

**Congress of the United States**  
Washington, DC 20515

May 15, 2019

The Honorable William Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

The Honorable Christopher A. Wray  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue NW  
Washington, D.C. 20535

Dear Attorney General Barr and Director Wray,

We are deeply concerned by growing reports of war crimes being committed by warring parties in Libya. The Libyan peace process and political transition are of high strategic interest to the United States and our allies. War crimes would represent a particularly acute threat to Libyan stability by deepening the intractability of the conflict and damaging the chances of peaceful resolution. Therefore, we respectfully ask you to investigate all allegations of war crimes in Libya that could warrant prosecution.

In particular, we have noted with concern the recent reports of alleged war crimes and torture committed by forces under the command of United States citizen Khalifa Haftar. Mr. Haftar leads a coalition of militias in Libya that has been accused of violating provisions of the United States War Crimes Act, the United States Torture Act, the Geneva Conventions, and internationally-recognized human rights law. We respectfully call on you to investigate Mr. Haftar and his subordinates for potential violations of the War Crimes Act, 18 U.S. Code § 2441, and the Torture Act, 18 U.S. Code § 2340A.

In our estimation, the War Crimes Act was enacted by Congress specifically for circumstances such as these. A United States citizen is directly undermining United States policy in Libya, including U.S. support for a United Nations-led mediation process and the internationally-recognized government of Libya. At the same time, Mr. Haftar's forces are alleged to have committed war crimes and inflicted unnecessary suffering and cruelty during the course of military operations. In so doing, Mr. Haftar's forces could be deepening the intractability of the conflict and pushing it toward a more acute level of brutality and bloodshed.

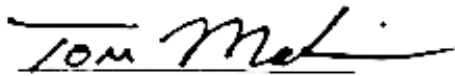
In addition to direct commission, knowledge of and involvement by Mr. Haftar in war crimes by his subordinates would itself constitute a war crime under standard principles of complicity. As noted by former Defense Department Special Counsel Ryan Goodman, the U.S. Government's Supplemental Filing in the Guantanamo cases drew from the international criminal tribunal that prosecuted former Liberian President Charles Taylor for war crimes. The international tribunal in that case held that the *mens rea* for aiding and abetting war crimes requires only knowledge, not purpose. The judgment wrote that the accused "was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator."<sup>1</sup>

A brief selection of alleged crimes relevant to this case include:

- In a 2015 video depicting a speech to troops under his command, Mr. Haftar appears to give a command to take no prisoners." The "denial of quarter" is prohibited under the U.S. War Crimes Act's provisions on murder in non-international armed conflict.<sup>vi</sup>
- Forces under Mr. Haftar's command have been repeatedly accused of indiscriminate shelling of civilian areas, actions prohibited under the U.S. War Crimes Act.<sup>vii</sup>
- A key subordinate of Mr. Haftar, Mahmoud Mustafa Busayf Al-Werfalli, was issued an arrest warrant by the International Criminal Court for crimes including participation in or ordering of execution of 33 detainees.<sup>viii</sup> Subsequent evidence indicates the massacre could have been ordered by Mr. Haftar himself. <sup>ix</sup> This would violate the U.S. War Crimes Act's prohibition of murder in non-international armed conflict.<sup>xii</sup>
- Forces under the command of Mr. Haftar have been accused of torture, according to an early January filing with the International Criminal Court by independent Libyan group Human Rights Solidarity.<sup>xiii</sup>
- United Nations reporting from 2018 also indicates that Mr. Haftar's forces are accused of widespread torture in the Kuweifiya prison.<sup>xv</sup>

The commission of war crimes by anyone, anywhere ultimately threatens both the well-being of American citizens at home and the safety and well-being of American civilians and troops in conflict zones. This underlies the motivation and history of U.S. laws governing war crimes. The commission of war crimes by a United States citizen is thus a particular stain on our national character and limits the ability of the President of the United States to foster just and dignified ends to worldwide conflicts. As such, we urge you to investigate in due course these war crimes allegedly committed by Mr. Haftar and his subordinates. Furthermore, we respectfully request that you provide a briefing on the initial findings of your staff related to these matters within 120 days.

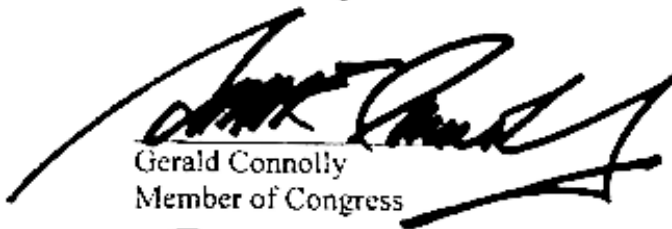
Sincerely,



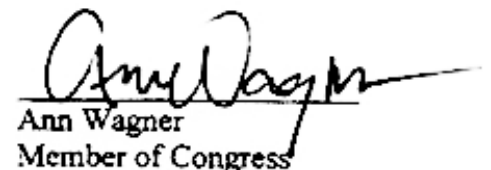
Tom Malinowski  
Member of Congress



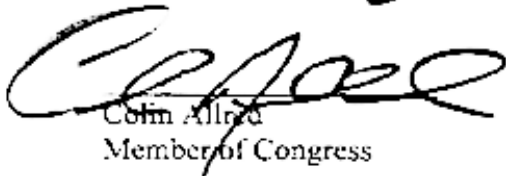
Josh Wilson  
Member of Congress



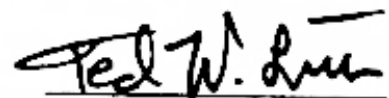
Gerald Connolly  
Member of Congress



Ann Wagner  
Member of Congress



Colin Allred  
Member of Congress



Ted Lieu  
Member of Congress



David Trone  
Member of Congress

CC:

The Honorable Michael Pompeo, Secretary of State  
Teresa McHenry, Chief, Human Rights and Special Prosecution Section, Department of Justice  
Kelley Eckels Currie, Acting Head, Office of Global Criminal Justice, Department of State  
Mark Schaffer, Chief, Human Rights Violators and War Crimes Unit, Department of Homeland Security  
Maureen Schulz, Chief, FBI International Human Rights Unit  
The Honorable Jerrold Nadler, Chairman, House Committee on the Judiciary  
The Honorable Doug Collins, Ranking Member, House Committee on Judiciary  
The Honorable Elliot Engel, Chairman, House Committee on Foreign Affairs  
The Honorable Michael McCaul, Ranking Member, House Committee on Foreign Affairs

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- <sup>1</sup> "The Law of Aiding and Abetting (Alleged) War Crimes." JustSecurity.org, 1 Sept 2016, <https://www.justsecurity.org/32656/law-aiding-abetting-alleged-war-crimes-assess-uk-support-saudi-strikes-yemen/>
- <sup>2</sup> "Smoking Gun Videos Emerge: US Citizen, Libyan Warlord Haftar Ordering War Crimes." JustSecurity, 14 Dec. 2017, [www.justsecurity.org/45094/hafter-smoking-gun-videos-emerge-citizen-libyan-warlord-khalifa-haftar-ordering-war-crimes/](http://www.justsecurity.org/45094/hafter-smoking-gun-videos-emerge-citizen-libyan-warlord-khalifa-haftar-ordering-war-crimes/)
- <sup>3</sup> "18 U.S. Code § 2441 - War Crimes." Legal Information Institute, Legal Information Institute, [www.law.cornell.edu/uscode/text/18/2441](http://www.law.cornell.edu/uscode/text/18/2441).
- <sup>4</sup> "Smoking Gun Videos Emerge: US Citizen, Libyan Warlord Haftar Ordering War Crimes." JustSecurity.org, 14 Dec 2017, [www.justsecurity.org/45094/hafter-smoking-gun-videos-emerge-citizen-libyan-warlord-khalifa-haftar-ordering-war-crimes/](http://www.justsecurity.org/45094/hafter-smoking-gun-videos-emerge-citizen-libyan-warlord-khalifa-haftar-ordering-war-crimes/).
- <sup>5</sup> International Criminal Court. The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli. 15 Aug 2017, [www.icc-cpi.int/CourtRecords/CR2017\\_05031.PDF](http://www.icc-cpi.int/CourtRecords/CR2017_05031.PDF).
- <sup>6</sup> Whiting, Alex. "New ICC Arrest Warrant Indirectly Implicates Libyan Warlord, a U.S. Citizen." JustSecurity.org, 29 Jan 2019, [www.justsecurity.org/44409/icc-arrest-warrant-indirectly-implicates-libyan-warlord-u-s-citizen/](http://www.justsecurity.org/44409/icc-arrest-warrant-indirectly-implicates-libyan-warlord-u-s-citizen/).
- <sup>7</sup> "18 U.S. Code § 2441 - War Crimes." Legal Information Institute, Legal Information Institute, [www.law.cornell.edu/uscode/text/18/2441](http://www.law.cornell.edu/uscode/text/18/2441).
- <sup>8</sup> Trew, Bel. "Libyan Commander Courted by European Countries Accused of War Crimes." The Independent, Independent Digital News and Media, 31 Jan. 2019, [www.independent.co.uk/news/world/middle-east/libya-haftar-war-crimes-derma-middle-east-icc-human-rights-torture-murder-a8755981.html](http://www.independent.co.uk/news/world/middle-east/libya-haftar-war-crimes-derma-middle-east-icc-human-rights-torture-murder-a8755981.html).
- <sup>9</sup> Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya . United Nations Human Rights High Commissioner, Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya , [www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful\\_EN.pdf](http://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf).