



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING

“NO SAFE HAVEN:
ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATORS, PART II”

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

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226 Dirksen Senate Office Building

Chairman Durbin, Ranking Member Coburn, and distinguished members of the Subcommittee:

I am pleased to have the opportunity to address this Subcommittee on the role U.S. Immigration and Customs Enforcement (ICE) continues to play in ensuring that the United States does not become a safe haven for human rights abusers. As the primary criminal investigative component in the Department of Homeland Security (DHS), ICE remains firmly committed to this mission and dedicates staff from many of our programs to advancing it, including special agents in the Office of Investigations (OI) and the Office of International Affairs (OIA), attorneys from the Office of the Principal Legal Advisor (OPLA) and officers from Office of Detention and Removal Operations (DRO).

Today, ICE is handling more than 1,000 human rights removal cases. These removal cases are at various stages of investigation and litigation and involve suspects from approximately 95 different countries, primarily those in Central and South America, the Balkans, and Africa. In addition, ICE currently has more than 180 active human rights investigations, which could ultimately support criminal charges or administrative removal proceedings. Since Fiscal Year 2004, the attorneys in OPLA have obtained final removal orders for, and officers in DRO have successfully removed, more than 300 suspected or known human rights violators from the United States.

Initially, I would like to mention the matter of Carlos Eugenio Vides-Casanova and Jose Guillermo Garcia, two Salvadoran government officials residing in the United States who have been of longstanding interest to this Subcommittee. I am well aware of these cases and I am committed to seeking justice. Despite the best efforts of government employees responsible for these cases, charges against these men stalled in the last administration. Since

becoming the Assistant Secretary, I have moved forward with a specific and determined plan, and ICE has lodged administrative charges against these individuals.

Working in tandem with our primary partner, the Department of Justice, we have enjoyed some significant successes. I would like to elaborate on just a few of these cases.

- Chuckie Taylor, the son of Liberian dictator Charles Taylor, committed numerous human rights abuses, including torture, while running the infamous Anti-Terrorist Unit during his father's violent regime. The investigation, prosecution and conviction of Chuckie Taylor reflected a cooperative partnership among ICE, the Department of Justice, the Federal Bureau of Investigation, and the Department of State. On January 8, 2009, a District Court Judge sentenced Taylor to 97 years in a federal prison after his conviction by jury.
- In the spring of 2007, in Boston, ICE agents investigated Carlos de Graca Lopes, a citizen of Cape Verde who entered the United States on a fraudulently obtained visitor's visa. Lopes was a prison warden in Cape Verde until an indictment was issued against him in his home country for various crimes, including the torture of prisoners in his care. He fled and entered the United States. ICE agents exercised their administrative authority to arrest Lopes. The United States Attorney's Office in Boston subsequently charged Lopes with 14 counts of visa fraud (18 U.S.C. § 1546), false statements (18 U.S.C. § 1001), and perjury (18 U.S.C. § 1621). Lopes pled guilty to 13 of the 14 counts and was sentenced to serve three years in prison. Fortunately, the District Court Judge imposed a sentence substantially higher than the sentencing guidelines recommended. In doing so, he stated that his intent was to deter others and "send the message that the United States will not be a safe or cost-free haven for those who are alleged to have abused human rights." ICE

attorneys had previously obtained a final order of removal for Lopes. Thus, when Lopes completes his term in federal prison, DRO will remove Lopes from the United States to Cape Verde, where he faces prosecution for his substantive offenses.

- ICE has continued to advance successfully the effort to bring to justice two Lieutenants in the Peruvian army, Juan Manuel Rivera-Rondon and Telmo Ricardo Hurtado-Hurtado. In 1985, both were principal perpetrators in a crime now known as the “Accomarca Massacre.” These men and their associates slaughtered 67 men, women, and children. Several weeks after that massacre, Hurtado-Hurtado discovered that some victims had survived and thus returned to kill an additional seven people who were witnesses to his crimes. Following an investigation of human rights abuses by the Peruvian Truth and Reconciliation Commission, Peruvian prosecutors charged Hurtado-Hurtado and Rivera-Rondon for their roles in this massacre. In 2006, ICE opened an investigation into both Hurtado-Hurtado and Rivera-Rondon, who were residing in the United States. Although extradition could not be achieved at that time, the Department of Justice provided information to ICE to determine if the men could be removed. ICE agents exercised their administrative authority, and arrested Rivera-Rondon in Baltimore in March 2007 and ICE attorneys successfully litigated the case before an immigration judge, and subsequently the Board of Immigration Appeals. In August 2008, Rivera-Rondon was deported to Lima, Peru, where he remains in custody pending trial. Working with the United States Attorney’s Office in Miami, ICE agents arrested Hurtado-Hurtado, who was charged with visa fraud (18 U.S.C. § 1546). He subsequently

- pled guilty and served six months in prison. He is now in the custody of the United States Marshals Service while he appeals his extradition to Peru.
- ICE helped remove former Nazi death camp guard John Demjanjuk from the United States. Following extensive litigation concluding in 2004, the Department of Justice successfully revoked John Demjanjuk's citizenship due to his participation at four Nazi death camps, including the Sobibor extermination camp, where he participated in the death of thousands of Jews murdered by asphyxiation with carbon monoxide. At the conclusion of additional litigation, ICE's Office of Detention and Removal Operations took Demjanjuk into custody without incident on May 11, 2009, and successfully removed him on the same day via medical air ambulance to Germany, where Demjanjuk faces prosecution.
 - ICE is currently seeking a removal order against Captain Nedjo Ikonik, who commanded a Special Police Company involved in the murder of more than 7,000 Bosnian Muslim men and boys at Srebrenica in July 1995—the largest mass-killing in Europe since the end of World War II. Like many others in military and police units involved in these crimes, Ikonik sought immigration benefits and entered the United States. In an investigation involving our partners in the U.S. Attorney's Office in Milwaukee, Wisconsin, investigators from the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, and investigators from the Bosnia Prosecutor's Office's Special Department for War Crimes in Sarajevo, ICE developed the necessary evidence to indict Ikonik for visa fraud (18 U.S.C. § 1546). In September 2007, he pled guilty to two counts of visa fraud and is still serving a one-year prison sentence in federal prison. ICE instituted proceedings to remove Ikonik from the United States while he is serving his

sentence with the intent to remove him to Bosnia. On September 23, 2009, Ikonik accepted a final order of removal to Bosnia. Late last year, war crimes prosecutors in Sarajevo obtained a detention order and international arrest warrant based on planned genocide charges against Ikonik for his role in Srebrenica.

- More recently, ICE traveled to Kigali, Rwanda, to investigate Prudence Kantengwa, an individual suspected of inciting and assisting in the 1994 Rwandan genocide. In December 2008, ICE's investigation resulted in a 15-count indictment in the District of Massachusetts against Kantengwa for visa fraud (18 U.S.C. § 1546), perjury (18 U.S.C. § 1621), and obstruction (18 U.S.C. § 1505). This matter remains pending.
- Jean-Marie Vianney Mudahinyuka illegally entered the United States in 2000. After settling in the Chicago area, six witnesses identified Mudahinyuka as a perpetrator of the Rwandan genocide, and one allegedly witnessed him committing murder and rape. ICE agents conducted an extensive investigation and arrested Mudahinyuka in May 2004 on federal immigration fraud charges. During the arrest at his Romeoville, Illinois, residence, Mudahinyuka assaulted an ICE agent and grabbed the agent's weapon. In June 2005, Mudahinyuka was convicted in federal court in Chicago for committing immigration fraud and assaulting a federal officer. He was sentenced to 51 months in federal prison and was transferred to ICE custody after he completed his sentence. An Immigration Judge subsequently ordered him removed. Upon his removal, ICE DRO officers will turn Mudahinyuka, who is wanted on an international arrest warrant, over to the custody of the Rwandan National Police to face charges of genocide and war crimes.

Our successes, and our ongoing daily efforts, underscore ICE's deep commitment to the No Safe Haven initiative to deny human rights violators safe haven in the United States using all of ICE's legal authorities. In April 2008, to be more proactive in our effort to prevent human rights abusers from entering the United States and to locate and remove those who have entered, ICE established the Human Rights Violators and War Crimes Center Pilot Project. This pilot project created a center to leverage existing personnel, missions and authorities that our agency already possessed to more effectively and efficiently harness our efforts against human rights abusers. The center synchronizes the expertise and talents of our investigators, legal experts, researchers and analysts, intelligence professionals and our international attachés. The center pulls together the broad spectrum of skills, authorities, and abilities already resident within ICE.

As part of the project, ICE created Regional Support Teams consisting of agents, attorneys, criminal researchers and historians with expertise in specific regional target areas or conflicts. These Regional Support Teams are a valuable resource and enhance our domestic enforcement activities. Based on the success of the pilot program, we now have fully implemented and established the Human Rights Violators and War Crimes Center ("Center") within the Office of Investigations. Several of our partners—for instance, the Department of Justice—participate in the Center through frequent attendance at weekly meetings and the constant facilitation of information-sharing between agencies. We hope that this participation will continue to expand. As our own space and resources allow, we will invite additional partners from within the Department of Homeland Security and from the Department of State to participate.

Likewise, in an effort to respond more proactively to prevent the entry of foreign human rights abusers into the United States, in June 2008, we created the Human Rights Target

Tracking Initiative. This initiative works to identify and target foreign human rights abusers and war crimes suspects before they enter the United States, and to take the necessary steps to ensure that they can be prevented from gaining admission. Working closely over the past year with our partners in the Bureau of Consular Affairs at the Department of State as well as U.S. Customs and Border Protection, we have identified and corrected a number of technical issues that prevented records pertaining to foreign human rights abusers maintained by ICE in the Treasury Enforcement Communications System (TECS) from being available to State Department Consular Officers at our embassies abroad via their Consular Lookout and Database Support System (CLASS). These ICE records are now visible to consular officers abroad, and should significantly advance our shared goal of preventing human rights abusers from improperly receiving nonimmigrant visas.

Since the inception of this initiative, ICE has generated over 507 records of human rights violator suspects covering select past and present human rights abuses in Central and South America, Africa, Europe, the Middle East, and Asia. Five individuals listed in these records were detained by U.S. Customs and Border Protection when they attempted to enter the United States. Based on the demonstrated potential of this initiative, a Target Tracking Team has been established and is now formally incorporated into the Human Rights Violators and War Crimes Center.

Since ICE last appeared before this Committee on November 14, 2007, we have more than doubled our headquarters staffing and currently have a team of 21 individuals working within the Human Rights Violators and War Crimes Center structure.

To enhance ICE's ability to deny human rights abusers a refuge in the United States, in October 2008, the Human Rights Violators and War Crimes Unit analyzed its practices. The review determined that the ICE Field Offices investigated human rights violators and war

crimes cases in a decentralized manner. Each of ICE's 26 Special Agents in Charge had the discretion to assign these cases to an agent in any programmatic area, whether related to national security, benefit fraud, smuggling, or some other focus. This analysis also revealed that the investigative techniques and methodologies used in human rights investigations often mirrored the approaches used in national security-related investigations. As such, the Human Rights Violators and War Crimes Unit was transferred to the ICE Office of Investigation's National Security Unit, and the field offices were instructed to assign human rights-related investigations to national security agents. This centralized the investigations within one programmatic area. Furthermore, ICE has provided specialized training to this cadre of agents, as well as to our attorneys, through formal annual conferences and informal region-specific training to further develop investigative abilities.

Since becoming the ICE Assistant Secretary, I have asked the Office of Investigations (OI) to examine different ways of improving the ways in which we dedicate resources to human rights. An option under review includes utilizing ICE Special Agents within the Center structure to actively initiate investigations and co-manage these investigations with field agents using the established collateral investigation process. Criminal Research Specialists and assigned Historians within the Center could then support these agents with operational and tactical level research as needed. This could also allow the Center to dispatch Special Agents, Criminal Research Specialists, and Historians to the field to support on-going investigations as needed. This is a new frontier for federal law enforcement: developing cases within the headquarters, farming the investigations to field offices and deploying resources to support the investigations. We believe such a model will work well with these cases, where expertise and the singular focus of the agents are hallmarks of our past successful investigations. We

continually prioritize our investigative activities based on risk, and will review existing investigative resources to see how we can improve our efforts in this important area.

Assistance from a broad range of non-governmental organizations (NGOs) is a key component in successful human rights-related investigations and prosecutions. ICE has benefited many times from the assistance of NGOs. For example, ICE has had assistance identifying potential suspects, witnesses, and victims, as well as providing crime scene information and language support. ICE has developed, and maintains a good relationship with, several dozen local, regional, and international organizations who work in the arena of human rights. As part of our continuing efforts to enhance our capacity to prevent the admission of known or suspected human rights violators, as well as to increase the effectiveness of ongoing domestic enforcement activities, ICE has developed a comprehensive outreach strategy to government entities and NGOs. Our outreach program allows ICE to expand these contacts through our 26 SAC offices and 54 attaché offices. The Human Rights Violators and War Crimes Unit outreach program has created new relationships with targeted organizations and has strengthened our existing relationships, ultimately furthering our ability to deny human rights violators and war criminals a safe haven in the United States.

The success ICE has enjoyed to date cannot be achieved without partnering with both domestic and foreign law enforcement agencies and NGOs. Human rights violator investigations require our agents, researchers, historians, analysts, and lawyers to travel the globe collecting evidence and interviewing victims and witnesses. Within our own agency, we have a network of 54 ICE attachés that have allowed us to foster strong international relationships in over 43 countries. Where ICE attachés are not present, we work with FBI legal attachés and agents in the Department of State, Bureau of Diplomatic Security.

When preparing cases for potential criminal indictment and prosecution, we partner closely with a variety of Department of Justice components, including the Domestic Security Section, the Office of Special Investigations, the Counter-Terrorism Section, United States Attorney's Offices, and the Office of International Affairs. I have been pleased to work with Lanny Breuer and his staff in substantive efforts to create one section within the Criminal Division that prosecutes, both criminally and civilly, human rights cases. I applaud the initiative undertaken by the Assistant Attorney General in this regard. ICE will be well served as a law enforcement agency by the new section. Finally, as ICE seeks to identify and prevent the admission of foreign human rights abuse and war crimes suspects, we work with our departmental partners at U.S. Citizenship and Immigration Services and U.S. Customs and Border Protection, as well as with several bureaus in the Department of State, including the Bureau of Consular Affairs, the Bureau of Population, Refugees and Migration, the Bureau of Democracy, Human Rights and Labor, and the Bureau of Intelligence and Research.

ICE also maintains close relationships with a number of United Nations-sponsored tribunals, including the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone. Other international partners include various war crimes and human rights-related agencies in Argentina, Australia, Bosnia and Herzegovina, Canada, Finland, Germany, Peru, Rwanda, and the United Kingdom. We maintain an even wider network through our coordination with INTERPOL's Fugitive Investigative Support Unit. In April of this year, subject matter experts from ICE, along with our counterparts from the Department of Justice, participated in INTERPOL's Fourth International Expert Meeting on Genocide, War Crimes and Crimes against Humanity, to provide the United States perspective on best practices related to investigation and enforcement issues.

While recognizing our combined work to date, ICE recognizes that much remains to be done to ensure that the United States does not become a safe haven for human rights abusers. While the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 broadened the category of human rights abusers who are inadmissible to, or removable from, the United States under the Immigration and Nationality Act (INA), significant gaps still remain. The Intelligence Reform and Terrorism Prevention Act added two new categories of individuals who are subject to removal: those who have participated in acts of torture, and those who have participated in extrajudicial killings. More recently, the Child Soldiers Accountability Act of 2008 added grounds to deny admission or remove individuals who have recruited or used children as soldiers.

While the INA bars many more individuals who ordered, incited, assisted, or otherwise participated in a much broader range of persecution from receiving certain forms of lawful immigration status (such as asylee or refugee status), there is no specific immigration charge of inadmissibility or removability for engaging in other serious acts of persecution. Therefore, some of these individuals still may be eligible for other forms of immigration benefits, including business or tourist visas or visas secured through a family member or an employer.

To obtain visas and enter the United States, many human rights abusers perpetrate fraud against the United States during the application process. Unless this fraud is exposed within five years, ICE is confronted with a serious obstacle to prosecution. The statute of limitations for visa fraud is only five years, although the statute of limitations for related crimes such as naturalization fraud is 10 years. Even the crimes of genocide and other war crimes carry a five year statute of limitations when the violation does not result in death. The crime of torture carries only an eight year statute of limitations if the acts did not result in death or serious bodily injury or the foreseeable risk of such. Frequently, we find ourselves in a position where

we must forgo criminal charges related to the visa and immigration fraud because evidence of the offender's misrepresentations did not come to light within the statute of limitations.

While we have enjoyed some success in obtaining sentences commensurate with the gravity of the crimes these offenders committed abroad, we are still confronted with the fact that most of the offenses we charge relate to visa fraud, false statements, and naturalization fraud fall at the extreme low end of sentencing guidelines. Not infrequently, individuals who have been convicted of these offenses receive minimal sentences of zero to six months, and then are placed into removal proceedings. These minimal sentences have almost no deterrent effect on future offenders and can be particularly frustrating to victims and survivors—particularly in cases where the offender is removed to a country that has pardoned, amnestied, or otherwise granted impunity to those who have committed such grievous acts. Respectfully, when we are dealing with human rights abusers, including those who commit the most heinous crimes, the burden should be on the human rights violator to argue for a lesser sentence, as opposed to on the government to argue for a greater one. A graduated scale of increases in sentencing guidelines related to the underlying conduct would ensure justice in these cases and provide for sentencing that reflects the seriousness of these crimes.

Over the past 25 years, the United States has sheltered over a million refugees fleeing armed conflict, ethnic cleansing, persecution and torture. Each of these refugees bears the burden of a personal ordeal that often reflects the loss of possessions, homes, family members, or even entire communities. They arrive with little more than the hope of rebuilding their shattered lives. Invariably, most choose to remain here. They and their children add another thread to the tapestry of our diverse, yet shared, immigrant history as a nation. As the Assistant Secretary of ICE, I recognize the unique responsibility my agency bears in protecting those who came to our shores seeking to escape those who perpetrated such atrocities. With

our partners within the Department of Homeland Security and in the Departments of Justice and State, we use every tool at our disposal to ensure that those who have committed such acts abroad never evade justice and accountability for their crimes by hiding among their victims here.

Perhaps our shared vision is best described by Nobel Laureate and Holocaust survivor Elie Wiesel. In August 2008, ICE was honored to receive him as our guest during our annual human rights conference in New York. He spoke of his life and his experiences—both as a victim of Nazi-era crimes and as a witness to modern day acts of persecution and genocide. Of the many impressions that he left with members of ICE that day, perhaps none was more striking than his view of the role that we collectively play in bringing such offenders to justice. Mr. Wiesel noted that the investigation and prosecution of human rights violators and war criminals was not merely an assignment given to us by our managers; it reflected a role assigned by history itself in the name of the countless and often anonymous victims who perished at the hands of those who perpetrated these crimes.

Chairman Durbin and Ranking Member Coburn, I applaud your continued leadership on these important issues. I congratulate you both on the enactment, exactly a year ago this week, of the Child Soldiers Accountability Act, which you were both instrumental in getting passed. I look forward to working with you both and the Subcommittee on this new law and other legislation in the future.

On behalf of Secretary Napolitano and the dedicated employees at ICE who are committed to fulfilling this shared vision, I thank you again for the opportunity to address this Subcommittee. I would be pleased to answer any questions you may have.