

# ICE

## **Investigating & Prosecuting Human Rights Violators and War Criminals: A Collaborative Approach**

***Center for Victims of Torture  
Webinar***

***October 20, 2010***

*Annemarie Brennan, Associate Legal Advisor  
Human Rights Law Section  
Office of the Principal Legal Advisor*



U.S. Immigration  
and Customs  
Enforcement

## Human Rights Goals

- To **deny safe haven** in the United States to human rights violators, torturers, and war criminals by:
  - Identifying,
  - Locating,
  - Investigating,
  - Prosecuting, and/or
  - Removing them from the United States.
- To **prevent these individuals from entering** the United States as they try to evade justice in their home jurisdictions.



# ICE



Members of units that participated in the massacre of thousands of Bosnian civilians at Srebrenica filed false refugee claims and have since been located in the United States.



U.S. Immigration  
and Customs  
Enforcement

# ICE



Paramilitary and militia gang members who participated in human rights abuses in Sierra Leone are suspected of entering the United States by posing as Liberian refugees.



U.S. Immigration  
and Customs  
Enforcement

# ICE

## ICE Human Rights Units



U.S. Immigration  
and Customs  
Enforcement

## Human Rights Units

- **Human Rights Violators and War Crimes Unit (HRV)**
  - Office of Homeland Security Investigations
  - Identifies, investigates, and aids in the prosecution of human rights violators, torturers, and war criminals
  - Founded in 2003
- **Human Rights Law Section (HRLS)**
  - Office of the Principal Legal Advisor, Homeland Security Investigations Law Division
  - Works with the Assistant Chief Counsels and the Office of Detention and Removal to prosecute and remove these persecutors
  - Founded in 2004



## HR Fusion Center

- Pulls together the resources of investigators, attorneys, analysts, and others
- Houses Regional Support Teams
  - Regional breakdown (Africa, Asia, Europe, Latin America, Middle East / North Africa)
  - Each team contains at least one special agent, attorney, historian, analyst, and clerk
  - Ensures collaboration among the different offices that deal with human rights cases
- Established in January 2009



## Partners: Within ICE

- Office of the Assistant Secretary
- Office of the Principal Legal Advisor
  - National Security Law Section
  - Criminal Law Section
  - Enforcement & Removal Ops Law Division
  - Offices of the Chief Counsel
- Homeland Security Investigations
  - Human Rights Violators & War Crimes Unit
- Office of Detention and Removal
- Office of International Affairs
- Office of Public Affairs
- Office of Congressional Relations



## Partners: Wider DHS and Interagency

- Department of Homeland Security
  - U.S. Citizenship and Immigration Services
  - Office of Civil Rights & Civil Liberties
- Department of State
  - War Crimes Office
  - Country Desk Offices
- Department of Justice
  - Human Rights and Special Prosecution Section (also covers MEJA)
  - Individual Assistant US Attorneys
  - FBI War Crimes Office
- Department of Defense
- HHS: Office of Refugee Resettlement



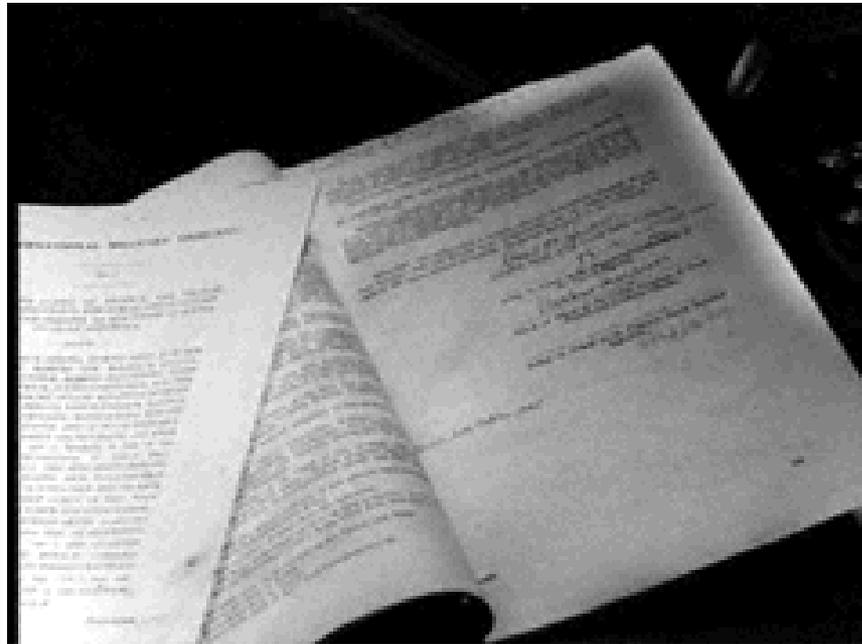
## NGO Community “Friends”

- Advocates for Human Rights
- Aegis Trust
- Amnesty International
- Human Rights First
- Human Rights Watch
- The Enough Project
- Freedom House
- Global Witness
- Impunity Watch
- International Crisis Group
- Iraqi Memory Foundation
- Open Society Institute



# ICE

## Basic Persecutor / Human Rights Violator Law



*Nuremberg Indictments*



U.S. Immigration  
and Customs  
Enforcement

## Bars v. Charges

- **Persecutor Bar** – Bars an applicant from certain forms of relief. (Applicant's burden to establish eligibility). If found to be a persecutor, an applicant is barred from:
  - Asylum
  - Temporary Protected Status
  - Cancellation of Removal
  - Withholding of Removal (INA & CAT)
  - NACARA (not §202 - Cuba/Nicaragua)

! Deferral under CAT is NOT Barred
- **Charges** – Actual immigration charge lodged against an applicant in order to establish them as inadmissible or removable. (Government's burden to prove charges.)



## Persecutor Bar

The definition of a refugee **specifically excludes** one 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.”

- *INA § 101(a)(42)(A)*



## Persecution Defined

“While there is no universally accepted definition of ‘persecution, ‘a threat to life or freedom **on account of**’ any of the five protected grounds ‘is always persecution.’”

- *Matter of McMullen*, 19 I&N Dec. 90, 95-96 (BIA 1984)



## Specific Charges

- Participants in Nazi persecution
  - *INA § 212(a)(3)(E)(i) / § 237(a)(4)(D)*
- Participants in genocide
  - *INA § 212(a)(3)(E)(ii) / § 237(a)(4)(D)*
- Torturers
  - *INA § 212(a)(3)(E)(iii)(I) / § 237(a)(4)(D)*
- Those who committed extrajudicial killings
  - *INA § 212(a)(3)(E)(iii)(II) / § 237(a)(4)(D)*
- Foreign government officials who committed particularly severe violations of religious freedom
  - *INA § 212(a)(2)(G) / § 237(a)(4)(E)*
- Recruiters of child soldiers
  - *INA § 212(a)(3)(G) / § 237(a)(4)(F)*



## Motivation

- “Do not look at the subjective intent ... but at the objective effect ...”  
*- Matter of Rodriguez-Majano, 19 I. & N. Dec. 811, 815 (BIA 1988)*
- The individual DOES NOT have to have to be acting on a personally held belief or motivation.
- It is important to determine whether the group or person on whose behalf the individual committed the acts of persecution was itself acting on account of a protected characteristic.



## Membership in a group that persecutes others

- “Mere membership” in a persecutory organization is not enough to bar the applicant.  
*- Matter of Rodriguez-Majano, 19 I&N Dec. 811, 814-815 (BIA 1988)*
- **REMEMBER** that “mere membership” in a **persecutory** organization is different from membership in a **terrorist** organization, which can alone be considered material support.
- **BUT**, if the applicant belonged to a persecutory organization, question the applicant carefully about his/her activities in to figure out whether the applicant’s actions or inactions assisted in the persecution of others.



## Acts committed during war or civil strife

- Acts directly related to war are not persecution.
- “Harm which may result incidentally from behavior directed at another goal, the overthrow of a government or, alternatively, the defense of that government against an opponent, is not persecution. In analyzing a claim of persecution in the context of a civil war, one must examine the motivation of the group threatening harm.”

- *Rodriguez-Majano*, 19 I&N Dec. 811, 815 (BIA 1988)

- **BUT**, if an act is done on account of one of the five protected grounds, it is persecution, even in wartime.

- *Rodriguez-Majano*, 19 I&N Dec. 811, 816 (BIA 1988)



## Nexus

- In symmetry with asylum law:
  - **“On account of”**: Note that this does not mean the sole motivation – merely at least one central reason for the persecutor’s actions.
  - **Membership in a protected class**: race, religion, nationality, membership in a particular social group, or political opinion



## Burden of proof

- It is the **applicant's burden** to establish that he is a refugee.
  - *INA 208(b)(1)(B)(i), 8 USC 1158(b)(1)(B)(i)*
- The applicant's credibility must play an important role in your decision.
- If the evidence indicates that the applicant **may be ineligible** for refugee resettlement because he or she is a persecutor, then the **applicant must establish** that the **persecutor exception does not apply**.
  - *Matter of A-H-*, 23 I&N, Dec. 774, 786 (A.G. 2005)



## No Legal Exceptions

- **No Self Defense**
- **No Repudiation**
- **No Restitution**
- **No Youth Exception** (but note current *policy...*)
- **No Duress / Involuntariness** (but note current *policy...*)



## Red Flags

- Military service during wartime or civil strife
- Claims of **NO** military service in countries where service is compulsory or where there has been recent conflict
- Special forces
- Intelligence service
- Police service
- Prison guards
- High-ranking government officials
- Membership in armed opposition groups
- The media (if the conflict was characterized by members of the media encouraging persecutory acts)



# ICE

# STOP Initiative



**Survivors of  
Torture  
Outreach  
Program**



U.S. Immigration  
and Customs  
Enforcement

- **Rationale**

- Every survivor of torture is a potential witness and / or might provide a valuable lead.

- **Work to date**

- Conducting outreach to
  - ◆ Torture treatment centers in the U.S. and overseas.
  - ◆ Refugee service providers and community organizations.
- Training investigators and agents to talk with survivors.



## STOP: Investigators

- **Special Training for HR Investigators**
  - Interviewers learn different techniques, including allowing the witness to set the pace and tone.
  - Interviewer learn that their appearance, behavior, and even room set up can impact:
    - ◆ the health and well being of the survivor, and
    - ◆ the success of the interview.
  - Interviewers are aware that survivors:
    - ◆ might be wary of talking to government investigators, and
    - ◆ might have issues with their immigration status.



## Stop: Witness Safety

- ICE Victims and Witness Services
  - Accustomed to working with survivors of torture, human trafficking, organized crime;
  - Trained in working with people from a variety of cultures; and
  - Prepared to address trauma-related mental health issues that could arise during the process.



## Stop: Witness Safety cont.

- Witnesses willing to testify against persecutors often travel within or to the United States:
  - Victim / Witness Coordinators are present and/or on call to 24 hours per day.
  - If there are **any** safety concerns, special agents are on duty in the witnesses' hotel
  - Special agents are on duty in courtroom.
- If witnesses are in continual, persistent danger:
  - Longer-term, US-based protection would require coordination with Department of State, other federal and state agencies



## Stop: Other Key Issues

- ICE accepts assistance at whatever level the witness is comfortable:
  - Anonymous tips
  - More detailed information without testimony
  - Testimony in criminal and/or removal hearings.
- ICE **will not** subpoena witnesses.



## STOP: Results

- After a presentation at a torture treatment center, a medical staffer indicated that a survivor had told her that he recognized a man in the center's waiting room as the man who had tortured him.
- A case manager at another center stated that he knew of a pilot assigned to the squadron that had participated in the use of chemical weapons against civilians.
- We are following up these leads.



# ICE

## Case Studies



U.S. Immigration  
and Customs  
Enforcement

## Case study: Kelbessa Negewo



- **Kelbessa Negewo** was an official during Ethiopia's Red Terror. At his direction numerous people were arrested, detained, interrogated, and severely beaten.
- A victim recognized him while he was working as a bellhop at a hotel in Atlanta. Three victims won a \$1.5 million judgment against him in 1993.
- Negewo became a US citizen in July 1995.
- He was denaturalized in October 2004 and was the first person charged as inadmissible based on acts of torture and extrajudicial killing under the new Intel Reform Act.
- Negewo was removed from the US and turned over to Ethiopian authorities in October 2006.
- In January 2009, he was sentenced to life in prison; his appeal was recently dismissed.



## Case study: John Demjanjuk



- **John Demjanjuk** was a guard at Nazi death camps during World War II.
- He lied about his past and entered the United States under the Displaced Persons Act in 1952; he became a citizen in 1958.
- In 2004, the United States stripped Demjanjuk of his citizenship.
- In March 2009, Germany issued an arrest warrant for Demjanjuk, saying that he had assisted in the murder of 29,000 people during World War II.
- In April 2009, Demjanjuk was removed to Germany to face trial.
- Demjanjuk's trial opened November 30, 2009.



## Case Study: Marko Boskic

- **Marko Boskic** came to the U.S. as a refugee from Bosnia.
- He had been involved in the 1995 Srebrenica massacre, which took the lives of thousands of Muslim men and boys.
- ICE conducted an investigation into Boskic's past, which included travel to The Hague and Bosnia, in partnership with International Tribunal investigators.
- Boskic was subsequently arrested, tried and convicted for visa fraud, and sentenced to five years in a US prison.
- Boskic was removed to face trial in Bosnia on April 28, 2010.



## Case Study: Chuckie Taylor

### Son of ex-Liberian president indicted in Miami on torture charges

BY JAY WEAVER

Miami Herald

Dec 06, 2006



- ICE received information alleging that **Charles Emmanuel “Chuckie” Taylor**, the U.S.-born son of the former Liberian President, was involved in crimes committed during the time of his father’s rule in Liberia.
- ICE conducted a four-continent investigation which resulted in Emmanuel being arrested and convicted of US passport fraud. Further investigation by ICE resulted in Emmanuel being indicted for torture, the first use of this statute in US federal court.
- On October 30, 2008, he was found guilty of torture and related offenses; he faces 20 years to life in prison.



# ICE

## Contact Us

# 1-866-DHS-2ICE

Mention the Human Rights Violators  
and War Crimes Unit.

You can also call your local ICE office.

Or, you can call me.



U.S. Immigration  
and Customs  
Enforcement

# ICE

**Annemarie A. Brennan**  
Associate Legal Advisor  
Human Rights Law Section  
Office of the Principal Legal Advisor

[annemarie.brennan@dhs.gov](mailto:annemarie.brennan@dhs.gov)

202.732.5371



U.S. Immigration  
and Customs  
Enforcement