

No. 24-704

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IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE; AL-HAQ;  
AHMED ABU ARTEMA; MOHAMMED AHMED ABU ROKBEH;  
MOHAMMAD HERZALLAH; AYMAN NIJIM; LAILA ELHADDAD; WAEIL  
ELBHASSI; BASIM ELKARRA; and DR. OMAR EL-NAJJAR,

*Plaintiffs-Appellants,*

v.

JOSEPH R. BIDEN, JR., *President of the United States*; ANTONY J.  
BLINKEN, *Secretary of State*; and LLOYD JAMES AUSTIN III, *Secretary*  
*of Defense*, in their official capacities,

*Defendants-Appellees.*

On Appeal from the United States District Court for the Northern  
District of California, Case No. 4:23-cv-05829-JSW

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**AMICI CURIAE BRIEF OF ELEVEN CIVIL RIGHTS AND GRASSROOTS  
ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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## CORPORATE DISCLOSURE STATEMENT

I, Christopher Godshall-Bennett, attorney for *amici curiae*, certify that *amici* are not-for-profit organizations. No *amicus* has a parent corporation. No *amicus* issues stock, nor does there exist a publicly held corporation that owns 10% or more of the stock of any *amicus*.

Date: March 14, 2024

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are eleven civil rights and grassroots organizations that collectively advocate for the rights and interests of the Palestinian people and of Black, Arab, Middle Eastern, Muslim, and South Asian communities – in the U.S. and around the world. They litigate, advocate, and educate in support and defense of Palestinian dignity and safety and work against efforts, both public and private, to dehumanize and erase the Palestinian people. *Amici* therefore support Plaintiffs-Appellants in pursuing accountability from Defendants-Appellees for their complicity in the unfolding genocide of Palestinians in Gaza.

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<sup>1</sup> The accompanying appendix lists all *amici* filing this brief. No counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission. All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

## SUMMARY OF THE ARGUMENT

Plaintiffs-Appellants (“Plaintiffs”) include Palestinian Americans who themselves and whose loved ones are experiencing grievous pain, suffering, and death at the hands of a genocidal regime that Defendants-Appellees (“Defendants”), the highest authorities in the United States, have not only failed to stop, but have militarily armed and diplomatically covered. The harm aided by Defendants is not faceless or theoretical. It is being inflicted on the Palestinian people of Gaza – including recently evacuated Palestinian Americans – and those who love them in the United States who have been forced to watch their own government support the destruction of their and their loved ones’ lives, homes, and communities.

The harms inflicted on Palestinians, including Palestinian Americans, have been documented by reporters and international non-governmental organizations, as well as by *amici* in their work supporting Palestinians in the United States and in Gaza. They include killings; injuries; the deprivation of food, water, and shelter; severe psychological trauma; cultural destruction; and the stigma associated with being viewed by your own government as less deserving of protection and aid than others. Each of these harms is illustrated by the lived experiences of human beings who, determined to tell their stories, have shared them with journalists, organizations, and *amici*. Their stories illustrate the severity of allegations in this case and the urgency of the relief this case demands.

In preparing the brief, *amici* consulted with about two-dozen affected clients and individuals. *Amici* have a strong interest in the issues before the Court and are well-positioned to offer useful commentary about the harm facing the estimated 220,000 Palestinian Americans in the United States.<sup>2</sup>

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<sup>2</sup> Upper estimates of the Arab American Institute Foundation gauge the number of Palestinian Americans to total 220,000. See Dan Williams, *Exclusive: Israeli Bid for U.S. Waiver Hangs on Palestinian-American Access Test*, Reuters (July 19, 2023), <https://www.reuters.com/world/middle-east/israeli-bid-us-visa-waiver-hangs-palestinian-american-access-test-2023-07-19/>.

## ARGUMENT

### I. **Palestinian Americans are directly harmed by U.S. complicity in the ongoing genocide in Gaza.**

#### A. **Killings**

Families of Palestinian Americans have been massacred in the thousands during the unfolding genocide in the Gaza Strip (“Gaza”). These deaths are not numbers; they represent loved ones with names, lives, hopes, and dreams. Between October 7, 2023, and March 11, 2024, Israeli forces have killed at least 31,112 Palestinians – almost the entire population of Beverly Hills, California.<sup>3</sup> More than 40 percent, or 12,550, of the Palestinians killed in Gaza were children – meaning one Palestinian child killed every fifteen minutes, or about 1 out of every 100 children in Gaza.<sup>4</sup>

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<sup>3</sup> See U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *Hostilities in the Gaza Strip and Israel | Flash Update #136* (Mar. 11, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-136>; *Annual Estimates of the Resident Population for Incorporated Places in California: April 1, 2020 to July 1, 2022*, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html> (estimating the 2022 population of Beverly Hills as 31,326).

<sup>4</sup> See “*Complete Psychological Destruction*”: *Children in Gaza Have Suffered “Relentless Mental Harm” During Five Months of War – Save the Children, Save the Children* (Mar. 12, 2024), <https://www.savethechildren.net/news/complete-psychological-destruction-children-gaza-have-suffered-relentless-mental-harm-during>; *Know Their Names: Palestinian Children Killed in Israeli Attacks on Gaza*, Al Jazeera (Jan. 25, 2024), <https://interactive.aljazeera.com/aje/2024/israel-war-on-gaza-10000-children-killed/>.

Entire generations of Palestinian families – from great-grandparents who survived the 1948 Nakba to newborns – have been eliminated, with the Palestinian Ministry of Health reporting 2,685 families completely wiped from the civil registry.<sup>5</sup> The current death toll likely underestimates the real casualties, as several thousand Palestinians remain unaccounted for, with many trapped under the rubble of homes bombed by Israeli forces, some buried hastily by relatives and neighbors in makeshift graves, and others whose bodies are left to decompose in areas that cannot be safely reached.<sup>6</sup>

Hundreds, if not thousands, of Palestinian Americans are mourning the deaths of their relatives in Gaza. Already by December 19, 2023, ten families from New Jersey and New York alone counted more than 1000 family members among the death toll, with Mohammed Shehaiber, from Union City, New Jersey, mourning 370 relatives.<sup>7</sup> “My family lost four generations of peaceful, loving family, and we will

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<sup>5</sup> See Aya Batrawy, *Gaza's Death Toll Now Exceeds 30,000. Here's Why It's an Incomplete Count*, NPR (Feb. 29, 2024), <https://www.npr.org/2024/02/29/1234159514/gaza-death-toll-30000-palestinians-israel-hamas-war>.

<sup>6</sup> See *id.*; Associated Press, *The Latest | Israel Wants Rafah Civilians to Go to Gaza's Center Ahead of Southern Offensive*, ABC News (Mar. 13, 2024), <https://abcnews.go.com/International/wireStory/latest-palestinian-stabs-2-checkpoint-jerusalem-israeli-police-108073040>.

<sup>7</sup> See Council on American-Islamic Relations (CAIR) – New Jersey, *Palestinian Americans from New Jersey Lost 1,000+ Family Members in Israel's War on Gaza*, YouTube (Dec. 19, 2023), [https://www.youtube.com/watch?v=qQqU\\_zM2LtM](https://www.youtube.com/watch?v=qQqU_zM2LtM).



never forget that,” Shehaiber recounted the day after a single airstrike killed 120 family members.<sup>8</sup>

Over the past several months, William Asfour, a Palestinian American from Chicago, has been grieving the deaths and abductions of 209 family members, the youngest only three-months old.<sup>9</sup> Many were killed by Israeli airstrikes on their homes, and snipers killed two of Asfour’s relatives while they were sheltering in a school.<sup>10</sup> In early February 2024, Israeli soldiers stormed a hospital and abducted more than 25 of his relatives. “We have no idea if most are dead or alive. We haven’t heard from them for two weeks. Some of my family members were released after a couple of days but not before they were beaten badly by Israeli soldiers.”<sup>11</sup> Israeli soldiers also assaulted Asfour’s recently widowed aunt and separated her from her 5 children.<sup>12</sup>

Fadi Sckak is a Palestinian American from the San Francisco Bay Area. Sckak’s parents were living in Gaza when Israel began its military onslaught. When Israeli forces bombed their home, Sckak’s parents managed to crawl through the rubble of the collapsed building. Despite Sckak’s father holding a white flag and an

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<sup>8</sup> *Id.*

<sup>9</sup> See Council on American-Islamic Relations (CAIR) – Chicago, *Palestinian-American Families Update on Unfolding Crisis in Gaza*, YouTube (Feb. 15, 2024), <https://www.youtube.com/watch?v=uIxS59i5Adc>.

<sup>10</sup> *See id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

expired U.S. passport, an Israeli sniper shot him in the leg. Sckak unsuccessfully spent days trying to arrange for emergency medical transport to reach his father. Sadly, Sckak’s father died with Sckak on the phone; his last words to his son were him begging for mercy.

## **B. Physical injuries**

Palestinian Americans and their relatives have been severely injured in Gaza. At least 72,760 Palestinians have been injured since October 7.<sup>13</sup> Many of these injuries are life-altering, such as “fractures, peripheral nerve injuries, amputations of one or several limbs, spinal cord injuries, traumatic brain injuries, and burns.”<sup>14</sup> More than 1000 children in Gaza have had one or both of their legs amputated – many without painkillers or anesthetic – in the first 2 months of Israeli bombardment.<sup>15</sup> Medical personnel also report treating patients with burns from artillery shells containing white phosphorus.<sup>16</sup> The World Health Organization

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<sup>13</sup> See *Hostilities supra* note 3.

<sup>14</sup> Humanity & Inclusion, *Blast Impacts: Looking into the Consequences of Explosive Weapons in Gaza* 5 (2023).

<sup>15</sup> ‘*Ten Weeks of Hell*’ for Children in Gaza: UNICEF, U.N. Palestine (Dec. 20, 2023), <https://palestine.un.org/en/256251-%E2%80%98ten-weeks-hell%E2%80%99-children-gaza-unicef>.

<sup>16</sup> See ‘*We Saw Phosphorus Burns*’: British-Palestinian Surgeon Recounts Injuries He Saw in Gaza – Video, Guardian (Nov. 27, 2023), <https://www.theguardian.com/world/video/2023/nov/27/we-saw-phosphorous-burns-british-palestinian-surgeon-recounts-injuries-he-saw-in-gaza-video>; *Israel: White Phosphorus Used in Gaza, Lebanon*, Hum. Rts. Watch (Oct. 12, 2024), <https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon>.

(“WHO”) estimates that 6,000 Palestinians need urgent medical evacuations for trauma injuries.<sup>17</sup>

One Palestinian American seriously injured by Israeli forces is Yousof Abushaban, an eighteen-year-old born in Michigan.<sup>18</sup> Unable to leave Gaza through the closed Rafah border crossing, Abushaban and his family were forced to return to their home in Gaza City.<sup>19</sup> After their return, an Israeli airstrike hit their home, killing Abushaban’s 14-year-old sister and injuring his father, mother, and surviving sister.<sup>20</sup> Abushaban suffered injuries from flying shrapnel, leaving him with a broken arm, and severe lacerations on his hand and face.<sup>21</sup>

### **C. Lack of access to food, water, and medicine**

Palestinians, including Palestinian Americans, are struggling to survive a humanitarian situation that is “incredibly desperate, [. . .] the worst that has been

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<sup>17</sup> See *Geneva Press Briefing: HRC, ITU, WHO, WMO, OCHA, UNICEF*, U.N. Web TV (Mar. 5, 2024), <http://webtv.un.org/en/asset/k1g/k1gvwft3ab>.

<sup>18</sup> See *U.S. Teenager: My Kid Sister Was Killed by Israeli Airstrike in Gaza*, Daily Beast (Oct. 20, 2023), <https://www.thedailybeast.com/us-teenager-yousof-abelalazeez-abushaban-my-kid-sister-was-killed-by-israeli-airstrike-in-gaza>.

<sup>19</sup> See *id.*

<sup>20</sup> See Isabeau Doucet, *Some Palestinian Americans Made It Out of Gaza, But Their Journeys to Safety Aren’t Over*, Guardian (Dec. 14, 2023), <https://www.theguardian.com/world/2023/dec/14/palestinian-americans-evacuated-gaza-israel-recovery>.

<sup>21</sup> See *id.*; Al Jazeera Staff, *‘We Went Through Hell’: Palestinian Dual Citizens Hoping to Leave Gaza*, Al Jazeera (Oct. 21, 2023), <https://www.aljazeera.com/news/2023/10/21/we-went-through-hell-palestinian-dual-citizens-remain-stuck-in-gaza>.

recorded by humanitarian agencies”<sup>22</sup> The entire population of Gaza – approximately 2.2 million people – is highly food insecure and at risk of famine, as “[h]unger has reached catastrophic levels.”<sup>23</sup> U.N. human rights experts have found that Israel is “using food as a weapon against the Palestinian people,” noting that it is “unprecedented to make an entire civilian population go hungry this completely and quickly.”<sup>24</sup> According to the Integrated Food Security Phase Classification (“IPC”) initiative, “[t]his is the highest share of people facing high levels of acute food insecurity... ever classified for any given area of country.”<sup>25</sup> An estimated 576,000 Palestinians in Gaza are experiencing catastrophic levels of hunger, marked by an extreme lack of food, starvation, and exhaustion of coping capacities.<sup>26</sup> Roughly 90 percent of children under the age of two are experiencing severe food poverty, and, in northern Gaza, one in six children suffer from severe acute

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<sup>22</sup> *Humanitarian Situation in Gaza 'Incredibly Desperate, Worst That Has Been Recorded' by Aid Agencies*, France 24 (Mar. 11, 2024), <https://www.france24.com/en/video/20240311-humanitarian-situation-in-gaza-incredibly-desperate-worst-that-has-been-recorded-by-aid-agencies> (quoting the CEO of War Child UK).

<sup>23</sup> *Gaza: 'Children are Dying from Hunger', Says UN Aid Coordinator*, U.N. News (Mar. 6, 2024), <https://news.un.org/en/story/2024/03/1147312> (quoting the United Nation’s humanitarian coordinator for the Occupied Palestinian Territory).

<sup>24</sup> See Press Release, OHCHR, *Over One Hundred Days into the War, Israel Destroying Gaza’s Food System and Weaponizing Food, Say UN Human Rights Experts* (Jan. 16, 2024).

<sup>25</sup> IPC, *Gaza Strip: IPC Acute Food Insecurity 1* (2023).

<sup>26</sup> *Id.* at 4.

malnutrition.<sup>27</sup> The deputy executive director of the U.N. World Food Program has described the situation in Gaza as “the worst level of child malnutrition anywhere in the world.”<sup>28</sup> “Many in Gaza survive on just one meal a day, others find none.”<sup>29</sup>

Palestinian Americans are witnessing their surviving relatives in Gaza starve. Dr. Rajaie Batniji, a Gaza-born physician living in San Francisco, is mourning the death of sixty-five members of his family – three generations killed by Israeli strikes as they sought shelter and safety.<sup>30</sup> The survivors of his family are homeless and struggle to find food. By mid-February, Dr. Batniji’s uncle had lost almost 44 pounds.<sup>31</sup>

Palestinians in Gaza also do not have access to clean water. The overwhelming majority use salinized or contaminated water for drinking, cooking, washing, and personal hygiene. About 81 percent of households lack safe and clean

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<sup>27</sup> *Geneva Press Briefing – 05 March 2024*, UNOG Newsroom (Mar. 5, 2024), <https://www.unognewsroom.org/story/en/2082/geneva-press-briefing-05-march-2024>.

<sup>28</sup> *WFP Deputy Chief Warns Security Council of Imminent Famine in Northern Gaza Unless Conditions Change*, World Food Program USA (Feb. 28, 2024), <https://www.wfpusa.org/news-release/wfp-deputy-chief-warns-security-council-of-imminent-famine-in-northern-gaza-unless-conditions-change/>.

<sup>29</sup> T.R., *Teenager, Elderly Die in Northern Gaza Hospitals Due to Severe Malnutrition and Dehydration*, Wafa News Agency (Mar. 6, 2024), <https://english.wafa.ps/Pages/Details/142271>.

<sup>30</sup> Rajaie Batniji, *Opinion: Secretary Blinken, this is the Uncomfortable Truth about America and Israel*, CNN (Feb. 16, 2024), <https://www.cnn.com/2024/02/14/opinions/palestinian-american-blinken-gaza-batniji/index.html>.

<sup>31</sup> *Id.*

water, with average household access at less than one liter per person per day – far below the minimum requirement of fifteen liters in emergency situations.<sup>32</sup> At least half of the water and sanitation facilities have been destroyed or damaged.<sup>33</sup> In November, one U.N. agency estimated that 70 percent of the population is drinking salinized or contaminated water; this figure is likely much higher today.<sup>34</sup> No access to clean water means mass dehydration, as well as the rapid spread of diseases such as hepatitis A, intestinal disorders, diarrhea, and skin diseases.<sup>35</sup>

As of March 11, at least 27 Palestinians in Gaza have died of malnutrition and dehydration,<sup>36</sup> which, according to local healthcare workers, “only reflects the number of people who were able to reach hospitals” as “dozens are dying in silence as a result of the famine.”<sup>37</sup> Dr. Rolla Alaydi, a U.S. Department of Defense employee from the San Francisco Bay Area, describes how her family has been without clean water since December 2023, forcing them to drink contaminated

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<sup>32</sup> UNICEF, UNICEF in the State of Palestine: Escalation Humanitarian Situation Report No. 19, 2 (2024).

<sup>33</sup> *See Lack of Clean Water Brings Disease and Suffering in Gaza*, Médecins Sans Frontières (Feb. 8, 2024), <https://www.msf.org/gaza-lack-clean-water-brings-disease-and-suffering>.

<sup>34</sup> *See* Press Release, OHCHR, Israel Must Stop Using Water as a Weapon of War: UN Expert (Nov. 17, 2023).

<sup>35</sup> *See Lack of Clean Water Brings Disease and Suffering in Gaza*, Médecins Sans Frontières (Feb. 8, 2024), <https://www.msf.org/gaza-lack-clean-water-brings-disease-and-suffering>.

<sup>36</sup> K.T., *Two Gazan Children Die of Malnutrition and Dehydration*, Wafa News Agency (Mar. 11, 2024), <https://english.wafa.ps/Pages/Details/142400>.

<sup>37</sup> T.R. *supra* note 28.

water. Her relatives regularly suffer from diarrhea and other gastrointestinal symptoms. Dr. Alaydi says her family avoids drinking too much contaminated water, due to the lack of sanitation services and the long queues to use the few available bathrooms in shelters.

Palestinians also lack access to life-saving healthcare and medicine, as Israel's attacks have decimated the medical infrastructure in Gaza. There is no fully-functioning hospital left; twelve out of the thirty-six hospitals are only partially functional, and one is minimally functional, while the rest have been destroyed.<sup>38</sup> At least 155 health facilities have been damaged, and 126 ambulances and transport vehicles targeted.<sup>39</sup> The remaining health facilities are “completely overwhelmed and overflowing and undersupplied,”<sup>40</sup> operating at nearly three times capacity.<sup>41</sup> Moreover, Israeli forces have killed 364 healthcare workers and abducted at least 269 others, including hospital directors in Khan Younis and northern Gaza.<sup>42</sup>

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<sup>38</sup> See WHO, *oPT Emergency Situation Update – Issue 24* (Mar. 3, 2024), [https://www.emro.who.int/images/stories/Sitrep\\_-\\_issue\\_24.pdf](https://www.emro.who.int/images/stories/Sitrep_-_issue_24.pdf).

<sup>39</sup> OCHA, *Hostilities in the Gaza Strip and Israel – Reported Impact | Day 152* (Mar. 7, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-152>.

<sup>40</sup> See *Gaza: Rafah Invasion Would be a Disaster ‘Beyond Imagination’, Warn UN Medics*, U.N. Palestine (Feb. 15, 2024), <https://palestine.un.org/en/260760-gaza-rafah-invasion-would-be-disaster-%E2%80%98beyond-imagination%E2%80%99-warn-un-medics>.

<sup>41</sup> See WHO *supra* note 37.

<sup>42</sup> See *id.*; Sana Noor Haq, Ibrahim Dahman, AbdulQader Sabbah & Abeer Salman, *Newborns Die of Hunger and Mothers Struggle to Feed Their Children as Israel’s Siege Condemns Gazans to Starvation*, CNN (Mar. 7, 2024),

Wounded and sick Palestinians are unable to access adequate medical care, with reports of medical staff having to perform operations – including amputations and Cesarean sections – without anesthetics.

Palestinian Americans can offer little help to their relatives in Gaza searching desperately for necessary healthcare. Narmin Abushaban, a math teacher from Michigan, describes how in early November her mother ran out of lifesaving medication needed to manage stroke-related symptoms. When she could not refill the medication, her relatives tried to switch her to a different one. Within days, the mother’s condition drastically deteriorated. She died on November 28, 2023, a few days before she was approved for evacuation.

Dr. Thaer Ahmad, a Palestinian American physician from Chicago, volunteered at Al Nasser Hospital in Khan Yunis, as part of a medical humanitarian organization.<sup>43</sup> Dr. Ahmad describes how overcrowded and under-resourced the hospital was: “I found a facility operating at three times its capacity, with thousands of internally displaced people in and around the hospital. We treated victims of trauma on the floor because of the lack of hospital beds, and every day, there were scores of injured and wounded. Our ability to appropriately treat our patients was

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<https://www.cnn.com/2024/03/06/middleeast/israel-gaza-starvation-siege-mothers-babies-intl/index.html>.

<sup>43</sup> See AJ+, ‘*We Used Men’s Razor Blades for Surgery*’: Doctor Witnesses Collapse of a Gaza Hospital, YouTube (Feb. 23, 2024), [https://www.youtube.com/watch?v=o5gqR\\_irY3I](https://www.youtube.com/watch?v=o5gqR_irY3I).



severely compromised.”<sup>44</sup> Dr. Ahmad recounts the hospital shaking due to near-constant aerial bombardment, gunshots, and tank shells hitting the hospital before it was besieged.

#### **D. Harmful effects on reproductive health**

The ongoing genocide is also devastating the reproductive health of Palestinians. In the first 105 days, 20,000 babies were born in Gaza – 1 every 10 minutes.<sup>45</sup> According to the Palestinian Ministry of Health, there are currently 60,000 pregnant women suffering from malnutrition, dehydration, and lack of proper health care.<sup>46</sup> There is little access to prenatal care, and 95 percent of pregnant and lactating women face severe food poverty.<sup>47</sup> Since the start of the war, about 5,000 pregnant women have given birth every month in dangerous and unsanitary conditions.<sup>48</sup> Many have given birth “with little or no medical help, sometimes in dirty, overcrowded shelters, public bathrooms or cold, makeshift tents.”<sup>49</sup> “Babies

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<sup>44</sup> *Id.*

<sup>45</sup> See Press Release, UNICEF, Born into Hell (Jan. 19, 2024).

<sup>46</sup> Palestinian Ministry of Health / Gaza, Facebook (Mar. 7, 2024), <https://www.facebook.com/MOHGaza1994/posts/pfbid0YVXraToC7yaiwAjhishJ9Q8gvPAJ7SeLwV6m6KGGNHYMrrD6haAj6GZ3csLSxJY2l> [Ar.].

<sup>47</sup> See Chotiner *supra* note 26.

<sup>48</sup> Palestinian Ministry of Health / Gaza, Facebook (Mar. 7, 2024), <https://www.facebook.com/MOHGaza1994/posts/pfbid0YVXraToC7yaiwAjhishJ9Q8gvPAJ7SeLwV6m6KGGNHYMrrD6haAj6GZ3csLSxJY2l> [Ar.].

<sup>49</sup> Margherita Stancati & Abeer Ayyoub, *Women in Gaza Give Birth in Tents and Public Bathrooms*, Wall St. J. (Feb. 6, 2024), <https://www.wsj.com/world/middle-east/women-in-gaza-give-birth-in-tents-and-public-bathrooms-be0a0c71>.

are born on the ground in the wilderness, umbilical cords cut with whatever sharp object there is to hand, and tins filled with hot water keep the newborn warm. C-sections, painful in the aftermath even when drugs are plentiful, are being performed without any anaesthesia at all, by surgeons who do not have any water to wash their hands, let alone sterilise them, and no antibiotics for any resulting infections.”<sup>50</sup> Israel has denied entry of medical supplies, including anesthetics and medical kits for delivering babies.<sup>51</sup> Healthcare professionals estimate a 300 percent increase in the miscarriage rate.<sup>52</sup> In addition to miscarriages, conditions in Gaza place pregnant people at heightened risks of stillbirths, preterm labor, maternal mortality, and emotional trauma.<sup>53</sup>

Relatives of Palestinian Americans Sami Shaban and Fidaa Alaydi were forced to deliver their babies under extreme conditions. By early November, Shaban, an attorney from New Jersey, was already mourning the deaths of seventeen family

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<sup>50</sup> Nesrine Malik, *In Gaza, There's a War on Women. Will the West Really Ignore It Because They're 'Not Like Us'?*, Guardian (Feb. 5, 2024), <https://www.theguardian.com/commentisfree/2024/feb/05/gaza-war-women-west-mothers-babies-medical>.

<sup>51</sup> See Tamara Qiblawi, Allegra Goodwin, Nima Elbagir, Caroline Faraj & Kareem Khadder, *Anesthetics, Crutches, Dates. Inside Israel's Ghost List of Items Arbitrarily Denied Entry into Gaza*, CNN (Mar. 2, 2024), <https://www.cnn.com/2024/03/01/middleeast/gaza-aid-israel-restrictions-investigation-intl-cmd/index.html>.

<sup>52</sup> See Kylie Cheung, *Miscarriages in Gaza Have Increased 300% Under Israeli Bombing*, Jezebel (Jan. 17, 2024), <https://www.jezebel.com/miscarriages-in-gaza-have-increased-300-under-israeli-1851168680>.

<sup>53</sup> See Born into Hell *supra* note 44.

members. One of Shaban’s surviving cousins was pregnant, but when she arrived at the hospital to deliver, she was turned away at first. She ended up needing a Cesarean section later and had to leave within ten hours. According to Shaban, his cousin has “had to move several times within Gaza just to be able to survive with [her] wounds.”<sup>54</sup>

Alaydi, an immigration attorney from Chicago, describes how her cousin’s wife Yaqeen Baker also had a Cesarean section and was discharged within hours, despite bleeding profusely and being unable to walk.<sup>55</sup> Baker and her newborn are currently sheltering in Maghazi refugee camp. Due to the severe lack of food and clean water, Baker has been unable to produce breast milk and has struggled to find baby formula.

Dire living conditions – including limited access to clean water and toilets in overcrowded shelters and the scarcity of hygiene products – force Palestinian women and girls to resort to dangerous and unhealthy measures to navigate menstrual cycles. Many are taking pills to delay their menstruation, with unknown

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<sup>54</sup> See CNN, *Man with Loved Ones in Gaza Shares Heartbreaking Reality Behind Family Photo*, YouTube (Nov. 10, 2023), <https://www.youtube.com/watch?v=Ejbl4AKhlj8>.

<sup>55</sup> See Yaqeen Baker, *Opinion: I Am Nine Months Pregnant and Living in Gaza. Will My Baby First Hear My Voice or Bombs?*, L.A. Times (Nov. 14, 2024), <https://www.latimes.com/opinion/story/2023-11-14/gaza-hospitals-doctors-children-pregnancy-women>.

long-term side effects.<sup>56</sup> Due to the severe shortage of hygiene products like sanitary pads and tampons, some Palestinians are “using canvas strips and scraps of clothing . . . risking infection and deadly toxic shock syndrome.”<sup>57</sup>

## **E. Harmful effects on mental health and collective identity**

### **1. War-related mental trauma**

Palestinians, including Palestinian Americans, are currently facing severe psychological and mental harm related to the unfolding genocide.<sup>58</sup> In Gaza, Palestinians are exposed to extreme levels of physical and psychological violence. They have, among other traumas: seen their loved ones attacked, abducted, and murdered by Israeli soldiers; survived being crushed under rubble; witnessed the destruction of their homes and neighborhoods; and viewed the desecration of education, cultural, and religious sites. Palestinians are also trying to find safe spaces to avoid the near-constant aerial bombardments and ground offensive, while searching for the limited sources of food, clean water, medicine, and sanitation services. They are at great risk of developing devastating mental health disorders

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<sup>56</sup> See Rodayna Raydan, *In Desperate, Unsanitary Poverty, Gaza's Women Resort to Period-Delaying Pills*, New Arab (Nov. 22, 2023), <https://www.newarab.com/features/gazas-women-resort-period-delaying-pills-desperation>.

<sup>57</sup> Katherine Hearst, *War On Gaza: Women Cut Up Tents for Period Products*, Middle East Eye (Jan. 22, 2024), <https://www.middleeasteye.net/news/war-gaza-women-cut-tents-period-products-and-endure-c-sections-without-anaesthesia>.

<sup>58</sup> See Yara M. Asi, *The Trauma Experienced in Gaza Is Beyond PTSD*, N.Y. Times (Feb. 22, 2024), <https://www.nytimes.com/2024/02/22/opinion/gaza-palestinians-mental-health.html>.

that will affect them for the rest of their lives.<sup>59</sup> This risk is particularly heightened given that Palestinians in Gaza have navigated prior trauma and hardships from decades of siege, war, and violence. A 15-year-old child, for example, has already experienced five periods of intense Israeli military attacks on Gaza: 2008-09, 2012, 2014, 2021, and now 2023-24.<sup>60</sup>

Palestinian American children are experiencing physical and cognitive symptoms of trauma, such as insomnia, depression, anxiety, confusion, lack of concentration and inattentiveness, and deterioration in their abilities to learn and participate in school. Sireen Beseiso, a Palestinian American mother from Utah, and her eleven-year-old son were in Gaza until early November. Beseiso notes that after a month of dodging airstrikes, including surviving an attack at the border crossing, she and her son are left traumatized. Loud noises, from cars passing on the street to the sounds of a toilet flushing, trigger her son, and Beseiso cannot leave his side.<sup>61</sup>

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<sup>59</sup> See, e.g., Lauren C. Ng, Naphtal Ahishakiye, Donald E. Miller, and Beth E. Meyerowitz, *Life After Genocide: Mental Health, Education, and Social Support of Orphaned Survivors*, 4 Int'l Perspectives Psychol. 83 (2015).

<sup>60</sup> See *Timeline: Israel's Attacks on Gaza Since 2005*, Al Jazeera (Aug. 7, 2022), <https://www.aljazeera.com/news/2022/8/7/timeline-israels-attacks-on-gaza-since-2005> (detailing Israel's attacks on Gaza in the past two decades).

<sup>61</sup> See Isabeau Doucet, *Some Palestinian Americans Made it out of Gaza, But Their Journeys to Safety Aren't Over*, Guardian (Dec. 14, 2023), <https://www.theguardian.com/world/2023/dec/14/palestinian-americans-evacuated-gaza-israel-recovery> (interviewing Beseiso).

In Gaza, “[t]here is no safe space, no sense of security and no routine . . . The trauma giving rise to these symptoms is ongoing, relentless and compounded day by day.”<sup>62</sup>

## 2. Collective harm of destruction of life in Gaza

Israel has destroyed or nearly destroyed all that made Gaza a vibrant community and center of cultural and social life. The U.N. independent expert on housing has described the scale and intensity of destruction in Gaza as “‘far worse’ than in Aleppo, Mariupol or even Dresden and Rotterdam during the Second World War.”<sup>63</sup> Over 70 percent of all homes across the Gaza Strip, and over 80 percent in north Gaza, have been damaged or destroyed.<sup>64</sup> The constant aerial bombardments, destruction of housing units, and search for safe shelter has led to forced displacement of about two million Palestinians from their homes and lands.<sup>65</sup> “‘When people lose their homes, they lose more than physical structures. A home is more than property; it is also the repository of memories, hopes and aspirations.’”<sup>66</sup>

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<sup>62</sup> *Children’s Mental Health in Gaza Pushed Beyond Breaking Point After Nearly a Month of Siege and Bombardment*, Save the Children (Nov. 7, 2023), <https://www.savethechildren.net/news/children-s-mental-health-gaza-pushed-beyond-breaking-point-after-nearly-month-siege-and>.

<sup>63</sup> *UN Rights Expert Condemns ‘Systematic’ War-Time Mass Destruction of Homes*, U.N. News (Mar. 5, 2024), <https://news.un.org/en/story/2024/03/1147272>.

<sup>64</sup> *See id.*

<sup>65</sup> *See* Al Jazeera Staff, *Gaza ‘Safe Zones’ Led to Displacement, Israeli Attacks on Civilians: Report*, Al Jazeera (Mar. 13, 2024), <https://www.aljazeera.com/news/2024/3/13/gaza-safe-zones-led-to-displacement-israeli-attacks-on-civilians-report>.

<sup>66</sup> *UN Rights Expert Condemns ‘Systematic’ War-Time Mass Destruction of Homes*, U.N. News (Mar. 5, 2024), <https://news.un.org/en/story/2024/03/1147272>.

The education system in Gaza has been decimated. 162 out of 563 schools have been directly hit by Israeli forces, and at least 26 buildings have been destroyed.<sup>67</sup> At least 378 schools have sustained some damage.<sup>68</sup> Every single university in Gaza has been mostly destroyed.<sup>69</sup> According to the Palestinian Ministry of Health, as of mid-January, at least 4,327 students and 231 teachers and educational staff have been killed, with a further 7,819 students injured.<sup>70</sup> Israeli forces have also killed at least 94 university professors.<sup>71</sup>

Religious sites and places of worship are in ruins, and Israeli attacks have damaged or destroyed hundreds of sites of Palestinian culture, heritage, and history.<sup>72</sup> According to the Palestinian Ministry of Culture, as of early February,

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<sup>67</sup> See *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, U.N. Press (Feb. 13, 2024), <https://press.un.org/en/2024/db240213.doc.htm>.

<sup>68</sup> See OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #102* (Jan. 25, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-102>.

<sup>69</sup> See Ghazal Golshiri, *All 12 Universities in Gaza Have Been the Target of Israeli Attacks: 'It's a War Against Education'*, *Le Monde* (Mar. 7, 2024), [https://www.lemonde.fr/en/international/article/2024/03/07/all-12-universities-in-gaza-have-been-the-target-of-israeli-attacks-it-s-a-war-against-education\\_6592965\\_4.html](https://www.lemonde.fr/en/international/article/2024/03/07/all-12-universities-in-gaza-have-been-the-target-of-israeli-attacks-it-s-a-war-against-education_6592965_4.html).

<sup>70</sup> See UNICEF, *UNICEF in the State of Palestine: Escalation Humanitarian Situation Report No. 15, 2* (2024).

<sup>71</sup> See *How Israel Has Destroyed Gaza's Schools and Universities*, *Al Jazeera* (Jan. 24, 2024), <https://www.aljazeera.com/news/2024/1/24/how-israel-has-destroyed-gazas-schools-and-universities>.

<sup>72</sup> See Chloe Veltman, *More than 100 Gaza Heritage Sites Have Been Damaged or Destroyed by Israeli Attacks*, *NPR* (Dec. 3, 2023), <https://www.npr.org/2023/12/03/1216200754/gaza-heritage-sites-destroyed-israel>.

Israeli forces partially or completely damaged: 32 cultural institutions, centers, and theaters; 12 museums; 9 public libraries; 8 publishing houses; 9 heritage sites; and 195 historical buildings.<sup>73</sup> These include: Al-Balakhia port and the Anthedon Harbor, the first known seaport of Gaza dating back to the seventh century BCE; the Gaza Municipal Library; the Rashad al-Shawa Cultural Center; and the Central Archives of Gaza City, which contained thousands of historical documents.<sup>74</sup> At least 3 churches and 217 mosques have been damaged or destroyed,<sup>75</sup> including the Great Omari Mosque, one of the most important and oldest mosques in historic Palestine, and the Church of Saint Porphyrius, the third oldest church in the world.<sup>76</sup> Moreover, forty-four writers, artists, and cultural workers have been killed.<sup>77</sup> The

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<sup>73</sup> Palestinian Ministry of Culture, *The Fourth Preliminary Report on Cultural Sector Damage* (Feb. 13, 2024), <https://www.facebook.com/ministryofculturep/posts/pfbid0onD68grHiPG5bkgcF7z8SGJmDiNfc5ihUkLpQpw9cusZtKHjKgWFW5N3fes7uMGS1> [Ar.].

<sup>74</sup> See *Living Archaeology in Gaza*, Forensic Architecture (updated Dec. 19, 2023), <https://forensic-architecture.org/investigation/living-archaeology-in-gaza>; Mohamad El Chamaa, *Gazans Mourn Loss of Their Libraries: Cultural Beacons and Communal Spaces*, Wash. Post (Dec. 1, 2023), <https://www.washingtonpost.com/world/2023/11/30/gaza-library-palestinian-culture/>; ‘Israel Destroyed Central Archives of Gaza City’: *Head of Gaza Municipality*, Middle East Monitor (Nov. 29, 2023), <https://www.middleeastmonitor.com/20231129-israel-destroyed-central-archives-of-gaza-city-head-of-gaza-municipality/>.

<sup>75</sup> See OCHA, *Hostilities in the Gaza Strip and Israel – Reported Impact | Day 157* (Mar. 12, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-157>.

<sup>76</sup> See Veltman *supra* note 71.

<sup>77</sup> Palestinian Ministry of Culture *supra* note 72.



mass destruction of art and cultural heritage “destroys the victim group’s social, psychological, and intellectual identity, and thus, the group’s sense of . . . ‘the moral, intellectual, and spiritual life’ by which the self is rooted in community and (by extension) the community is situated in history.”<sup>78</sup>

Some of the destroyed sites of cultural and religious significance belonged to families of Palestinian Americans. In 2013, Chicago-based law student Yasmeeen Elagha’s family built a mosque, Masjid Al-Shuhada, to honor her late grandfather. Completed in 2016, the mosque became a source of pride, joy, and community for Elagha’s relatives and their neighbors. Several weeks ago, an Israeli airstrike destroyed it.

#### **F. U.S. complicity in these harms**

In Gaza, Israeli forces killed many Palestinians with weapons and military assistance from the United States. An Amnesty International investigation of two air strikes that killed 43 Palestinians, including nineteen children, found that Israeli forces used U.S.-made Joint Direct Attack Munitions (JDAM) to drop bombs on the al-Najjar and Abu Mu’eileq family homes in Deir al-Balah.<sup>79</sup> According to the

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<sup>78</sup> Peter Balakian, *Raphael Lemkin, Cultural Destruction, and the Armenian Genocide*, 27 *Holocaust & Genocide Stud.* 57, 61 (2013).

<sup>79</sup> *Israel/OPT: US-made Munitions Killed 43 Civilians in Two Documented Israeli Air Strikes in Gaza – New Investigation*, Amnesty Int’l (Dec. 5, 2023), <https://www.amnesty.org/en/latest/news/2023/12/israel-opt-us-made-munitions-killed-43-civilians-in-two-documented-israeli-air-strikes-in-gaza-new-investigation/>.

*Washington Post*, citing intelligence figures provided to Congress, the United States supplied Israel with more than 22,000 guided and unguided bombs used on Gaza in the first six weeks since October 7.<sup>80</sup> After examining on-site blast fragments and analyzing strike footage, experts cited by the *Associated Press* “[were] confident that the vast majority of bombs dropped on the besieged enclave are U.S.-made.”<sup>81</sup>

The United States has approved and delivered more than 100 separate foreign military sales to Israel since October 7, “amounting to thousands of precision-guided munitions, small-diameter bombs, bunker busters, small arms and other lethal aid”, and there are an additional 600 pending cases of military transfer or sale worth more than \$23 billion.<sup>82</sup>

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<sup>80</sup> Missy Ryan, Michael Birnbaum, Abigail Hauslohner & John Hudson, *Biden’s Arming of Israel Faces Backlash as Gaza’s Civilian Toll Grows*, Wash. Post (Dec. 9, 2023), <https://www.washingtonpost.com/national-security/2023/12/09/us-weapons-israel-gaza/>.

<sup>81</sup> Julia Frankel, *Israel’s Military Campaign in Gaza Seen as Among the Most Destructive in Recent History, Experts Say*, Associated Press (Jan. 11, 2024), <https://apnews.com/article/israel-gaza-bombs-destruction-death-toll-scope-419488c511f83c85baea22458472a796>.

<sup>82</sup> John Hudson, *U.S. Floods Arms into Israel Despite Mounting Alarm Over War’s Conduct*, Wash. Post (Mar. 6, 2024), <https://www.washingtonpost.com/national-security/2024/03/06/us-weapons-israel-gaza/>.

## **II. U.S. complicity in the ongoing genocide inflicts stigmatic harms on Palestinian Americans.**

### **A. Failure to protect Palestinian Americans**

Since October 7, the U.S. government has neglected Palestinian Americans, signaling to them that their lives do not merit the same protection, attention, and concern as other similarly situated groups.

First, the U.S. government has refused to extend the bare minimum of care for its citizens and residents harmed by Israel's assault. It does not know how many U.S. citizens, legal permanent residents, and their immediate family members were in Gaza or remain there today. In early December, for example, the State Department estimated about 1000 U.S. citizens, residents, and family members among the 2.3 million Palestinians in Gaza, though, based on the *amici*'s understanding, the true number was much higher at the time.<sup>83</sup> U.S. officials have also not provided the number of Palestinian Americans killed in Gaza, and they may not even monitor this figure. Yet, the State Department has disclosed how many U.S. citizens serving in the Israeli military and in the Israeli national police have been killed.<sup>84</sup> Moreover,

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<sup>83</sup> See *Press Briefing by Matthew Miller, State Dep't Spokesperson* (Dec. 6, 2023), <https://www.state.gov/briefings/departments-press-briefing-december-6-2023/> (stating "a little under a thousand" U.S. citizens, LPRs, and their family members remain, "with about 350, 370 of them being American citizens").

<sup>84</sup> See Vedant Patel, Principal Deputy Spokesperson, U.S. Dep't State, Department Press Briefing (Jan. 22, 2024) (responding to a question on the number of Americans who have been killed in Gaza).

while the Justice Department is actively investigating the deaths and kidnappings of U.S. citizens during the October 7 attack, there are no similar investigations for U.S. citizens and residents from Gaza.<sup>85</sup>

Second, the U.S. government is failing to support families of Palestinian Americans abducted and detained by Israeli forces. Yasmeeen Elagha, a law student from Chicago, has lost 130 family members. Since the start of the war, Elagha has been in constant communication with U.S. officials in the Jerusalem and Cairo embassies, in the Tel Aviv consulate, and at the State Department requesting evacuation assistance for her U.S. citizen family members. On February 7, Elagha learned from her aunt that Israeli soldiers broke into her family's shelter near Khan Younis early in the morning, tied up and blindfolded the women and children, and abducted her male relatives – including 2 Palestinian Americans Borak, 18, and Hashem, 20 – along with their father, a mentally disabled uncle, and 2 other adult male relatives.<sup>86</sup> Elagha immediately attempted to contact U.S. officials for help, but

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<sup>85</sup> See Lindsay Whitehurst, *The Justice Department Is Investigating the Deaths and Kidnappings of Americans in the Hamas Attack*, Associated Press (Dec. 6, 2023), <https://apnews.com/article/hamas-americans-killed-kidnapped-justice-department-investigation-64d851f794a6de4cbda40968dca50320>.

<sup>86</sup> See Ellen Knickmeyer & Seung Min Kim, *Family Says Two American Brothers, 18 and 20, Detained in Israeli Raid in Gaza*, Associated Press (Feb. 8, 2024), <https://apnews.com/article/gaza-israel-us-brothers-detained-9e9d675ad4fe5812c87a57c7f0e3f05f>; Joseph Stepansky, *Families of Detained Palestinian Americans Decry US Government's Silence*, Al Jazeera (Feb. 13, 2024), <https://www.aljazeera.com/news/2024/2/13/families-of-detained-palestinian-americans-decry-us-governments-silence>.

her family did not hear from U.S. officials until February 26. Despite the family's repeated requests for information, the U.S. government would not reveal Israel's alleged reasons for detaining Borak and Hashem for nearly three weeks. The family only learned of Israel's allegations through a journalist. While awaiting U.S. consular assistance, Borak and Hashem endured severe beatings, torture, forced starvation and solitary confinement, as reported by their mother to the family attorney and *amici*. Israeli authorities continue to detain Borak and Hashem, denying them access to legal counsel, formal charges, or any meaningful due process.

### **B. Differential treatment**

Not only are Defendants failing to protect Palestinian Americans, but they are also taking a markedly different approach to the protection of Israeli Americans and other groups facing crises. In the first week following October 7, the State Department reportedly made 5,600 seats available by air and sea for Americans wanting to leave Israel, with some evacuees greeted with champagne, mimosas, and lavish buffets on a chartered cruise ship off the coast of Haifa.<sup>87</sup> In stark contrast, the

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<sup>87</sup> See Oriana Pawlyk, *U.S. to Wind Down Charter Flights from Israel as Demand Wanes*, Politico (Oct. 19, 2023), <https://www.politico.com/news/2023/10/19/u-s-to-wind-down-charter-flights-from-israel-as-demand-wanes-00122546>; Lauri Donahue, *Evacuating in Style: US Sends Cruise Ship to Get Its Citizens out of Israel*, Jerusalem Post (Oct. 17, 2023), <https://www.jpost.com/israel-news/article-768677>.

U.S. government denied its citizens, residents, and their families in Gaza *any* evacuation services.

The State Department failed to establish regular communication with them and their families and did not provide a clear and effective protocol for the U.S. evacuation process. Rather, individuals had to proactively contact the State Department via an intake form that was only in use for a few weeks.<sup>88</sup> The State Department would then request that a person's name be added to a list of names allowed to cross at Rafah, which would then be vetted by both the Israeli military and Egyptian officials.<sup>89</sup> Palestinian American families seeking to evacuate have reported to *amici* that U.S. officials would offer no further information following that initial request, and the families would only find out if their names would be published on the Palestinian General Authority for Crossings and Borders' Facebook page.<sup>90</sup> The families would not know if or when their names would appear

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<sup>88</sup> Initially, the U.S. State Department required U.S. citizens, residents, and their family members seeking government assistance to depart Gaza to complete a Crisis Intake Form. However, sometime in November or December, the U.S. government removed the form as part of the process and now requires persons to directly contact the U.S. embassy in Jerusalem.

<sup>89</sup> See *Latest Information for U.S. Citizens: Information for U.S. Citizens in Israel, the West Bank, and Gaza*, U.S. Dep't State (Jan. 10, 2024), <https://travel.state.gov/content/travel/en/traveladvisories/ea/situation-in-israel-2023.html>.

<sup>90</sup> See General Authority for Crossings and Borders – Gaza “Official Page”, Facebook, <https://www.facebook.com/GAFC.MOI> (publishing the names of individuals approved to cross Rafah).

on the list before its “publication.” The U.S. government continues to emphasize that it does not control the crossing lists or who can depart Gaza or enter Egypt, and cannot guarantee the safety of U.S. citizens, residents, and their families traveling to the border.<sup>91</sup> This has led many Palestinian Americans to feel abandoned by their government, with Maha Barakat, a U.S. citizen who was stuck in Gaza at the start of the genocide, sharing, ““We are American citizens and should be treated the same as the Americans who got put on planes out of Tel Aviv.””<sup>92</sup>

Family members of Bashar Yazgi, a Palestinian American businessman from New Jersey, did not receive the same evacuation support as their counterparts in Israel. His entire family had to flee from their home in Gaza City. Yazgi’s grandmother suffered a stroke, and his relatives have taken her to the Rafah crossing several times where she has been denied passage. After completing a Crisis Intake Form for her, they did not receive a notification of her placement on the crossing list. At the border, she was told that she had missed her opportunity and was sent back.

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<sup>91</sup> *Latest Information for U.S. Citizens: Information for U.S. Citizens in Israel, the West Bank, and Gaza*, U.S. Dep’t State (Jan. 10, 2024), <https://travel.state.gov/content/travel/en/traveladvisories/ea/situation-in-israel-2023.html>.

<sup>92</sup> Yasmie Salam, Mirna Alsharif & Anna Schechter, *Doubts, Fears Run High for Palestinian Americans Stuck in Gaza*, NBC News (Oct. 16, 2023), <https://www.nbcnews.com/news/us-news/doubts-fears-run-high-palestinian-americans-stuck-gaza-rcna120616>.

The notable absence of comprehensive and consistent efforts to rescue Palestinian Americans and their immediate relatives trapped in Gaza is due to lack of resolve rather than logistical or legal impediments. This discrepancy is best highlighted by the U.S.-government-led evacuation of an American soldier's mother, Zahra Sckak, 44, where the Biden administration and the State Department supported her secure and swift exit.<sup>93</sup> Further, there are notable cases involving individuals who have had their names placed on the Rafah Crossing departure list only after their American relatives appeared on mainstream media or garnered advocacy support from influential figures or groups, underscoring a humiliating pattern of selective responsiveness by the U.S. government.

U.S. officials' neglect for the value of Palestinian American life is starkly apparent when contrasted with their response to the crisis in Ukraine. The "Uniting for Ukraine" initiative allows for the temporary stay of Ukrainians and their immediate family members in the U.S. for up to two years. Further, special initiatives support pursuit of refugee status by Ukrainian nationals outside of the U.S. and asylee status for those within U.S. borders. Despite advocacy efforts, there have been no comparable initiatives for the displaced families of Palestinian

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<sup>93</sup> See Hope Hodge Seck & Dan Lamothe, *Inside the Daring Plot to Rescue an American Soldier's Mother from Gaza*, Wash. Post (Jan. 8, 2024), <https://www.washingtonpost.com/national-security/2024/01/08/soldiers-mother-rescued-gaza/>.



Americans. There is no specific refugee resettlement program for Palestinians, nor are Palestinians permitted to exit Gaza for the purpose of appearing at the U.S. embassy in Cairo.<sup>94</sup> Additionally, some Palestinians who have obtained visas and traveled to the United States have been denied entry and had their visas revoked after intense interrogation at airports by U.S. Customs and Border Protection agents.<sup>95</sup> The Uniting for Ukraine Program illustrates how a sense of urgency can result in an efficient process to seek refuge in the United States. The only difference between the responses to the plights of Ukrainians and Palestinians is the value U.S. officials place on their lives.

### **C. Stamps of inferiority**

Palestinians are also facing social stigma in the United States, given the U.S. government's support for the unfolding genocide of their people. For example, Tariq Luthun, a data engineer and poet from Detroit, feels devastated by the destruction in Gaza and feels that he, along with other Palestinian Americans, are "not even

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<sup>94</sup> See Aline Barros, *Is There a Path to Refugee Resettlement for Palestinians?*, VOA News (Oct. 28, 2023), <https://www.voanews.com/a/is-there-a-path-to-refugee-resettlement-for-palestinians-/7330124.html>.

<sup>95</sup> See María Inés Taracena, *Palestinians in the U.S. Race to Evacuate Families from Gaza*, Prism Reports (Feb. 28, 2024), <https://prismreports.org/2024/02/28/palestinians-race-evacuate-families/>.

allowed to grieve.”<sup>96</sup> Luthun shares, “‘I’m literally watching my family get bombed and then being gaslit to say, ‘Oh, they deserve it.’”<sup>97</sup>

Defendants have themselves questioned the number of Palestinian deaths and repeated inflammatory misinformation used to justify the assault on Gaza.<sup>98</sup> The Defendants’ unquestioning support of Israeli actions despite staggering death tolls, daily live-streamed violence against Palestinian bodies, and genocidal calls by Israeli officials has deeply harmful consequences on the communities that *amici* represent. It signals to Palestinian Americans that they are inferior, less valued members of society, whose lives do not count. Hani Almadhoun, a Palestinian American in Washington, D.C., feels betrayed by the U.S. government. Referring to hate crimes against Palestinians in the United States, Almadhoun says, “‘The leadership here in this country owns this . . . They’ve stoked the fear in the hearts of Americans. They made us animals and beasts and barbarians, and the media ran with it.”<sup>99</sup>

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<sup>96</sup> See Sandhya Dirks, *Palestinian Americans on the Israel-Hamas War: ‘We’re not Even Allowed to Grieve’*, NPR (Oct. 23, 2023), <https://www.npr.org/2023/10/23/1208026655/palestinian-americans-on-the-israel-hamas-war-were-not-even-allowed-to-grieve>.

<sup>97</sup> *Id.*

<sup>98</sup> See, e.g., *Biden Says He Has ‘No Confidence’ in Palestinian Death Count*, Reuters (Oct. 25, 2023), <https://www.reuters.com/world/middle-east/biden-says-he-has-no-confidence-palestinian-death-count-2023-10-26/>.

<sup>99</sup> Sandhya Dirks, *Palestinian Americans on the Israel-Hamas War: ‘We’re not Even Allowed to Grieve’*, NPR (Oct. 23, 2023),

The full scale and duration of this stigmatic harm continue to unfold and defy easy comprehension. Among its more extreme manifestations, however, is the rise of anti-Palestinian violence in the U.S., such as the fatal stabbing of a 6-year-old Palestinian American boy in Illinois – in front of his mother, also stabbed – and the shooting of 3 Palestinian college students in Vermont.<sup>100</sup> In addition to concerns about their families’ lives and livelihoods and navigating their own trauma, Palestinian Americans worry about the physical risks to themselves arising from their anti-genocide advocacy and for simply being Palestinian in the United States.

### CONCLUSION

For the foregoing reasons, *amici* respectfully support Plaintiffs-Appellants in urging this Court to reverse the district court’s dismissal of their Complaint and remand the case for their claims to proceed on their merits.

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<https://www.npr.org/2023/10/23/1208026655/palestinian-americans-on-the-israel-hamas-war-were-not-even-allowed-to-grieve>.

<sup>100</sup> See Eric Levenson, Whitney Wild & Bill Kirkos, *Landlord Accused of Killing 6-Year-Old Palestinian American Boy Pleads Not Guilty to Murder and Hate Crime Charges*, CNN (Oct. 30, 2023),

<https://www.cnn.com/2023/10/30/us/palestinian-american-boy-stabbed/index.html>; Lexi Lonas, *Fears Rise on Campuses After Attack on Palestinian College Students*, The Hill (Nov. 30, 2023), <https://thehill.com/homenews/education/4331566-fears-campus-attack-palestinian-islamophobia-hamas-israel/>.

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## CERTIFICATE OF SERVICE

I, Christopher Godshall-Bennett, attorney for *amici curiae*, hereby certify that on March 14, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate Case Management/Electronic Case Files (CM/ECF) system.

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