?

Answer:

Through the creation of a central focal point for collecting, processing and analyzing human rights related offender information, a "knowledge center" on these issues will be created and fostered. This expertise will enhance ICE's ability to vet information and

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records to reduce the potential that inaccurate or malicious information will impact innocent individuals who wish to enter the U.S.

Question#:	8
Topic:	process
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: 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?

Answer:

ICE seeks to prosecute all foreign suspected human rights abusers residing in the United States to the extent permissible under the law. During removal proceedings, country conditions in the designated country of removal are often raised. In accordance with its obligations under Article 3 of the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the United States will not remove an individual to a country where it is more likely than not that they will be subjected to torture. All individuals in removal proceedings have the opportunity to seek protection under regulations implementing our CAT Article 3 obligations.

Question#:	9
Topic:	steps
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: 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?

Answer:

DHS notifies local law enforcement authorities when it is removing a suspected human rights abuser to his/her home country and shares relevant evidence as permitted under U.S. laws and regulations, as requested by local authorities. Any monitoring and reporting of subsequent prosecutions by the home country would be under the purview of the Department of State.

Question#:	10
Topic:	Negewo
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: Ms. Mandelker 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. What assurances, if any, do you have that Negewo's conviction complied with human rights standards?

Answer:

While ICE does receive such information from the Department of State or nongovernmental organizations in other human rights violator cases, it did not receive any information regarding the *in absentia* conviction in this particular case. After Negewo was returned to Ethiopia, he was entitled to a new trial. ICE worked with the Ethiopian prosecutor to provide him with relevant documents for that trial.

Question#:	11
Topic:	Boskic
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: You testified that you anticipated Marko Boskic will face charges for the atrocities he committed when he returns to Bosnia. What is the basis for this statement? What type of commitment has the U.S. government obtained that Boskic will in fact be held accountable for his alleged role in the Srebrenica massacre?

Answer:

Ongoing contacts with the Office of the Prosecutor for the War Crimes Chamber of the Bosnian State Court indicate their continued interest in the eventual prosecution of Marko Boskic for war crimes related acts in Bosnia. ICE will continue to closely monitor this situation.

Question#:	12
Topic:	human rights cases
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

Question: What steps does the government take to protect witnesses in human rights cases?

Answer:

ICE protects all of the victims and the witnesses in all of our investigations. ICE utilizes all available means to accomplish this including exigent relocation, providing armed agent protection, and utilization of the U.S. Marshals Witness Security Program. ICE takes the preservation of human life and victim/witness well-being very seriously.

ICE has a victim assistance program with victim coordinators specially trained to deal with the unique circumstances surrounding these cases. Domestic efforts to protect witnesses are generally handled by each respective local ICE office and witness threats have been infrequent.

Generally, the greatest concern is to overseas witnesses or family members of U.S.-based witnesses; in those instances, ICE can work with its overseas attaché offices, other U.S. Government (USG) partners, and foreign governments to protect witnesses and family members from intimidation and harm. ICE has the ability to grant Significant Public Benefit Parole to bring the affected person(s) into the U.S. Obviously, ICE can afford the witnesses and victims the highest level of protect if the witnesses and victims are in the United States. ICE also utilizes third-country relocation or internal relocation options with overseas USG and non-USG partners.

Question#:	13
Topic:	witness process
Hearing:	No Safe Haven: Accountability for Human Rights Violators in the United States
Primary:	The Honorable Richard J. Durbin
Committee:	JUDICIARY (SENATE)

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

Answer:

Yes. ICE has the ability to grant Significant Public Benefit Parole (SPBP). Additionally, as a long-term solution, ICE may pursue S-visas for witnesses and their derivative family members who assist during the course of investigations. Both S-visas and SPBP are critical tools that enhance the ability of ICE to enforce the law and protect victims and witnesses from harm. SPBP is a temporary measure used to support law enforcement efforts by providing a legal mechanism for aliens such as informants, witnesses, criminals, and defendants who are otherwise inadmissible to be present in the United States so they may assist with investigations, prosecutions, or other activities necessary to secure the borders of the United States. S-visas provide witnesses with a more permanent solution that may result in the witness obtaining lawful permanent residency in the U.S.