

## Utilize Past Nazi Immigration Lessons

To Prevent Today's War Criminals From Entering the United States  
First, by Using More Inclusive Statutory Terms And Second, by  
Assigning the OSI to the Task.

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A parallel exists between the entrance of Nazi war criminals into the United States and the influx of new war criminals entering the United States. The marginally effective [\[1\]](#) effort to remove Nazi war criminals will soon come to an end due to the passage of time and the deaths of those criminals. [\[2\]](#) Lessons gleaned from the Nazi removal attempts should be used to provide a swifter and more effective process to remove other war criminals from the United States, thereby prompting Congress to create legislation that would first, include language to allow prosecution against those who have committed crimes against humanity and second, authorize the Office of Special Investigations to investigate and litigate against other international war criminals. This legislation would ideally ensure that these new criminals would not go unpunished like their Nazi predecessors.

### **I. INTRODUCTION**

#### **A. Overview and Roadmap.**

This paper discusses how Nazis gained entrance into the United States and the problems that resulted due to the slow initial response to prevent their entrance and to remove them from the U.S. The paper also presents information about the influx of present day war criminals into the U.S.

Next the paper presents an overview about basic Immigration Law concepts as well as a discussion of existing U.S. laws affecting Nazi Immigration. Also discussed are U.S. laws affecting new foreign war criminal immigration. To illustrate statutory language distinctions, the paper examines the International Criminal Court (ICC) 1998 Rome Statute terms of *Genocide* and *Crimes against Humanity*.

The paper discusses shortcomings resulting from legislative language deficiencies which only use the term Genocide. The paper also illustrates the current administrative organization between the Immigration and Naturalization Service (INS) and the Office of Special Investigations (OSI), and the delegation of authority between INS and the OSI. Finally, the paper provides a discussion of proposals to fix these shortcomings.

#### B. Nazi entrance into the United States and the ensuing slow removal response .

After World War II, aliens entered the United States under the Displaced Persons Act [3] and the Refugee Relief Act [4] . The total number of aliens entering from 1948 through 1956 is estimated at over 612,000 people [5] , with as many as 10,000 of those admitted suspected entering by fraud or misrepresentation on their visas regarding their wartime activities. [6]

Until 1978 the United States was unable to remove suspected Nazis for any reason other than the lies on their visa applications. In 1978, Congress amended the Immigration and Nationality Act (INA) by creating new grounds for exclusion of Nazis in section 212(a)(33) of the INA, [7] and a new ground for deportation in section 241(a)(19). [8] This “Holtzman Amendment” [9] , ordered the deportation of aliens who had “ordered, incited, assisted, or participated in persecution because of race, religion, national origin or political opinion” in connection with the Nazi regime of Germany. [10] Immediately after the Holtzman Amendment was enacted, the Attorney General of the United States created the Office of Special Investigations (OSI), a subset of the Immigration and Naturalization Service, designed

specifically to investigate and prosecute cases 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, ordered, incited, assisted or otherwise participated in the persecution of any person because of race, religion or national origin.” [\[11\]](#) The OSI continues to investigate “a dying breed of criminals” and will potentially have little or no work to do within the next decade due the natural passage of time. [\[12\]](#)

### C. Influx of present day war criminals into United States.

Perpetrators of war crimes should be held accountable for their actions regardless of when they committed their crimes or where their crimes took place. The U.S. has become a destination for today’s war criminals. Ethiopian aliens accused of various crimes against humanity currently reside in the United States. [\[13\]](#) Rwandan, Cambodian, Sudanese, Somalian, Indonesian, Haitian, Chilian, and Argentinean war criminals have been allowed to enter the United States and been permitted to stay. [\[14\]](#) Torturers and assassins from El Salvador, Guatemala, Bosnia, Serbia, Cuba, South Vietnam and Afghanistan are believed to live in the United States after having slipped in with other refugees who were admitted “under hectic and disorganized conditions” or simply arrived as tourists and stayed in this country to live. [\[15\]](#) Today, as many as 7,000 present day war criminals are estimated to live in this country. [\[16\]](#)

The current immigration laws in the Unites States specifically preclude Nazi perpetrators and those who commit “genocide” from entrance into the country, but at present these laws do not have sufficient provisions to prevent other human rights violators from entering the country and making the United States their home. [\[17\]](#) Also, no provision exists in the current laws that would authorize any special agency such as the OSI to investigate and prosecute these criminals.

## II. CURRENT IMMIGRATION LAWS

### A. Basic overview of immigration law concepts:

There are several possible levels of stringency in response to war crime immigrants, ranging from keeping the alien out of the country altogether to ultimately stripping an alien who has attained United States citizenship of this status.

#### 1. Exclusion

The method of proceeding against an alien seeking admission to the United States is an exclusion hearing, which prevents the alien who is trying to gain admittance from ever entering the United States. [18] An alien in an exclusion hearing has fewer options and procedural protections than in a deportation hearing and if found excludable, must return to the country from which he came. [19] This type of action occurs before the alien has entered the country, distinguishable from deportation actions where the alien is already physically present in the United States. One example of when this type of action is effective is when a war criminal's name is on a "watch list" [20] and can be discovered by immigration officials before ever gaining access into the United States and excluded from entering.

#### 2. Deportation

Deportation is the removal of an alien from the United States, after an "Order to Show Cause" [21] has been issued which notifies the alien of the deportation proceedings and gives the reasons and alleged facts from which the INS has determined deportability. [22] The burden of proof to present clear, unequivocal and convincing evidence that the alien should be deported lies with the Government. [23] The alien in this proceeding has various rights including:

continuance for good cause, privilege against self-incrimination, the right to make motions and the right to designate a choice of country for deportation. [24]

### 3. Denaturalization

A naturalized citizen may be denaturalized if his citizenship was “illegally procured or [was] procured by concealment of a material fact or by willful misrepresentation.” [25] United States citizenship is considered a precious possession, the loss of which can have grave consequences. [26] Aliens who do not have a “state” do not have citizenship anywhere and are considered to be without a homeland. [27] Courts have an obligation to protect the integrity of the naturalization process to ensure that both citizenship is legally acquired, and then subsequently that legally naturalized citizens are not subjected to illegal revocation of their citizenship status. [28] In this type of proceeding the burden of proof lies with the government to prove by clear, unequivocal and convincing evidence that citizenship should be taken away.[29]

#### B. Immigration policy in the United States and laws affecting Nazi immigration:

##### 1. Displaced Persons Act of 1948.

Congress enacted the Displaced Persons Act, on June 25, 1948 to alleviate the problem of displaced persons created at the end of World War II where nearly 8 million people in Europe were displaced from their homes and made wards of the Allied Armies. [30] These persons included about one million liberated prisoners from the Nazi concentration camps, former prisoners of war, forced laborers who had been taken from the Nazi occupied territories, as well as thousands who had fled

prior to the Russian Army march, all of whom either could not, or would not to return to their homes. [\[31\]](#)

The Displaced Persons Act (DPA) was intended to establish an immigration program, which would allow World War II victims to come to the United States to start their lives anew. The DPA attempted to control and specify which refugees would be permitted to immigrate into the United States. [\[32\]](#) To qualify for a DPA immigrant visa, the alien had to establish that he was a displaced person as defined under the International Refugee Organization [\[33\]](#) (IRO) Constitution. [\[34\]](#) The IRO Constitution defined "displaced persons" as: [A] person who, as a result of the actions of the authorities of the regimes has been deported from, or has been obliged to leave his country of nationality or former habitual residence, such as persons who were compelled to undertake forced labor or who were deported for racial, religious, or political reasons. [\[35\]](#)

The IRO definition was adopted into the DPA, [\[36\]](#) which specifically excluded from the definition of a "refugee" any persons who were war criminals, quislings and traitors or any other person who assisted the enemy in persecuting civil populations of countries, members of the United Nations, or had voluntarily assisted the enemy forces since the outbreak of [World War II](#) in operations against the United Nations. [\[37\]](#) The DPA also created an additional exception, however, directed at former Nazis in section 13, which read: No visas shall be issued

under the provisions of this Act to any person who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or the form of government of the United States. [\[38\]](#)

The administration of such a large number of visas, roughly 400,000, proved to be complicated and labor intensive. Because of the high numbers and difficulty of processing the visas in an expedient manner, a number of suspected Nazi war criminals are thought to have illegally entered the U.S. under this Act. [\[39\]](#)

## 2. The Refugee Relief Act of 1953

In 1953, Congress passed the Refugee Relief Act because a large number of displaced persons still remained in Europe. [\[40\]](#) The Refugee Relief Act contained a provision specifically prohibiting aliens who participated in the persecution of others from entering the United States and provided in section 14(a) that visas should not be issued to persons who "advocated or assisted in the persecution of any person or group of persons because of race, religion or national origin." [\[41\]](#) The Refugee Relief Act and its amendments admitted approximately 217,000 refugees during a three-year period. [\[42\]](#)

## 3. The Holtzman Amendment of 1978

This amendment, as previously discussed, modified the Immigration and Nationality Act specifically to exclude Nazi war criminals from being eligible to receive entry visas and made these individuals deportable if found within the United States. [\[43\]](#) The Holtzman Amendment also created four statutory bars on the relief available for aliens found excludable or deportable as Nazi war criminals. [\[44\]](#) These limits hindered the ability of Nazi war criminals to remain in the United States after they had already gained entry. Through the Holtzman Amendment, Congress voiced their disapproval of collaborators in Nazi war crimes by refusing to harbor them within the United States and creating a special office to specifically remove them. [\[45\]](#)

#### 4. The Immigration Act of 1990; addition of *Genocide*.

Congress did not stop its focus on the problem of suspected Nazi war criminals residing in the United States with the Holtzman Amendment. In 1990, Congress further amended to the INA by passing the Immigration Act of 1990 (IMMACT90). [\[46\]](#) The IMMACT90 again outlined the same language regarding Nazi war criminals that was first enunciated in the Holtzman Amendment. [\[47\]](#) Importantly, however, this Act also provided that persons having committed *genocide* were precluded from immigration relief. [\[48\]](#)

In summary, Congress, after World War II, passed the Displaced Persons Act of 1948 that excluded those who had *persecuted* or were *hostile to the U.S.* Later, the Refugee Relief Act of 1953 was passed which prohibited *persecutors* from entry in the United States. It is believed that under both of these Acts, as many as 10,000 of the admitted refugees were actually ineligible to enter the United States.

The Holtzman Amendment was passed in 1978 and it provided additional grounds for deportation and exclusion for individuals *who collaborated with the Nazi government.* This amendment also limited the ability of these individuals to obtain exclusion and deportation relief. Importantly this amendment authorized the creation of the OSI. The Immigration and Nationality Act was amended again in 1990 by the IMMACT90 to both streamline the act and include a bar against those who had committed *genocide*, but did create any special responsibilities for the OSI and thereby still limited OSI jurisdiction to Nazis.

C. U.S. laws affecting other foreign war criminal immigration.

Previous to the Holtzman Amendment, the United States tried to keep war criminals out by saying that those who *were hostile to the United States* or *persecuted others* should not be allowed in to the country. The Holtzman Amendment went further to say the *Nazis* should be kept out. As discussed previously, the IMMACT90 precluded relief to aliens who participated in Nazi activity or *genocide*. The IMMACT90 thus tries to more effectively serve as a bar to other war criminals than previous legislation that for example simply used the term

“persecution.” According to the State Department, although no legislative background could be found, the genocide addition in the IMMACT90 indicates that, “Congress apparently intended to exclude any alien whose behavior, though similar to that found excludable under the Nazi provisions, violated more universal standards.” [\[49\]](#)

This additional genocide provision prohibits immigration relief to aliens who engaged in genocide as defined in the International Convention on the Prevention and Punishment of Genocide [\[50\]](#) created in 1948.[\[51\]](#) This Genocide definition is identical to the 1998 Rome Statute of the International Criminal Court (ICC) definition of “Genocide” and reads as follows:

[A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group. [\[52\]](#)

Currently, the United States is using the term “genocide” to prevent new perpetrators of heinous crimes throughout the world from entering the U.S. Since the enactment of IMMACT90 however, the question remains as to whether the addition of the term “genocide” has actually proven sufficient to keep these war criminals out of U.S. borders.

### III. SHORTCOMINGS IN CURRENT IMMIGRATION LAW

#### A. Crimes Against Humanity should replace Genocide

The term “genocide” has been criticized on several levels as an ineffective tool to keep war criminals out of the United States. First, the “group” element that is prevalent in all five of the defined acts of genocide is too restrictive because it may be difficult to prove that crimes were committed against a “group” per se. For example, proving that crimes were systematically planned against a group has been difficult in Bosnia because there was no established “systematic plan” of killing a group, as had been apparent in World War II with the Nazi extermination plan. [\[53\]](#)

Second, Article II of the Convention on the Prevention and Punishment of the Crime of Genocide limits the scope of the protection to racial, religious, and ethnic groups. [\[54\]](#) This limited grant of protection should be expanded to grant protection to *any* organization that is subject to persecution. [\[55\]](#) Another, less extreme possible extension of this idea would be to protect more specific groups such as: women, or political groups, or even different socioeconomic classes. [\[56\]](#) The definition of genocide as written also does not address the idea of possible cultural genocide. [\[57\]](#)

A third criticism of using genocide as the bright line rule to define who to keep out of the United States is that the term itself is vague [\[58\]](#) and therefore serves as an ineffective guideline.

There is an argument that the United States is using ineffective language by including only “genocide” as a legislative guidepost. The five-part genocide definition is lacking enough substance, contrasted to the ICC’s more inclusive eleven-part definition of Crimes Against Humanity, which reads as follows:

[A]ny of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. [\[59\]](#)

Genocide “should be conceptualized as a point on a continuum” [\[60\]](#) in making the determination of which criminals should be excluded from the United States, rather than as the termination point in U.S. legislation. Crimes Against Humanity is far more inclusive and would prevent the entrance of more war criminals than the genocide provision currently in place.

The Crimes Against Humanity definition corrects the Genocide definition shortcomings. Crimes Against Humanity protects against widespread *or* systematic attacks [\[61\]](#) not necessarily directed

at a group, thereby alleviating the need for the discovery of evidence of systematic plans against a group. Also, Crimes Against Humanity protects against “[p]ersecution against *any* identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law,” [62] which is far more inclusive than the Genocide grant of protection. Finally, because the Crimes Against Humanity definition is more inclusive and descriptive, the problem presented by the Genocide definition’s vagueness is eliminated because the Crimes Against Humanity terms are clear and more inclusive as to which specific activities are prohibited.

In pursuing war criminals, having a more inclusive definition would prove valuable to whichever agency is ultimately charged with keeping these criminals out of the United States. Currently, the OSI is responsible for Nazi criminals in the United States, while the INS is responsible for the exclusion of any new war criminals.

#### B. OSI jurisdiction only extends to Nazi war criminals.

##### 1. INS authority.

The INS is an agency of the Department of Justice, which is responsible for enforcing the laws that regulate the admission of aliens into the United States and for regulating the benefits associated with immigration such as granting asylum and naturalization of qualified citizens. [63] The INS is responsible for border control, port of entry inspections, detention and removal of criminal aliens, apprehension of illegal aliens and workers, deportations and exclusions, as well as denial of benefits to ineligible applicants. [64]

##### 2. OSI authority.

The Attorney General of the United States established the OSI after the passage of the Holtzman Amendment. [65] This office is responsible for detecting, investigating, and taking legal action

in all cases involving suspected Nazi war criminals. [66] The OSI has exerted great efforts in evidence gathering against Nazi war criminals with a small staff of historians who are fluent in German and a small staff of attorneys. [67] Each OSI case is assigned one historian and at least one attorney who then spend large quantities of time looking through and gathering evidence by comparing lists of known Nazi collaborators against lists of aliens who were admitted into the United States. [68]

### 3. Conflict between the INS and OSI.

Current delegation of authority over war criminals between the INS and the OSI creates a tension. In the thirty-five years between the end of World War II and OSI's creation, the INS succeeded in removing only one Nazi war criminal from the United States and has placed "few if any" war criminals of any foreign atrocities on the watch list. [69] In contrast, since the OSI's creation, it has placed thousands of the Nazi war criminals on the watch list, thereby allowing the United States to prevent the entry of more than 150 war criminals. [70] As of February 2000, the OSI had denaturalized 63 Nazi war criminals and deported 52 of them. [71] Strikingly, the INS has never deported any immigrant on the basis of human rights abuses, while that has been the OSI's main focus since its inception. [72]

The OSI is only authorized to go after Nazi war criminals. INS has the authority to go after all other war criminals. However, there is an impending "turf war" between the INS and the OSI. [73] The INS "is fighting [a bill], which would strip the INS of its authority over contemporary war crimes cases." [74] There are several compelling reasons to redistribute responsibility over new war criminal immigrants from the INS to the OSI.

First, the scope of the INS mainly deals with "victims" and is less properly equipped to deal with oppressors, whereas the OSI's main focus has been on the "victimizers" since its inception. [75] Because the INS has historically dealt with those trying to get into this country

to escape oppression, it might prove difficult for the INS to switch gears and look at the immigrant with a more discerning eye.

One such example where the INS acted contrary to the way the OSI would have proceeded is the case of Kelbessa Negewo [\[76\]](#) , a former senior government official from Ethiopia who was found guilty in a United States court of numerous acts of torture and human rights abuses against Ethiopians in the late 1970's. [\[77\]](#) The court's decision, which was ultimately affirmed by an appellate court, was to award compensatory and punitive damages in the amount of \$1,500,000 for the defendant's "chilling" acts of abuse. [\[78\]](#) Ironically, while the case was on appeal prior to being affirmed, the INS granted Kelbesso Negewo United States Citizenship. [\[79\]](#) This type of short-sited action bolsters the belief that the INS is ill equipped to exclude modern day war criminals.

Second, although the OSI is small (only 27 employees [\[80\]](#) ), the greater expertise and experience of the OSI in successfully prosecuting war criminals for nearly 25 years should outweigh the INS's sheer size (over 28,000 investigators [\[81\]](#) ). Quantity does not necessarily equal quality. The INS has a lack of experience in the area of war criminal prosecution and has yet to remove one criminal on human rights violations. [\[82\]](#) According to Senator Patrick Leahy, the OSI, "ha[s] built up the expertise. They've got the centralized and experienced team. They know how people flee and where they tend to go." [\[83\]](#) In contrast, the INS "has failed because of the bureaucratic and political inefficiency of the structure and operation" to successfully preclude contemporary war criminals. [\[84\]](#) The INS is too large in size for this specialized task of war criminal investigation.

Third, Congress sent a message through the passage of the Holtzman Amendment that it did not approve of Nazi criminals residing in the United States. [\[85\]](#) This message should be re-issued and expanded to express Congressional disapproval of today's war criminals. Due to the atrocious nature of war crime activity, there should be a symbolic agency, separate from the INS

that would be solely responsible for the prosecution of the new war criminals seeking to gain entry into the United States. For victims around the world, similar to the OSI's significance to Holocaust survivors, the gesture of the creation of a special office to detect and protect against new war criminals would serve to demonstrate the United States commitment to these victim's interests.

The historic and symbolic nature of the OSI would not be lessened if the OSI were also assigned to protect against the influx of new criminals. Various Jewish groups support the idea of an OSI that would have expanded jurisdiction, [86] thus supporting the idea that the OSI's significance to Holocaust survivors would exist even if the OSI had additional duties.

#### **IV. PROPOSAL TO FIX SHORTCOMINGS**

To prevent the continued influx of modern day war criminals, Congress needs to pass legislation that would use inclusive language that would also authorize the Office of Special investigation to extend its jurisdiction beyond Nazis to track down these new criminals. Several attempts at proposed legislation have been introduced, but these proposals were not sufficiently effective.

During the 106<sup>th</sup> Congress, the "Anti-Atrocity Alien Deportation Act,"(HR 3058) [87] was introduced which proposed three things: first, to bar admission and authorize deportation and denaturalization of aliens who participated in acts of torture; second, to expand the jurisdiction of the OSI to prosecute and remove any alien who participated in torture and genocide abroad; and third, to authorize additional funding to the OSI to accomplish this mission. [88]

Had that legislation passed, it would have improved the existing IMMACT90 in terms of extending OSI jurisdiction and providing funding for this OSI expansion, however the proposal still fell short in terms of language distinctions. HR 3058 only proposed to add the term *torture* [89] to the list of activities that would be actionable. [90] Torture as defined in the

Federal criminal code 18 U.S.C. § 2340 to mean any act committed under color of law specifically intended to inflict severe pain (physical or mental) or inflict suffering upon another person in custody or physical control. [\[91\]](#) According to the Department of Justice, the term torture in HR 3058 is not inclusive enough to prevent many of the new war criminals from entering the United States because the term is “too limited”. [\[92\]](#) Torture is just one subset of the Crimes Against Humanity definition from the ICC definition from the ICC. [\[93\]](#)

**Similarly, another ineffective bill introduced in the 106<sup>th</sup> Congress was the “Serious Human Rights Abusers Accountability Act of 2000” (HR 5285)[\[94\]](#) which sought to amend the Immigration and Nationality Act to prevent “serious human rights abusers” as defined within that Act from being eligible for admission into the United States and other forms of immigration relief. [\[95\]](#) The Act defined serious human rights abuses as follows:**

[S]erious human rights abuser means any alien who--

(i) 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;

(ii) while serving as a foreign government official, was responsible for, or directly carried out, particularly severe violations of religious freedom (as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402));

(iii) during an armed conflict, ordered, incited, assisted, or otherwise participated in a war crime (as defined in section 2441(c) of title 18, United States Code);

(iv) ordered, incited, assisted, otherwise participated in, attempted to commit, or conspired to commit conduct that would constitute genocide (as defined in section 1091(a) of title 18, United States Code), if the conduct were committed in the United States or by a United States national;

(v) ordered, incited, assisted, or otherwise participated in any act of torture (as defined in the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention); or

(vi) ordered, incited, assisted, or otherwise participated in a crime against humanity (including the commission of murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced sterilization, or acts of a similar character), when committed as part of a widespread or systematic attack, whether international or internal in character, and directed against any civilian population, with actual or constructive knowledge of the attack. [\[96\]](#)

HR 5285 had language that was sufficiently broad because in Section 2 part (vi) it incorporated a section strikingly similar to the ICC definition of Crimes Against Humanity. [\[97\]](#) However, the proposed legislation still fell short of being adequate legislation because it did not authorize the Office of Special Investigation to pursue and prosecute these war criminals.

Each of these proposed pieces of legislation improved one part of the problem but failed to address the second part. HR 3058 fixed the OSI jurisdictional problem, but neglected to properly fix the terminology problem. HR 5285 fixed the terminology problem, but did not address the OSI jurisdiction at all. An effective piece of legislation would address both issues and thereby fix the current war criminal immigration problem.

#### E. Conclusion

A piece of legislation, similar to HR 3058 but with more inclusive language such as that included in HR 5285, should be initiated immediately to ensure that similar to the Nazi situation, the passage of time will not bar prosecution of today's war criminals who gain entry into the

United States. This new legislation should use the ICC's definition of Crimes Against Humanity in its language as well as authorize the scope of OSI to investigate new war criminals.

Nazi war criminals were able to enter the country because no specific provision in any piece of legislation guarded against entry of those who had committed heinous crimes with regard to wartime activities until 1978. In that year, Congress passed the Holtzman Amendment, which effectively said "No more Nazis." Unfortunately it is unrealistic and not practical to wait for Congress to continue to add terms one at a time in a piecemeal fashion, for example, first adding *genocide*, then ten years later proposing to add *torture*, or proposing to create a new category of criminals such as *serious human rights abuses*.

Congress should enact legislation first, that prohibits entry into the country by present-day war who commits any acts delineated in the ICC's inclusive definition of Crimes against Humanity. Second, the legislation should authorize the OSI to handle these cases because the INS is ineffective in dealing with these specific war crimes cases.

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[1] Implementation of Nazi War Crimes Disclosure Act, An Interim Report to Congress, <http://www.nara.gov/iwg/report.html>, visited 9/29/00. Of the possible thousands of Nazi perpetrators that may have entered the United States since World War II, as of September, 1999, only 63 participants in Nazi acts of persecution had been denaturalized, 52 of those individuals have been removed from the country, and just over 150 suspected Nazi perpetrators have been excluded from entry into the United States. ; Matthew Lippman, The Pursuit of Nazi War Criminals in the United States and in Other Anglo American Legal Systems, 29 Cal. W. Int'l L. J. 1, 49, Fall 1998. There was an "inadvertent" admission into the United States of between 1,000 to 10,000 Nazi War Criminals.

[2] Lippman at 99, "The next decade, nevertheless, presents the last opportunity to denaturalize and to deport those who assisted in the Nazi Genocide."

[3] Micheal J. Creppy, Nazi War Criminals in Immigration Law, 12 Geo. Immigr. L.J. 443, 444, Spring 1998. Displaced Persons Act enacted on June 25, 1948 created to help alleviate the problems associated with war refugees.

[4] Refugee Relief Act of 1953, P.L. No. 83-203, 67 Stat. 400 (1953).

[5] Creppy at 443.

[6] Id. at 448.

[7] Id.

[8] Id.

[9] Named in honor of Representative Elizabeth Holtzman, the amendment's sponsor.

[10] Creppy at 449.

[11] Id. at 454 quoting THE OFFICE OF SPECIAL INVESTIGATIONS PUBLIC RELEASE STATEMENT 3 (July 8, 1997).

[12] Lippman at 99.

[13] Aceves at 658.

[14] FAIR Congressional Hearings, House Immigration Subcommittee Hearing on HR 3058: Mr. Richard Krieger, President of International Education Missions INC, <http://www.fairus.org/html/08248002.htm>.

[15] Lisa Hoffman, U.S. Nazi Hunters might get new orders; Crackdown sought on today's war criminals, Scripps Howard News Service, The San Diego Union- Tribune, December 2, 1999.

[16] House Judiciary Subcommittee on Immigration and Claims meeting on Serious Human Rights Abusers Accountability Act of 2000 (HR 5285) held on September 28, 2000. Comments of Mark Foley. [http://ilw.com/lawyers/immigdaily/congress\\_new/2000.1002-Foley.shtm](http://ilw.com/lawyers/immigdaily/congress_new/2000.1002-Foley.shtm), visited 4/18/01.

[17] William J. Aceves, Paul L. Hoffman, Using Immigration Law to Protect Human Rights: A Legislative Proposal, 20 Mich. J. Int'l L. 657, 660. Summer 1999.

[18] Lynn Mallya, Deportation and Due Process: Does the Immigration and Nationality Act or the Fifth Amendment Provide for Full Interpretation of Deportation and Exclusion hearings? 11 Law & Ineq. 181, 184. December 1992.

[19] Id. at 184.

[20] Aceves, Hoffman at 667, Known as the National Automated Immigration Lookout System.

[21] Id. at 184.

[22] Id.

[23] Id.

[24] Id.

[25] Immigration and Nationality Act, ch 477, §340(a), 66 Stat. 163, 260 (1952), codified as amended at 8 U.S.C. §1451 (a).

[26] Creppy at 455.

[27] Micheal Heyman Language and Silence: The Supreme Courts Search for the Meaning of American Denaturalization Law. 5 Geo. Immig. L.J. 409, 410. Summer 1991.

[28] Creppy at 455.

[29] Heyman at 411.

[30] Id.

[31] Id.

[32] Id.

[33] An organization created by the United Nations.

[34] Constitution of the International Refugee Organization, Dec 16, 1946, 62 Stat. 3037 (entered into force Aug. 20, 1948.)

[35] IRO Constitution annex I, part I, §B.

[36] DPA section 2 reads: “Displaced person” means any displaced person or refugee as defined in Annex I of the Constitution of the International Refugee Organization.

[37] IRO Constitution annex I, part II.

[38] DPA, section 13.

[39] Creppy at 447.

[40] Creppy at 447.

[41] Refugee Relief Act, Section 14(a). Pub. L. No 83-203, §14(a), 67 Stat. 400, 406 (1953).

[42] Refugee Relief Act, Section 3 as amended.

[43] Lippman, Nazi article, at 51.

[44] Creppy at 450. Bars to Relief: First, it prohibited Nazi War Criminals from obtaining nonimmigrant waivers under section 212(d)(3) which would have permitted the alien to temporarily enter the United States. [44] Second, it barred Nazi War Criminals from seeking the relief of withholding of deportation under section 243(h), which prohibited the United States government from returning an alien to a country where his life or freedom would be threatened on account of race, religion, nationality, membership in a social group or political opinion. Third, it barred the relief of voluntary departure which permitted the alien to leave the United States on his or her own initiative by a certain time period in order to avoid being subject to a five (5) year bar from returning to the United States, without the consent of the Attorney General. The fourth and final bar created by the Holtzman Amendment concerned the discretionary relief of suspension of deportation under section 244(a). The Holtzman Amendment

bars, however, do not apply to individuals who are diplomats, foreign officials and foreign government representatives to international organizations and their respective families seeking temporary admission to the United States.

[45] Id.

[46] Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990), amended by Pub. L. No. 102-65, 105 Stat. 322 (July 2, 1991).

[47] Creppy at FN 49.

[48] (ii) Participation in Genocide

Any alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible. IMMACT90.

[49] U.S. Dep't of State, Foreign Affairs Manual, §40.35(b) at n.1.

[50] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, 280.

[51] Paul John Chrisouloulos, Giving Meaning to the Term "Genocide" as it applies to U.S. immigration Policy, 17 Loy. L.A. Int'l & Comp. L.J. 925, 936. Fall 1995. The IMMACT90 gives guidance as to how to define genocide by referring to the Convention on the Prevention and Punishment of the Crime of Genocide.

[52] International Criminal Court (ICC) Rome Statute 1998, Article 6.

[53] Chrisopoulos at 937.

[54] Matthew Lippman, The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later, 15 Ariz. J. Int'l & Comp. Law 415, 464. Spring 1998.

[55] Id. at 464.

[56] Id. at 464.

[57] Id. at 457.

[58] Chrisopoulos at 936. The term lacks a "clear universal definition."

[59] ICC, Article 7.

[60] Lippman, Genocide Article, at 509.

[61] ICC, Article 7.

[62] ICC, Article 7 (h), emphasis added.

[63] INS website, <http://www.ins.usdoj.gov/graphics/aboutins/thisisins/overview.htm> , visited 11/14/00.

[64] Id.

[65] Creppy at 454.

[66] Id.

[67] Id.

[68] Id.

[69] FAIR Congressional Hearings, House Immigration Subcommittee Hearing on HR 3058: Mr. Richard Krieger, President of International Education Missions INC, <http://www.fairus.org/html/08248002.htm>

[70] Id.

[71] Id.

[72] Statement of Senator Patrick Leahy at Hearing of the House Judiciary Subcommittee on Immigration and Claims on H.R. 3058, "Anti-Atrocity Alien Deportation Act", February 17, 2000, <http://leahy.senate.gov/press/200002/000217.html> visited 9/28/00.

[73] Id.

[74] Steve Fainaru, War crimes bill spurs Justice Department Turf battle, The Boston Globe, November 6, 1999.

[75] Fairus site, Krieger's statement.

[76] Abebe-Jira v. Negewo, 72 F. 3d 844 (11<sup>th</sup> Cir. 1996).

[77] Leahy website.

[78] Id.

[79] Id.

[80] Sam Skolnik, Leahy proposes expanding OSI's Jurisdiction to Include Acts of Torture, Legal Times, July 26, 1999.

[81] Fairus website.

[82] Fainaru, Boston Globe article.

[83] Id.

[84] Fairus website, Kreiger statement.

[85] Creppy at 450.

[86] Anti-Defamation League of B'nai B'rith director Jess Jordes said, "It's a recognition of what [the OSI] ha[s] done in the past and their ability to deal with modern problems." Skolnik, Legal Times article.

[87] H.R. 3058.

[88] H.R. 3058; Leahy Bill Enhances Federal Efforts to Track Down, Deport War Criminals, U.S. Newswire, Inc., July 16, 1999.

[89] Torture defined in HR 3058: COMMISSION OF ACTS OF TORTURE- Any alien who, outside the United States, has committed any act of torture, as defined in section 2340 of title 18, United States Code, is inadmissible.

[90] H.R. 3058.

[91] 18 U.S.C. §2340 (1994).

[92] Committee on the Judiciary Hearings on HR 3058. Comments of James Castello, Associate Deputy Attorney General, U.S. Department of Justice <http://www.house.gov/judiciary/cost0216.htm>, visited 10/31/00.

[93] ICC, Article 7 (f).

[94] Serious Human Rights Abusers Accountability Act of 2000, HR 5285, <http://thomas.loc.gov>, 106<sup>th</sup> Congress, Bill Summary and Status. Visited 4/23/01.

[95] H.R. 5285.

[96] H.R. 5285 Section 2.

[97] See ICC, Title 7; and H.R. 5285 Section 2 part vi.