

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; AYMAM 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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APPELLANTS' EXCERPTS OF RECORD, VOLUME 2 OF 3

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UNITED STATES DISTRICT COURT

**ORIGINAL**

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable JEFFREY S. WHITE, Judge

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

**Motion for Preliminary  
Injunction**

**Motion to Dismiss**

Plaintiffs, )

vs. )

NO. C 23-05829 JSW

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

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Defendants. )

Oakland, California  
Friday, January 26, 2024

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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1 Friday, January 26, 2024

8:57 a.m.

2 P R O C E E D I N G S

3 --o0o--

4  
5 **THE CLERK:** Good morning, everyone. My name is Ki'i.  
6 We're going to get started here in just a bit.

7 Just to go over a few housekeeping matters before we get  
8 started, please turn off or silence your cell phones. They  
9 should not be present during court appearances or during this  
10 hearing.

11 Also, we will be appearing via Zoom today. And this --  
12 excuse me -- the motion hearing will also be video-recorded.

13 Prior to starting, I'd like to review General Order  
14 Number 58.

15 Persons granted access to court proceedings held by  
16 telephone or video conference are reminded that photographing,  
17 recording and rebroadcasting of court proceedings, including  
18 screenshots or other visual copying of a hearing is absolutely  
19 prohibited.

20 Thank you.

21 (Pause in the proceedings.)

22 **THE COURT:** Please call the case.

23 **THE CLERK:** Calling civil case 23-CV-5829 JSW,  
24 Defense for Children International - Palestine, et al. versus  
25 Biden, et al.

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1 Counsel, please step forward to the podium and state your  
2 appearance for the record starting with plaintiff counsel.

3 **MS. SHAMAS:** Good morning. My names is Diala Shamas,  
4 counsel for the plaintiffs.

5 **THE COURT:** Good morning.

6 **MS. SHAMAS:** In the courtroom, we have several of our  
7 plaintiffs with us today.

8 **THE COURT:** All right.

9 **MS. SHAMAS:** Mr. Ahmed Abofoul on behalf of Al-Haq,  
10 Ms. Laila Elhaddad, Waeil Elbhassi, Mohammad Herzallah, Basim  
11 Elkarra, and our pseudonymous plaintiff, AN, is also here in  
12 person.

13 Over Zoom, we are joined by Dr. Omar Al-Najjar from Gaza,  
14 and Mr. Khaled Quzmar from Defense for Children  
15 International - Palestine.

16 **THE COURT:** Would you mind, Counsel, introducing the  
17 other folks at your table.

18 You may have already mentioned their names, but it would  
19 be very helpful if you could just have them introduce  
20 themselves or you introduce them, please.

21 **MS. SHAMAS:** Okay. So at our counsel's table, we  
22 have Katie Gallagher.

23 **THE COURT:** Welcome.

24 **MS. SHAMAS:** Pamela Spees.

25 **THE COURT:** Welcome.

1                   **MS. SHAMAS:** Astha Sharma Pokharel.

2                   **THE COURT:** Welcome.

3                   **MS. SHAMAS:** Mr. Marc Van Der Hout.

4                   **THE COURT:** Welcome.

5                   **MR. VAN DER HOUT:** Good morning, Your Honor.

6                   **THE COURT:** Good morning.

7                   **MS. SHAMAS:** Mr. Johnny Sinodis.

8                   **THE COURT:** Good morning.

9                   **MS. SHAMAS:** Mr. Baher Azmy.

10                  **THE COURT:** Good morning.

11                  **MS. SHAMAS:** And Ms. Maria LaHood.

12                  **THE COURT:** Good morning. Thank you very much.

13                  And for the defendants, please?

14                  **MS. LIN:** Good morning, Your Honor. My name is Jean  
15 Lin. I'm here on behalf of the United States and the federal  
16 defendants.

17                  And with me at the counsel table is Jonathan Kossak, also  
18 from the Department of Justice.

19                  **THE COURT:** Okay. Good morning, everybody.

20                  So before we get to the hearing -- before we start the  
21 hearing and arguments and then testimony in this case, I  
22 wanted to state some remarks to kind of set up the hearing  
23 today and tell you based upon the briefs in the case and my  
24 initial thoughts about the case where I think the issues are  
25 this morning.



1 In response to the brutal attack by Hamas on October 7,  
2 2023, Israel's defensive military campaign has been similarly  
3 brutal. Hamas murdered approximately 1200 citizens and  
4 soldiers and took 240 civilian hostages and military captives.

5 Since that time, Israel has killed tens of thousands of  
6 Palestinian civilians, a substantial portion of them children,  
7 and nearly 2 million Palestinian people have been displaced  
8 from their homes.

9 The destruction is widespread. The current living  
10 conditions for occupants of the Gaza Strip are worsening and  
11 becoming more and more dangerous each day.

12 The Israeli attacks have destroyed critical civilian  
13 infrastructure, leveled hospitals, schools, refugee camps, and  
14 safe havens, and destroyed nearly 45 percent of all housing  
15 units in the area. The Palestinian people are living in fear  
16 and without food, medical care, clean water or sufficient  
17 humanitarian aid.

18 The defendants, the President of the United States and his  
19 Secretaries of State and Defense, have provided substantial  
20 military, financial, and diplomatic support to Israel.  
21 Defendants have repeatedly visited the region to reinforce the  
22 United States' support there.

23 During the whole -- during the whole course of the  
24 military campaign, defendants continue to fund and proffer  
25 weapons to Israel.

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1 Plaintiffs and the amicus parties are human rights  
2 organizations, doctors, Palestinian residents of Gaza, and  
3 Palestinians in the United States with family remaining in  
4 Gaza.

5 They seek an injunction ordering the United States to  
6 cease supporting Israel's continued attacks in Gaza through  
7 provision of financial support and military aid.

8 Plaintiffs invoked the Genocide Convention, which was  
9 unanimously adopted by the United Nations in 1948.  
10 Article III of the Convention forbids genocide, defined as  
11 acts, quote, committed with intent to destroy in whole or in  
12 part a national, ethnic, racial, or religious group as such,  
13 unquote.

14 The treaty also forbids, quote, complicity in genocide,  
15 unquote, which plaintiffs claim is implicated by the United  
16 States' support of Israel's ongoing military campaign.

17 The facts of war and the brutality of the killings in the  
18 region are horrible. However, the primary concern for this  
19 Court is the limitation of its own jurisdictional reach.

20 By this lawsuit, plaintiffs seek an injunction to stop the  
21 United States government from providing military or financial  
22 assistance to Israel.

23 However, the foreign policy decisions whether to provide  
24 military or financial support to a foreign nation is, quote, a  
25 quintessential political question, unquote, and likely, quote,

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1 inappropriate for judicial resolution, unquote.

2 And for that quote, I'm citing *Abusharar*,  
3 A-b-u-s-h-a-r-a-r, vs. *Hagel*, 77 Fed. Supp. 3d. 1005 and 1006,  
4 and which is cited in the Central District of California in  
5 2014; and *Corrie*, C-o-r-r-i-e, vs. *Caterpillar*, 503 F.3d 974  
6 at 983 decided by the Ninth Circuit in 2007.

7 The Court faces the issue of whether allowing this action  
8 to proceed would necessarily require the judiciary to question  
9 the decisions of the political branches of our government to  
10 grant extensive military aid to Israel.

11 Foreign policy is constitutionally committed to the  
12 political branches of government, and disputes over foreign  
13 policy are considered non-justiciable political questions.

14 And for this position, see *Haig*, H-a-i-g, vs. *Agee*,  
15 A-g-e-e, 453 U.S. 280 at 292, and decided in 1981. Quote, If  
16 the Court is being called upon to serve as a forum for  
17 considering the wisdom of discretionary decisions made by the  
18 political branches in the realm of foreign policy or national  
19 security, then the political question doctrine is implicated,  
20 and the Court cannot proceed, unquote. Citing *Mobarez*,  
21 M-o-b-a-r-e-z, vs. *Kerry*, 187 Fed. Supp. 3d. 85 at 92 decided  
22 by the DC District Court. This is an opinion by now Justice  
23 Ketanji Brown Jackson.

24 At the heart of the political question doctrine is the  
25 separation of powers among the three branches of government, a

1 fundamental and guiding concept enshrined in the United States  
2 Constitution.

3 I understand what is at stake here and the importance of  
4 plaintiffs' lawsuit. I also understand the limitations placed  
5 on my office by the separation of powers and binding legal  
6 precedent.

7 The Court has permitted the hearing to be available  
8 contemporaneously to the public by Zoom and the Zoom recording  
9 which will be available immediately after this hearing on the  
10 Court's website for the public.

11 So I will first address the questions posted to the  
12 parties, and then I would welcome the witnesses to testify.

13 What I want to say for those of you who have not appeared  
14 in my court for a law and motion, when I -- I review the  
15 pleadings, I review the authorities, including the ones  
16 recently submitted by the parties, and all of the arguments of  
17 counsel, and the entire record.

18 And then when I am left with questions to help guide me to  
19 a fair and just decision, I issue questions to the lawyers,  
20 which, when I was a lawyer, I wished judges would do all the  
21 time. For example, when I argued before the Ninth Circuit, it  
22 would be great if I knew what their questions were before I  
23 went in there and made a fool of myself.

24 So I issue those questions to help counsel to help the  
25 Court and also to set the metes and bounds of this hearing.

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1 If I have not asked a question on a particular subject,  
2 it's because I don't need any additional information. So this  
3 is not an opportunity to simply regurgitate what's in either  
4 side's briefs but to help the Court come to a fair decision by  
5 answering its questions.

6 So the way I typically handle this is I will address the  
7 question to one side or the other and then ask the opposing  
8 side to respond and continue the discussion until I feel like  
9 I've had sufficient information.

10 When I'm done, when the responses to the questions are  
11 completed, I'll take a short recess, and then we will hear  
12 from the witnesses whose testimony I am anxious to hear.

13 So if counsel will come up and we can begin with the  
14 questions, I would really much appreciate it.

15 And by the way, if you want to split up -- I should have  
16 said this -- who answers what questions, as long as we have  
17 one lawyer answering -- on each side answering the questions  
18 rather than more than one because it's hard to follow, I  
19 appreciate that very much.

20 So we'll start immediately with question 1. And why don't  
21 counsel come up.

22 Yeah, please come to the podium. We'll give you plenty of  
23 time. And may I ask you to kindly identify yourself again.

24 (Simultaneous colloquy.)

25 **THE COURT:** Okay. Go ahead.

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1                   **MR. VAN DER HOUT:** Marc Van der Hout on behalf of  
2 plaintiffs, Your Honor.

3                   And what I thought -- and do you want counsel to --

4                   **THE COURT:** No, not until we ask --

5   (Simultaneous colloquy.)

6                   **MR. VAN DER HOUT:** Okay. Thank you.

7                   Just before we get into answering your questions,  
8 et cetera, which other of my co-counsel will be doing, I just  
9 wanted to address and -- and ask the Court if possible, we  
10 received the Court's -- communication through the Court the  
11 last couple of days in terms of the courtroom availability,  
12 that there would be capacity of 30 people inside the courtroom  
13 and then there'd be an overflow courtroom available to  
14 whatever members of the public could -- could fit in there.

15                   And so we anticipated besides the Zoom, which is going on  
16 now, we anticipated, you know, around 50 people from the  
17 public would be able to come in.

18                   When we approached the courthouse today, we were informed  
19 that there was an order from the Court to not allow any  
20 members of the public in except the press and obviously  
21 plaintiffs and their -- the attorneys and plaintiffs and their  
22 witnesses.

23                   So we asked this -- if there was a court order, and we've  
24 been quite honestly unclear because we've been not given any  
25 court order, yet that was what the marshals were informed.

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1 And we -- there's a huge public interest of course in this.

2 So we do want to know is there an overflow courtroom  
3 available like we were told there would be? And can we at  
4 least have those members of the public who are waiting in line  
5 right now and have been for hours this morning at least enter  
6 to fill that overflow courtroom and -- and whatever is  
7 available here.

8 **THE COURT:** All right. The answer to your question  
9 and the issue you raised is that the Court has determined in  
10 the interest of public safety to take the steps that you  
11 outlined. So that's the answer to your question.

12 Now, let's move on to the questions. And I'll start with  
13 plaintiffs' counsel for question --

14 (Simultaneous colloquy.)

15 **MR. VAN DER HOUT:** Thank you, Your Honor.

16 **THE COURT:** Thank you very much.

17 Question number 1.

18 **MS. GALLAGER:** Good morning, Your Honor. Katherine  
19 Gallagher for the plaintiffs.

20 And thank you for the recitation of the facts in this case  
21 at the start of this hearing and your appreciation of the very  
22 serious nature of the claims before the Court today.

23 This case does not present the Court with a political  
24 question. Rather, it raises two purely legal questions  
25 arising out of the unfolding genocide against 2.2 million

1       Palestinians in Gaza; namely, whether U.S. officials have  
2       violated international and U.S. law in failing to take all  
3       measures to prevent genocide when put on notice of the serious  
4       risk of genocide against the Palestinian population in Gaza;  
5       and, two, whether U.S. officials violated international law  
6       when they knowingly provide and continue to provide practical  
7       assistance that has had a substantial effect on the commission  
8       of genocide, contrary to the prohibition of complicity in  
9       genocide.

10       This Court has authority to exercise its judgment over  
11       these questions regarding the lawfulness of defendants'  
12       conduct and not the wisdom of discretionary policies. These  
13       are not questions of policy. These are questions of law.

14       In accordance with the power vested to the judiciary in  
15       the Constitution since the founding of this country, there has  
16       been a role for the courts in determining what the law is and  
17       applying it to the facts.

18       Ever since *Marbury vs. Madison*, the court has enforced a  
19       fundamental distinction between discretionary policy  
20       decisions, which may be committed to the executive judgment,  
21       and binding legal obligations which must be subjected to  
22       judicial review.

23       A proper application of the separation of powers maintains  
24       the court's power to serve as a check on political branches.  
25       The executive does not get to make a political determination



1 when the law is enforced.

2 And more fundamentally, the executive branch has no  
3 discretion to violate the law, including legal, binding  
4 obligations arising out of international law.

5 Here, the *erga omnes* prohibitions relate to the most  
6 serious of crimes, genocide. And it is the duty,  
7 respectfully, of this Court to apply these laws intended to  
8 forestall further death, destruction, displacement, and  
9 starvation of the Palestinian people in Gaza, half of whom are  
10 children.

11 This power of judicial review is not foreclosed when U.S.  
12 foreign policy decisions are implicated. As the Supreme Court  
13 made clear in *Baker v. Carr*, it is error to suppose that every  
14 case or controversy which touches on foreign relations lies  
15 beyond judicial cognizance.

16 Indeed, the Supreme Court, in an eight-to-one decision in  
17 *Zivotofsky v. Clinton*, emphasized the very narrow nature of  
18 the political question doctrine and affirmed that when there  
19 are concrete legal questions, there is a role for courts.

20 The court stressed federal courts are not being asked to  
21 supplant a foreign policy decision of the political branches  
22 with the court's own unmoored determination. In a politically  
23 fraught case like some may perceive this one to be, in that  
24 case regarding the status of Jerusalem, it continued that  
25 where there is a specific statutory right, the court has a

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1 role to determine whether or not that statute is  
2 constitutional. Quote, this is a familiar judicial exercise.

3 In this case, there is that same familiar judicial  
4 exercise to be carried out by this Court, and that is to  
5 provide a factual analysis against a clearly defined and  
6 clearly established legal obligations to prevent and not  
7 further genocide.

8 In *Al Shimari v. CACI*, a case out of the Fourth Circuit,  
9 the court made clear that when there is an international  
10 obligation, in that case regarding the prohibition of torture,  
11 it is the court's duty to enforce the prohibition. And that  
12 case arising out of torture at Abu Ghraib, the military  
13 context was of no moment to the court when the -- when  
14 legality was at issue.

15 The court noted that there is, quote, settled  
16 international law and binding criminal law to make the claims  
17 justiciable. That is the same case here.

18 The United States has a clear and unambiguous duty, which  
19 it itself has acknowledged, to prevent and punish genocide.  
20 The United States led the drafting of the Genocide Convention  
21 and included the obligations to prevent, suppress, and punish  
22 all forms of genocide. The United States ratified the  
23 Genocide Convention.

24 The United States enacted domestic criminal prohibitions  
25 to punish all acts of genocide. And President Biden declared

1 upon taking office that the prevention and punishment of mass  
2 atrocities including genocide are cases of national -- of  
3 national interest and a matter of national policy.

4 Here, the United States is choosing to disregard its  
5 binding legal obligations. It is making policy determinations  
6 that are contrary to law.

7 This case is distinguishable from those cases which Your  
8 Honor mentioned, *Corrie, Haig*, and -- and other cases where  
9 there was a discretionary matter before the -- the Court.

10 Here, there can be and must be no discretion to provide  
11 the means by which a genocide is committed.

12 This is not a wholesale challenge to U.S. military aid to  
13 Israel. This is not a question of applying the Leahy law as  
14 was the case in -- in *Haig*.

15 This is also distinct from *Corrie v. Caterpillar* where the  
16 Court was being asked to review a discretionary decision to  
17 reimburse the sale of bulldozers in a direct -- a direct sale  
18 between a private company and a foreign state.

19 In that case, the court would have had to review the  
20 entire foreign military financing program and the ways that it  
21 is carried out. No such assessment is required here. It is  
22 simply applying the facts to the law.

23 I will stop here, Your Honor.

24 **THE COURT:** Thank you very much.

25 I'll now hear from government counsel.

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1           **MS. LIN:** Thank you, Your Honor.

2           I think Your Honor had --

3           **THE COURT:** Would you reidentify yourself, counsel,  
4 please.

5           **MS. LIN:** Oh, I'm sorry, Your Honor.

6           **THE COURT:** That's okay.

7           **MS. LIN:** My name is Jean Lin from the Department of  
8 Justice --

9           **THE COURT:** All right. Proceed.

10          **MS. LIN:** -- on behalf of defendants.

11           So the Court has recognized that the -- the *Corrie vs.*  
12 *Caterpillar* case of the Court of Appeals decision is directly  
13 relevant here. And, in fact, we submit that it forecloses the  
14 plaintiffs' claims here because this political question  
15 doctrine is -- renders this case non-justiciable.

16           Just three very quick responses to the plaintiffs'  
17 position.

18           So the political question doctrine bars the Court's review  
19 regardless of how they're styled as long as they call into  
20 questions that are inexecutable from the issues -- from the  
21 questions identified in *Baker*. And we submit that that  
22 clearly is the case here.

23           And I don't want to belabor the *Corrie* case, but just to  
24 highlight a couple points that the Court of Appeals mentioned  
25 in the *Corrie* case where the court said it is not the role of

1 the Court to indirectly indict Israel for violating  
2 international law with military equipment that the United  
3 States provided in that case. Any politic -- any policy  
4 condemning the Israeli government must first emanate from the  
5 political branches.

6 And the court in that case could not find in favor of the  
7 plaintiffs without implicitly questioning and even condemning  
8 United States foreign policy toward Israel, especially about  
9 policy decision the political branches had already made in  
10 that case.

11 And if the court were to condemn United States foreign  
12 policy toward Israel, it could cause international  
13 embarrassment and undermine foreign policy decision of the  
14 sensitive -- in the sensitive context of the  
15 Israeli-Palestinian conflict.

16 And finally, there, as here, entering a declaration that  
17 the Israeli military has systemically committed grave  
18 violation of international law was to verve [phonetic] United  
19 States foreign policy. So all of those consideration [sic]  
20 apply equally here.

21 And, in fact, it wouldn't make sense for a case such as  
22 *Caterpillar* where the -- the challenge is indirectly  
23 challenging the United States foreign policy to be precluded  
24 by the political questions doctrine and here when the  
25 plaintiffs are directly challenging the United States policy

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1 towards Israel.

2           **THE COURT:** Let me ask you this. Counsel mentioned  
3 the Abu Ghraib case. There's another case that I think  
4 counsel cited in its additional authorities involving the Iraq  
5 war -- another aspect of the Iraq war and was brought by  
6 Congress against then President George W. Bush. And the court  
7 there -- it was a District Court, obviously not in this  
8 district, but still -- not in this Circuit, but still a pretty  
9 well-reasoned opinion. Although he -- that judge ruled  
10 against the plaintiffs, he held that the ability for the court  
11 to look at what the government was doing, the executive  
12 branch, in connection with its then impending war with Iraq  
13 was not a political question.

14           So counsel is -- has submitted a -- those authorities and  
15 others as instances where the court has recognized its power  
16 to intervene.

17           So how would you distinguish from those -- that line of  
18 questions -- that line of cases? Excuse me.

19           **MS. LIN:** So to take the Court's questions in turn,  
20 the first one was the case of the *Al-Tamimi* case where the  
21 court asked about why there was not political question  
22 doctrine applicable there.

23           And I think we -- we submit that that case actually  
24 underlines why the political question doctrine applies here.  
25 Because in that case, yes, it was true that it was involving a

1 claim of genocide, but the court was quite clear that it  
2 didn't implicate U.S. foreign policy. It was about whether  
3 the Israeli settlers were committing genocide.

4 And the court specifically analyzed that it would have  
5 been a different case if the Israeli military's conduct were  
6 called into question. And in that case, the United States has  
7 submitted a statement of interest indicating that if the  
8 Israeli military's conduct were in -- were called into  
9 question, that could create an interbranch conflict.

10 But in that case, the plaintiffs dropped the claims  
11 against Israeli military. So there was no U.S. foreign policy  
12 at issue in that case at all. Which highlights why in this  
13 case, where directly -- where there's a direct challenge to  
14 U.S. foreign policy, that the political question doctrine  
15 applies with full force here.

16 And I'll just address quickly on the *Dellums* case that the  
17 Court noted that the plaintiffs submitted yesterday. So we  
18 think that case, first of all, we think is -- is an outlier  
19 because since that time the DC circuit en banc has adopted a  
20 framework that we think will call into doubt the -- the  
21 decision in that case. The DC circuit en banc case we had  
22 cited in our brief is the *El-Shifa Pharmaceutical Company*  
23 case. And that case is cited with favor by the Ninth Circuit  
24 in the *Republic of Marshall Islands* case.

25 So but even if *Dellums* were still good law, it's more in

1 line with the kind of conflict that was at issue in  
2 *Zivotofsky*. So in both cases, there was a question of whether  
3 one political branch is intruding on the authority of another  
4 branch. So in *Zivotofsky*, Congress enacted a statute which  
5 potentially could intrude into the President's authority to  
6 recognize a foreign government.

7 So the Congress was -- sorry -- the Supreme Court was  
8 saying that a familiar judicial exercise was determined  
9 whether that statute was constitutional, and it determined  
10 that it wasn't because it's intruding into the President's  
11 exclusive power invested by the Constitution to recognize  
12 foreign countries.

13 Similarly, in *Dellums vs. Bush*, the Court was considering  
14 a question about whether the President's use of military force  
15 intruded into Congress's war powers clause, and whether the  
16 President's activities as the commander in chief was  
17 constitutional. So there, too, is a similar kind of  
18 separation of powers question.

19 But here we don't have any of that where there's not a  
20 familiar judicial exercise to determine whether a statute is  
21 constitutional, whether one branch is intruding on another  
22 branch's Constitutionally vested authority. What we have here  
23 is a challenge to the foreign policy decisions of the  
24 political branches.

25 **THE COURT:** All right. Thank you, counsel.



1           **MS. GALLAGER:** Just a few responses, Your Honor, if I  
2 may.

3           First on *Corrie v. Caterpillar*, I would note that that  
4 decision predates the *Zivotofsky* decision. And so to suggest  
5 that any discussion of foreign policy that may be contrary to  
6 the views of even an ally is not a reason to find that there  
7 is a political question.

8           I do not believe that the *Corrie v. Caterpillar* decision  
9 can stand following the Supreme Court's decision in *Zivotofsky*  
10 to the extent that the government is arguing that there is  
11 some background concern about discord with a foreign  
12 government.

13           **THE COURT:** Let me ask you one question because,  
14 counsel, and I apologize for interrupting, but I'm afraid I'll  
15 lose the thought if I don't bring this up.

16           So I'm very familiar the *Marshall Islands* case because  
17 that was my case, went up to the Ninth Circuit. So there was  
18 a case where the Marshall Islands was alleging that the U.S.  
19 acted inappropriately by failing to engage in nuclear  
20 disarmament talks, and I ruled in that case and I was affirmed  
21 by the Ninth Circuit -- not that my ruling is of any weight or  
22 anything like that -- but the Ninth Circuit, that that was a  
23 quintessential political issue.

24           So how is that case distinguishable?

25           **MS. GALLAGER:** I think that case is distinguishable,

1 Your Honor, because of the nature of the obligations in place  
2 in the treaty at issue.

3 Here in the Genocide Convention, there are specifically  
4 defined obligations to prevent, to suppress, and to punish the  
5 crime. There are judicially manageable standards of conduct  
6 that is required of all states' parties because there is a  
7 definition of genocide and a definition of the duties on  
8 states.

9 Respectfully, in the -- in the *Republic of Marshall*  
10 *Islands* case, what the plaintiffs were seeking was something  
11 that related to negotiations, and that is more squarely within  
12 the powers of the executive branch and the foreign policy  
13 considerations of the executive than it is for the courts.

14 Here, the question is a legal one, whether the actions  
15 undertaken by the United States fail to uphold the obligation  
16 to prevent genocide. And that is an active obligation that  
17 requires that the United States not provide the means by which  
18 a genocide is being furthered.

19 It also requires the United States not to provide support  
20 in the form of aiding and abetting a genocide. Those are  
21 fundamentally different than asking the Court to weigh into  
22 what the outcome of negotiation should be. The United States  
23 already negotiated the Genocide Convention. It already  
24 ratified it, implemented it, and stated that compliance with  
25 the Genocide Convention is part of U.S. policy.

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1 The United States also affirmed the International Court of  
2 Justice just two years ago in the *Ukraine v. Russia* case that  
3 it views these obligations as *erga omnes partes*, meaning  
4 binding on all states.

5 So to the extent that there may be conduct by a third  
6 state at issue in this case, a state that is not a party to  
7 the proceedings -- this case is, again, against U.S.  
8 defendants -- that obligation to prevent, suppress, and punish  
9 genocide also applies to the State of Israel. And we had a  
10 judgment this morning out of the International Court of  
11 Justice that made that quite clear.

12 So there is no discretion for any state to evade its  
13 obligations, its legal obligations. These are not policy  
14 decisions.

15 **THE COURT:** All right. Thank you.

16 Anything further you want to say briefly?

17 **MS. LIN:** No. Other than I did misspeak. You know,  
18 I think friends on the other side was actually talking about  
19 different case as opposed to *Al-Tamimi*. They talked about the  
20 *Al Shimari* case, which I just want to mention that that case  
21 is not at all relevant here because it had to do with how to  
22 assess whether military contractor has any -- you know, the  
23 actions of a military contractor is imputed to the military so  
24 that it becomes a military decision. So that's entirely  
25 outside of the realm.

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1           **THE COURT:** All right.

2           **MS. LIN:** But there are a couple points that counsel  
3 mentioned that I think is probably reserved for the next  
4 questions --

5           **THE COURT:** All right.

6           **MS. LIN:** -- about the duties.

7           **THE COURT:** Do you want to respond briefly to what  
8 your opponent just said?

9           **MS. GALLAGER:** I think just on *Al Shimari*, the  
10 political question doctrine was litigated over a decade back  
11 and forth in that case. It was a live issue in the case. And  
12 it was the Fourth Circuit, upon review, that said even when  
13 military affairs are implicated, binding law applies. And  
14 it's a role of the court to determine what the law is. And  
15 even when there are questions that may implicate U.S. foreign  
16 policy, U.S. military operations, the law must be applied and  
17 that no one, including the President of the United States, is  
18 above the law.

19           **THE COURT:** We've heard that before many times in  
20 the --

21           **MS. LIN:** Your Honor, if I may just say that we  
22 dispute the characterization of that case because that  
23 ultimately --

24           **THE COURT:** Let me stop you. I can read the case.

25           **MS. LIN:** Sure.

1           **THE COURT:** And I'm not trying to be rude, but  
2 whenever there's a case at issue and -- I can interpret it  
3 hopefully as well as counsel.

4           What I'm going to do, move on to question 2. And I think  
5 given the importance and public interest in the case, I'll  
6 read the question in case those people who are observing these  
7 proceedings, or will, understand what we're asking because  
8 they may not have access to the docket.

9           So question 2 that the Court prepublished is as follows:  
10 If the Court determines that plaintiffs' claims present  
11 non-justiciable political questions best left to the executive  
12 branch, must the Court adjudicate whether plaintiffs have  
13 stated cognizable causes of action for injunctive relief under  
14 the Alien Tort Statute and whether the claim is barred by the  
15 Federal Tort Claims statute or whether the government has  
16 waived sovereign immunity?

17           So I know when I ask these hypotheticals, the lawyer who  
18 thinks -- the side who thinks that it's against their position  
19 gets nervous. But that's just the way we engage in dialogue.

20           So I'll let you answer.

21           **MS. GALLAGER:** Sure, Your Honor.

22           And hearing that I don't have to repeat that we do not  
23 believe the political question doctrine applies in these -- in  
24 this case.

25           But for purposes of your question, I think the answer

1 turns on how the political question is defined. We have two  
2 claims in this case, one for duty to prevent genocide and one  
3 for complicity in genocide.

4 And we also have two forms of relief that we're  
5 requesting. One is a declaratory judgment and one is  
6 injunctive relief. And with regard to declaratory judgment,  
7 declaratory relief, the government has been silent on that.

8 And we find that there is really no way that the -- that a  
9 judicial pronouncement that the executive officers are  
10 violating the law and, in so doing, the Court advising what  
11 the law is, is a political question.

12 The Court unambiguously could enter declaratory relief in  
13 this case which the defendants would be obligated to take  
14 measures to comply with.

15 So we think that even if there are some aspects of the  
16 case that might be determined to be a political question,  
17 which was part of the analysis that the DC Circuit did in the  
18 *Al-Tamimi* case where it carved out some questions as political  
19 questions under the doctrine and determined that the  
20 adjudication of whether genocide was being committed was a  
21 legal question proper for adjudication, a similar exercise  
22 could happen here.

23 **THE COURT:** Let me ask you this, counsel. If you  
24 were -- when I start looking at a case -- a request for  
25 injunction or declaratory relief, I start with the notion --

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1 and when I was, you know, in your position, the first thing I  
2 would start with is drafting the proposed order and the  
3 remedy.

4 So tell me precisely what the plaintiffs envision as the  
5 remedy if they were to prevail in terms of what would the  
6 injunction look like in a way that would actually be  
7 enforceable, and where the President and his cabinet would  
8 understand what they're ordered to do or not do, and then do  
9 it so that you could seek further relief if they don't comply.

10 **MS. GALLAGER:** Right.

11 Your Honor, I think that that order would start with  
12 defining that there could not be further military support for  
13 use in the ongoing genocide in Gaza.

14 What we know from public reporting and from announcements  
15 of U.S. officials at press conferences and elsewhere is that  
16 the United States has provided tens of thousands of munitions  
17 worth billions of dollars for operations in Gaza.

18 **THE COURT:** So let me stop you there, right there,  
19 okay.

20 So let's assume for purposes of argument -- and by the  
21 way, I will let you complete your answer and give a full  
22 answer. But I'm interested in this because -- so let's say  
23 the Court orders the government to do what you said. Would  
24 that mean that the government -- the executive branch could,  
25 for example, continue to give some arms to Israel to protect

1       itself from other -- from Iran or -- and I'm just saying, I'm  
2       not making any judgments about that, but other actors in the  
3       area?

4               **MS. GALLAGER:** Your Honor, we are not seeking through  
5       this case a cessation of all military support or assistance to  
6       Israel. To the extent that there may be programs such as the  
7       Iron Dome, that is not something that is necessarily  
8       implicated in this case.

9               What we are seeking is to stop the flow of munitions,  
10       whether it's tanks, Hellfire missiles, bunker-busting bombs,  
11       there is a -- a list which plaintiffs can come up with. But,  
12       frankly, the government is in a far better position than we  
13       are to know what is in the pipeline for delivery to Israel.

14              So we could see, if Your Honor were to move towards an  
15       injunction, that we could have a hearing and do some discovery  
16       even, if necessary, to more define what are the parameters of  
17       the weapons that would need to be foreclosed.

18              But any -- I think there could be a high-level order that  
19       any weapons that are going to support military operations  
20       against the Palestinian population in Gaza at this moment and  
21       to enforce the total siege on Gaza must be stopped.

22              **THE COURT:** All right. You may -- I interrupted your  
23       response to question 2, if --

24              **MS. GALLAGER:** Your Honor, just to say that we do  
25       think that the Court could go on and do an analysis of the



1 Alien Tort Statute claims if it were to find that there were a  
2 path forward on any -- either of our claims or either of our  
3 forms of relief.

4 And this is in fact the framework that the *Sosa v. Alvarez*  
5 Supreme Court decision sets out, a two-step process, to first  
6 assess whether the claim is specific, obligatory, and  
7 universal under international law, and then after making that  
8 determination, determine whether there is any reason for the  
9 Court to exercise judicial caution.

10 **THE COURT:** Continue. Sorry.

11 **MS. GALLAGER:** And I can stop here, Your Honor.

12 **THE COURT:** I don't want to cut you off.

13 **MS. GALLAGER:** I can stop here.

14 **THE COURT:** Okay. Thank you.

15 Counsel.

16 **MS. LIN:** Your Honor, I think just trying to answer  
17 the question about whether declaratory relief would be  
18 appropriate and also the predicate question of if the Court  
19 would find political question, whether the Court could  
20 proceed.

21 So we submit that if the Court finds that this case  
22 presents political questions that go to both of the claims  
23 here, one is to prevent genocide, the other one is to stop  
24 being purportedly complicit in genocide. If the Court finds  
25 that those questions -- those present political questions,

1 then there is no need for the Court to proceed further.

2 And that's essentially what *Corrie vs. Caterpillar* did  
3 because there was also the declaratory judgment request in  
4 that case.

5 So that if -- responding to the Court's pure question  
6 about whether the Court could proceed to address those other  
7 issues, it's only if the Court finds one of the two or one of  
8 the other -- one -- there is one possibility that something is  
9 not precluded by political question, then -- then the Court  
10 would need to address the other defenses that the United  
11 States has raised.

12 But just to be very clear about the idea that there is a  
13 universal standard on prevention of genocide as opposed to  
14 complicity, we certainly don't submit that that is something  
15 that is identified in the Genocide Convention Act under  
16 Article III --

17 **THE COURT:** So wait. So are you saying therefore  
18 that the political question issue or doctrine would supersede  
19 the Alien Tort Statute and so that the Court could not find  
20 that the plaintiffs have stated a case and maybe even are  
21 entitled to an injunction for a -- if there is -- if there is  
22 current alleged tortious acts being committed or aiding --  
23 aided and abetted by our government, that the Court could  
24 not -- does the -- does the doctrine of political question  
25 supersede the Alien Tort Statute?

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1           **MS. LIN:** Yes, Your Honor. Because the Alien Tort  
2 Statute is really a cause of action. So if the Court has no  
3 jurisdiction to proceed at all because it goes -- the  
4 justiciability, meaning the political question doctrine  
5 application, goes to the very question of whether the Court  
6 has subject matter jurisdiction to proceed.

7           So if the Court doesn't have that, then there's no need to  
8 address cause of action, sovereign immunity defenses, all the  
9 other issues that the parties have briefed.

10           And that, again, is what the *Corrie vs. Caterpillar* case  
11 did, you know, even though, again, the case did raise  
12 declaratory judgment.

13           But in general, all of the political question doctrine  
14 cases, when they -- when the court finds a political -- that  
15 the political question doctrine applies, then as to that claim  
16 nothing else needs to be addressed because that goes to the  
17 court's jurisdiction.

18           And we think that here is a very easy question as to both  
19 of these claims. There is a textual commitment to -- by the  
20 Constitution to the political branches to make those  
21 decisions.

22           Some of the remedies that plaintiffs' counsel is outlining  
23 kind of underscores precisely why that is not appropriate for  
24 this Court to do, to line draw some military aid might be  
25 appropriate, some may not be appropriate, plaintiffs can help

1 with defining what the U.S. foreign policy should be as to  
2 what military aid is appropriate.

3 So that kind of really underscore that these are the kind  
4 of questions that constitutionally are committed to the  
5 political branches.

6 **THE COURT:** So let me ask you this. So why don't you  
7 kind of humor me for a moment, and I'll go to the same series  
8 of questions, hypotheticals I asked plaintiffs' counsel.

9 Let's say the Court gave the plaintiffs substantially what  
10 they wanted after further hearings, discovery, and the  
11 remedies said to the President and his Cabinet, stop  
12 supplying -- stop aiding and abetting -- I won't use the term  
13 genocide -- but the damage being inflicted on the Palestinian  
14 people. Figure out what it is you're -- for example, we read  
15 about these bunker-busting bombs that plaintiff mentioned, and  
16 clearly those are -- there's no dispute and the President and  
17 Secretary Austin have affirmed that those come from the  
18 United States.

19 What would the President do, putting aside they go to the  
20 Ninth Circuit or the Supreme Court, they grade my papers, and,  
21 you know, they would -- if they disagree, they disagree. But  
22 let's assume that's not the case or that the Ninth Circuit and  
23 the Supreme Court agrees. What would the President then do?

24 **MS. LIN:** Your Honor, I hate to suggest that, you  
25 know, the executive branch would not be complying with a

1 judicial court order. But, you know, it's a longstanding  
2 doctrine the court has jurisdiction to enjoin the President in  
3 his exercise of official duties. *Franklin vs. Massachusetts*  
4 is a well-established principle. And precisely because of the  
5 separation of powers.

6 Imagine any District Court in the country try to stop the  
7 President, as the commander in chief and as the nation's organ  
8 in the realm of foreign policy, to try to manipulate how the  
9 President should make those very sensitive foreign policy  
10 decisions.

11 **THE COURT:** Well, the courts had no problem doing  
12 that when Trump and all the Muslims coming into this country.  
13 That case went all the way to the Supreme Court, right? And  
14 that was against the President and his policy.

15 **MS. LIN:** Your Honor, if the question is going to  
16 the -- whether -- I'm not very familiar with the travel ban  
17 issues. But certainly the political question doctrine was not  
18 directly implicated. At least, you know, that was not how  
19 those cases were decided. So I don't think that they would be  
20 directly applicable here.

21 But here we're really getting at the quintessential  
22 separation of powers doctrine and what the political questions  
23 doctrine stands for. The *Baker vs. Carr* factors apply in all  
24 of its elements to this case here.

25 **THE COURT:** All right. Thank you.

1           Would you like to reply?

2                   **MS. GALLAGER:** Yes, Your Honor. Thank you.

3           First to -- to go to the duty to prevent. The United  
4 States again ratified the Geneva -- the Genocide Convention.  
5 And Article I of the Genocide Convention, at the urging of the  
6 United States during drafting, includes the legal duty to  
7 prevent.

8           And in its submission to the International Court of  
9 Justice, in the *Ukraine v. Russia* case, the United States  
10 submission says that the object and purpose is, quote,  
11 safeguarding the very existence of certain human groups, end  
12 quote, endorsing the most elementary principles of morality.  
13 This duty to prevent is to forestall the destruction of a  
14 group.

15           And it has been adjudicated now a number of times by the  
16 International Court of Justice which has put forward the  
17 elements that the Court could apply. The ICJ has noted that  
18 this is not a passive obligation but it is an active  
19 obligation similar to preventing aiding and abetting as a mode  
20 of liability.

21                   **THE COURT:** Well, let me -- since you've already kind  
22 of moved into that -- and I'm not criticizing you -- to the  
23 third question, let's put that on the table because I think  
24 you were beginning to respond to that question. And let's get  
25 that on the table.

1           So the question 3 reads: United States Constitution  
2 Article VI clause 2 provides as follows: "This Constitution,  
3 and the Laws of the United States which shall be made in  
4 Pursuance thereof; and all Treaties made, or which shall be  
5 made, under the Authority of the United States, shall be the  
6 supreme Law of the Land; and the Judges in every State shall  
7 be bound thereby, any Thing in the Constitution or Laws of any  
8 state to the Contrary notwithstanding."

9           So the question is, which is what we've begun discussing,  
10 which I appreciate, if the Genocide Convention is explicitly  
11 binding on this Court and the Supreme Court of the land, can  
12 the Court find support for exercising jurisdiction here?

13           And I'll let you continue now since you started answering  
14 that anyway.

15           **MS. GALLAGER:** Yes, Your Honor. The Court can  
16 certainly find support for jurisdiction in the Genocide  
17 Convention as a binding treaty on the United States as well as  
18 an expression of customary international law.

19           The purpose and framework of the Genocide Convention  
20 envisions and in fact mandates judicial enforcement. These  
21 obligations are not merely aspirational.

22           Sections 1331 and 1350, which is the Alien Tort Statute,  
23 vests this Court with the jurisdiction over violations of  
24 customary international law as part of federal common law,  
25 which the Supreme Court and the Ninth Circuit have both

1 repeatedly found.

2 So, yes, Your Honor, operating through 1331 and 1350, this  
3 Court can apply the prohibitions and requirements in the  
4 Genocide Convention including against the United States.

5 **THE COURT:** Thank you, counsel.

6 **MS. LIN:** Your Honor, the -- we submit that the Court  
7 has no jurisdiction to assess these claims even though we  
8 agree that the Genocide Convention is the supreme law of land.  
9 And this --

10 **THE COURT:** So it's the supreme law of the land  
11 within the meaning of the Constitutional provision I read; you  
12 agree to that?

13 **MS. LIN:** Yes, it is.

14 **THE COURT:** All right.

15 **MS. LIN:** Under the supremacy clause, it is supreme  
16 law of land. But as the Ninth Circuit explained very clearly  
17 in the *Marshall Islands* case, that elevated status does not  
18 mean that it may be enforced by the courts.

19 And as the Ninth Circuit explained in the *Marshall Islands*  
20 case, the key is to recognize that the question whether a  
21 treaty is supreme law of land is separate from the question  
22 whether its provisions create a rule of decision.

23 So the fundamental and threshold inquiry of whether a  
24 treaty is self-executing must proceed before the Court  
25 attempts to enforce it. So at its core, the question of



1 self-execution addresses whether a treaty provision is  
2 directly enforceable in domestic courts. And so when courts  
3 are asked to enforce a treaty provision, they must first make  
4 that determination, and only -- only if the treaty is a  
5 directive to domestic courts, then may the court enforce it.

6 So by contrast, a treaty that is not self-executing is not  
7 enforceable at the behest of anyone because non-self-executing  
8 treaties are not judicially enforceable claims, seeking to  
9 enforce them therefore non-justiciable.

10 Sorry, I'm getting a little bit confused here.

11 But the point is that the Court must first determine  
12 whether the Genocide Convention is self-executing for it to  
13 apply with full force here. And we have cited authority in  
14 our briefs establishing that the Genocide Convention is not  
15 self-executing.

16 **THE COURT:** And you're saying because it's not  
17 self-executing, it does not -- it does not yield a basis for  
18 asserting jurisdiction or any mechanism for parties to seek  
19 intervention of a U.S. court; is that what you're arguing?

20 **MS. LIN:** Yes. Yes, that's our position, that if --  
21 when there's a non-self-executing treaty, it's not enforceable  
22 in the domestic courts.

23 And, you know --

24 **THE COURT:** And what's your principal authority for  
25 that, the *Marshall Islands* case?

1           **MS. LIN:** The *Marshall Islands* case. But the  
2 principal distinction between execution and self-execution of  
3 course is well established. The Supreme Court in the *Dean vs.*  
4 *Texas*, which is also quoted in the *Marshall Islands* case,  
5 identify why certain treaties are self-executing and can be  
6 enforced and then why some others are not self-executing. And  
7 there's a whole framework to determine whether a treaty is  
8 non-self-executing.

9           So all that body of jurisprudence will be pointless if you  
10 connect -- seek to enforce a treaty regardless of its  
11 self-executing nature and just try to enforce it in District  
12 Court or in -- in the federal courts.

13           And so one other point about this is that when -- when  
14 the -- when Congress ratified the Genocide Convention, which  
15 it did in the 1980s, it explicitly conditioned, and this is  
16 the Senate that provided the advising consent, explicitly  
17 conditioned that ratification of the Genocide Convention on  
18 the enactment of the Implementation Act, and we cited  
19 authority discussing this legislative history.

20           And so the Implementation Act is what Congress has  
21 permitted how the Genocide Convention is going to be enforced  
22 domestically. And in implementing that -- that act, which is  
23 section 1092, Congress specifically said that nothing in the  
24 act shall be construed as creating any substantive or  
25 procedural right enforceable by law by any party in any

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1 proceeding.

2 And that's how Congress envisioned the Genocide Convention  
3 will be enforced domestically, which is through a criminal  
4 proceeding through the exercise of prosecutorial discretion  
5 in -- in courts in that manner.

6 **THE COURT:** So does that mean that somebody could be  
7 charged with a crime in this country in this Court, for  
8 example, for violating the convention against genocide?

9 **MS. LIN:** Your Honor, yes, there is a criminal  
10 process for doing that. And just to note that even in  
11 adopting or enacting the Implementation Act, Congress did not  
12 include complicity as part of the punishable act even though  
13 in Article III of the Genocide Convention, there's a list of  
14 acts and complicity is one of them.

15 And by the way, there's no prevention of genocide in that  
16 section. And Congress did not include all of the provisions  
17 even from the Article III of the convention.

18 **THE COURT:** So I'm a little confused. Are you saying  
19 the government -- the Court can enforce the statute -- or  
20 actually the executive branch can. They could bring a  
21 criminal prosecution and the Court could enforce the statute  
22 in that manner, but the Court cannot enforce the statute in  
23 equity as the plaintiffs are -- are requesting here?

24 **MS. LIN:** That's right, Your Honor. There is -- Your  
25 Honor simply has no jurisdiction because this is not a

1 self-executing treaty.

2 And of course, you know, there is some very minor  
3 exception in the civil context if someone were to bring a  
4 lawsuit under the ATS, the Alien Tort Statute. And then in  
5 that context, there's very limited determination, as explained  
6 by the Supreme Court in *Sosa*, for the two-step analysis.

7 And so there is a possibility in very small category cases  
8 a civil action is appropriate. But is not appropriate against  
9 the United States in that context.

10 **THE COURT:** All right. Thank you.

11 Counsel?

12 **MS. GALLAGER:** Thank you, Your Honor.

13 A few -- a few comments.

14 First on section 1092. Opposing counsel is correct that  
15 the provision says that the United States is, quote, create --  
16 not creating any new substantive rights. But it certainly did  
17 not say it is taking away preexisting rights.

18 And as the Second Circuit found in *Kadic v. Karadzic* and,  
19 as the Ninth Circuit found in *Sarei*, the right to a remedy  
20 under 1331 through the enforcement of federal common law, and  
21 under 1350 through the recognition of a cause of action under  
22 international law that is specific, obligatory and universal,  
23 remains.

24 So it is -- section 1092 is in no way diminishing the  
25 jurisdiction that already exists.

1 And a treaty, while the discussion around self-executing  
2 or not self-executing, a treaty is also evidence of customary  
3 international law. And when it comes to the prohibitions  
4 around genocide, there is no question that genocide, unlike  
5 some other treaty obligations, rises to the level of customary  
6 international law and satisfies the *Sosa* standards.

7 Also on aiding and abetting, aiding and abetting exists in  
8 the federal code and can be used as a mode of liability. It  
9 has also been recognized most recently in the Ninth Circuit in  
10 the *Cisco* case as a mode of liability available for ATS  
11 claims.

12 So I don't think there is any discussion or debate  
13 including again the United States confirming that complicity  
14 in genocide is part of customary international law. There's  
15 no debate that aiding and abetting genocide is available under  
16 the Alien Tort Statute in 1331 as federal common law.

17 **THE COURT:** All right. Well, let's move on to the  
18 next question. And as inevitably happens in my proceedings,  
19 we kind of mush into the next question which is perfectly  
20 fine. It's kind of the way the Court's mind works in a linear  
21 fashion, and counsel -- esteemed counsel here do the same  
22 thing. But let's put the question on the table.

23 Question 4. Assuming for the sake of argument that the  
24 actions taken by the Israeli government constitute genocide  
25 under international law, and the actions taken by the

1 United States government constitutes complicity, what  
2 mechanism -- and this is going to go to the government in the  
3 first instance -- what mechanism do defendants contend would  
4 be the appropriate forum to enforce binding international law  
5 forbidding complicity with genocide? And, added to that, what  
6 is the proper procedural mechanism for enforcement of  
7 international law as embedded in the -- embodied in the  
8 Genocide Convention?

9 So my concern is, counsel, we've -- we've established  
10 that, you know, that the Genocide Convention is part of the  
11 supreme law of the land. And -- and arguably, based on the  
12 allegations in the complaint and the submissions, and I'm sure  
13 the testimony, and the finding today by the International  
14 Tribunal concerning potential genocide, how -- how does the  
15 Court -- how does this Court, any court, how does the Court  
16 enforce that? What is the enforcement mechanism for the  
17 Genocide Convention? There's got to be some.

18 **MS. LIN:** Your Honor, the Genocide Convention itself  
19 sets forth the enforcement mechanism. There are three key  
20 features.

21 The first one is Article V of the Convention where it says  
22 that the contracting parties agree to undertake to enact, in  
23 accordance with their respective constitutions, the necessary  
24 legislation to give effect to the provisions of the  
25 convention.

1 That is one mechanism. And as I noted earlier, the United  
2 States did ratify the Convention undertaking the legislation  
3 that is required under Article V.

4 **THE COURT:** And what is that legislation --

5 **MS. LIN:** That is the --

6 **THE COURT:** -- that the government -- the necessary  
7 legislation to give effect to the provisions of the  
8 Convention, what is that legislation?

9 **MS. LIN:** The legislation is the Genocide Convention  
10 Act section 1092 which is what I mentioned earlier.

11 So Congress, again not to -- not to repeat the point here  
12 but just to be clear, Article V of the Genocide Convention  
13 addresses how the individual signatory state should try to  
14 enforce the Convention in their domestic courts.

15 So that's why section -- and that's why the Genocide  
16 Convention is not self-executing for that reason because  
17 additional acts taken by the political branches of the  
18 signatory states must take place.

19 **THE COURT:** And you're saying those haven't taken  
20 place yet?

21 **MS. LIN:** They have taken place in this case because  
22 Congress -- the Senate that ratified the Convention or  
23 provided the advice and consent conditioned the ratification  
24 of the Convention on the implementation of the Genocide  
25 Convention Implementation Act.

1           **THE COURT:** But I'm still confused. You keep saying  
2 that, and that's what the authorities state. But what is the  
3 implementation? We're kind of going round and round.

4           There's the Genocide Convention supreme law of the land.  
5 There's implementation, ratification by the senate,  
6 implementation, okay.

7           So where does that leave us with plaintiffs who are  
8 claiming under that Convention that they're entitled to  
9 relief?

10           **MS. LIN:** So they're not under the -- the scheme that  
11 Congress created. The Implementation Act is the criminal  
12 statute. So the way the United States has committed to  
13 implement the Genocide Convention is through criminal  
14 prosecutions of individuals whose committed acts identified in  
15 the Implementation Act, which as I noted earlier, is narrower  
16 set of punishable acts compared to the Convention Article III.  
17 And that --

18           **THE COURT:** So are you saying therefore that the  
19 President and the Secretaries are subject to criminal  
20 prosecution? They're not above the law, as you properly  
21 conceded. But they could be prosecuted if it's found -- if  
22 they're charged with complicity in what a court would find is  
23 genocide going on in the Middle East?

24           **MS. LIN:** Your Honor, I'm not criminal law experts.  
25 And depending how the prosecutors can exercise the discretion



1 under the prosecutorial discretion to charge an individual  
2 under, you know, where they're acting official capacity, there  
3 are, I think, limitations about this kind of prosecution.

4 But this is not the only feature, though, in the  
5 Convention that provides enforcement. Again the Genocide  
6 Convention has two other very important features.

7 The one is through Article VIII of the Convention which  
8 says that the contracting parties may call upon the competent  
9 organs of the United States -- the United Nations to take such  
10 actions under the charter of the United Nation as -- as they  
11 consider appropriate for the prevention and suppression of  
12 acts of genocide.

13 And so you know, some of the competent organs, as  
14 mentioned, are the General Assembly, the -- the Security  
15 Council. And there've been votes taken in those forums --  
16 fora to address whether -- as to any claim of genocidal acts.

17 So that's another key feature that is -- that the  
18 Convention itself envisions to enforce itself.

19 The third feature is in Article IX of the Genocide  
20 Convention, which says that disputes between the contracting  
21 parties relating to the interpretation, application or  
22 fulfillment of the Convention may be broad and shall be  
23 submitted to the International Court of Justice at the request  
24 of any of the parties to that dispute.

25 So as Your Honor is aware, South Africa did submit an

1 application with the court -- the International Court of  
2 Justice under the Genocide Convention against Israel.

3 And so these two international features, in terms of  
4 addressing enforcement of a convention, are consistent with  
5 the Supreme Court's jurisprudence about how a treaty is  
6 enforced.

7 So this concept is discussed again in the *Marshall Islands*  
8 case, which is that a treaty --

9 **THE COURT:** So you're saying -- you're saying that it  
10 would not be appropriate, for example, for South Africa to  
11 come in under, you know, some sort of collateral estoppel  
12 argument or otherwise using the finding that was recently made  
13 in the -- in the court -- in the International Tribunal and  
14 bring a claim here in the United States to enforce the ruling  
15 of that body under the -- under the Genocide Convention or  
16 otherwise?

17 **MS. LIN:** Your Honor, under the Genocide Convention,  
18 the mechanism is very clearly spelled out either through  
19 Article VIII or Article IX, or the individual states could  
20 enact laws under Article V. Right.

21 So these concepts, especially the use of international  
22 fora to address violations of a convention is -- these are  
23 consistent with Supreme Court jurisprudence.

24 And again, the *Marshall Islands* case identified that and  
25 repeated it, which is well established, which is that a treaty

1 will often depend on -- for the enforcement of its provisions  
2 on the interest and honor of the governments which are parties  
3 to it. If a state breaches a non-self-executing treaty, its  
4 infraction becomes the subject of international negotiations  
5 and reclamation, and the judicial courts have nothing to do  
6 and can give no redress.

7 And here we have even more than just simply reclamation  
8 and negotiation. We have the individual international bodies  
9 addressing this precise question. So domestically, beyond the  
10 criminal provision that I mentioned and the international fora  
11 that the -- that a party can go to address, we also have  
12 colloquial [sic] accountability. So in fact, there is very  
13 active discussion in Congress right now about the United  
14 States' support for Israel. And any relief therefore is not  
15 appropriate from this Court.

16 **THE COURT:** All right.

17 Counsel?

18 **MS. GALLAGER:** Your Honor, I'm going to change  
19 positions with my co-counsel, Pam Spees.

20 **THE COURT:** Okay. But just to give me kind of a --  
21 is she going to address the next question?

22 **MS. GALLAGER:** She's going to address this question  
23 and the next question.

24 **THE COURT:** Oh, very well. Okay.

25 **MS. GALLAGER:** Thank you.

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 565-7228**

1           **THE COURT:** Please come up and. If you wouldn't  
2 mind, counsel, reintroducing yourself for the court reporter  
3 and the Court. Thank you.

4           **MS. SPEES:** Thank you, Your Honor.

5           Pam Spees for the plaintiffs.

6           **THE COURT:** And just so, you know, we're still on  
7 question number 4. And you're going to speak in opposition to  
8 what the government just stated; is that correct?

9           **MS. SPEES:** That's correct, Your Honor.

10          **THE COURT:** Okay. Go ahead.

11          **MS. SPEES:** The government is correct that Article V  
12 of the convention anticipates that countries that ratify the  
13 convention will incorporate the ability within their national  
14 systems to -- to deal with and implement the obligations set  
15 out in the convention.

16          And just to step back a moment, this was -- this is the  
17 Genocide Convention which was drafted and adopted in the wake  
18 of the Holocaust and was an effort to make sure that this  
19 could never happen again. So the crime -- one of the  
20 crimes -- the crime of most serious concern to the  
21 international community as a whole.

22          Article VIII -- well, let me go to Article IX.

23          When the U.S. ratified the Genocide Convention, it  
24 specifically entered a reservation to Article IX that the  
25 International Court of Justice jurisdiction would not apply to

1 the U.S. unless the U.S. government consented to it.

2 So pointing to the ICJ as a procedural device or mechanism  
3 or court that could handle claims dealing with the U.S. is  
4 not -- does not satisfy that concern because the U.S. has  
5 specifically said it has to consent in an ongoing way.

6 And we know from -- from the case brought by Nicaragua  
7 against the U.S. after the -- after the affairs of the 1980s  
8 that the U.S. actually withdrew from that case and -- and  
9 renounced the court's jurisdiction.

10 So pointing to the ICJ is not an answer for these  
11 concerns.

12 The upshot of the government's position is --

13 **THE COURT:** Is that dispositive on -- just kind of  
14 thinking out loud. Okay, let's assume I agree that, okay, and  
15 it kind of -- it will kind of, you know, kind of segue in a  
16 few minutes into the last -- into the fifth question.

17 Does that fail -- or that -- I'm sorry, that omission and  
18 that declination by the U.S. to be -- to consent or consent as  
19 you've just laid out, somehow -- how does that aid the Court  
20 in determining whether it has jurisdiction?

21 I understand your point that you just rebutted what the  
22 government said about there being an enforcement mechanism in  
23 the International Tribunal. Okay. So how does that move the  
24 ball along in this specific case?

25 **MS. SPEES:** It means that courts in the United States

1 have an even more critical role to play in enforcing the  
2 Genocide Convention and the mandates of that convention and  
3 customary international law.

4 **THE COURT:** All right.

5 **MS. SPEES:** And the upshot of the government's  
6 argument is that, yes, we have a criminal statute that  
7 implements the Convention which -- which suggests that after  
8 the fact of a genocide someone can be prosecuted for it, but  
9 that while it's being committed or carried out or aided and  
10 abetted, that the courts in this country can do nothing to  
11 stop it. That is the upshot of their position, and that  
12 cannot be the case.

13 **THE COURT:** All right. I'll give you the last chance  
14 of that question if you wish.

15 **MS. LIN:** Your Honor, I think that the idea that  
16 there are enforcement mechanisms provided by the Convention  
17 itself in the United States is part of that Convention should  
18 be answer enough because there are processes in place. Just  
19 because in a very precise situation there may or may not be  
20 actual remedy is not a way to then give the Court  
21 jurisdiction.

22 Again, the Court's jurisdiction is very limited by the  
23 political question doctrine and the arguments that we've  
24 raised.

25 **THE COURT:** All right. Let's move -- go ahead. I'm

1       sorry.

2               **MS. LIN:** Just one other thing is that, you know,  
3 even just in the situation in Nicaragua, for example, the  
4 United States provision of aid to Nicaragua had been found  
5 again a political question.

6               So all of these things come back to the fundamental  
7 question of whether this Court is sitting in judgment of  
8 political decisions made by the political branches about  
9 things that are committed to them by the Constitution.

10              **THE COURT:** All right.

11              I'll -- if you wish to reply, I'll give you an  
12 opportunity. But let's put question 5 on the table, and then  
13 I won't limit you from not responding to what the  
14 government -- if you wish.

15              So the question 5 is: Can plaintiffs join the current  
16 suit before the International Court of Justice, or ICJ,  
17 regarding the participation or support offered by the United  
18 States government?

19              I now know the status of the proceeding. Thank you for  
20 that. We all found out together.

21              And can plaintiffs file on their own to proceed before the  
22 ICJ?

23              Counsel.

24              **MS. GALLAGER:** Your Honor, just to quickly respond to  
25 one other thing that counsel for the government stated around

1 Article VIII and the mechanisms in the UN system.

2 I would just note that the -- the U.S. is a permanent  
3 member of the Security Council and we wield to veto. So  
4 nothing is going to happen against the U.S. interest in terms  
5 of accountability in those forums.

6 **THE COURT:** Indeed they have exercised their veto in  
7 that regard, correct?

8 **MS. SPEES:** Many times --

9 **THE COURT:** Yes.

10 **MS. SPEES:** -- Your Honor. And more than once in the  
11 instant assault --

12 **THE COURT:** Yes.

13 **MS. SPEES:** -- if you will.

14 And to the question as to whether plaintiffs can join the  
15 suit in the ICJ, the answer is no. Article XXXIV of the  
16 statute of the court mandates that only states' parties can  
17 bring cases before that court, and international public bodies  
18 can participate, but individuals cannot.

19 **THE COURT:** Do you agree with that?

20 **MS. LIN:** We agree, Your Honor.

21 **THE COURT:** Yay, we have an agreement on something.

22 Okay.

23 **MS. LIN:** Yes, but if I may --

24 **THE COURT:** Yes.

25 **MS. LIN:** -- Your Honor, just to highlight the idea



1 that the International Court of Justice will be determined in  
2 the first instance whether Israel has committed genocide.

3 For this case to proceed in this Court, the Court would  
4 necessarily have to address that first question, and we submit  
5 that the Court is not necessarily competent when it's  
6 intertwined with sensitive foreign policy decisions of the  
7 United States.

8 **THE COURT:** All right. Let's do this now.

9 Let's take a deep breath and take a break, and then I want  
10 to hear the testimony.

11 What I'm going to do at the end is I'm going to give each  
12 side a chance to wrap up and maybe make a brief closing  
13 argument, which I would normally do now and say -- where I  
14 have the question where I ask, "Is there anything else?"

15 So I want to give counsel the chance to wrap it up after  
16 we hear the testimony, and then I will take it under  
17 submission. All right?

18 **MS. LIN:** Your Honor. Sorry, with Your Honor's  
19 permission, we do have a few points that we'd like to address  
20 either now or later that were raised in the plaintiffs'  
21 surreply that we didn't have a chance to respond.

22 I promise I'll be very brief --

23 **THE COURT:** Well, let's do that in the final remarks.  
24 That would be the time to do that. I'll give you a chance to  
25 wrap up. If there's anything I missed in the legal

1 discussion, I'd be happy to hear that.

2 And if any -- if you want to argue about the implications  
3 to this case arising out of the evidence adduced by the  
4 witnesses, I'll allow both sides to do that.

5 So you'll have the opportunity. If I forget, please  
6 remind me.

7 **MS. LIN:** Thank you, Your Honor.

8 **THE COURT:** Okay. So let's take about 20 minutes.

9 Yes, counsel.

10 **MR. VAN DER HOUT:** Can I just approach briefly just  
11 about the next session?

12 **THE COURT:** Yes, sir.

13 **MR. VAN DER HOUT:** Just so we're clear, Your Honor.

14 **THE COURT:** Reidentify yourself.

15 **MR. VAN DER HOUT:** I'm sorry. Marc Van Der Hout on  
16 behalf of plaintiffs, Your Honor.

17 **THE COURT:** Thank you. Thank you.

18 **MR. VAN DER HOUT:** And since we're going to take a  
19 break and then reconvene, we have done everything we can to,  
20 you know, we -- to comply with the Court's order about  
21 allowing two hours, and we appreciate that, for testimony.

22 We've restricted a number of plaintiffs testifying and a  
23 number of witnesses, et cetera. And we do have one expert.  
24 We believe that it's possible. It may go over somewhat, and  
25 we just wanted to, you know, ask the Court's indulgence in

1 that. Or if that's --

2 **THE COURT:** You've got it.

3 **MR. VAN DER HOUT:** Thank you very much.

4 **THE COURT:** But the indulgence is not unlimited just  
5 because we have other matters. But, no, this is a really  
6 serious matter, and I'm not going to peremptorily cut you off.

7 **MR. VAN DER HOUT:** Thank you.

8 **THE COURT:** So I know you -- both parties have  
9 behaved in good faith. So, yes, you'll have as much time as  
10 you need, within reason.

11 **MR. VAN DER HOUT:** Thank you, Your Honor. Appreciate  
12 that.

13 **THE COURT:** Thank you very much.

14 (Recess taken at 10:13 A.M.; proceedings resumed at  
15 10:35 A.M.)

16 **THE CLERK:** This case is being recorded. Per General  
17 Order 58, persons granted access to court proceedings are  
18 reminded that photographing, recording, rebroadcasting of  
19 court proceedings, including screenshots or other visual  
20 copying of a hearing, is absolutely prohibited.

21 I previously asked that you silence your cell phones. If  
22 you could please go ahead and turn them off.

23 Please be reminded that during our court proceedings in  
24 person, no cameras are allowed to video-record or screenshot  
25 any portion of this proceeding. Anyone found doing so will be

1 escorted from the property. Thank you.

2 (Pause in the proceedings.)

3 **THE CLERK:** Please remain seated and come to order.  
4 Court is back in session.

5 **THE COURT:** All right. Would you please call your  
6 first witness.

7 **MS. SHAMAS:** Thank you, Your Honor.

8 My name is Diala Shamas.

9 And I would like to call Dr. Omar Al-Najjar, who's on  
10 Zoom, to the stand.

11 **THE COURT:** Madam Clerk, would you please swear the  
12 doctor in.

13 **THE CLERK:** Good morning, sir. Can you hear me?

14 **THE WITNESS:** Yes.

15 **THE CLERK:** If you could please raise your right  
16 hand.

17  
18 **OMAR AL-NAJJAR,**

19 called as a witness by the plaintiffs, having been duly sworn,  
20 testified as follows:

21 **THE WITNESS:** Yes.

22 **THE CLERK:** Thank you.

23 Please state your full name and spell your last name for  
24 the record.

25 **THE WITNESS:** Omar Al-Najjar.



1 Q. Can you spell Rafah?

2 A. Rafah, yes, R-A-F-A-H.

3 Q. Thank you.

4 And what is your profession?

5 A. What?

6 Q. What is your profession?

7 A. Okay. I'm internship director --

8 **THE COURT:** Is there -- Counsel, is there any way --  
9 I understand where he is, he's in a war zone. But is there  
10 any way he can move away to kind of a quieter -- or close the  
11 door or something? If it's not possible, it's not possible.  
12 But you understand why it's a little bit distracting.

13 **MS. SHAMAS:** Yeah.

14 Q. Dr. Al-Najjar, there's a lot of sound around you. Can you  
15 describe where exactly you are? And is there any way you can  
16 move to a quieter zone?

17 A. Okay. As I said, I'm communicating with you, the  
18 administration Internet. I'm sitting in the hallway of the  
19 board of the administration here in the hospital. And it is  
20 the oldest [sic] point I can get a good Internet.

21 **THE COURT:** Fair enough. Thank you.

22 **THE WITNESS:** Is that clear?

23 **BY MS. SHAMAS:**

24 Q. I think we were able to hear you. Thank you.

25 And can you -- can you -- tell us where you're from before

1 you were in Rafah, where did you live?

2 **A.** Okay. I'm -- I'm from Khuza'a village in the eastern part  
3 of Khan Younis city. I'm originally from Salama Village from  
4 Jaffa. So before I came here to Rafah, I was in Khuza'a.

5 **Q.** And when you say you were originally from Jaffa, can you  
6 explain more?

7 **A.** Yes. My grandparents are from Jaffa, and they were  
8 forcibly [sic] displaced in 1948 by the Zionists in that time  
9 to leave Jaffa, and they settled in Gaza, in Khuza'a.

10 **Q.** Thank you.

11 And you said you're from Khuza'a and now you're in Rafah.  
12 Can you explain how or why you got from Khuza'a to Rafah and  
13 when?

14 **A.** Okay. Actually, it's a long story. I left Khuza'a, my  
15 village, since the second day the war. That mean before  
16 112 days ago. It was the last time I slept in my bed there,  
17 because the occupation -- Israel occupation forces threats and  
18 the random shelling of the village in that time. So we had to  
19 leave so to preserve our lives.

20 Khuza'a in the eastern border of Khan Younis, it's  
21 about -- my home about 400 meter away from the Israel  
22 occupation since. So we had to leave Khuza'a to preserve our  
23 lives to -- more to center to the city.

24 So firstly, my family went to relatives in Bani Suheila  
25 City. It is more to center than Khan Younis, away from the

1 border. And personally I went to Nassar Medical Complex.

2 We lived difficult days with scarce water and food. And  
3 then we have go through multiple displacement throughout these  
4 last days. This, when I came here to Rafah, this the fourth  
5 displacement for me and my family.

6 Q. Thank you.

7 And -- and you -- just to make sure -- I'm not sure the  
8 clerk [sic] caught it. You said you were in Nassar Medical  
9 Complex before coming --

10 A. Yes.

11 Q. Okay.

12 A. Yes. Yes. I left Nassar Medical Complex in the 5th of  
13 December.

14 Q. Okay. And do you still have friends at the Nassar Medical  
15 Complex or former -- or colleagues? And are you still in  
16 touch with them?

17 A. Okay. I have a friend called Hammad. He was in Nassar  
18 Medical Complex until the beginning of this week when the  
19 ground invasion widened in Khan Younis City.

20 I lost contact with him until yesterday when I hear that  
21 he managed to evacuate the hospital due to heavy shelling and  
22 random gunfire, with some family to Al-Mawasi area, which is  
23 area that Israel occupation forces claims it's safe.

24 Once they arrive to Al-Mawasi area, the IRF targeted them,  
25 and they killed his uncle and cousin. Up until now, I have



1 not heard any new information about him.

2 I have also other colleagues I know there, and some of  
3 them are still there. According to those who managed to -- to  
4 get out, the Nassar Medical Complex, the situation there is  
5 catastrophic with very few numbers of doctors, and their  
6 conditions are difficult.

7 It seems to be like the scenario of the bombing and the  
8 siege in al-Shifa hospital is repeating again.

9 **Q.** And do you know what's happened to your home in Khuza'a?

10 **A.** Unfortunately, I -- me and my family, so I report from a  
11 broad channels, this 12 channels, that document like a report  
12 where the soldiers who bomb all the area. So I saw my home,  
13 my uncle homes, my grandparents' homes, all this area was  
14 bombed, totally bombed.

15 And it is now like a very -- a very space area without any  
16 building. So we -- we can't go there until now, but we saw  
17 that -- that in the reports of Israeli channels.

18 **Q.** And I'd like to ask you a little bit about the hospital  
19 you're in now and what you're seeing and what you're  
20 experiencing.

21 Can you describe the situation at the hospital in Rafah?

22 **A.** Okay. As you know, there are approximately 2 million  
23 people in Rafah and overwhelming for the population originally  
24 not exceeding 300,000. Rafah lacks a well-equipped large  
25 hospital like Nassar Medical Complex or al-Shifa Medical

1 Complex. The hospital I work lacks, for example, intensive  
2 care units and even essential medications for urgent cases.

3 The original capacity of this hospital is like three  
4 emergency beds only. And daily we receive over 2,000 patients  
5 in addition to numerous injuries, cases from various  
6 locations.

7 The health situation here is -- is catastrophic with  
8 imminent outbreaks of infectious diseases. Hepatitis A cases  
9 are observed daily. And severe dehydration cases, respiratory  
10 distress, cyanosis, convulsions, all of these things we are  
11 seeing every minutes.

12 Also cases of a childbirth in the street are widespread in  
13 this time due to the absence of communication and preventing  
14 the families from calling for an ambulances.

15 Also there is a problem with the chronic patients, the  
16 chronic diseases patients with diabetes, hypertensions,  
17 cancers, kidney failure. There is no medication for them.  
18 They are facing complication without proper care to them.

19 **Q.** Thank you.

20 Can you describe just any recent patient that you've seen  
21 perhaps in the last couple of days or weeks?

22 **A.** There is -- there is a lot -- there is a lot of cases and  
23 a lot of scenes. But I can recall and mention from Nassar  
24 Medical Complex and from -- from other hospital. Where I'm  
25 right now, there is a story of my sister, my sister

1 mother-in-law, which is my -- my sister in a tent in the  
2 refugee area here in Al Mawasi area in Rafah.

3 A few days ago, my sister-in-law, brother-in-law had  
4 suffered from a stroke in the middle of the night in their  
5 tent. So they couldn't inform anyone due to the lack of  
6 communications and transportation. So they feared moving on  
7 foot at night under the sounds of air strikes and shelling.  
8 So the woman passed away that night in the tent among their  
9 children and grandchildren.

10 And until the morning, her lifeless body remained among --  
11 among them. Until the morning they -- they are -- they were  
12 able to bring a guard and a proper -- here to the hospital  
13 where I saw her -- her body. So these are recent events.

14 And also there is many events, for example, before around  
15 four days when I was on a night shift. Around 3:00 a.m.,  
16 there's a father came to the hospital, to the ER. He was  
17 running, and he say to us that his -- his wife gave a child in  
18 the street around 300 meter from the hospital gate.

19 We go there. We -- we rushed to there. And unfortunately  
20 we saw the child was -- and he started to have a convulsion.  
21 We send him to the hospital. And later on, I -- I know  
22 that -- I have some information from the doctor from that  
23 hospital that he has hypoxic systemic brain injury.

24 Q. Thank you for those examples.

25 You said your family is on their fourth displacement. Are

1 you in touch with them now --

2 **A.** Yes.

3 **Q.** -- while you're at the hospital?

4 **A.** Yeah. I'm working on the hospital around -- around the  
5 clock, 24 hours, there is no rest. But in every week, I try  
6 to go to there to the place where they are, about two hours or  
7 three hours to check in with a checkpoint with them. But I  
8 have no direct contact with them.

9 For example, a short while ago, as I was trying to listen  
10 to the discussions here in this -- in this station, someone  
11 informed me that there was an air strike on the tents of  
12 displaced people west of Rafah, the place where my sister and  
13 relatives are.

14 So I left my phone here in this place and went down to  
15 help -- to help and also check on the wounded who come from  
16 there to make sure that my sister and other relatives are not  
17 with them.

18 So this is the only way I can know about their safety  
19 right now in this absence of communication.

20 **Q.** Have you heard from your sister since the air strike that  
21 just -- that you just described?

22 **A.** Sorry. Again?

23 **Q.** Have you heard any news from your sister since the air  
24 strike that you just described?

25 **A.** No. No, no, no. I didn't. But I did not receive her --

1 or any of her daughters in our emergency room.

2 **Q.** Okay.

3 Dr. Al-Najjar, is there anything else you would like to  
4 share with the Court today while we have you in a pretty -- I  
5 know it's been very hard to get the connection so I'm grateful  
6 you were able to make it work.

7 Is there anything else you would like to share?

8 **A.** I would like to share that I have a lot to talk and a lot  
9 to mention and sharing this a glimpse of a heavy burden on my  
10 heart. I have lost everything with this war, my home, my  
11 garden, my mother home, my family houses, my mosque, my  
12 neighborhood, playground, all complete destroyed. My  
13 university is gone.

14 Friends I haven't seen a while and many of them lost,  
15 professors and teachers. And also other teachers were killed.

16 My dreams and the plans for acceptance to UK universities  
17 and the nights spent on those plans, all of this are lost.

18 I have nothing left but my breath, a lifeless body walking  
19 on this earth, seeing the life in shades of gray devoid of  
20 passion and energy.

21 This is what Israel and its supporters have done to us  
22 before and during the war. They weakened us for years and  
23 continue to unleash bullets and missiles on our lifeless body,  
24 so that's the situation.

25 **Q.** Thank you, Dr. Al-Najjar.



1 the record.

2 **THE WITNESS:** My name Ahmed Abofoul. And my last  
3 name is spelled A-B-O-F-O-U-L.

4 **THE COURT:** Welcome, sir.

5 **THE WITNESS:** Thank you, Your Honor.

6 **THE COURT:** Proceed.

7 **DIRECT EXAMINATION**

8 **BY MS. SHAMAS:**

9 **Q.** Mr. Abofoul, can you please state your place of residence.

10 **A.** I reside in The Hague, the Netherlands, at the moment.  
11 But I'm originally from Gaza, born and raised as a  
12 third-generation refugee, spent my whole life in Gaza.

13 And I'm -- I was born and raised --

14 **THE COURT:** Excuse me, sir. Would you mind pulling  
15 the microphone a little closer. You have a very soft voice  
16 and I want to make sure we hear you.

17 Thank you, sir.

18 **THE WITNESS:** So I was saying I reside in the  
19 Netherlands, in The Hague, but I was born and raised in Gaza  
20 as a third-generation refugee, as over 75 percent of the Gaza  
21 population who were ethnically cleansed from their homes and  
22 villages, including my family, in 1948.

23 **BY MS. SHAMAS:**

24 **Q.** And where do you work?

25 **A.** I work with Al-Haq Palestinian human rights organization

1 based in Ramallah.

2 Q. Could you spell Al-Haq.

3 A. A-L, H-A-Q.

4 Q. Thank you.

5 And what's your specific role within Al-Haq and what's  
6 your area of expertise?

7 A. I'm an international lawyer by profession. My position  
8 with Al-Haq is a legal researcher and advocacy officer. And  
9 my area of expertise is public international law,  
10 international humanitarian law, and international criminal  
11 law.

12 Q. And can you tell us about what Al-Haq does and its  
13 mission?

14 A. Al-Haq was established in 1979 as the first human rights  
15 organization in Palestine and in the region as a whole. And  
16 we have a very specific mandate to protect and promote the  
17 individual and collective rights of the Palestinian people as  
18 a whole, but in particular in the occupied Palestinian  
19 territory.

20 And we do that by documenting the human rights violations  
21 that are being committed regardless of the nationality of the  
22 perpetrator or the victim as long as these crimes are within  
23 our mandate.

24 And Al-Haq was established in 1979 because a group of  
25 Palestinian lawyers realized that the systematic violations of



1 the Israeli occupation go unnoticed and undocumented, and it  
2 has been ever since our mission to make sure that we document  
3 these violations and ensure that at some point these victims  
4 will see justice.

5 **Q.** And why did your organization, Al-Haq, decide to file this  
6 case in U.S. court?

7 **A.** We decided to file this case in U.S. court primarily  
8 because of our firm belief in the recourse to the rule of law,  
9 because of our confidence in the judiciary and this court.  
10 And the current situation in Gaza is like nothing we've seen  
11 before and even for people like us who spend their lives  
12 working in this field but also in this particular situation.

13 I, for one, I worked in different armed conflicts around  
14 the world, especially in our region. I have never seen any  
15 like -- anything like this. I was born and raised in Gaza. I  
16 lived through, I would even say, rather, survived three wars.  
17 And these wars were the reason that I decided to study law.

18 But I've never seen anything like this, and we've never  
19 imagined to witness something like this. We've always heard  
20 the stories of Nakba. And our grandparents would tell us that  
21 perhaps the world didn't know back then because we weren't as  
22 connected as today. But I've never imagined that we would  
23 live it and witness it, though, ourselves.

24 **Q.** Thank you.

25 And I'd like to ask you more about that in a moment, but

1 for now, I'd just like to ask you a bit more about Al-Haq and  
2 Al-Haq's experience over the last 16 weeks.

3 Can you share how Israel's assault on Gaza over the last  
4 16 weeks has impacted the organization?

5 **A.** It has impacted our ability to do our work gravely. For  
6 the first time since our establishment in 1979, we had to  
7 announce that we are unable to cover Gaza properly. At some  
8 point, we lost contact with our colleagues Tariq and Mohamad  
9 who lost family members and their homes were also destroyed.

10 And I remember this very well that we had also made this  
11 decision collectively. Everyone in the organization  
12 participated in this decision. At that point, our thinking  
13 was that we have to choose between documenting human rights  
14 violations but also the survival of our staff.

15 And our collective conclusion was that they need to look  
16 after themselves and make sure that they are and their  
17 families are safe. Unfortunately, some of them lost family  
18 members. And they're -- they're both displaced now. But they  
19 continue to try to do their work and document to the best they  
20 can.

21 **Q.** Can you share some other ways that Al-Haq's work has been  
22 impacted?

23 **A.** Of course. Our core work, most of it has been suspended  
24 at the moment because of the level of violations that we're  
25 facing at the moment. And our work has shifted completely on

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1 the situation on Gaza.

2 I can give examples from my work personally. For example,  
3 part of my function with Al-Haq is to build partnerships to  
4 represent Al-Haq with coalitions and federations, and build  
5 these partnerships, including here in the U.S., but also  
6 around the world. All of this work has stopped.

7 Part of my work is also to represent Al-Haq before  
8 international mechanisms. I still manage to do this work, but  
9 only in relation to Gaza. The core part of our work with  
10 these institutions has stopped.

11 And big part of our projects have been suspended. And  
12 we're in a way unable to meet our obligations because we're in  
13 what I would describe on auto pilot mode responding to the  
14 current situation but not doing other projects and not meeting  
15 other deadlines.

16 **Q.** Thank you.

17 And you mentioned some of the Al-Haq staff who have been  
18 impacted directly who are in Gaza.

19 Can you share more about what has been the experience of  
20 your Gaza-based Al-Haq staff?

21 **A.** Well, both our staff had to evacuate. Both of them, their  
22 houses have been destroyed. They lost family members. One of  
23 our staff, his sister was critically injured. Her three  
24 children were killed. And they struggle to -- to survive, let  
25 alone do their -- their work.

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1 My own family was -- was also affected by -- by this.  
2 From my father's side of the family, we lost over 60 members,  
3 sixty, six zero. Fifty in one strike in the north. We -- we  
4 are still unable to -- to retrieve the bodies of many of them  
5 who remain under the rubble.

6 My cousin, Ahmed Abofoul, who is a paramedic, tried to  
7 reach that house that is his house, and he still -- he's still  
8 unable to retrieve the bodies of his five children. And every  
9 time they try, the Civil Defence, to enter that area, the  
10 Israeli Army and snipers shoot at them.

11 My family has been displaced, all of them. We are  
12 originally from -- or we used to reside in the northern part  
13 of Gaza, in Gaza City. But now most of the family is in  
14 Rafah. The one uncle that is still in the north, we -- we  
15 don't have contact, and we don't know if they're alive or not.  
16 Last we heard that they're still alive but struggling to find  
17 food and water, like most of the people in the Gaza Strip.

18 From my mother's side, we've lost over 22 members of the  
19 family. Her -- my mother's uncle was also taken by the  
20 Israelis when he was evacuating from the north to the south.  
21 He was taken by the Israeli Army, and we don't know where he  
22 is. And the family is gravely concerned because of the  
23 numerous reports of torture that those people that were taken  
24 have been experiencing.

25 My mother's Aunt Aziza, she's 90 years old, and she's

1 missing. We -- we don't know where -- where she is. Until  
2 this very moment we don't know if she's alive.

3 And from my immediate family, I lost my eldest uncle one  
4 day before the so-called humanitarian pause.

5 My sister was pregnant. She couldn't have access to -- to  
6 deliver, and this is her third child. She had to have a  
7 C-section and it was not possible. She went to the hospital  
8 one day before the humanitarian pause, and she was scared.  
9 And they didn't have full anesthesia to conduct the operation  
10 and she was scared to do it without it, and they send her  
11 back.

12 Next day we learned that my uncle was killed. Also next  
13 day when the humanitarian pause entered, she went back to the  
14 hospital and managed to -- to deliver. But at the moment of  
15 them are at serious risk because neither she or the baby are  
16 having enough food. She can't breast feed because she's not  
17 having enough food.

18 And this is the situation in all Gaza, not only my family.  
19 One of the hardest things I have to deal with is to hear my  
20 family trying to manage one liter of water and how they going  
21 to drink it because they don't know if they going to have  
22 water next day. Same goes for food. People are -- are  
23 struggling to have anything to survive on.

24 It's no secret to the Court and to everyone that  
25 80 percent of the people who are facing starvation around the

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1 world are in Gaza. The vast majority of the population are  
2 facing famine. And those who survive the bombings most likely  
3 will not survive staying in this condition.

4 **Q.** When did you leave Gaza? How old were you when you left  
5 Gaza?

6 **A.** I left Gaza in 2016 to do my internship at the  
7 International Criminal Courts Office of Public Counsel for  
8 Victims, and I was 24 years.

9 **Q.** And so what do you know about the current state of the  
10 places that you knew for the majority of your life?

11 **A.** The -- the Gaza that we know no longer exists. Everything  
12 I know has been destroyed. And I'm not exaggerating when I'm  
13 telling you that.

14 From my kindergarten to any elementary school. To my  
15 university, I had to watch it being blown up for no reason.  
16 The Israeli Army was there, entered the university but then  
17 blew it up. Every place I have memories with has been  
18 destroyed.

19 One of the hardest I had to deal with, seeing my  
20 neighborhood completely destroyed and -- and seeing part of  
21 the wall that survived and the writing on it which brings so  
22 many memories. It was a wedding. Palestinians have a habit  
23 of writing on the wall to congratulate each others on such  
24 occasions. And I was there when that writing happened. And I  
25 remember that we were celebrating someone. And everything

1 there has been destroyed except for that part of the wall that  
2 was there to -- to remind me of it.

3 Everything I know, every place I made memories, and  
4 including, for example, the -- the three historic churches,  
5 one of which is the -- the oldest -- the third oldest in the  
6 world, which I attended so many weddings there for my friends,  
7 have been destroyed. The Al Omari Mosque, which is a historic  
8 place, has also been destroyed for no obvious reason.

9 The Gaza Archive, the history of Gaza. Gaza is one of the  
10 oldest cities in the world. The Archive has been destroyed.  
11 So that's why when I say the Gaza we know no longer exists, it  
12 does not longer exist, has been completely destroyed.

13 **Q.** And briefly, you described displacement and you've said  
14 the word Nakba. Can you elaborate, just share more about what  
15 that means for your family and for you to sort of watch this  
16 displacement?

17 **A.** You know, I grew up hearing about this from my  
18 grandparents who lived it. And my grandfather who's still  
19 alive, he was seven when the Nakba happened, and he remembered  
20 very well.

21 I remember at some point when I encouraged my family to  
22 leave the -- the northern part of Gaza and came from me, the  
23 one who's outside because people underground didn't understand  
24 what's going to happen. But as a lawyer who worked in  
25 different situations and hearing Israeli officials' genocidal

1 statements, I was scared for my family and I told them.

2 But my -- my grandfather refused. His exact words were --  
3 because we told him we leave for a few days until it's safe  
4 and then we come back. And his exact words were, "That's  
5 exactly what they told me in 1948 and I haven't been able to  
6 go back ever since."

7 And he didn't want to go -- to leave Gaza City. So my  
8 uncles told me that they had to carry him and force him in a  
9 car and take him to the south.

10 **Q.** And do you have any idea if his house is still -- what  
11 happened to his house?

12 **A.** It has been destroyed.

13 **Q.** Thank you.

14 So how has everything that you just described impacted you  
15 and your ability to work and your work at Al-Haq?

16 **A.** It did not only affect my ability to work, it affected my  
17 ability to live. It affects my -- my -- every second of my  
18 life to the extent I feel guilty when I drink water.

19 Add that to the survival -- survivor's guilt that why am I  
20 safe, why am I here and not there. I feel guilty when I eat,  
21 when I have shelter. I spend so many nights not able to sleep  
22 because I'm worried about a name I saw on the news that is the  
23 exact name of one of my cousins or my family, and there's no  
24 way for me to verify this until I manage to -- to get hold of  
25 my family in Gaza, which is extremely difficult because the



1 Israeli occupation imposes a telecommunication blackout so  
2 we're unable to reach them to verify who -- who's still alive.

3 And to the extent that I'm scared every time that I pick  
4 up the phone and I try to -- to call them. Although I want to  
5 reach them and know that they're safe, but it has been the  
6 case that with every phone call, they're not the same, we've  
7 lost more. And I'm -- I'm always concerned that some more  
8 have been killed.

9 **Q.** Thank you. Thank you for sharing your personal story as  
10 well as your -- the background about your organization Al-Haq.

11 **MS. SHAMAS:** I have no further questions, Your Honor.

12 **THE COURT:** Any questions from the government?

13 **MR. KOSSAK:** No questions, Your Honor.

14 **THE COURT:** All right. Thank you, sir. We really --

15 **THE WITNESS:** Thank you.

16 **THE COURT:** -- appreciate your testimony. Thank you.

17 Next witness, please.

18 **MS. POKHAREL:** Good morning, Your Honor.

19 My name is Astha Sharma Pokharel. And I'd like to call  
20 Ms. Laila Elhaddad to the stand.

21 **THE COURT:** Please do. Is this a live person?

22 **MS. POKHAREL:** Yes.

23 **THE COURT:** Okay. Great. Thank you.

24 It's hard for me to tell where people are, so thank you  
25 for that.

1           **THE CLERK:** Good morning. Please raise your right  
2 hand.

3  
4                                   **LAILA ELHADDAD,**  
5 called as a witness by the plaintiffs, having been duly sworn,  
6 testified as follows:

7           **THE WITNESS:** I do.

8           **THE CLERK:** Please be seated.

9           Please speak clearly into the microphone, state your full  
10 name. And if you don't mind, please spell your first and last  
11 name.

12           **THE WITNESS:** Laila Elhaddad, L-A-I-L-A,  
13 E-L-H-A-D-D-A-D.

14           **THE COURT:** Welcome, Ms. Elhaddad.

15           **THE WITNESS:** Thank you.

16           **THE COURT:** Counsel.

17                                   **DIRECT EXAMINATION**

18           **BY MS. POKHAREL:**

19           **Q.** Good morning, Ms. Elhaddad.

20           Where do you live?

21           **A.** I live in Clarksville, Maryland.

22           **Q.** And what do you do for a living?

23           **A.** I'm a mother of four. I'm an author. I'm a writer who  
24 focuses largely on documenting Gaza's culinary heritage as a  
25 way to further exploring the human impact of Israel's blockade

1 on Gaza.

2 Q. And how are you connected to this case?

3 A. I'm a plaintiff with family in Gaza.

4 Q. And why did you decide to bring this case?

5 A. Israeli forces have killed, massacred numerous members of  
6 my family on my father and my mother's side, with active U.S.  
7 support, arms, political support. And I felt it was my duty  
8 as an American whose taxes and government have been directly  
9 responsible for the deaths of my family. And as a Palestinian  
10 with family in Gaza, to do everything I can to put an end to  
11 this ongoing genocide. And to ask this Court to hold the  
12 government accountable as they have failed to uphold their  
13 duty. And to prevent the further arms from being sent and  
14 from the U.S. government supporting any further Israel's  
15 genociding of my family.

16 Q. Thank you.

17 I'd like to ask you about your -- your family in Gaza. So  
18 what -- what family do you have there?

19 A. My entire extended family is in Gaza. My father's side of  
20 the family are from Gaza City. My mother's side are from  
21 Khan Younis in the south of Gaza.

22 Q. You said your paternal side of the family is from Gaza  
23 City. Where are they now?

24 A. Israel has displaced the surviving family members. So I  
25 have a younger uncle whose house was destroyed by Israeli

1 forces in Gaza who is currently sheltering with neighbors.

2 I have my eldest uncle, who is now in central Gaza in the  
3 village of Zawayda. He's almost 90 and he's blind and he's  
4 deaf.

5 And my middle uncle is now, after being displaced four  
6 times, in the southern Gaza town of Rafah, along with my  
7 cousins and their family members.

8 And I have my mother's side of the family who are from  
9 Khan Younis, who Israeli forces displaced, and are now in the  
10 Mawasi enclave west of Khan Younis.

11 **Q.** Are you in touch with your family who's now in Rafah?

12 **A.** Yes, I am.

13 **Q.** Are you in touch with your family who's still in Gaza  
14 City?

15 **A.** I only have intermittent communication with them because  
16 of the communication blackouts. So we mainly rely on our  
17 family members in Rafah to convey any updates or information  
18 about members of our family who have either been killed or  
19 injured or displaced.

20 **Q.** And you said you had family from Khan Younis who are now  
21 in Mawasi. What do you know about what's currently happening  
22 in that area?

23 **A.** I know that the town of Khan Younis itself has been  
24 surrounded by Israeli forces. And that despite Israel  
25 proclaiming that Mawasi was supposed to be a safe area, they

1 actually attacked it several times, attacked hospitals as well  
2 within Mawasi, and targeted and killed dozens of Palestinians  
3 who were sheltering and trying to receive some humanitarian  
4 aid as well.

5 And the conditions within Mawasi for those family members  
6 who are surviving that I have been able to hear from are  
7 horrifying as well.

8 One of them messaged me telling me that after her home was  
9 destroyed, she had to go to Mawasi and that she's now living  
10 with her four children and her husband who has cancer under a  
11 nylon tarp because she couldn't even find a tent, and had a  
12 minimal amount of food to feed her family members with and  
13 children, and no winter clothes at all.

14 **Q.** Have any of your family members in Gaza been injured or  
15 killed over the past 16 weeks?

16 **A.** Yes. Early November, on November 2nd, we received word  
17 that my aunt -- that Israeli forces had dropped a bomb in the  
18 Sheykh Ridwan neighborhood where my aunt was residing, and  
19 killed my aunt and my three adult cousins, Hanni and Houdah  
20 and Wafah, and my cousin's wife Vera.

21 And the injured -- critically injured the surviving cousin  
22 who I was finally able to get in touch with and communicated  
23 to me the horror scene that unfolded before him as he had to  
24 attempt to retrieve whatever bodies he could find.

25 Two of their bodies he was unable to retrieve and are

1 still under -- under the rubble. And he had to collect the  
2 body parts of his sister and half of his mother's body. And  
3 his brother bled to death in his arms. And he buried them in  
4 a mass grave because they didn't have access to anywhere where  
5 they could bury them.

6 **Q.** I'm really sorry, Ms. Elhaddad.

7 What was your relationship like with your aunt who you've  
8 just described?

9 **A.** We were close. She was the first person to always visit  
10 us when we would return to Gaza, both as children and as  
11 adults. She -- she lived with my paternal grandmother for a  
12 long time, and was a kind of repository of memories and  
13 recipes and information. And my father, I know, was very fond  
14 of her as well. And the last time I had a chance to see her  
15 was in 2019.

16 **Q.** You described your aunt and your cousins, her -- her  
17 children who have been skilled over the past 16 weeks.

18 Do you have any other family members who've been killed or  
19 injured over the past 16 weeks?

20 **A.** My father's eldest cousin was also killed in Gaza City,  
21 and I had cousins as well in central Gaza in the town of  
22 Deir el-Balah -- in the town of Deir el-Balah who were -- who  
23 were killed.

24 And as I said, the surviving family members, Israel has  
25 either displaced or is starving or depriving them of clean

1 water, and they're just having trouble trying to survive at  
2 this point.

3 **Q.** Do you have an estimate of the numbers of relatives  
4 that -- that have been killed over the past 16 weeks?

5 **A.** I know on my father's side, as I mentioned, it was five.  
6 And on my mother's side of the family, the latest count is  
7 84 with several dozen that are unaccounted for. And they are  
8 from the Al-Fara [phonetic] family in southern Gaza in Khan  
9 Younis.

10 **Q.** So you've described your family's displacement. You've  
11 described families that -- your family members that have been  
12 killed. How has this affected you?

13 **A.** I mean it's consumed every aspect of my life. It's been a  
14 living nightmare figuratively and literally. I, you know,  
15 sometimes wake up from nightmares where I've returned to Gaza,  
16 and as the previous plaintiff pointed out, it's  
17 unrecognizable, and I'm just walking around in the rubble of  
18 my neighborhood which was destroyed on the second day of  
19 Israel's aggression on Gaza, and looking for pictures or  
20 something to remember it by.

21 I spend my days just -- it all revolves round this. When  
22 I'm not trying to help family members meet their basic needs  
23 in Gaza, I am trying to do what I can, you know, and use my  
24 privilege here to put an end to their suffering by lobbying my  
25 representatives or speaking to the media or writing or even

1 looking over my own back and my daughter's back, both of us  
2 being visible Muslim women, or trying to defend and protect my  
3 daughter's First Amendment rights in her high school, or  
4 helping, you know, coach them and help them cope through this  
5 tragedy.

6 So it has been completely layers upon layers of trauma, I  
7 would say, is the best way to describe it.

8 **Q.** Has it impacted your relationship with your family members  
9 here?

10 **A.** I -- you know, I wish I could say I had the luxury to be  
11 able to grieve, but there's this urgency that I and others, I  
12 think, as Palestinians with family members, Palestinian  
13 Americans with family members feel about doing something about  
14 this, and I just haven't really had a moment to process.

15 And my -- my eldest two children approached me last week,  
16 my 19-year-old and my 16-year-old. And they said we need to  
17 talk to you because you've been irritable and emotionally  
18 distant and we need you and you're not there for us.

19 So, you know, it's -- yeah, it takes a toll. It's very  
20 stressful. I mean, what do you say? Of course, I tell them,  
21 you know, my family's being killed on my dime. There's no  
22 time for feelings right now. So --

23 **Q.** So sorry, Ms. Elhaddad.

24 I would like to ask you some questions --

25 Thank you.



1 When you're ready, I'd like --

2 **THE COURT:** Would you like a glass of water or do you  
3 need a break? Are you okay?

4 **THE WITNESS:** I'm okay. Water would be great  
5 actually. Yeah. Thank you.

6 **THE COURT:** Okay. Madam Clerk or counsel, would you  
7 please.

8 Thank you very much.

9 If at any time you need a break, just let me know.

10 **THE WITNESS:** Oh, sure.

11 **THE COURT:** Of course I'll give that to you.

12 **THE WITNESS:** Thank you.

13 (Pause in the proceedings.)

14 **THE COURT:** Are you ready to proceed?

15 **THE WITNESS:** Yeah.

16 **THE COURT:** All right. Proceed, please.

17 **BY MS. POKHAREL:**

18 **Q.** I would like to ask you some more questions about your  
19 connections to Gaza. So have you spent time in Gaza?

20 **A.** Yes. Gaza is the place where my parents were born and  
21 raised and began practicing as physicians, and where I would  
22 visit, where I would return to every summer as a child and  
23 where I ultimately decided to return to as a -- as a new  
24 mother to raise my firstborn son for the first few years of  
25 his life and begin my career as a journalist at the time.

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1 Q. What are some places that you remember about your time  
2 there?

3 A. As a child, I remember the Khan Younis, you know, town  
4 center and walking down the narrow alleyways. And being sent  
5 by my mother -- by my grandmother to -- with empty bowls to go  
6 and fill them up with hummus and ful for breakfast.

7 And as an adult, visiting Gaza City where my father's home  
8 is in the Ridwan neighborhood, as I mentioned. And as a young  
9 mother, taking my son down to the Jundi park, otherwise known  
10 as the Park of the Unknown Soldier, in front of which my  
11 father's house is. And that park extends all the way down the  
12 main street, Omar Al Mukhtar, in Gaza all the way to the  
13 parliament and the Rashad al Shawa Cultural Center.

14 And I would take him down for strolls. And my mother and  
15 I would buy peanuts and ice cream and walk all the way down to  
16 the promenade along Gaza City's beach to drink tea and watch  
17 the sunset and go watch musical performances in the Rashad al  
18 Shawa Center. That entire area was destroyed on the second  
19 day of Israel's aggression on Gaza. And it is now a large  
20 pile of sand.

21 Everything from the Rashad al Shawa Cultural Center to the  
22 swing sets to the park to the fountain that used to be there  
23 to the memorial of the unknown soldier is completely gone.

24 Q. So you've described the destruction of -- of this  
25 neighborhood and this park. How has that destruction affected

1 you?

2 **A.** I mean it's -- it's been devastating and overwhelming, and  
3 it has really left me with a profound feeling of not just  
4 sorrow and sadness but helplessness and injustice.

5 In Arabic, we have a word for this. It's called *hadjes*  
6 [phonetic] or *hadjza* [phonetic] in the feminine. And all of  
7 this is compounded by the knowledge that my taxpayer money and  
8 my government is complicit in this ongoing genocide against my  
9 family and the destruction of everything that I knew and I  
10 loved.

11 **Q.** So I'd like to ask you some more about why you decided to  
12 sue these defendants. Why did you decide to sue President  
13 Biden, Secretary Blinken, and Secretary Austin?

14 **A.** I -- I want to just -- I have a few more thoughts about  
15 the previous question. I just want to say also -- sorry --

16 **Q.** Feel free to share.

17 **A.** -- that it's also made me feel, as a Palestinian-American  
18 Muslim, unseen and unheard and discriminated against and  
19 dehumanized, completely invisible to hear our President not  
20 only actively support this but cast doubt on the deaths of my  
21 family members and other Palestinians in Gaza.

22 In regards to why I decided to be a plaintiff in the case,  
23 President Biden, Secretary of State Blinken, and Secretary of  
24 State Austin -- Secretary of Defense Austin -- excuse me --  
25 have supported this ongoing genocide from day one despite now

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1 the overwhelming majority of Americans supporting a ceasefire,  
2 despite President Biden himself acknowledging the  
3 discriminatory nature of Israel's bombings, despite Israeli  
4 leaders themselves making clear their intent to commit  
5 genocide against Palestinians, to make Gaza unliveable, to  
6 maximize damage, to consider there are no innocents in Gaza.

7 Despite this, they have continued to kill my family  
8 members, to displace the surviving family members, to deprive  
9 them of food and water and basic human needs, to starve them.

10 Despite all this and despite the fact that President Biden  
11 could, with one phone call, put an end to this, he has on the  
12 contrary decided to aid and abet and actively encourage.

13 And so I'm here today to do everything in my capacity to  
14 stop that and to ask the Court to do everything in its  
15 capacity to hold the U.S. government accountable and from  
16 furthering this genocide and from providing any more arms or  
17 support to Israel as this genocide continues to unfold.

18 **Q.** Thank you, Ms. Elhaddad.

19 **MS. SHAMAS:** That's all I have for this witness.

20 **THE COURT:** Any questions?

21 **MR. KOSSAK:** No questions, Your Honor.

22 **THE COURT:** Thank you, Ms. Elhaddad, for your  
23 testimony.

24 Next witness, please.

25 **MR. VAN DER HOUT:** Good morning once again, Your

1 Honor. Marc Van der Hout for plaintiffs.

2 And I'll call Mr. Waeil Elbhassi to the stand, please.

3 **THE CLERK:** Good morning, sir. If you could please  
4 raise your right hand.

5  
6 **WAEIL ELBHASSI,**

7 called as a witness by the plaintiffs, having been duly sworn,  
8 testified as follows:

9 **THE WITNESS:** I do.

10 **THE CLERK:** Please be seated.

11 **THE WITNESS:** Thank you.

12 **THE CLERK:** If you could please speak clearly into  
13 the microphone, state your full name and spell your first name  
14 and last name, please.

15 **THE WITNESS:** My name is Waeil Elbhassi. My last  
16 name is E-L-B-H-A-S-S-I.

17 **THE COURT:** Welcome, sir.

18 **THE WITNESS:** Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 **BY MR. VAN DER HOUT:**

21 **Q.** Mr. Elbhassi, where do you currently reside?

22 **A.** I reside in San Ramon, California.

23 **Q.** And what is -- excuse me.

24 What is your role in this case?

25 **A.** I am one of the plaintiffs. I'm a Palestinian-American

1 with large extended family in the Gaza Strip, many of whom  
2 were killed by Israeli bombing since October 8th.

3 Q. And where were you born and where were you raised?

4 A. I was born and raised in Kuwait.

5 Q. And since when have you been living in the United States?

6 A. I've been in the States since 1988.

7 Q. Do you currently have family in Gaza?

8 A. Yes. I have large extended family from both sides of my  
9 parents. Primarily in Khan Younis and Deir el-Balah counting  
10 in the hundreds.

11 Q. And I'm sorry?

12 A. Hundreds.

13 Q. In the hundreds.

14 Have any of your family members been injured or killed  
15 since the Israeli attacks began on October 8th?

16 A. Yes. Over a hundred members of my family were killed  
17 and/or injured.

18 Q. And how have you become aware of that?

19 A. From various family members living in the Gaza Strip or  
20 abroad. My mother's last name, Abu Shamala, was in the news  
21 multiple times where many members of Abu Shamala family were  
22 massacred in various bombings in Rafah, in Khan Younis, and  
23 El Bureij refugee camp, as well as in Deir el-Balah.

24 Q. Is anybody by that last name a member of your family; is  
25 that what you're saying?

1       **A.** Absolutely.

2       **Q.** Okay. And how did you become aware of this?

3       **A.** Various family members, as I said, and some news feeds  
4 with family last name which was later affirmed.

5       **Q.** Okay. And do you have family members who you knew  
6 personally who have been killed or injured by Israeli attacks?

7       **A.** I do. My first cousin Mohammad, who was 65 years old at  
8 the time. His son Hamdan who was 33-year-old at the time.

9 And Hamdan's daughter, Noord, was one-year-old at the time.

10 On October 12th, the three of them were killed in an Israeli  
11 bomb.

12       The three were standing or hanging out by their house, and  
13 the bomb hit the neighboring house directly killing 14 members  
14 of that family, completely wiping out that house.

15       **Q.** And how did you become aware of this specific incident?

16       **A.** My other cousin, Mazouza, who lives in Deir el-Balah, same  
17 town, had told me. I had been in touch with her over the  
18 years. And I had been in touch with her especially during  
19 these times. She had told me about that incident.

20       **Q.** And given the ages, was it Mohammad that you knew  
21 personally?

22       **A.** Yeah. Mohammad was a bit older than me, but he is the one  
23 that I knew personally. I knew him well. My family -- our

24 parents in Kuwait, just like most Palestinians, would make --

25 would try to make that trip as much as possible to the Gaza

1 Strip, to make a long difficult road trip, and they would take  
2 us and they made sure that we made connections and knew family  
3 and knew about the homeland.

4 So I knew Mohammad and I knew all my cousins from that  
5 time, and I kept in touch with them.

6 (Simultaneous colloquy.)

7 **BY MR. VAN DER HOUT:**

8 **Q.** Kept in touch with them in the United States -- from the  
9 United States?

10 **A.** Yes.

11 **Q.** Were you shown any photos or videos or anything about that  
12 killing?

13 **A.** There was one disturbing photo that my uncle in Canada,  
14 Uncle Yousef, had shared with me of that instance. Apparently  
15 it was taken just a few seconds after the bombing. And you  
16 can see Hamdan's -- the son head, his body. I'm told that  
17 that's him kind of appearing from under the rubble.

18 **Q.** From the rubble, is that what you said?

19 And how did it make you feel not only that obviously that  
20 one, you know, photo, which, you know, was graphic, but not  
21 only that, but just the killing of -- of Mohammad and the  
22 people you knew there?

23 **A.** It's horrifying. It was devastating. We'd been  
24 witnessing this at the time for weeks. There had been various  
25 bombing campaigns in previous years. And it's always a fear

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1 that next day you're going to hear about a loved one or  
2 someone you know.

3 This time we felt it was different. The -- the magnitude,  
4 intensity, the level of the destruction and the killing was  
5 just so enormous by comparison of previous times. And -- and  
6 just felt that it was going to be a matter of time before I  
7 hear about someone I know.

8 And sure enough. It's so -- so it's quite devastating and  
9 to know that this is going on and I've lost other family  
10 members as well since.

11 Q. And that was going to be my next question. So what other  
12 family members have been killed that you knew personally?

13 A. Tragically, obviously, but especially Mazouza, the -- my  
14 cousin who I had just mentioned who had told me about Mohammad  
15 and his family, her son Samer, a week later on October 19th,  
16 was killed. Samer was 26 years old. He was in the mosque  
17 praying and the bomb destroyed the mosque, killing him and  
18 other worshipers.

19 I've -- also know the disturbing fact that Samer's body  
20 remains under the rubble as we speak.

21 Q. How are you aware of that?

22 A. She told me, Mazouza, his mother. She is dealing with  
23 this added grief, horror that her son is still under the  
24 rubble.

25 She did mention the scene just as much as you could. I

1 mean, people dig when these things happened, and we see these  
2 images. People dig, people using their bare hands as much as  
3 they can. But there's only so much they can do.

4 And without ceasefire, she says, without heavy machinery,  
5 without fuel, Samer's body, as well as 7,000 people probably,  
6 at least that we know of, will remain under the rubble.

7 People are not even trying to dig them out. It's impossible.

8 **Q.** What else have you become aware of, if anything, regarding  
9 other family members in Gaza who've been injured or killed?

10 **A.** I do have large extended family in Khan Younis. My aunt's  
11 children, my cousins, Shadi and Ahmad were injured in a -- a  
12 bomb at Khan Younis a few weeks later -- I forget the date.  
13 And Shadi was so lucky. The shrapnel didn't penetrate his  
14 flesh and sustained injuries.

15 And Ahmad was -- also sustained burns. It was a bomb that  
16 directly hit also the house right next to them killing two  
17 members of that family.

18 **Q.** Those two who you just mentioned were shot or burned -- or  
19 injured, sorry -- they've managed to survive though; is that  
20 correct?

21 **A.** Sorry.

22 **Q.** They're alive though?

23 **A.** Yes. Yes.

24 **Q.** Okay. And the aunt you just spoke of, is that the aunt  
25 that you referred to in your declaration who may have been

1 thinking of going to Dubai?

2 **A.** Yes. This is my aunt. And they had since been able to  
3 exit, but at the time and as had mentioned the declaration it  
4 was a very difficult decision to make. People who can make --  
5 who can exit -- well, it's very difficult to exit with  
6 situation in the border.

7 But also leaving and leaving loved ones behind in what is  
8 a killing field essentially is an extremely difficult decision  
9 to make with a lot of extended family and grandchildren and so  
10 on.

11 At that time of my declaration, I believe there was about  
12 60 -- over 60 people living in their house, half of whom were  
13 family, friends who had been evicted or fled the north seeking  
14 shelter and eventually trying to make their way to the south  
15 to Rafah. People try to sort things out like that.

16 And in addition, obviously her husband, her children, her  
17 grandchildren, and some in-laws.

18 **Q.** In your declaration, you mention that your family survived  
19 the Nakba in 19 -- experienced the Nakba in 1948. And what is  
20 occurring in Gaza now has brought up feelings for you about  
21 that. Can you talk about that a little bit?

22 **A.** Yeah. And actually when my aunt that I was just talking  
23 about, a big part of not wanting to leave is also knowing that  
24 they understand what this is. They -- they fully understand  
25 what's going on. They know that once they leave, it's very

1 unlikely they would be allowed to come back. Israel is  
2 ethnically cleansing the Gaza Strip. It is making it  
3 unliveable. It is executing a massive campaign of destruction  
4 so that people cannot -- have nothing to come back to.

5 My aunt as well as my mom and my father, they're all --  
6 well, my -- my parents, but my aunt is one of the majority of  
7 people on Gaza who know all too well what the Nakba is, the  
8 catastrophe of 1948.

9 The majority of people in Gaza are refugees that were  
10 forcibly removed in 1948. Two of whom are my parents who  
11 actually lived it firsthand and told us also stories about it.  
12 So people know. People don't want to leave. People feel  
13 that -- it's difficult. They might -- if they stay, they  
14 might die or starve. And if they leave, it's not likely that  
15 there's going to -- that they'll be allowed to come back.

16 You know, if I may.

17 **Q.** Please do.

18 **A.** One of the really powerful images that's very disturbing  
19 images early on, first few weeks of this, that struck me so  
20 powerfully was when I saw thousands of people in Gaza just  
21 fleeing, walking on foot, carrying all they can from their  
22 belongings, carrying children.

23 And my brain immediately recalled images from black and  
24 white that I know of from 1948 of Palestinians made the same  
25 exodus, made the same journey. This is so powerfully

1 ingrained in our consciousness and our memory as Palestinians.  
2 **Q.** Can you describe -- I know this is difficult, but can you  
3 describe how the events, you know, since October 8th have made  
4 you feel?

5 **A.** It's -- I think devastating really is befitting here. I  
6 mean it's -- it's -- I feel completely consumed by it. Every  
7 Palestinian I know feels similarly. We wake up looking at our  
8 news feeds, just watching the horror.

9 In 1948, as I think Ahmed alluded to, people didn't know  
10 what was going on. You know, we learned later that massacre  
11 happened and destruction and so on. And the fact that we're  
12 witnessing this in real time on television, we're watching the  
13 Nakba as well as Israeli officials actually named it  
14 Nakba 2.0. It's quite horrifying to be watching this.

15 So it's -- it's devastating, but it's also enraging. And  
16 it makes me very fury -- furious and angry that my government  
17 is complicit, that while this is happening, the Biden  
18 administration is actually increasing and expediting arming  
19 and vetoing ceasefire. Just something as basic as ceasefire,  
20 like don't kill people, this is being vetoed by the U.S.  
21 government, ensuring that this actually continues.

22 **Q.** Why did you decide to sue President Biden, Secretary of  
23 State Blinken, and Secretary of Defense Austin in this  
24 lawsuit?

25 **A.** Well, we are witnessing an unfolding genocide. There's no

1 doubt in my mind. We have demonstrated. We have rallied. We  
2 took to the streets. We spoke at city councils. We passed  
3 local resolutions. We appealed to the world. And nothing is  
4 happening. I mean, the killing continues. And people in  
5 power who can make decision to stop it are complicit.

6 And that's why I'm here, and myself and the plaintiffs,  
7 Your Honor, on behalf of 2 million Palestinians who are  
8 trapped in a killing field, who are being destroyed. We're  
9 here to appeal to you, to implore you to order the government  
10 to obey the law. That's it. Just obey the law. Stop the  
11 genocide.

12 They can do a lot to stop this genocide. And we implore  
13 you to order them to do everything in their power to stop  
14 this.

15 **Q.** Thank you very much, Mr. Elbahassi, for sharing this with  
16 the Court and quite honestly with the public of this country.

17 **MR. VAN DER HOUT:** We have no further questions, Your  
18 Honor.

19 **THE COURT:** Thank you, counsel.

20 Any questions?

21 **MR. KOSSAK:** No questions, Your Honor.

22 **THE COURT:** Thank you, sir. We really appreciate  
23 your testimony.

24 (Simultaneous colloquy.)

25 **THE COURT:** Thank you.



1 Please speak clearly into the microphone. Please state  
2 your full name and spell your first and last name for the  
3 record.

4 **THE WITNESS:** Mohammad Monadel Herzallah. Last name  
5 H-e-r-z-a-l-l-a-h.

6 **THE COURT:** Can you spell your first name, sir. I'm  
7 sorry.

8 **THE WITNESS:** Mohammad.

9 (Off-the-record discussion.)

10 **THE WITNESS:** Monadel, M-O-N-A-D-E-L.

11 **THE COURT:** Welcome, sir. Thank you.

12 You may proceed, counsel.

13 **DIRECT EXAMINATION**

14 **BY MR. SINODIS:**

15 **Q.** Mr. Herzallah, what is the name that you typically go by?

16 **A.** I go by my middle name Monadel.

17 **Q.** Okay. And where are you currently residing?

18 **A.** I -- I am currently residing in the city of Fairfield,  
19 California.

20 **Q.** And can you explain to the Court and to the public what  
21 your role in this case is?

22 **A.** My role in this case as a plaintiff with my brothers and  
23 sister bringing to the Court our plight for the fact that we  
24 have lost members -- well, I lost members of my family during  
25 this destruction that has gone on, this unfolding genocide

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1 that we're witnessing every day.

2 Q. Can you elaborate on that? Why specifically did you sue  
3 these defendants?

4 A. I specifically suing these specific defendants for the  
5 fact that they have the authority, they have the power, they  
6 have the obligations to prevent -- first prevent this genocide  
7 from taking place and failing to stop it until this moment.

8 Q. I'd like to speak about your family in Gaza.

9 A. Yes.

10 Q. How many family members do you have living there right  
11 now?

12 A. The remaining members of my family living in Gaza at this  
13 point is unknown for the fact that I am not -- my family  
14 originated in Gaza. My grandparents, my grandfather, my  
15 grandmother, my grandmother's brother, his sons, his  
16 daughters, we're all in big -- one big house in neighborhood  
17 of Shuja'iiya in Gaza City.

18 Years now, they are after 1948, some of them were,  
19 including my grandparents, were living in Vira Sivou  
20 [phonetic] which is south of Gaza. And after 1948, many of --  
21 of the members of my family were scattered in the different  
22 Arab countries after the Nakba of 1948. But still, the  
23 majority of the members of the Herzallah family continue to --  
24 to live in Gaza.

25 Q. And since the Israeli attacks began on October 8th, how

1 many family members have you lost?

2 **A.** Since the beginning of October 8th, we have lost about  
3 seven members of my family, one of whom is a 40 years old girl  
4 by the name Warada. And Warada in Arabic means flower. And I  
5 was wondering how many more flowers should be cut before the  
6 whole world recognize that these are people that have been  
7 targeted for no reason.

8 **Q.** How close were you to the members of your family who you  
9 lost?

10 **A.** Members of my family that we lost are very close. As a  
11 matter of fact, regardless of where we are in the different  
12 Arab countries or we are here in the United States, I continue  
13 to have good relationship and communication with them just  
14 like any other family.

15 And, you know, during birthdays, holidays, Ramadan, el  
16 Eid, like, you know, making sure that we're always connected.  
17 Particularly my -- my cousin Mahar who is like a brother to me  
18 and who have lost two sons in this horrible....

19 **Q.** Can you explain a little bit more about your relationship  
20 with Mahar and his losing his two sons?

21 **A.** Mahar is my age. And we always -- as I mentioned, we  
22 always connect and communicate with each other. I have a son  
23 and -- and always joke to me, he said, you know, you're from  
24 Gaza, you only have one son. And I explain to him, Mahar,  
25 it's for medical reason, for health reason. And he said, no,

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1 just consider my sons are your sons. And that really meant a  
2 lot to me. And that you know that your son has brothers in  
3 Gaza.

4 I learned in last week of October that Mahar lost his son  
5 28 years old Majdadin, and left two daughters behind. It was  
6 devastating -- particularly devastating for me for the fact  
7 that Mahar have also have lost before a son, his oldest son,  
8 Mohammad, who was only 22 years old in the first aggression  
9 against Gaza during the blockade. His name is Mohammad,  
10 22 years old. And this had been like the second thing.

11 So I called him right away and I expressed my condolences.  
12 It was hard for me to do that.

13 The hardest part is a few weeks later in first week of  
14 November, I learned that Mahar lost another son which means a  
15 third son he loses as we are -- as we are like witnessing this  
16 inhuman aggression against the population of -- of Gaza.

17 And Abdulah Haman was only -- that's the third son for  
18 Mahar. It was extremely horrible for me to hear. I was  
19 extremely saddened and I cannot find the words to express my  
20 condolences to Mahar for the fact that Abdulah Haman was only  
21 20 years old, studying engineering in the university in Gaza.  
22 And he was killed by Israeli sniper is what I learned  
23 literally.

24 Until this moment, I did not have a chance to communicate  
25 with Mahar. As a matter of fact, I don't know how to find the

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1 words to explain or express my feeling towards him so I'm  
2 sorry. I'm unable to do that.

3 **Q.** You mentioned that Mahar lost his eldest son before in  
4 another attack by Israel. When did that happen?

5 **A.** That happened in January of 2009.

6 **Q.** And can you explain to the Court why you haven't been able  
7 to call Mahar after the killing of his third son?

8 **A.** It's been extremely difficult, as my plaintiffs expressed  
9 earlier, for the fact -- I mean like the connection is very  
10 poor. And the Israeli government got the Internet and the  
11 power. And just to communicate with them or find -- or  
12 receive a text is very difficult for me to do that.

13 So Mahar in specific, I haven't been talking to him. But  
14 I had the chance to -- to communicate with his brother Amad  
15 [phonetic], and he's telling me that Mahar is -- is okay.

16 So that's -- and it's really -- you know, I wanted to  
17 express with you that the fact -- to you, the fact that when I  
18 asked them and they -- and said how are you doing, and it's  
19 really -- we feel really helpless. I mean how you doing is --  
20 it's very dry. And when they respond to saying we still  
21 alive, that hurts more. That hurts more and more.

22 And then it gives me more motivation to do whatever I can,  
23 whatever I can to stop this madness through all tools  
24 necessary here in the United States or elsewhere in the world.

25 **Q.** For your family members in Gaza who have been fortunate to

1 survive this long, what has happened to them?

2 **A.** Many of the families in Gaza, including mine, were -- had  
3 to evacuate, had to be displaced from one place to another.

4 At least last place they are in right now after Khan Younis,  
5 they are in Rafah. And as the doctor testified earlier, it's  
6 been extremely crowded and extremely difficult circumstances.

7 **Q.** Have any of them described the conditions to you?

8 **A.** Yeah. Amad, who is brother of Mahar, I was able to  
9 communicate with him, and he was telling me that there's no  
10 power, there is no clean water, there's piling garbage,  
11 there's hardly any food. And it's a very miserable situation.

12 I have to tell you, Monadel, that living there, I mean  
13 animals cannot survive this kind of conditions.

14 **Q.** For you and your immediate family members inside the  
15 United States, what have the last 16 weeks been like?

16 **A.** Well, I have to tell you, I am 63 years old man. And the  
17 last 16 months -- 16 weeks has been the hardest ever, the most  
18 devastating time I've ever lived in my entire life. And I --  
19 I lived through wars and before.

20 And as the beginning of the war started in October 8th, as  
21 I said, my -- I have a small family, my wife and my son and  
22 myself. October 8th, my wife and I were protesting this  
23 vicious attack again for the fifth time against our people in  
24 Gaza.

25 And we did that and came back home. Unfortunately, a week

1 later, Mona, my wife, was fighting a terminal illness and had  
2 to be admitted to the hospital in the ICU. I had to call my  
3 son who came from out of state and stayed with us. And -- and  
4 each and every moment as we are, we care about Mona and her  
5 situation, we were following up everything that is happening  
6 in Gaza.

7 As much as people, the staff and -- and people in the  
8 hospital were like, you know, talking about both at the same  
9 moment, about the health situation of my wife and the  
10 conditions of the people in Gaza with no separation of this.  
11 So my -- my it was really, really difficult time for me.

12 I'm proud and honored to have a partner in life for the  
13 last 33 years like Mona because she was always motivating  
14 to -- to do whatever we can, including filing this case and  
15 holding the people responsible.

16 And she was a force that is telling us, okay, you know,  
17 after she was discharged from the hospital, she was under care  
18 on the hospice. And then we were -- three of us were, you  
19 know, like, following the news, trying to communicate with the  
20 family in Gaza, and taking care of -- of Mona.

21 And until her last dying moment in December 18th, she was  
22 always encouraging us to move forward and, you know, raise  
23 your voice and we have to fight this injustice that's taking  
24 place.

25 And she was saying that you -- one of you and one of us

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1 has to be in the action. So every weekend it was something  
2 going on in San Francisco, I would stay with Mona and then my  
3 son will go to the action, or vice versa, I'll go to the  
4 action, he stays with his mom.

5 And it's really very, very difficult moment that we went  
6 through in the last 16 weeks. And we're trying to, you know,  
7 confront each other and talking about the fact that although  
8 we're going through very difficult time as we are saying  
9 goodbye to close member of the family, and the fact that she  
10 was saying that one of us has to be there is really -- I want  
11 to make the wishes comes true and then continue to -- to this  
12 path.

13 I don't know what, you know -- and sometimes we try to --  
14 to comfort each other. We're saying that we're so lucky,  
15 we're so fortunate for the fact that we are, you know,  
16 communicating with each other. We have a roof over our head.  
17 We have food. As a sister mentioned earlier, we feel guilty  
18 about the fact.

19 But we also had the opportunity to be able to -- to -- to  
20 cherish the last moment of our loved ones before we learned  
21 that -- that's the end of her life.

22 These cherishable moment, the family moment, our people in  
23 Gaza don't have that. They die instantly. They die, they get  
24 killed. And -- and that's really make us, you know, our grief  
25 is not only private grief, but also a grief for our people in

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1 Gaza and in Palestine as a whole.

2 Q. When you wake up in the morning, what is the first thing  
3 that you do?

4 A. First thing I do, I check my -- my phone on my messages to  
5 learn if I receive any update from the family in Gaza.

6 Second thing I do, I turn on my TV. That's if it was off  
7 because we always keep it on till we learn what's going on,  
8 what -- what is being done to stop this madness.

9 Q. As you continually check in with your family, or try to,  
10 and watch the news, and as you see the statistics continue to  
11 rise, the death count continues to rise as Israel continues  
12 its bombing, how are you feeling today?

13 A. I feel horrible. I feel dehumanized. I feel that we are  
14 witnessing numbers increased, and the world is numb about it,  
15 it's silence about it.

16 As a matter of fact, two days ago I recall the fact that a  
17 number of -- of people killed was 200 in the last 24 hours  
18 which means that in every hour there's eight to nine people  
19 are being killed. Which means that in the last two hours we  
20 are sitting here in this court, there is eight, nine innocent  
21 people being killed, the majority of whom are children.

22 Q. So what are you asking this Court to do?

23 A. Well, as -- I'm asking this Court to do is continue to --  
24 to raise the voice of our people in Gaza, to hold people who  
25 are responsible and who has the authority and the duty, to --

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1 to hold them responsible for the inability to stop this  
2 madness, to stop this genocide.

3 I heard earlier in the court that there's a separation of  
4 power. And I wanted to -- to say that we have learned that in  
5 the schools and the college. As a matter of fact, every U.S.  
6 citizen has to pass a -- an exam to make sure to know what --  
7 what separation of power is.

8 My -- here I'm asking the Court to do whatever it takes to  
9 hold these people responsible, to abide by the Constitution.  
10 We have Constitutional rights that abide these people in  
11 charge in -- in the government to do -- to do their job and to  
12 be -- and there is consequences to that.

13 And when we see that we are being invisible in the country  
14 and I see that this country is being -- is changing as much as  
15 the world is changing. And I see that the -- the fact that  
16 hardly anybody can criticize the actions of the state of  
17 Israel is because of the overwhelming and biased support by  
18 this government to the state of Israel.

19 And I believe that this thing will change because our  
20 people, the new generations will break this taboo. The new  
21 generation, not only immigrant Palestinians born and raised in  
22 the United States are in the streets asking for the same thing  
23 that we are asking here. End the genocide against the  
24 Palestinian people, against the people of Gaza, my family and  
25 those families over there. Today, before tomorrow, as soon as

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1 possible. This is an urgent thing. This is something that is  
2 going on as we speak.

3 **Q.** Thank you, Mr. Herzallah.

4 **MR. SINODIS:** I have no further questions, Your  
5 Honor.

6 **THE COURT:** Any questions?

7 **MR. KOSSAK:** No, Your Honor.

8 But would it be possible to have a brief restroom break?

9 **THE COURT:** I was just about to do that.

10 So thank you, sir. I appreciate your testimony. Thank  
11 you, sir.

12 Let me ask plaintiffs' counsel -- we're going to take  
13 about a 15-minute break, give everybody a rest -- how much  
14 more do you have in terms of witnesses and time? So I can  
15 plan.

16 **MR. VAN DER HOUT:** Thank you, Your Honor. Marc Van  
17 Der Hout.

18 So we have three more witnesses. We have one individual  
19 plaintiff, we have one organizational plaintiff, and then we  
20 have our expert, Dr. Trachtenberg. And we expect probably one  
21 hour total more or less as we -- we have to.

22 **THE COURT:** This is very important and I want to hear  
23 it all, but hopefully a little bit toward the less than the  
24 more would be very much appreciated.

25 **MR. VAN DER HOUT:** We understand.



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**BASIM ELKARRA,**

called as a witness by the plaintiffs, having been duly sworn,  
testified as follows:

**THE CLERK:** Please be seated. Please speak clearly  
into the microphone, state your name and spell your first and  
last name.

**THE WITNESS:** Basim Elkarra, B-A-S --  
(Simultaneous colloquy.)

**THE COURT:** Can you just pull it really closer.  
Thank you very much. That's better.

**THE WITNESS:** B-A-S-I-M, E-L-K-A-R-R-A.

**THE COURT:** Welcome, sir.

Proceed.

**DIRECT EXAMINATION**

**BY MS. POKHAREL:**

**Q.** Mr. Elkarra, good afternoon.

Where do you live?

**A.** I live in Sacramento, California.

**Q.** And how are you connected to this case?

**A.** Both of my parents were born in the Gaza Strip. Both were  
born in Bani Suheila.

**Q.** And what is your role in this case?

**A.** I'm one of the plaintiffs.

**Q.** Why did you decide to file this case?

**A.** Decided to file this case, it was the least that I can do

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1 to help stop the genocide of my family and my people.

2 Q. So I'd like to ask you a little bit about your family in  
3 Gaza. What family do you have there?

4 A. Aunts, uncles, cousins, second cousins, third cousins.  
5 But we -- in our culture, we don't, you know, distinguish  
6 between first cousin, second cousin. They're all family,  
7 they're all relatives.

8 Q. What is your relationship like with your family there?

9 A. Very close to them. Spent childhoods, spent many summers,  
10 with these family members. And beautiful fond memories with  
11 them. And, you know, been able to stay in touch with many of  
12 them over the years.

13 Q. Have any of your family members in Gaza been injured or  
14 killed over the past 16 weeks?

15 A. Yes. Right after the ceasefire, according to the health  
16 ministry, the names that we were able to look up was a 65 at  
17 that point for my mom and dad's side. Since then it was 73.  
18 And right now during the break, I just received news that my  
19 mom's cousin's son was murdered and two of his siblings are  
20 missing.

21 Q. In your declaration, you talk about your -- your other  
22 cousin's son and grandson. Do you want to say more about  
23 them?

24 A. Yeah. So Palestinian families are -- are splitting apart  
25 each night. This is in the beginning of -- of the genocide.

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1 Because a lot of -- entire families were being wiped out.

2 Sometimes three generations in one attack.

3 So what folks were doing was the mother would take some of  
4 the children and take them to one house. And then the father  
5 would take some children to another house.

6 In this particular attack, my cousin, Fareda, her son  
7 and -- and his son were -- were in a house. And this is from  
8 my mom's side. And then on my dad's side, one of his cousins  
9 and his son happened to be in the same house, and that house  
10 was -- was bombed. They were all killed.

11 **Q.** Do you want to say more about your family members that you  
12 just got news about?

13 **A.** This is, you know -- you know, his father was very dear to  
14 us. You know, I just -- when we were children, we'd always --  
15 you know, he'd always invite us over. And he was a very close  
16 cousin of my mother. And he was beloved to my grandmother.  
17 He was her nephew and she loved him. And -- and so this is  
18 just devastating news.

19 **Q.** You described your family members who have been killed.  
20 Have any of your family members in Gaza faced any other action  
21 by Israeli authorities?

22 **A.** Yes. I mean, right now, the numbers that I mentioned, I  
23 think 74 and -- this is what we -- like I said, what we know  
24 of. There's dozens missing. Many family members are saying,  
25 you know, expect once this is -- this is over, by the time

1 they count everyone, it to be over a hundred murdered.

2 Now, every few days, we're getting word that some of our  
3 elders are dying. And these are folks that are transmitters  
4 of our heritage and our history, some of them over 90 years  
5 old. And due to the -- you know, the famine-like conditions,  
6 no water, no food, we are losing many of our elders right now.

7 **Q.** How else have the conditions in Gaza impacted your family  
8 members?

9 **A.** No food, no water. Even in the beginning, you know, we  
10 were getting complaints from them that they had water in the  
11 southeast of Gaza and -- early on. But many of them were  
12 throwing up due to the tainted water.

13 And so -- and then the health -- the health conditions.  
14 My 30-year-old cousin Noor just passed away just recently  
15 from -- from thyroid cancer. And she died a horrible, painful  
16 death. She left behind three children under the age of seven,  
17 and -- you know, three orphans.

18 And -- and so this is impacting not just, you know,  
19 direct -- you know, direct military, you know, bombing and --  
20 and murdering, but people -- so many others are dying due to  
21 the health conditions of Gaza.

22 We're talking about there's no menstruation pads. There's  
23 no diapers for children. Just imagine one of the most densely  
24 populated places on earth, people crowded in schools, and in  
25 these sanitary conditions.

1 Also the sites that, you know, we grew up seeing. You  
2 know, the school that many generations of my family went to,  
3 destroyed. Many cemeteries are said -- you know, according to  
4 a CNN report, over 16 cemeteries where our ancestors are  
5 buried. Imagine not knowing where your grandmother or great  
6 grandfather are buried. And just bulldozed, completely  
7 destroyed.

8 And so, you know, it's affecting our people in so many  
9 different ways.

10 **Q.** You said you spent time with your -- with your family  
11 members in Gaza. Where did you go when you visited Gaza?

12 **A.** We went all over, but we spent mostly in the southeast of  
13 Gaza, in Khuza'a, Abasan, New Abasan, Bani Suheila.

14 And we have family throughout this entire region. And we  
15 would spend -- you know, they'd all fight for -- for us to go  
16 and stay with them for -- for a few days here and there. And  
17 it was just the most warm, welcoming people, loving hearts,  
18 that....

19 And Khuza'a, which in 2014 was almost pretty much  
20 completely destroyed, now we're hearing is completely  
21 destroyed.

22 We're seeing footage of Israeli soldiers demolishing  
23 entire neighborhoods in -- in Khuza'a. And that's an area  
24 where we spend a lot of time, where our family there, they  
25 have farms and horses, and we would ride -- we would ride, you



1 know, horses throughout the fields. And just beautiful  
2 memories of Khuza'a, which, unfortunately, is no longer there.

3 **Q.** Do you have any other memories of -- of Gaza that you  
4 would like to share?

5 **A.** Yeah. You know, my grandfather's home, you know, it was  
6 over a hundred years old. And, you know, these homes get  
7 passed down generation. These are -- this was an -- an  
8 Adobe-like home with a huge courtyard. And I remember the  
9 bricks even had seashells in them.

10 They were really -- a really old house that we always  
11 dreamt that we would turn into a cultural heritage site for  
12 people to come visit. That's -- that's been destroyed.

13 And, you know, some of the memories of -- of going to  
14 Gaza. I remember in -- in 2002, I just had fallen asleep, and  
15 an explosion -- just within a split second, I was from  
16 sleeping to standing up.

17 And just -- and I rushed to my cousin's house to see, you  
18 know, what happened. And he had satellite, to see if there  
19 was any news.

20 We found out that the next morning that a one-ton bomb was  
21 dropped on a three-story building. Seventeen people were  
22 killed, 150 were injured. From the 17 people who were killed,  
23 4 women and 11 children.

24 And that shook me, because that's something that would  
25 always play out in my head, that explosion. And that was just

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1 one time. And that -- we were staying in Bani Suheila at the  
2 time. This bomb was in Gaza -- was in the north in Gaza.

3 And you could imagine. Gaza is, you know, 25 miles long,  
4 and it's from 3 to 7 miles wide in some areas. And so any  
5 bomb that gets dropped impacts everyone. Many people can feel  
6 it.

7 And so right now when we were talking to our relatives,  
8 they're saying they can -- there's no sleep. There's no sleep  
9 because due to the bombs.

10 And me going through that experience of just a one-ton  
11 bomb. Now two-ton bombs are being dropped. In December, CNN  
12 had produced a report that hundreds of two-ton bombs were  
13 being dropped. And these are bombs that were used in, you  
14 know, Vietnam and other wars, but they were used in open  
15 areas. They were never dropped in densely populated areas  
16 because they can kill up to a thousand feet. And this is --  
17 and these bombs are being dropped on refugee camps. They're  
18 being dropped close to hospitals.

19 And so just, you know -- just thinking about that moment  
20 in 2002 and what young children are going through right now  
21 when some -- for some of them, this is their fifth war and  
22 these constant bombs being dropped.

23 And for me, these bombs are manufactured right here.  
24 They're -- they're sent from -- from our government with our  
25 taxpayer dollars to -- to fund this genocide against our

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1 people.

2 Q. Have you found yourself thinking about the memory of that  
3 bomb over the past 16 weeks?

4 A. Absolutely. Absolutely. And I just -- I can't, in my  
5 mind, fathom how these children, you know, or any human being  
6 for that matter, can -- can deal with a constant relentless  
7 bombing that shakes you to your core.

8 And -- and if this bomb was -- was -- you know, anyone  
9 that knows the geography of Gaza, this happened in the north.  
10 I can't even imagine when these 2,000-pound bombs -- and --  
11 and more -- more tonnage of bombs has been dropped on Gaza  
12 than Hiroshima and Nagasaki.

13 And just -- for that to sit -- sit in, that's how much  
14 bombs, U.S. bombs, being dropped on my people. And it just --  
15 it's very unsettling.

16 And you live with this guilt every day, the survivor's  
17 guilty, that knowing your taxpayer dollars -- and these bombs  
18 are being sent by an administration -- and I even feel more  
19 guilty because our community mobilized to help put Biden in  
20 power to defeat Trump who had the Muslim ban and all the  
21 rhetoric against our community, and it just -- it's -- it  
22 hurts. It hurts deeply.

23 Q. You've described your family members who have been killed  
24 and these -- these areas that you remember being destroyed.  
25 How has this impacted your daily life?

1     **A.** You know, you -- you know, at first it's like a dream.  
2     Like, you know, is this -- is this really happening? Because  
3     look, it's not our first rodeo. We've lost family members in  
4     many of the attacks over the years. But, you know, and this  
5     is what Israelis call mowing the lawn or putting the Gazans on  
6     a diet. So this has been happening, but not at this level.

7             And the utter destruction of an entire -- you know, the  
8     majority of Gaza, and there's not a family that hasn't lost a  
9     loved one.

10            And so for me to explain it to my children about why this  
11     is happening and, you know, who -- and we're asking -- and one  
12     of the saddest things, and I'm sure this happens to many  
13     families from Gaza, is that we're asking our parents for  
14     family trees. We're trying to piece the puzzles together  
15     because entire wings of the family have been wiped out. And  
16     it's, like, okay, whose son was this? And whose daughter was  
17     this?

18            And so it just -- it makes you numb at times that, you  
19     know, every few days you're hearing more people killed. And  
20     it's just -- you become angry, you become numb.

21            You know, we wake up every morning calling -- calling our  
22     family to see who's made it. But especially what's intense is  
23     nights for us here. Because at night, it's morning time  
24     there.

25            So we're -- we split up, our -- my siblings and I. We

1 say, okay, I'll call these cousins, you call this branch of  
2 the family, you call this branch, to see who survived.

3 And calling from America, you feel just -- you feel  
4 tremendous guilt because it's my government, and the bombs  
5 that are being dropped on them are -- are being sent from  
6 here.

7 **Q.** So, finally, I'd like to ask you some questions about why  
8 you decided to sue these defendants. So why did you decide to  
9 sue the President and Secretaries Blinken and Austin?

10 **A.** Because for them knowing that Israel has genocidal  
11 intent -- because they've said it, they've said it publicly  
12 on -- in Israeli media. Quoting biblical verses, calling for  
13 a slaughter of men, women, children, and even animals. You  
14 know, putting -- you know, saying that no food, no water, no  
15 electricity will be -- you know, will be allowed into Gaza.  
16 Calling the Gazans animals.

17 And these are things that reminiscent of previous  
18 genocides that happened in the world. And we're seeing it  
19 play out before our eyes. They're saying it. Their intention  
20 is clear.

21 And despite that, President Biden, his spokespeople, State  
22 Department, their spokespeople, Defense -- and the Defense  
23 Secretary and his spokespeople justifying, almost at every  
24 press conference going out of the way to justify what's  
25 happening in Gaza. And for me, just -- this is the least that

1 we can do. And just the utter dehumanization of our people.

2 Just on the hundredth day of this conflict,  
3 Secretary Blinken -- sorry -- the White House put out a  
4 statement, did not mention the over 20,000 Palestinians at the  
5 time that were killed, mentioned only the hostages.

6 So valuing certain lives more than other lives, it just --  
7 it's very dehumanizing. The way that they look at  
8 Palestinians, the way they look at Arabs, the way they look at  
9 Palestinian Muslims, the way they look at Palestinian  
10 Christians, because if you look at what's happening there, you  
11 know, some reports are saying over a thousand -- over a -- a  
12 thousand out of 1200 mosques have been destroyed. Three  
13 churches have been -- and these are ancient churches and  
14 mosques.

15 And one memory I have was the Al Omari Mosque, which is  
16 one of the oldest mosques in the Muslim world, and destroyed.  
17 Our heritage sites, our antiquities, looted, not only  
18 destroyed. 200 out of the 325 heritage sites have been  
19 destroyed and looted. And some of this loot was -- the  
20 antiquities were taken and displayed at the Knesset.

21 And so for our President to know all this?

22 And also the United States is flying drones over Gaza.  
23 They made a -- they were flying drones. So they know what's  
24 happening on the ground. They know that what these  
25 2,000-pound bombs being dropped on refugee camps are doing.

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ELKARRA - DIRECT / POKHAREL

1 And despite that, they just keep sending more money, they keep  
2 sending more weaponry. And now there's a report of them  
3 sending more fighter planes, more helicopter attacks.

4 So they are failing -- not only failing to prevent a  
5 genocide, they are completely complicit.

6 **MS. POKHAREL:** Thank you, Mr. Elkarra. That's all I  
7 have for this witness, Your Honor.

8 **THE COURT:** Thank you.

9 Any questions?

10 **MR. KOSSAK:** No questions, Your Honor.

11 **THE COURT:** Thank you very much, sir. Appreciate it.  
12 Next witness, please.

13 **MS. LAHOOD:** Marie LaHood for the plaintiffs.

14 The last plaintiff who will be testifying is Mr. Khaled  
15 Quzmar, who's on Zoom.

16 **THE COURT:** I'm sorry?

17 **MS. LAHOOD:** On Zoom.

18 **THE COURT:** He's on Zoom. Very well.

19 **THE CLERK:** Hello, sir. Can you hear me?

20 **THE WITNESS:** Yes.

21 **THE CLERK:** Please raise your right hand.

22

23 **KHALED QUZMAR,**

24 called as a witness by the plaintiffs, having been duly sworn,  
25 testified via Zoom as follows:

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1 Centre for Human Rights.

2 Q. Can you tell you also about DCIP and its mission?

3 A. DCI Palestine established to -- to provide legal services  
4 to the Palestinian children and the Israeli military court  
5 system in 1991.

6 And also to document the violation against the Palestinian  
7 children inside the Israeli military system and to advocate  
8 for their rights.

9 But after that, after establishing the Palestinian  
10 Authority, we also expand our way to include the Palestinian  
11 children under the Palestinian Authority, to provide them, the  
12 children who are in conflict with the Palestinian law or are  
13 victim of -- violence, to support them with psychosocial  
14 support and of course legal support.

15 And also we participated in building a child juvenile  
16 justice system in -- under the Palestinian Authority. And we  
17 build the capacity of the juvenile judges, juvenile  
18 prosecutors, and juvenile police.

19 Q. And does DCIP also monitor and document human rights  
20 violations against children?

21 A. Yes. We take it as a package. We document the violation  
22 against all the Palestinian children -- to visit in our  
23 advocacy to hold the perpetrators accountable regardless who  
24 is the perpetrator.

25 Q. How is DCIP connected to this case against Biden, Blinken,

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1 and Austin?

2 **A.** Yeah, DCIP is a plaintiff in this case because we believe  
3 that we have a mandate to protect and to create a protective  
4 environment -- environment for the Palestinian children in the  
5 Occupied Palestinian Territory. So we decided to file this --  
6 this case in order to try to offer any kind of protection or  
7 to stop the genocide that are committed against the  
8 Palestinians in Gaza.

9 **Q.** And where is DCIP based?

10 **A.** We work in all the Occupied Palestinian Territories, but  
11 we have offices in Ramallah, and we have in the north, the  
12 West Bank in Nablus, and we have in Hebron in the south. And  
13 of course we have a presence in East Jerusalem and in Gaza  
14 Strip.

15 **Q.** Who on your staff is currently in Gaza?

16 **A.** We have a permanent staff since 20 years, Ahmad Abu  
17 Rokbeh.

18 **Q.** And Mr. Abu Rokbeh also connected to this case?

19 **A.** Of course.

20 **Q.** How is he connected?

21 **A.** He is also a plaintiff.

22 **Q.** Okay. And are you in contact with Mr. Abu Rokbeh?

23 **A.** Usually, yes. Before the 7th of October, yeah, we used to  
24 be in daily basis. But after the Israeli assault against Gaza  
25 and the genocide, so in the best scenario, we are in touch

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1 every five days or even more sometimes.

2 **Q.** Okay. How has DCIP's work in Gaza been impacted over the  
3 past 16 weeks?

4 **A.** Completely impacted. And even the -- the colleague there  
5 is unable to do his work. And so now usually in such  
6 circumstances, we contracted other field workers in order to  
7 manage -- to document all the violation against the children  
8 during the assaults and the war.

9 But this time is different than any time before. So we --  
10 since more than 16 -- 16th week, we only manage to work in the  
11 week of the two -- maybe the third or fourth week of the  
12 genocide. So that work only done by visiting the shelters and  
13 interviewing children to know more about their -- their  
14 situation and the way of life of the children. And after  
15 that, there is no work.

16 **Q.** Okay. Do you know how Mr. Abu Rokbeh has been personally  
17 impacted in the last 16 weeks?

18 **A.** Of course. I believe that every family in Gaza are  
19 impacted and affected by the Israeli genocide -- ongoing  
20 genocide. And the Mohammed family, like the other families,  
21 are also impacted.

22 I know that he was displaced there for several days and  
23 displaced from the north to the middle and from the middle to  
24 the south. So I -- I think he -- four or five times, he was  
25 forced to move from place to place with his family in order

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1 seeking for any kind of protection and for safer place.

2 Q. And do you know how Mr. Abu Rokbeh's family has been  
3 impacted in the last 16 weeks?

4 A. Yes. I know that, I think from his close family, like  
5 brothers and nephews he lost.

6 And the recent attack, I believe it was a few days ago,  
7 few weeks ago, that his mother was shot by Israeli sniper,  
8 Israeli soldier, and her leg was even cut off as a result of  
9 the shot.

10 Q. And was he able to get medical care for her?

11 A. Yeah, he was starting to find a way to help her and to  
12 manage to -- to let her get out of Gaza to travel outside.  
13 And even he contacted me in order to use my communication, my  
14 colleagues to support him to -- to let her get out.

15 But unfortunately, I tried with all the international  
16 organization that I work with, the UN agencies, even the Red  
17 Cross. The answer was usually always is we have tens of  
18 thousands of cases like this and it's impossible.

19 At the end, he failed to find a place even she was -- they  
20 cut off her leg then.

21 Q. Do you know where Mr. Abu Rokbeh is now?

22 A. The last few days, I believe that he was in -- in Rafah in  
23 a net -- a tent. I don't know if he's still there or moved  
24 because since that time, I have no communication with him, no  
25 access to Internet or communication.

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1 Q. You mentioned during the -- the pause that DCIP was able  
2 to do some work in Gaza interviewing children. Can you tell  
3 us about that?

4 A. Yes. During the truce, we -- Mohammed, he managed to  
5 visit some schools, shelters. And he interviewed some of the  
6 children to know about their feelings about the -- the way of  
7 the life that they are living.

8 So, yeah, it was -- we managed to share it and to -- to  
9 reflect part of the suffer of the Palestinian children in  
10 Gaza.

11 So the cases are really short. In few -- in one minute,  
12 they manage to -- to share with us which kind of atrocities  
13 that -- that they are live in.

14 Just I would like to say -- to say that one of the cases,  
15 which is Noonia [phonetic]. Noonia was with her family at  
16 home. And during the night, the Israeli war plane bombed the  
17 house and they killed her mother, her father, and brother and  
18 sister.

19 And her, she was lucky that only her leg was cut off. So  
20 she was -- she went to the hospital, and she found that all  
21 the family are gone. And she was not much -- think only, she  
22 was -- her dream is to get to travel outside the country to --  
23 to have the new leg. And also to -- to continue her study to  
24 become a doctor to -- to treat and to help the children.

25 Unfortunately, while she was in the hospital after two

1 weeks of the accident, she was hospitalized in the hospital,  
2 Israel, again they bombed the hospital, and then she was  
3 killed. And by killing her, they killed all her dreams and  
4 her -- her life.

5 **Q.** Has DCIP been monitoring the general situation of children  
6 in Gaza over the last 16 weeks?

7 **A.** As I said, the situation in Gaza, it's unpleasant even  
8 before. We witnessed the many Israeli assaults against Gaza  
9 since 1995.

10 But what is happening this time is different than anytime  
11 in the past. And they completely put us in a place that we  
12 are not able to do the work that we are doing.

13 Usually, we document the -- each case in a detailed  
14 documentation with evidence, testimonies from the  
15 eyewitnesses, visiting the hospitals, provide medical reports.  
16 So this time it's impossible to do that.

17 We are now not able even to control the number of the  
18 killing. So all the time we are expanding our network to --  
19 to also to work with the international human rights  
20 organizations, with the UN agencies, in order at least to  
21 collect the numbers.

22 So no one can provide you with the -- with the exact  
23 number of the killing, because already now we are talking  
24 about almost 50,000 civilians killed, among them more than  
25 10,000 children. But also still under the rubble around

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1 10,000. So nobody knows what happened to those 10,000.

2 Mostly they are kin.

3 **Q.** What can you tell us about injuries that children in Gaza  
4 are sustaining?

5 **A.** I believe the problem with the injuries is more worse than  
6 those who are killed. Those who are killed, already they  
7 left. But those who stayed with their pain, with their sick,  
8 with their -- with injuries, injured. But with -- not lack --  
9 with no medical treatment. Hospitals are attacked. All the  
10 hospitals in Gaza are being attacked and bombed by the  
11 Israeli.

12 There is no medical treatment for the -- for those who are  
13 injured. So they are dying. And even those who are dying  
14 from the injury -- from their injuries, from the no food, no  
15 water, so that -- this kind of situation put them in suffer --  
16 in ongoing suffer. And, of course, for their families or the  
17 rest of their families who's still alive. So it's an ongoing  
18 and very complicated problem for them.

19 **Q.** What can you tell us about the impact of the lack of food  
20 and water on children in Gaza?

21 **A.** Of course, as a human being, they have food going through  
22 the system three times a day, and their food, water, every --  
23 all the -- the time, around hour.

24 But the Israeli policy was clear from the beginning, the  
25 intention to do the side [sic] -- the genocide. So we hear

1 the Israeli defense minister from the second day -- the first  
2 day of the aggression, the 7th of October, he, in a press  
3 conference, he declared that from the moment, no food -- even  
4 he used his fingers -- no food, no water, no electricity, no  
5 fuel, and to open a war against the -- no civilians there --  
6 open the war against those who are in Gaza, they are human  
7 animals.

8 Unfortunately, this message was taken seriously direct  
9 from the Israeli army. And the result is now we are seeing --  
10 following that the number of the killing.

11 We -- I never witnessed to see that every five minutes a  
12 child killed in any place in the world. But in Gaza, that's  
13 happened in every seven minutes.

14 So this is why I believe we feel that all the time that  
15 our hands are cuffed.

16 So this is why we start to search for any place to obtain  
17 justice or to stop the genocide.

18 We witnessed and we try, we experienced the Israeli  
19 military system, legal system, even the Israeli civil legal  
20 system. We never, during my work with more than 30 years in  
21 this field, we never manage to obtain any kind of justice for  
22 the Palestinians in the Israeli military system nor in the  
23 Israeli civil system. Because the system are designed in  
24 order to banish the Palestinian and to legitimate [sic] the  
25 Israeli crimes against the Palestinian.

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1 This is why we -- we felt that we are seeing the killing,  
2 we are seeing the genocide, why we are not able to do anything  
3 to stop the crime.

4 **Q.** What can you tell us about the impact on children whose  
5 parents or families are killed?

6 **A.** The case of the children is something -- it's a unique  
7 situation. Never happened. When you talk about those who  
8 lost their life, it's a bigger problem. Those who are injured  
9 and they live with their suffer is a bigger problem.

10 Also, those children who are left alone, just to -- recall  
11 the short video with one of them, I think the name of the  
12 little girl, she is 13 years old, Sarah.

13 She woked [phonetic] up in the -- she found that she is in  
14 the hospital while the -- the house was bombed. And she was  
15 talking that she lost her father, she lost her brothers, her  
16 sisters. But only she -- she was left with her mother and  
17 she -- her mother was asking her to come to her, while in fact  
18 her mother was also killed in the same accident.

19 So this kind of cases, it will become the suffer with --  
20 will be with the little girl, 13 years old, for all of her  
21 life.

22 And of course the case of Sarah is the case of hundreds of  
23 children left behind without any family to take care. So  
24 it's -- it becomes responsibility on our shoulders and the  
25 government in order to see how we can solve this problem in

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1 the future.

2 **Q.** Is there anything else you can tell us about the  
3 conditions of life for children in Gaza?

4 **A.** Gaza, I can use what the Secretary General of United  
5 Nations said. Gaza become the graveyard for the children.  
6 And I can say also, I can add that Gaza is become, according  
7 to what Unicef said, is that the -- the high risk place, the  
8 highest risk place in the world for children is Gaza.

9 Unicef published reports about the situation in Gaza  
10 saying that all of the children around the world who killed  
11 during -- in the armed conflict areas since 2019 until now is  
12 less than half of the children who were killed in Gaza in  
13 three weeks.

14 So Gaza is -- the common issue in Gaza is the killing.  
15 The killing. So everyone is expect -- expect to be killed  
16 every minute. And those who are still alive, not because they  
17 are smart, not because they did something, only by the chance,  
18 so everyone in Gaza now all in his mind is not to dream what  
19 to be in the future, just to keep alive, to keep survive.  
20 This is the situation in Gaza.

21 **MS. LAHOOD:** Thank you, Mr. Quzmar. I have no  
22 further questions.

23 **THE COURT:** Thank you, counsel.

24 Any questions?

25 **MR. KOSSAK:** No, Your Honor.

1                   **THE COURT:** Thank you very much.

2                   Thank you, sir. We appreciate your testimony.

3                   Next witness.

4                   **MS. SPEES:** Thank you, Your Honor. Pam Spees with  
5 the plaintiffs.

6                   We call Dr. Barry Trachtenberg.

7                   **MR. KOSSAK:** Your Honor, may I have one moment?

8                   **THE COURT:** Yes.

9                   **MR. KOSSAK:** We recognize -- sorry. Jonathan Kossak  
10 on behalf of the defendants.

11                   We recognize that we previously objected to the proposed  
12 testimony of Dr. Trachtenberg and in -- in opposition to the  
13 plaintiffs' motion for live testimony.

14                   We also understand that you already allowed it, but for  
15 the record, we want to renew our objection to  
16 Dr. Trachtenberg's proposed testimony on the public interest,  
17 given that it touches on a question of law and is  
18 inappropriate subject of expert testimony, given that it's the  
19 Court's role to weigh the public interest.

20                   **THE COURT:** All right. The objection is overruled.

21                   It's important, I think, for the Court to hear all that  
22 the plaintiff has to propose to the Court, including expert  
23 testimony, so that the Court can make a fair decision on a  
24 full and complete record.

25                   So the government's objection is noted and overruled.

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1 Please call your next witness.

2 **MS. SPEES:** Thank you, Your Honor.

3 Dr. Trachtenberg.

4 **THE CLERK:** Good afternoon.

5 If you could please step on the stand. Please raise your  
6 right hand.

7

8 **BARRY TRACHTENBERG,**

9 called as a witness by the plaintiffs, having been duly sworn,  
10 testified as follows:

11 **THE WITNESS:** Yes.

12 **THE CLERK:** Please be seated.

13 Please speak clearly into the microphone. Please state  
14 your full name and spell your first and last name for the  
15 record.

16 **THE WITNESS:** My name is Barry Trachtenberg,  
17 B-A-R-R-Y, T-R-A-C-H-T-E-N-B-E-R-G.

18 **THE COURT:** Welcome, Doctor.

19 **THE WITNESS:** Thank you.

20 **DIRECT EXAMINATION**

21 **BY MS. SPEES:**

22 **Q.** Dr. Trachtenberg, can you state where you currently work?

23 **A.** I work at Wake Forest University in Winston-Salem,  
24 North Carolina.

25 **Q.** And what is your position there?

1       **A.** I hold the Ruben Presidential Chair in Jewish history.

2       **Q.** And can you share with the Court your educational history  
3 and background?

4       **A.** Sure.

5             I was in school for a while. But I did an undergraduate  
6 degree in English at what was then Glassboro State College in  
7 New Jersey which is now Rowan University.

8             I went from there to the University of Vermont to do a  
9 master's in ultimately what became Holocaust Studies U.S.  
10 History.

11            From there I went to Oxford University for a postgraduate  
12 diploma in Hebrew and Jewish studies where I began studying  
13 Yiddish.

14            And from there, I went to UCLA for my Ph.D. in European  
15 history with a specialization in Jewish studies and Holocaust  
16 studies. And while I was there, spent, I think, approximately  
17 14, 15 months living in Jerusalem as part of my research.

18       **Q.** Um-hmm. And did you ever go to Gaza while you were in --

19       **A.** I spent time --

20       **Q.** -- doing research in Jerusalem?

21       **A.** Yep. When I was living in Jerusalem, I was -- visited  
22 Gaza in June of 1998.

23       **Q.** And have your studies -- or has your work required you to  
24 study other genocides in history?

25            You mentioned the Holocaust. Have you studied others?

1     **A.** I have. As -- as part of being a historian of the  
2 Holocaust, much of the work that we do is talk about the  
3 precedence, you know, that happened -- that allowed the  
4 Holocaust to take place and, of course, the genocides that  
5 have happened since.

6             I've taught several classes of comparative genocide, to  
7 graduate students, to upper-level undergraduate students.

8             And every academic year since coming to Wake Forest in  
9 2016, I teach a class on Modern European History, which has a  
10 whole unit that examines genocide.

11     **Q.** And have you published any works on -- on these issues?

12     **A.** I have. I've published two books related to the Nazi  
13 Holocaust. The first was *The United States and the Nazi*  
14 *Holocaust: Race, Refuge and Remembrance*, which came out in  
15 2018, which is about the United States' relationship to the  
16 Holocaust.

17             And then more recently in 2022, I published a book called  
18 *The Holocaust & the Exile of Yiddish*, which looked at the  
19 impact of the Holocaust on the Yiddish language and the  
20 political and cultural ideologies associated with it.

21     **Q.** Have you ever testified previously as an expert on these  
22 issues?

23     **A.** In 2017, I testified to Congress regarding the question of  
24 antisemitism on college campuses.

25     **Q.** I see.

1           **MS. SPEES:** Your Honor, may I approach?

2           **THE COURT:** Yes, sure.

3                           (Pause in the proceedings.)

4           **MS. SPEES:** (Handing document.)

5           **THE WITNESS:** Thank you.

6           **BY MS. SPEES:**

7           **Q.** I've just handed you a document. Can you say what -- what  
8           that is?

9           **A.** This is my CV. It's a record of my academic work.

10          **Q.** And can you just look at it and make sure that it's a true  
11          and complete copy of your CV.

12          **A.** Yes. This is up-to-date.

13          **Q.** Thank you.

14                   **MS. SPEES:** Your Honor, at this point, I'd like to  
15          introduce Dr. Trachtenberg's CV into the record.

16                   **THE COURT:** Any objection other than what you've  
17          stated before, counsel?

18                   **MR. KOSSAK:** We object --

19                   **THE COURT:** Please stand.

20                   **MR. KOSSAK:** Sorry, Your Honor.

21                   We object to the extent that this was just given to us  
22          last night and we haven't really had a chance to review it  
23          thoroughly.

24                   **THE COURT:** Well, I'll overrule the objection. And  
25          if you wish to cross-examine -- do you want -- if he's offered

1 and you wish to voir dire him on his credentials, I'll allow  
2 you to do that as the federal rules allow.

3 So for the moment I will overrule the objection, and I  
4 will admit the document.

5 Can we mark that, Madam Clerk, as Plaintiffs' Exhibit  
6 No. 1 for this hearing?

7 **THE CLERK:** Yes, Your Honor.

8 **THE COURT:** Thank you very much.

9 (Plaintiffs' Exhibit 1 marked for identification)

10 (Plaintiffs' Exhibit 1 received in evidence.)

11 **MS. SPEES:** And at this time, Your Honor, I would  
12 tender Dr. Trachtenberg as an expert.

13 **THE COURT:** In what area?

14 **MS. SPEES:** In -- apologies.

15 In the area of Jewish history, Holocaust studies, and  
16 genocide studies.

17 **THE COURT:** Do you wish to voir dire?

18 **MR. KOSSAK:** No, Your Honor. But the plaintiffs had  
19 originally proposed eliciting this testimony --

20 **THE COURT:** Would you speak closer to the microphone.  
21 Or come up to the lectern, please.

22 Thank you.

23 **MR. KOSSAK:** I'm sorry, Your Honor.

24 **THE COURT:** Yes.

25 **MR. KOSSAK:** The plaintiffs proposed that their --



1 Dr. Trachtenberg's testimony would be about the public  
2 interest, not about Jewish history and the Holocaust.

3 **THE COURT:** What's your response?

4 Is there -- so you're claiming there's a notice issue?

5 **MR. KOSSAK:** That's correct, Your Honor.

6 **THE COURT:** Counsel?

7 **MS. SPEES:** So, Your Honor, first of all,  
8 Dr. Trachtenberg has already submitted a declaration with two  
9 other experts in this case where he's set out his -- his  
10 opinions. And the public interest factor in this case  
11 necessarily has to address the public interest in preventing  
12 genocide.

13 If the -- if one of the factors is the public interest in  
14 the injunction weighed against the irreparable harms,  
15 Dr. Trachtenberg is uniquely placed to offer -- offer the  
16 Court expert testimony on those issues.

17 **THE COURT:** Your response?

18 **MR. KOSSAK:** Your Honor, Dr. Trachtenberg's  
19 declaration -- he was asked to opine on the unfolding attack  
20 on the Palestinian population in Gaza and whether it has the  
21 indicia of genocide.

22 It is not regarding the public interest, and we object to  
23 his testimony on public interest in that regard.

24 **THE COURT:** All right. Objection is overruled.

25 I will accept him as an expert in the field that he's

1 offered and allow him to give his opinion under the rules.

2 **MS. SPEES:** Thank you, Your Honor.

3 **Q.** So, Dr. Trachtenberg, you've just heard us refer to your  
4 declaration that you submitted on November 13th in connection  
5 with the motion that we're here to deal with today.

6 Could you just briefly summarize your opinion that you  
7 shared in that declaration.

8 **A.** Sure. Along with my colleagues, Victoria Sanford and John  
9 Cox, we looked at the unfolding situation that was happening  
10 in Gaza and asserted our understanding that we were watching a  
11 genocide that was unfolding, and then compared it to more  
12 recent genocides from the second half of the 20th century and  
13 the early part of the 21st century.

14 **Q.** Can you share with the Court what you reviewed to arrive  
15 at your -- at that opinion?

16 **A.** We looked at a range of materials including histories of  
17 genocide. We looked at more recent reports from organizations  
18 like the United Nations and Humans Rights Watch, organizations  
19 that were reporting from the ground, as well as a wide range  
20 of media sources, including journalists who are reporting  
21 directly from Gaza.

22 **Q.** And are these the kinds of resources that, as a scholar,  
23 you would normally review in the course of your studies on  
24 genocides?

25 **A.** Yeah, these are absolutely among them. And, you know, one

1 of the challenges is -- of studying genocide is that genocides  
2 themselves destroy their own evidence. You know, as we heard  
3 from so many of the -- the people who gave testimony today,  
4 that archives are being destroyed, memorial sites are being  
5 destroyed, and human beings who hold that history is  
6 destroyed.

7 Unfortunately this is all too common for genocides. And  
8 so as scholars, we have to develop techniques to try to  
9 understand those absences, to account for those absences, and  
10 to try to tell a story as best as we can of those genocides.  
11 And those absences, those voids are part of the story we have  
12 to tell.

13 **Q.** What was it that you reviewed -- what was it about what  
14 you reviewed that made you and your -- or let me just ask  
15 you --

16 **A.** Sure.

17 **Q.** -- for your response to this -- that made you believe what  
18 was happening was a genocide?

19 **A.** What made me -- and I can speak for my -- I think my  
20 colleagues as well, believe that what was going on and what is  
21 at this very moment as we're sitting here is a genocide, is  
22 the correspondence between the actions that we're seeing on  
23 the ground and the statements and actions of intent. Right?  
24 We're very well familiar that to have an event sort of fall  
25 under the 1948 Convention of Genocide requires both action and

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1 intent. And here, we see that very, very clearly in a way  
2 that seems really quite unique in history.

3 Very often the statements of intent are not declared  
4 publicly, they're not declared openly by the people who are  
5 responsible for carrying out the violence. But they use code  
6 words or they use euphemisms or they speak to simply the will  
7 of various leaders.

8 But here the statements of intent were made from the very,  
9 very beginning. And the actions correspond so very clearly to  
10 them that there was no reason for me and my colleagues to not  
11 take the Israeli leaders at their word.

12 **Q.** Can you describe some of those statements that struck you?

13 **A.** Yeah. Absolutely.

14 Some of the -- the early statements were, for example, the  
15 President of Israel declaring that all Gazans were responsible  
16 for this, that there are no innocent people in Gaza.

17 Hearing the Minister of Defense, as we've heard from other  
18 witnesses, talk about there being no food, no water, no  
19 electricity will be allowed to Gaza.

20 The Israeli Minister of Energy who declared that there'll  
21 be no water, not a single battery will be given until Gazans  
22 disappear entirely.

23 And the one that was most alarming to me was hearing the  
24 Prime Minister of Israel, Netanyahu, declare many, many times  
25 that they're -- Israel is fighting a war against Amalek,

1 right, this biblical image that is seen as the eternal enemy  
2 of the Jewish people and who, in Hebrew scripture, you know,  
3 the Israel -- Israelite people were commanded to destroy them  
4 utterly, men, women, children, even their cattle.

5 And this is an image that resonates with every Jewish  
6 person who knows scripture, with every Israeli.

7 And, again, we see that the military is not just taking  
8 this as sort of symbolic rhetoric, but this is what they're  
9 doing.

10 **Q.** So you submitted this declaration with your colleagues on  
11 November 13th.

12 And as we sit here today, has there been anything that has  
13 happened since then that has changed your mind or impacted  
14 your opinion that you shared?

15 **A.** When I read the declaration now that we submitted then,  
16 I'm struck by how much worse the situation has become and how  
17 everything that we feared and more is unfolding.

18 Then, if I remember correctly, we were talking about  
19 11,000 people known to be dead. Now the number as of this  
20 morning is over 26,000 people who are dead. There's some  
21 63,000 people who are injured.

22 What we're also seeing are clear efforts by Israeli  
23 authorities to destroy the conditions of life, which again, is  
24 forces of violation of the 1948 Convention. And for this, I  
25 would point to Israel's decision to not allow food aid into

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1 Gaza, to not allow medical supplies either for Gazans or for  
2 the people who are still being held hostage.

3 We see Israel going so far as to make decisions to flood  
4 the tunnels that, to my mind, are not illegal -- maybe what  
5 you do with the tunnels may be a violation -- but to flood the  
6 tunnels with millions of gallons of seawater which are  
7 threatening to destroy the aquifer and to not allow --

8 **MR. KOSSAK:** Objection, Your Honor.

9 **THE COURT:** Stand, please.

10 **MR. KOSSAK:** Your Honor, I object to  
11 Dr. Trachtenberg's characterization of what's going on with  
12 the tunnels. He's not an expert in the field of military  
13 affairs or what's going on in that regard.

14 **THE COURT:** Overruled.

15 Continue, please.

16 **THE WITNESS:** In effect, what we're starting to see  
17 is them salting the earth, right, which will prevent food from  
18 growing and from Gazans to be able to survive.

19 And so to my understanding, this seems to be a --

20 **MR. KOSSAK:** Your Honor, objection. There's been no  
21 question --

22 **THE COURT:** Overruled.

23 **MR. KOSSAK:** -- posed.

24 **MS. SPEES:** He was finishing his response --

25 **THE COURT:** Overruled.

1 (Simultaneous colloquy.)

2 **THE COURT:** Let me just say -- let me ask you, why  
3 don't you ask the next question so just so we're on sort of  
4 the same page and same framework.

5 Thank you.

6 **MS. SPEES:** Sure.

7 **Q.** So having studied the Holocaust and other genocides in  
8 history, can you describe the international responses to these  
9 atrocities and efforts --

10 (Simultaneous colloquy.)

11 **THE WITNESS:** Are you referring to what's happened  
12 since October 7th? Or do you mean --

13 **BY MS. SPEES:**

14 **Q.** No, in -- in general. The -- the frameworks --

15 **A.** Um-hmm.

16 **Q.** -- in the international community --

17 **A.** Yeah.

18 **Q.** -- to --

19 **A.** Yeah. Absolutely.

20 **MR. KOSSAK:** Objection. Vague.

21 **BY MS. SPEES:**

22 **Q.** -- to attempt to prevent genocide.

23 **THE COURT:** Overruled.

24 You may answer, Doctor.

25 **THE WITNESS:** Thank you, Your Honor.

1 Since 1948, with the Convention on the Prevention of  
2 Genocides passed by the United Nations, we now have a  
3 framework under international law both to prevent and punish  
4 the crime of genocide.

5 As we've seen in nearly every genocidal effort since, the  
6 legal actions always seem to come afterwards. They come late  
7 after those who have been killed in the genocide are dead, and  
8 then there's an attempt to try to bring justice for the  
9 victims against the persecutors of it.

10 What makes this situation so unique is we're watching the  
11 genocide unfold as we speak. And we're in this incredibly  
12 unique position where we can actually intervene to stop it  
13 using the mechanisms of international law that are available  
14 to us.

15 **BY MS. SPEES:**

16 **Q.** What, in your view, do those mechanisms entail or include?

17 **A.** Those mechanisms include punishing the -- the people who  
18 are prosecuting, you know, these -- these genocides. And in  
19 this particular case, I think we have an opportunity here in  
20 the United States to stop the transmittal of weapons that are  
21 being used. You know, as we've heard from plaintiffs after --  
22 plaintiff after plaintiff, the bombs that are dropping are  
23 bombs from the United States. And we have this unique  
24 opportunity to intervene with that.

25 **Q.** And in the course of your review of the materials that you

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1 reviewed to put together the declaration, did you yourself  
2 review reports about U.S. weapons and what was being used?

3 **A.** I did.

4 **Q.** Aside from what you heard today?

5 **A.** Yeah, I did. Some of it repeats what we've heard today,  
6 such as the use of Hellfire missiles, such as the use of these  
7 2,000-pound bombs that are being sent.

8 You know, there's been billions of dollars that have been  
9 sent since October 7th to Israel by the United States in  
10 circumvention of Congress.

11 And it seems that we have this opportunity now through --

12 **THE COURT:** Let me interrupt. I'm just interested.

13 When you say contrary to the intent of Congress --

14 **THE WITNESS:** Yeah.

15 **THE COURT:** -- can you explain what you mean?

16 **THE WITNESS:** Sure. I've just seen objections by  
17 members of Congress who feel they've not been consulted and  
18 that there's been an end-run that's being done around them  
19 where President Biden seems to be supporting a war without  
20 Congressional approval.

21 **THE COURT:** Thank you.

22 **MR. KOSSAK:** Your Honor, I would object to that  
23 testimony.

24 **THE COURT:** On what ground?

25 **MR. KOSSAK:** On the ground that he's not an expert in

1 national security or Congressional affairs or -- and there's  
2 nothing in his declaration about this. It's -- he's a scholar  
3 of Jewish history and genocide, not about Congress's internal  
4 or -- Congress's public negotiations about the U.S. support  
5 for Israel.

6 **THE COURT:** My view, counsel, is that we don't have a  
7 jury here. We have this Court. I am -- I'd like to think  
8 that I am savvy enough to be able to consider only the  
9 evidence that is appropriate under the law and the  
10 Constitution.

11 And I will weigh that and -- and if, as, and when you  
12 would wish to present cross-examination or the government  
13 wants to prevent -- present countervailing evidence, they have  
14 the right to do so.

15 So the objection is overruled.

16 **THE WITNESS:** May I -- may I continue?

17 **THE COURT:** Yes, please continue.

18 I overruled the objection. You can continue.

19 **THE WITNESS:** You know, what we study is how  
20 genocides happen, right? Scholars of genocide get into this  
21 because we want to learn how genocides occur, right? And it's  
22 out of this concern for stopping genocide that we do this  
23 work.

24 And we look at the various mechanisms that allow for  
25 genocides to happen. And so the reason why I'm weighing in on

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 565-7228**

1 the issue is because we're seeing it happen before our eyes.

2 And history teaches us, and American history teaches us,  
3 that there's moments of intervention that can happen such as  
4 with the United States and the Nazi Holocaust that are  
5 overlooked that, that they're ignored, they're not paid  
6 attention to. And it's only afterwards that we then have to  
7 have this reckoning, right?

8 And so my own field of Holocaust studies, and in  
9 particular, we've seen since the end of World War II that we  
10 have a whole culture of memory and guilt around the Holocaust  
11 in the United States to the point where we have a museum on  
12 the National Mall of the United States.

13 And those of us who engage in this research do it because  
14 we don't want that to happen again.

15 **THE COURT:** Understood.

16 **THE WITNESS:** Yeah.

17 **THE COURT:** Continue.

18 **MS. SPEES:** I have no further questions, Your Honor.

19 **THE COURT:** All right. Cross-examination?

20 **CROSS-EXAMINATION**

21 **BY MR. KOSSAK:**

22 **Q.** Good afternoon, Dr. Trachtenberg.

23 **THE COURT:** Would you reintroduce yourself, please.

24 **MR. KOSSAK:** Yes. My name is Jonathan Kossak. I'm  
25 counsel, along my colleague Jean Lin, for the defendants.

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**THE COURT:** Okay. Continue.

**BY MR. KOSSAK:**

**Q.** Dr. Trachtenberg, you do not have a law degree, correct?

**A.** Correct.

**Q.** You do not have a degree in international relations, correct?

**A.** Correct.

**Q.** You're not an expert on the constitutional principle of separation of powers, correct?

**A.** Correct.

**Q.** You are not an expert on U.S. national security interests, correct?

**A.** Correct.

**Q.** You are not an expert on U.S. foreign diplomacy, correct?

**A.** I've studied quite a bit of U.S. diplomacy, especially as it relates to genocide and during World War II.

**Q.** You do not have a degree in foreign policy, correct?

**A.** No. I wasn't aware that's a degree.

**Q.** You've not written on -- strike that.

**MR. KOSSAK:** If I can have one moment, Your Honor.

**THE COURT:** Sure.

**MR. KOSSAK:** No further questions, Your Honor.

**THE COURT:** Thank you, counsel.

Any further questions?

**MS. SPEES:** No, Your Honor.

1           **THE COURT:** Thank you, Doctor. I appreciate it.

2           **THE WITNESS:** Thank you, Your Honor.

3           **THE COURT:** Thank you.

4           Does the plaintiff have any more witnesses?

5           **MS. SPEES:** We do not, Your Honor.

6           **THE COURT:** You do not, okay.

7           Does the government have any witnesses?

8           **MS. LIN:** No, we don't, Your Honor.

9           **THE COURT:** All right. So plaintiff rests?

10          **MS. SPEES:** (Nods head.)

11          **THE COURT:** Yes?

12          **MS. SPEES:** Yes, Your Honor.

13          **THE COURT:** And the government -- the defendant  
14          rests?

15          **MS. LIN:** Yes, subject to --

16          **THE COURT:** Subject to argument, yes.

17           Okay. So let me have counsel -- lead counsel come up, and  
18           I'd like to hear -- and I will give you the opportunity, I  
19           promise.

20           But I'll start from plaintiffs' counsel. And without  
21           necessarily repeating, I'd like you to sort of wrap it up and  
22           reflect on what we've heard, and in light of what we heard,  
23           you know, what you think the Court can do and should do.

24          **MS. SPEES:** Yes. Thank you, Your Honor.

25           Pam Spees, again, for the plaintiffs.

1 Well, after what we've heard, it's -- there's been some  
2 harrowing, horrific testimony from the plaintiffs. And I  
3 guess it's -- it's my job to speak now about the factors and  
4 the frameworks for preliminary injunctions in the Ninth  
5 Circuit and to talk about things like sliding scales and the  
6 balance of equities.

7 But hearing what we've heard and knowing that just since  
8 we've been here today, one of the plaintiffs had lost  
9 additional family members. And that when we filed this case  
10 in mid-November, the death count was at 11,000. And as the  
11 Court acknowledged today, it's well over 25,000.

12 2.2 million people are at risk of starvation. I would say  
13 that this -- that what's happening breaks the scales. The  
14 U.N. Secretary General has said the same thing. He said just  
15 this week that the entire population of Gaza is enduring  
16 destruction at a scale and speed without parallel in recent  
17 history.

18 All of these horrific records are being broken. There've  
19 been more journalists killed in just the first four-week  
20 period than in any conflict in the last three decades. And  
21 those are the storytellers, the people who are making the  
22 record of what's going on.

23 UN aid workers, more killed in the first month than in any  
24 comparable period in the history of the United Nations.

25 I will just say that the numbers are staggering for an

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1 enclave like Gaza, and yet if proportionate to what that would  
2 feel like in the United States proportionally, it's all of  
3 Oakland, it's all of San Francisco, it's all of Berkeley,  
4 Sacramento, and San Jose with room left to spare, gone. And  
5 many, many, many scores more people facing the threat of  
6 starvation and famine, catastrophic famine.

7 And so when we talk about the sliding scale for  
8 preliminary injunctions and how one factor slides that scale,  
9 it's difficult to even analogize the cases that we have to  
10 cite to because they don't comprehend harm -- irreparable harm  
11 of this magnitude and scale.

12 But even so, when we talk about the balance of equities,  
13 and when they -- when they do point so sharply in the  
14 movants' -- movants' favor, the plaintiffs only need to show  
15 that there are serious questions going to the merits, the  
16 merits being that a genocide is unfolding and that there's a  
17 duty to prevent and the U.S. is failing in that, and in fact  
18 is enabling that genocide.

19 We would submit that we've shown that there are far more  
20 than serious questions, that there's a likelihood of  
21 prevailing on these merits ultimately.

22 As to the defendants, again when we filed, the numbers  
23 were in the -- were around 11,000. And there were already  
24 warnings, as Dr. Trachtenberg testified and as they submitted  
25 in their declaration and as is noted in the filings,

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1 800 scholars joined them in raising the alarm, sounding the  
2 alarm that what was happening was a genocide. U.N. experts  
3 sounded that alarm.

4 And then today, the International Court of Justice just  
5 came in with its ruling which is almost unprecedented in terms  
6 of what it's recognizing as the harm that's happening now and  
7 the need to require preventative measures.

8 So that's their version of a preliminary injunction, Your  
9 Honor.

10 And it shows that there are judicially manageable  
11 standards that judges and courts have roles to play in  
12 enforcing and making real this duty that all of us in this  
13 world have to preventing a genocide.

14 And the government's only response is to say to this Court  
15 that it can't even engage with the question, that it should be  
16 allowed to continue because this touches on matters of foreign  
17 policy.

18 We're talking about clear allegations of illegality here  
19 of the most serious kind. That is not what the political  
20 question doctrine was for. That is not what separation of  
21 powers is for. Mr. Herzallah reminds us of what -- how  
22 important that is. And what separation of powers is not, is  
23 not unequal branches of government. They are coequal branches  
24 of government. The gov -- the administration wants to turn  
25 that on its head and have a free pass to keep going even in

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1 the face of all of this recognition that what's happening is a  
2 genocide.

3 The government has said that these defendants can't be  
4 held responsible because Israel is an independent actor making  
5 unfettered decisions. Even Israeli officials acknowledge that  
6 that is not true. We have a quote from Minister of Defense  
7 Yoav Gallant where he is saying that it was the U.S. pressure  
8 that made them relent and let in a trickle of aid at a certain  
9 point. Not enough to address, by any measure, the  
10 humanitarian situation.

11 And what that says is that, A, the Israeli officials were  
12 intending to starve that population; and, B, the U.S. has a  
13 role to play and is playing a role in influencing these  
14 officials, in addition to the enormous, enormous amount of  
15 weapons and munitions that we are funneling. Because there  
16 were warnings all along the way, and the U.S. responses have  
17 been, and to this point still are, that they are not placing  
18 any conditions on the use of those weapons.

19 They are not drawing any red lines, and as  
20 Dr. Trachtenberg said, rushing still more, bypassing Congress,  
21 to make those weapons available to a military that they know  
22 is using them. And even -- even President Biden has said it,  
23 they are using them indiscriminately. And I would suggest  
24 that that's a generous term.

25 Your Honor, the plaintiffs have come to you under these

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1 stark daunting circumstances. They've come to this Court to  
2 ask it to do what courts do, which is to apply the law to  
3 these facts and make a determination.

4 We ask that the Court consider a declaratory judgment as  
5 set out in the briefing. And we think it is completely within  
6 the Court's authority to enjoin the government from continuing  
7 to send the weapons that have already been used repeatedly  
8 over and over again. We -- just last -- it was a month ago we  
9 heard that there were 20,000 bombs dropped on the small  
10 enclave of Gaza and that all of them had come from the  
11 United States.

12 And the government can confirm that. The government can  
13 share information about what is going, what is defensive, what  
14 is being used. And the Court can fashion a remedy that is --  
15 that will indeed have an impact on the behavior of Israeli  
16 military officials and civilian officials.

17 And with that, Your Honor, we -- yeah, we request the  
18 Court do so. Thank you.

19 **THE COURT:** All right. Counsel?

20 **MS. LIN:** Your Honor, I just want to first reiterate  
21 what the Secretary of State has said, which is that we are in  
22 the midst of a human tragedy in the Middle East for  
23 Palestinians and Israelis alike. And we are seeing every day  
24 in Gaza the gut-wrenching events that are unfolding.

25 And we all want to see that the suffering of people who

1 are caught in the middle to end as quickly as possible. And  
2 that is why the executive branch is engaging in diplomacy  
3 relentlessly every single day.

4 But this Court is not the proper forum to provide redress  
5 for the plaintiffs' grievances. This Court is asked to sit in  
6 judgment of a foreign government, the State of Israel, to  
7 determine whether Israel has transgressed international  
8 limits, limits imposed by international law, with the  
9 assistance of the United States.

10 This case, as Your Honor noted earlier, is a -- falls  
11 within the quintessential political question doctrine. And so  
12 the Court is -- doesn't need to even engage in the preliminary  
13 injunction factors because if the Court grants the  
14 government's motion to dismiss because this case is simply not  
15 justiciable under the political question doctrine, then  
16 there's no need to determine the PI factors.

17 But even if the Court were to go further, the standard is  
18 quite clear that if a plaintiff fails to show a likelihood of  
19 success in this case whether the case is justiciable under the  
20 political question doctrine and other defenses we raise, then  
21 the Court need not consider the remaining factors. And that  
22 is *Garcia vs. Google* from the Ninth Circuit en banc.

23 So again that leads to the same place that this case  
24 simply cannot proceed under their well-established doctrines.

25 **THE COURT:** All right. Would you like to rebut

1 counsel, or do you have anything further to say?

2 **MS. SPEES:** Your Honor, if the Court accepts this  
3 position, all of this framework, the Genocide Convention,  
4 everything that's been put into place to prevent genocides  
5 means nothing when it's U.S. officials who are enabling it, if  
6 it can't be stopped by a court in the United States.

7 **THE COURT:** Thank you.

8 So the Court is going to take this matter under advisement  
9 and -- and make a decision in its -- on a timely basis.

10 I want to say as we close that --

11 **MS. LIN:** I'm so sorry, Your Honor.

12 Would I be allowed an opportunity to address the points  
13 that I intended to raise earlier?

14 **THE COURT:** All right. I thought you were doing  
15 that, but go ahead.

16 **MS. LIN:** No. I was doing the concluding statement.  
17 I'm sorry, Your Honor --

18 **THE COURT:** Go ahead. Briefly, please.

19 **MS. LIN:** -- if I misunderstood you.

20 So just try to be very brief. There are three points that  
21 we didn't have an opportunity to address in -- because they  
22 were raised in the plaintiffs' surreply.

23 And the first one is we submitted a case yesterday to this  
24 Court, the United States versus Jewel case, which is *Jewel vs.*  
25 *NSA*, which is actually Your Honor's decision.

1 And we did that because we had talked about relying on the  
2 Supreme Court's *Patchett* framework to determine whether the  
3 FTCA bars relief here. And the plaintiffs came back and said  
4 no, if the *Patchett* case is a quiet title case, it didn't talk  
5 about the FTCA so it's not relevant.

6 So we submitted the *Jewel vs. NSA* case to show that this  
7 Court itself applied the *Patchett* framework to determine that  
8 even outside of the quiet title case context, the *Patchett*  
9 framework still applies.

10 And Your Honor may remember the case was about a suit for  
11 injunctive relief concerning the federal government's alleged  
12 warrantless communications surveillance of U.S. citizens.  
13 And -- and this Court held that the APA's waiver of sovereign  
14 immunity for injunctive relief didn't apply. And that was  
15 because Congress had waived sovereign immunity in -- for money  
16 damages in the Patriots Act.

17 And so that act provided money damages for violations of  
18 certain provisions of the Foreign Intelligence Surveillance  
19 Act. So the limited waiver in the Patriots Act limited the  
20 relief under the APA.

21 So we think the same concept applies here.

22 **THE COURT:** Would you like to respond to that?

23 **MS. SPEES:** Just that it's not applicable at all,  
24 Your Honor.

25 **THE COURT:** All right. All right. So as I said

1 before, before we close, a couple of things.

2 Number 1, because of the justifiable public concern in  
3 this case, we have live-streamed this. And as soon as it's  
4 technologically possible, given we're dealing with the United  
5 States government, we will get this up on the website.

6 And by the way, the website is on the uscourts.gov website  
7 under "Cameras in Court," and it will be up unredacted,  
8 uncensored except for the beginning when there's -- before  
9 there was any discussion before the proceedings started. So  
10 that's going to be available to everybody.

11 And in fact, I wanted to mention, because there's been  
12 some concern expressed even while we're here in court from  
13 outside that -- about the number of licenses available. We  
14 had 500 licenses. We got another 500. We had a thousand  
15 licenses. And that's all we had.

16 So we have actually exhausted. So to those people outside  
17 who justifiably wanted to listen to these proceedings in real  
18 time, we tried. And that was the extent of our -- our  
19 technological ability to do it. So but that's going to be  
20 remedied as soon as this is posted.

21 So the last thing I want to say is the testimony that the  
22 Court heard was truly horrific, gut-wrenching. There really  
23 isn't any -- there aren't any words to describe what's been  
24 testified to, what's going on.

25 And there really isn't -- the government doesn't

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 565-7228**

1 dispute -- seriously dispute factually what's going on in Gaza  
2 to the -- to the people, to the population, people of Gaza,  
3 Palestinians.

4 And on this record, there is -- although there were  
5 objections on certain grounds to the testimony of  
6 Dr. Trachtenberg, there is now on the record uncontradicted  
7 evidence that at least in the opinion of scholars, one very  
8 highly regarded scholar, not from a legal standpoint, from a  
9 sociological and historical construct, they believe that there  
10 is a genocide in progress.

11 And I have to say that in 20-some-odd years on the bench,  
12 this is probably the most difficult case factually that this  
13 Court has ever had, and one of the most difficult cases  
14 legally that this Court has ever had. Because the Court needs  
15 to decide, as I said at the beginning and as counsel has  
16 argued, what are the limits of the Court's power within our  
17 constitutional framework.

18 And so I -- I have listened to, and I want to say to those  
19 witnesses who testified both directly in person and by Zoom,  
20 that you have been seen, you have been heard by this Court as  
21 a representative of the -- of the coequal branch of  
22 government. I'm going to consider your testimony, I'm going  
23 to consider the law, and apply the facts to the law and make  
24 the best decision I can consistent with my constitutional  
25 obligations.

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1 And I want to thank counsel on both sides for really  
2 helping the Court, giving me the information and the arguments  
3 to help the Court make a very, very difficult decision. One  
4 of the most difficult -- the most difficult judicial decisions  
5 that I have ever made. And I'm going to take it extremely  
6 seriously.

7 So thank you very much, everybody, for your attention and  
8 for this -- presenting these very important facts in this  
9 extremely tragic case. Thank you.

10 **MS. SPEES:** Thank you, Your Honor.

11 **MR. KOSSAK:** Thank you, Your Honor.

12 (Proceedings were concluded at 1:41 P.M.)

13 --o0o--

14 **CERTIFICATE OF REPORTER**

15  
16 I certify that the foregoing is a correct transcript  
17 from the record of proceedings in the above-entitled matter.  
18 I further certify that I am neither counsel for, related to,  
19 nor employed by any of the parties to the action in which this  
20 hearing was taken, and further that I am not financially nor  
21 otherwise interested in the outcome of the action.

22  
23 

24 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

25 Tuesday, February 20, 2024

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 565-7228**



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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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,

v.

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

Defendants.

Case No.: 23-cv-5829

**ERRATA TO TRANSCRIPT**

**2-ER-180**

1 Upon review of the Court Reporter’s transcript of the proceedings held on January 26, 2024,  
 2 filed February 27, 2024, ECF No. 100, Plaintiffs have identified the following errors in the transcript  
 3 and submit the following table with corrections:  
 4

	<b>Original transcript</b>	<b>Correction</b>	<b>Page, line</b>
5			
6	1 since	fence	62, 22
7	2 Nassar	Nasser	63, 1; 63, 8
8	3 Hammad	Ahmed	63, 17
9	4 IRF	IOF	63, 24
10	5 broad	Hebrew	64, 11
11	6 my sister-in-law and brother-in-law	my sister’s mother-in-law	66, 3-4
12	7 guard	car	66, 12
13	8 with a checkpoint	to check in	67, 7
14	9 station	session	67, 10
15	10 any	my	77, 14
16	11 underground	on the ground	78, 23
17	12 hadjes or hadjza	‘ajiz or ‘ajza	90, 5-6
18	13 Shamas	Pokharel	91, 19
19	14 Noord	Noor	94, 9
20	15 Vira Sivou	Bir Elsabi’	104, 19
21	16 Warada	Warda	105, 4; 105, 4
22	17 Mahar	Maher	105, 17; 105, 20; 105, 21; 105, 24; 106, 4; 106, 7; 106, 14; 106, 18; 106, 20; 106, 25; 107, 3; 107, 7; 107, 13; 107, 15; 108, 8
23	18 Abdulah Haman	Abdul Rahman	106, 17; 106, 20
24	19 Amad	Imad	107, 14; 108, 8
25	20 confront	comfort	110, 7
26	21 Noonia	Dunya	132, 15; 132, 15

1 Dated: March 6, 2024

Respectfully submitted,

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United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEFENSE FOR CHILDREN  
INTERNATIONAL-PALESTINE, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, et al.,

Defendants.

Case No. [23-cv-05829-JSW](#)

**ORDER RE QUESTIONS**

Re: Dkt. Nos. 19, 38

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE OF THE FOLLOWING TENTATIVE RULING AND QUESTIONS FOR THE HEARING SCHEDULED ON JANUARY 26, 2024, AT 9:00 a.m. The Court does not wish to hear the parties reargue matters addressed in their briefs, and the parties shall not file written responses to this Notice of Questions. If the parties intend to rely on legal authorities not cited in their briefs, they are ORDERED to notify the Court and all opposing parties of these authorities reasonably in advance of the hearing and to make copies of those authorities available at the hearing. If the

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parties submit such additional authorities, they are ORDERED to submit the citations, with pin cites, to the authorities. They shall not submit additional argument or briefing on the authorities. Cf. N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority.

The Court will allow the parties 45 minutes of oral argument, but it will waive that time restriction if an associate or of counsel attorney working on this case is permitted to address some or all of the Court’s questions. Following oral argument by counsel, the Court will also allow two hours for live testimony for Plaintiffs and/or their witnesses.

1. Under what authority can the Court, in effect, exercise its judgment over and reverse United States foreign policy decisions and assess whether Israel has transgressed limits imposed by international law? How is this not a quintessential political question best left to the coordinate branches of government?

2. If the Court determines that Plaintiffs’ claims present nonjusticiable political questions best left to the executive branch, must the Court adjudicate whether Plaintiffs have stated cognizable causes of action for injunctive relief under the Alien Tort Statute and whether the claim is barred by the Federal Tort Claims Act or whether the government has waived sovereign immunity?

3. The United States Constitution, Article VI, Clause 2 provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

If the Genocide Convention is explicitly binding on this Court and the supreme law of the land, can the Court find support for exercising jurisdiction here?

4. Assuming, for the sake of argument, that the actions taken by the Israeli government constitute genocide under international law and the actions taken by the United States government constitute complicity, what mechanism do Defendants contend would be the appropriate forum to enforce binding international law forbidding complicity with genocide? What is the proper procedural mechanism for enforcement of international law as embodied in the Genocide Convention?

5. Can Plaintiffs join the current suit before the International Court of Justice (“ICJ”) regarding the participation or support offered by the United States government? What is the status

1 of that proceeding? Can Plaintiffs file on their own to proceed before the ICJ?

2 6. Do the parties have anything else they wish to address?

3 **IT IS SO ORDERED.**

4 Dated: January 24, 2024

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7 JEFFREY S. WHITE  
8 United States District Judge

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United States District Court  
Northern District of California

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12 Attorneys for Plaintiffs DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE, et al.

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 DEFENSE FOR CHILDREN  
16 INTERNATIONAL – PALESTINE; AL-  
17 HAQ; AHMED ABU ARTEMA;  
18 MOHAMMED AHMED ABU ROKBEH;  
19 MOHAMMAD HERZALLAH; A.N.;  
20 LAILA ELHADDAD; WAEIL ELBHASSI;  
21 BASIM ELKARRA; and DR. OMAR EL-  
22 NAJJAR

23 Plaintiffs,

24 v.

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

Defendants.

Case No.: 23-cv-05829

**SECOND DECLARATION OF DR  
SUSAN POWER, FOR AL-HAQ IN  
SUPPORT OF PLAINTIFFS’ MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White  
United States District Judge

1 I, Susan Power, under penalty of perjury declare as follows:

2 1. My name is Susan Power and I am the Head of Legal Research and Advocacy at Al-  
3 Haq. I have worked at Al-Haq for 10 years. This declaration is an update of the statements I submitted  
4 to this Court on November 16, 2023.

5 2. Al-Haq is an independent Palestinian non-governmental human rights organization  
6 based in Ramallah, West Bank. The United States' support of Israel's current attack on Gaza continues  
7 to disrupt Al-Haq's operation.

8 3. Due to Israel's continued bombing of the Gaza Strip, our field researchers continue to  
9 work on preliminary reports of the unfolding hostilities on the ground, but are not able to get the  
10 required onsite documentation.

11 4. The two directors of our partner organizations in Gaza, Al Mezan Center for Human  
12 Rights and the Palestinian Center for Human Rights (PCHR), are now operating out of Cairo,  
13 Egypt.

14 5. Members and staff of Al-Haq in Gaza have been subjected to increased indiscriminate  
15 bombardment and displacement.

16 6. Our legal researcher and advocacy officer Ahmed Abofoul, lost more than 60  
17 members of his extended family since October 7, who were indiscriminately bombed and killed  
18 in airstrikes. On 18 October five of his cousins were killed, Dr. Raafat Abofoul and his wife, his  
19 brother and his wife, and his son whose wife is in critical condition as she lost her limbs. On 23  
20 October, his cousin's four-year-old child was injured in an airstrike and died the following day, in  
21 another airstrike. On 23 November, three of his cousins, Rami Abofoul, his wife and daughter (a  
22 child), were killed in in the Abu Iskandar area, Sheykh Ridwan neighbourhood, Gaza City.  
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1 Another daughter was in a critical condition after she lost her leg. A further 13 members of his  
2 family's in-laws (the Abu Obeid family) were killed in another bomb strike.

3  
4 7. On 24 November, Ahmed's eldest uncle Fathi Abofoul was killed in the Sheykh  
5 Ridwan neighborhood, Gaza City. Fathi was in his house when shrapnel from a nearby bombing  
6 entered and hit him minutes before the truce started for the "humanitarian pause". On 13 December at  
7 least 50 members of Ahmed's extended family sheltering in a multi-story house in Beit Lahia, were  
8 killed, although the exact number remains unknown because some remain under the rubble. The  
9 targeted house was that of the Mokhtar, Abdallah Abofoul (elder of the family). Several families were  
10 sheltering in his multi-story family home in the Beit Lahia area, north of Gaza, close to Kamal Adwan  
11 Hospital.

12  
13 8. Al-Haq continues to struggle to maintain contact with its two field researchers based in  
14 the Gaza Strip, due to the latest communication blackout we had not established communication in the  
15 five days prior to 21 December. In the south in Rafah, the sister of our field researcher Tareq Zaqqoot,  
16 lost her three children who were killed in a bombing attack on their home, leaving her in a critical  
17 condition, requiring three days of surgeries. Tareq and his family have since been displaced from his  
18 home in the south of Gaza, after neighbors received a phone call from the Israeli forces to evacuate.  
19 He moved to his mother in law's house in Khan Younis and is currently in Nusairat. His father, who  
20 is a cancer patient was not able to leave and remained with his brother. On 22 December the Israeli  
21 army issued a map highlighting blocks for bombardment, including a block dangerously close to where  
22 Tareq is currently located. He is now preparing to leave with his family to Rafah.

23  
24 9. In Gaza city, the home of our field researcher, Mohammad Abu Rahmeh was bombed  
25 and the building housing a number of apartments was completely destroyed. He and his family fled to  
26 his wife's sisters house, which was subsequently bombed. In October our organization lost contact  
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1 with Mohammad for over two weeks. When we regained contact, he and his family had fled to the  
2 south, to Rahaf. Due to a communications blackout, it is difficult to retain regular contact.

3 10. Because of the continuous bombardments it is impossible for our field researchers to  
4 conduct field investigations. At the moment, the organizations are collecting preliminary data, for  
5 follow up when hostilities subside. It is the first time in the 44-year history of Al-Haq, that we have  
6 been unable to conduct field investigations due to the intensity and scale of the hostilities.  
7

8 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge  
9 and belief.

10  
11 

12 \_\_\_\_\_  
13 Susan Power

Executed this 22nd day of December, 2023

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8 [REDACTED]  
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11 [REDACTED]

12 Attorneys for Plaintiffs DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE, et al.

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 DEFENSE FOR CHILDREN  
16 INTERNATIONAL – PALESTINE; AL-  
17 HAQ; AHMED ABU ARTEMA;  
18 MOHAMMED AHMED ABU ROKBEH;  
19 MOHAMMAD HERZALLAH; A.N.;  
20 LAILA ELHADDAD; WAEIL ELBHASSI;  
21 BASIM ELKARRA; and DR. OMAR EL-  
22 NAJJAR

23 Plaintiffs,

24 v.

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

Defendants.

Case No.: 23-cv-05829

**DECLARATION OF A.N. IN SUPPORT  
OF PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White  
United States District Judge

1  
2 I, A.N., under penalty of perjury, declare as follows:

- 3 1. I am one of the Plaintiffs in *Defense for Children International-Palestine v. Biden*.
- 4 2. Since the filing of the complaint on November 16, things have only gotten worse. Food,  
5 clean water, and medicine is even harder to come by. I am very worried about starvation and  
6 disease spreading.
- 7 3. Just this morning, my oldest sister lives in Nusairat refugee camp. The Israeli military just  
8 dropped leaflets on her area instructing them to leave. We are all in a panic. She has 8  
9 children, she is looking for a way to be evacuated but there is nobody who can help her.
- 10 4. My other sister had to walk a really long distance from the area of her home under active  
11 shelling from the air, land, and sea to shelter at my family's house and protect her five young  
12 children from death and starvation.
- 13 5. My brother had to walk barefoot for more than 3 miles on Al-Rashid Street (along the sea) to  
14 look for scraps of food for our family. The family house hosts more than 150 near and distant  
15 relatives. Everyone I speak with from our neighborhood tells me that the intention and action  
16 is to destroy not our buildings but delete us from the civil registry.
- 17 6. For the last 70 days, my mother has had to rely on boiled seawater to survive; my dad has to  
18 rely on whatever my siblings and our neighbors can find to help him survive the ongoing  
19 shelling, the lack of electricity, and the lack of proper medication and sanitation.
- 20 7. My whole family has to wait at least a month to shower, which is a recipe for more disease to  
21 spread in my family and the entire neighborhood.
- 22 8. The area my family lives in has come under severe shelling.
- 23 9. On December 18, 2023, while watching Al-Jazeera news, I saw images of my friend and  
24 neighbors from Deir al Balah refugee camp, where I grew up and where my family home is,  
25 carrying a dead body that I couldn't recognize because it had been maimed beyond  
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1 recognition. I was thrown into a panic. I tried desperately to reach out to him but to no avail.

2 My neighborhood was being intensively bombarded all day.

3 10. The scenes I saw were 400 feet away from my family home. I spent the next 19 hours trying  
4 to find ways to connect to them, but nobody was able to tell me anything. I cannot describe  
5 the anguish of not knowing if my family was alive or dead. It wasn't until the next day that I  
6 heard from my niece that they were alive.

7  
8 11. I heard more than 10 people were killed in that strike.

9 12. On December 7th, 2023, my sister-in-law lost her aunt, her cousin, and 10 of her cousin's  
10 children in the blink of an eye. The Israeli military had shelled an entire family without a  
11 warning or notice, totally obliterated residential complexes, and deliberately targeted the  
12 vicinity of the Shuhada Al-Aqsa hospital, which is the central area's hospital, terrifying and  
13 terrorizing the many evacuees sheltering around it.

14  
15 13. The death count is unfathomable to me. To be no longer in the dozens, nor the hundreds,  
16 even the thousands, and now the tens of thousands is something that I don't have the capacity  
17 to process. I really can't even count the dead, people under the rubble, or picture children  
18 dying from starvation.

19 14. Besides my wife and children, my entire family lives in the Gaza Strip. My mother, who is  
20 struggling with kidney stones and hypertension, has been banned from traveling for medical  
21 treatment to the West Bank or any Israeli hospital to seek medical treatment. My father, who  
22 has heart complications and chronic obstructive pulmonary disease (COPD), has been denied  
23 the ability to travel for medical treatment since Israel imposed a crippling siege on Gaza in  
24 2006. I have done what I can from the United States to support my family back home in  
25 Gaza, and I have missed them terribly.  
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1 15. I feel like I am just waiting in line for my turn to receive the phone call about the fate of my  
2 loved ones. Sometimes I think it would be easier to be in Gaza now rather than to be thirsty  
3 for news if they are alive or dead.

4 16. I also receive news from other people that I know, in my community, or people that I work  
5 with, who have died. A doctor that I know well lost his daughter and granddaughter.

6 17. I personally lived through a 22-day military offensive in 2008-2009 before I left Gaza to  
7 come to the United States. My wife and children experienced the 2008-2009, 2012, and 2014  
8 Israeli offensives. I know what it is like to live under constant bombardment, and I have been  
9 reliving those days every day for the past 70 days.

10 18. In the U.S., I am experiencing an immense and unfathomable fear and uncertainty for my loved  
11 ones, checking our social media feeds every 30 seconds, in a frenzied way, to witness new  
12 deaths, amputees, journalists, doctors, nurses, and every living and unliving being. I feel like I  
13 am experiencing an emotional genocide in my life as I witness and bear witness to the most  
14 highly broadcast genocide in history.

15 19. I scroll through pictures of child after child that look just like mine. It is all surreal, and  
16 numbing. I don't have the words to express it. Depressed and anxious don't even begin to  
17 capture my state of mind. This moment is indescribable. I don't sleep at night.

18 20. It aches my heart that America, where I studied in its universities in conflict resolution,  
19 peacebuilding, and transformative social change, is throwing all its capabilities towards so  
20 vehemently supporting the mass killing and starvation of the entire population of the smallest  
21 tiny, densely populated enclave of land.

22 21. The dehumanization, demonization, of my people that I experience sitting here in the United  
23 States is mind-boggling to me. I am not exaggerating when I say that we as a people are being  
24 subjected to a form of psychological torture.

1 22. When I came to the U.S., I knew it was a haven for critical thinking and a place that valued  
2 human rights and dignity. What should I tell my now American children about the country we  
3 live in, and how everything around them is telling them their lives don't matter?

4 23. The U.S. government is signaling to us that our lives are less important than Israelis' lives. I  
5 feel like I am perpetually at the bottom of a hierarchy. I watch on the news pundits saying that  
6 we should be killed in the thousands, as if we are subhuman, and nobody blinks.

7 24. I worry about how I have internalized this status of being less-than, and begin to believe that  
8 our lives don't matter because that is what the world is telling us, that is what the U.S.  
9 Government is telling us.

10 25. I declare under penalty of perjury that the foregoing is true and correct to the best of my  
11 knowledge and belief. Executed this 22nd day of December, 2023.  
12

13  
14 A. N.

15 -----  
16 A.N.

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12 Attorneys for Plaintiffs DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE, et al.

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 DEFENSE FOR CHILDREN  
16 INTERNATIONAL – PALESTINE; AL-  
17 HAQ; AHMED ABU ARTEMA;  
18 MOHAMMED AHMED ABU ROKBEH;  
19 MOHAMMAD HERZALLAH; A.N.;  
20 LAILA ELHADDAD; WAEIL ELBHASSI;  
21 BASIM ELKARRA; and DR. OMAR EL-  
22 NAJJAR

23 Plaintiffs,

24 v.

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

Defendants.

Case No.: 23-cv-05829

**DECLARATION OF BASIM ELKARRA  
IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White  
United States District Judge



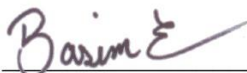
1  
2 I, Basim Elkarra, declare as follows:

- 3 1. I am one of the Plaintiffs in *Defense for Children International-Palestine v. Biden*
- 4 2. The area that my entire extended family lived in - Bani Sohaila, Khuzaa' and Abasan - have  
5 been almost completely destroyed. All of my relatives have been displaced. We do not know  
6 if their houses still stand. Based on the news reports of the near total demolition of those  
7 areas, it is unlikely. All the houses that I used to visit in Khuzaa and Abasan where we would  
8 stay when we would visit are likely destroyed.
- 9 3. I believe that we have lost over 70 relatives. It is difficult to know the numbers anymore, as  
10 there are several relatives that we haven't heard from in some time. It is unfathomable that  
11 we don't know who from our family is alive or dead.
- 12 4. Those who are alive are displaced and hungry. They do not have basic food and water. Some  
13 are staying in UN Schools in Khan Younis and Rafah, and others are staying in tents in Khan  
14 Younis in Rafah. We have lost touch with many of them.
- 15 5. I am experiencing this trauma of feeling guilty, as an American, that my taxpayer dollars are  
16 paying for the bombs being dropped on my family. I'm feeling tremendous guilt and shame. I  
17 spend sleepless nights wondering what can I do to stop the genocide.
- 18 6. Not knowing who is alive and who is dead is causing a lot of anxiety. But so is the idea that  
19 starvation is being used as a weapon, and knowing that it has been so deliberately calculated.  
20 The Israeli defense minister said that he was going to impose a blockade on food and water  
21 against my people, and now my family, and the people of Gaza, are starving.
- 22 7. My children keep asking me questions. How am I supposed to explain a genocide against  
23 their people to them? How am I supposed to explain to them what is happening to their  
24 relatives, to their cousins? I've started to try to shield them because we don't want them to be  
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1           traumatized. But at the same time they need to know. So we try to strike a balance. They will  
2           say to each other don't waste your food, your cousins have no food or no water to drink.  
3  
4           8. Despite over 20,000 killed and thousands under the rubble, Secretary Blinken and other U.S.  
5           officials make comments that seem to only value Israeli lives and Israeli safety. This means  
6           that Palestinian lives don't mean anything to the United States. It's very dehumanizing. This  
7           is how genocides have historically been justified.  
8

9           I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge  
10          and belief.

11          Executed this 22nd day of December, 2023.

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15          Basim Elkarra  
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12 Attorneys for Plaintiffs DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE, et al.

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 DEFENSE FOR CHILDREN  
16 INTERNATIONAL – PALESTINE; AL-  
17 HAQ; AHMED ABU ARTEMA;  
18 MOHAMMED AHMED ABU ROKBEH;  
19 MOHAMMAD HERZALLAH; A.N.;  
20 LAILA ELHADDAD; WAEIL ELBHASSI;  
21 BASIM ELKARRA; and DR. OMAR EL-  
22 NAJJAR

23 Plaintiffs,

24 v.

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

Defendants.

Case No.: 23-cv-05829

**DECLARATION OF WAEIL ELBHASSI  
IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White  
United States District Judge

1 I, Waeil Elbhassi, declare as follows:  
2

3 1. I am one of the Plaintiffs in *Defense for Children International-Palestine v. Biden*.

4 2. Since the end of the “temporary ceasefire,” Khan Younis, where my extended family live,  
5 has been especially targeted since the resumption of the bombing (after the pause).

6 3. Around Dec 9th, my two cousins Shadi and Ahmad (children of my aunt) in Khan Younis  
7 sustained light injuries in a bombing that directly hit a neighbor’s house (2 houses away). Two  
8 members of the neighbors’ family were killed, a young man and woman. Shadi was hit near the  
9 chest with shrapnel that luckily didn’t penetrate his flesh and Ahmad sustained light burns. Both  
10 Shadi and Ahmad were standing outside their house at the time.  
11

12 4. That same night, my aunt (mother of Shadi) told us that what they believed to be white  
13 phosphorus bombs were dropped near their home. They suffered respiratory after-effects for the next  
14 couple of days. Their next door neighbors had to be hospitalized due to difficulty breathing.

15 5. A week later, three members of another neighboring family were killed with a drone while on  
16 their roof in another strike.  
17

18 6. My aunt’s house has been sheltering 64 people, half of which are close friends (and their  
19 families) who had fled Gaza City early in this war. This includes Shadi, his wife and 5 children,  
20 other sons, daughters, grandchildren, in-laws and extended family. Some of those who had initially  
21 come to shelter with them have since moved to Rafah, which is considered safer than Khan Younis,  
22 even though Israel has killed many civilians there, too.

23 7. My aunt and her husband have an option to go to Dubai since they both have a residency  
24 there through their son. But they won’t leave and leave behind many family members, children,  
25 grandchildren and other relatives. This is an especially difficult dilemma for many Gazans who may  
26 be able to leave but can’t leave loved ones behind. They are talking to friends in Rafah to try to rent  
27 a temporary residence there.  
28

1 8. I'm very worried for them as they are elderly.

2 9. I'm constantly in touch with my cousin Mazouza in Deir El Balah, who lost her son  
3 Samer. Mazouza has still not been able to recover her son's body, which is still buried under the  
4 rubble, like thousands of other families.

5 10. Mazouza describes scenes of refugees overflowing in the shelters, which are the schools in  
6 Khan Younis. They have little food. Her family used money that was raised by her son in the US and  
7 fed people. She shared photos.

8 10. My family reports that things are getting worse for everyone. They grow more worried as  
9 statistically, the more this continues the higher the chances are that they will be bombed.

10 11. My whole family is very worried. My family and I watch the news all day.

11 12. It is evident that the Israeli assault on Gaza has been intensifying given the increase of the  
12 daily death rate. With this in mind, we fear the worst everytime Deir El Balah, or Khan Younis  
13 (where most of my family are) are mentioned in the news. We feel that bad news about our loved  
14 ones is imminent.

15 13. For me, as a U.S. citizen and resident, like all Palestinian Americans, especially from, or with  
16 family in Gaza, the total lack of action by the US government to stop this genocide has been  
17 infuriating, to say the least. While Israel continues to carry out its assault on Gaza with increasing  
18 impunity against rising global popular and formal opposition, watching the US continue to arm and  
19 fund Israel, sending them the very weapons that might any moment kill my family, and use its Veto  
20 power to block a ceasefire, has been enraging. I feel that me and my community are unseen and  
21 unrepresented, that our lives simply don't matter very much.

22 14. In general, I feel a sense of helplessness, frustration, and rage, that such crimes against  
23 humanity are taking place with either no action, or complicity by the United States government.  
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1 15. It has been painful and traumatizing to watch the mass killing, destruction, and what's  
2 clearly an operation of uprooting of our people in Gaza and Palestine in general.

3 16. I'm the son of parents who both lived through the Nakba (catastrophe), the uprooting of the  
4 Palestinian people from their land, and the destruction of their country in 1948. We as a people carry  
5 the generational trauma of that event. While this current war and the immediate loss it is causing are  
6 traumatizing on their own, watching another uprooting/Nakba of our people in real time is  
7 horrifying. I have not been able to help but be consumed by this additional pain and worry on a daily  
8 basis. It has been difficult to focus on work and daily tasks in general and it has been difficult to  
9 sleep, eat, or enjoy usual social activities, hobbies, etc. The past two months feel like a huge  
10 disruption of life for me and my community, a sense of collective depression and anxiety.

11 17. These are not feelings that I have been able to share at work or in spaces in general other than  
12 with my family and friends. The U.S. government's unconditional support for the killing of my  
13 people, and the biased corporate media coverage of this war that normalizes and justifies our killing,  
14 makes it feel that sharing my experience as a Palestinian is a taboo topic.  
15  
16

17  
18  
19 I declare under penalty of perjury under the laws of the United States of America that the foregoing  
20 is true and correct.

21 Executed this 22nd day of December, 2023.

22 *waeil elbhassi*  
23

24 \_\_\_\_\_  
Waeil Elbhassi  
25  
26  
27  
28

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12 Attorneys for Plaintiffs DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE, et al.

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 DEFENSE FOR CHILDREN  
16 INTERNATIONAL – PALESTINE; AL-  
17 HAQ; AHMED ABU ARTEMA;  
18 MOHAMMED AHMED ABU ROKBEH;  
19 MOHAMMAD HERZALLAH; A.N.;  
20 LAILA ELHADDAD; WAEIL ELBHASSI;  
21 BASIM ELKARRA; and DR. OMAR EL-  
22 NAJJAR

23 Plaintiffs,

24 v.

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

Defendants.

Case No.: 23-cv-05829

**DECLARATION OF LAILA ELHADDAD  
IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White  
United States District Judge

1  
2 I, Laila Elhaddad, under penalty of perjury, declare as follows:

- 3
- 4 1. I am a Plaintiff in *Defense for Children International-Palestine v. Biden*.
- 5 2. Since I filed the complaint, things have gotten far worse for my relatives.
- 6
- 7 3. Those who said they wouldn't leave Gaza City have since been forced to leave: My paternal  
8 uncle and his two sons, my cousins, have had to move to Rafah. They have now been  
9 internally displaced for the fourth time.
- 10
- 11 4. Their home has been partially damaged in an Israeli tank and was no longer livable. They  
12 have moved from place to place, the last place in Gaza City that they left was bombed shortly  
13 thereafter.
- 14
- 15 5. I have two cousins still in Gaza City, Rana and Hiba, and they are now completely cut off.  
16 Their apartment buildings are surrounded by tanks, Hiba has not been able to leave her  
17 building for a long time, as she lives close to the Nasser hospital that has been heavily  
18 targeted. Hiba hasn't been able to go out and find food or find clean water for her family.
- 19
- 20 6. I and my relatives outside of Gaza have lost communication with her. We are only able to  
21 find out that she is still alive through other local contacts who are able to check in on her and  
22 get the word out to us.
- 23
- 24 7. The relatives in Gaza that I can still reach often don't want to speak to me anymore as they  
25 are completely overwhelmed. One cousin has twins that are a mere few weeks old. It is  
26 impossible to find any food or clean water, they're having to walk very long distances to get  
27 these basics. Most of what they cook is without any protein. They can't get medicines for my  
28 uncle, who has a heart condition.



- 1 8. Some of my family on my mother’s side received the order to evacuate their area at the  
2 entrance of Khan Younis, so they went to Mawasi, which is the small area by the beach that  
3 the Israeli military has designated as a safe zone, but it has no infrastructure, no capacity to  
4 hold everyone. As far as we know they are alive, but they are there under very difficult  
5 conditions and had to leave their homes in the middle of Khan Younis.  
6
- 7 9. They are just barely surviving: the most people can hope for is clean water and some food.  
8 Medications have become a luxury that they don’t even look for. All of their children are  
9 traumatized.  
10
- 11 10. As for myself, it has been a very difficult time emotionally.  
12
- 13 11. I have recurring nightmares every night; in them, I go back to Gaza and everything is  
14 completely destroyed. And I keep searching through the rubble trying to find pictures.  
15
- 16 12. Being here in the US at this moment in time as a Palestinian-American, I feel like I’m living  
17 in the twilight zone.  
18
- 19 13. I have been doing a lot of public speaking, and I have done everything in my power, trying to  
20 be calm, to explain over and over again why we don't deserve to be killed. Why our homes  
21 and everything that we hold dear, our places of worship, our parks, our very life in general,  
22 shouldn’t be destroyed. This has been so exhausting, to have to explain, over and over again.  
23
- 24 14. The silence is deafening. I really feel completely invisible.  
25
- 26 15. Some days I wake up and say we have to keep trying and working, and other days I feel like  
27 I’m banging my head against the wall.  
28

1 16. I feel powerless, that there's nothing I can do to stop this right now, and I feel like I'm  
2 contributing to the destruction of Gaza, to the destruction of life and everything beautiful. Of  
3 my own family.  
4

5 17. They are not just destroying property and killing people. They're destroying people -  
6 peoples' lives, livelihoods, memories - Gaza is being rendered unlivable. I just don't see a  
7 future, I don't see a way forward.  
8

9 18. Earlier on during the course of this genocide I had some hope, I kept saying that someone at  
10 some point will do something to stop this, and now I only see apocalyptic scenarios, I only  
11 see death and destruction.  
12

13 19. I feel like we are completely erased. The U.S. is not even trying to pretend that it cares about  
14 Palestinians. What I am seeing is beyond complicity, our officials are being Israeli  
15 spokespeople. That's how I feel when I watch Blinken speak.  
16

17 20. As a Palestinian-American, my life, my peoples' life, matters less, and worse, doesn't matter  
18 at all to my government. I feel they are actively not only helping Israel, but ... targeting me  
19 and my people. It's a huge slap in the face.  
20

21 21. It is hard to articulate this but genuinely, I wake up feeling that the United States is OK with  
22 our genocide. That killing us is an acceptable cost, that the United States is ok with  
23 decimating my people, along with their place, their homes, their livelihoods, everything in  
24 between, in the name of Israeli security. That our lives are dispensable and disposable. They  
25 just don't care about us.  
26  
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1 22. That's the everyday reality right now that I'm coming to terms with. The United States  
2 Government does not care about me as a Palestinian, it does not care about my people or my  
3 family. At all.  
4

5 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge  
6 and belief.  
7

8 Executed this 22nd day of December, 2023.  
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11 Laila Elhaddad  
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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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

Defendants.

Case No.: 23-cv-05829

**SECOND DECLARATION OF OMAR  
AL-NAJJAR IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White  
United States District Judge

1  
2 I, Omar Al-Najjar, under penalty of perjury, declare as follows:

- 3 1. I am one of the Plaintiffs in *Defense for Children International-Palestine v. Biden*.
- 4 2. I have had only sporadic access to the internet, which has limited my ability to communicate  
5 with my lawyers.
- 6
- 7 3. I sent the following information via voice note and text messages to my lawyers on  
8 December 22, 2023 as an update to my previous declaration from November 16, 2023.
- 9

10 **My family's fourth displacement since October 8, 2023**

- 11 4. Since Israel's attacks on Gaza began on October 7, my family has now been displaced  
12 four times and we are currently in Rafah in the southern Gaza Strip.
- 13
- 14 5. On December 1, 2023, due to Israeli military assaults, heavy airstrikes, and leaflets  
15 threatening residents to leave, I, along with four members of my immediate family (mother,  
16 father, brother, sister), fled from Bani Suheila to Khan Younis. My parents also received  
17 phone calls from the Israeli army, which we also received when we first fled our family  
18 home in Khuza'a.
- 19
- 20 6. The school shelters were full. Despite trying everywhere and calling everyone I knew in  
21 Khan Younis, I could not find shelter for my family, and they ended up sheltering in a school  
22 yard for 5 days, from December 1-5, 2023.
- 23
- 24 7. Meanwhile, I was working and living at Nasser Medical Complex in Khan Younis doing  
25 everything I could to help treat the huge numbers of patients. I wanted my parents to be able  
26 to stay near me while I worked there, but unfortunately I wasn't able to find a place for them.
- 27
- 28

1 8. Finally on December 5th, I was able to find shelter for them with a friend in Rafah and we  
2 made the extremely difficult decision to displace our family for the fourth time to move in  
3 with my friend and his family in their home.  
4

5 **Impact on my family of continued Israeli attacks**

6 9. Many people in our extended family have been killed, including at least two adult cousins  
7 and one child, a little girl.  
8  
9 10. One family stayed behind in Bani Suheila, unable to flee like my family did, and the home  
10 where they were staying was surrounded by occupation forces and shelled or bombed. Two  
11 little girls – cousins – were pulled from the rubble, already dead. I later learned today,  
12 through a Facebook post, that many others from that family were killed: the two  
13 grandparents, three sons, and their families. Another cousin who had been sheltering in a  
14 school in Khan Younis, was in one of the classrooms when she was shot and killed by a  
15 quadcopter drone.  
16

17 **The situation at Kuwaiti Hospital**

18 11. Since December 5, 2023, I have been working and living at Kuwaiti Hospital in Rafah.  
19  
20 12. The bombing is less intense than in Khan Younis, though just today we received patients  
21 whose car was bombed, and we are treating a young child with severe injuries, and another  
22 young child has died.  
23  
24 13. We are seeing enormous amounts of children with severe dehydration, febrile convulsions,  
25 and infectious diseases, including hepatitis and mumps.  
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27 14. There are no oral rehydration salts in the Gaza Strip, which is a fluid and electrolyte therapy  
28 especially for dehydrated children with severe diarrhea.



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Attorneys for Plaintiffs DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE, et al.

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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

Defendants.

Case No.: 23-cv-05829

**DECLARATION OF JOSH PAUL IN  
SUPPORT OF PLAINTIFFS’ MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White  
United States District Judge



1 I, Josh Paul, pursuant to 28 U.S.C. § 1746, declare the following is true and correct:

- 2 1. For over 11 years, from April 2012 until October 2023, I served as Director of Congressional  
3 and Public Affairs in the U.S. Department of State's Bureau of Political-Military Affairs (PM).  
4 PM is responsible for the oversight and approval of U.S. arms transfers conducted via the  
5 Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) processes, as well as for  
6 the obligation of the State Department's military grant assistance funding, including Foreign  
7 Military Financing (FMF). I was responsible for the Bureau's relationships with Congress, the  
8 media, and civil society, and represented the Assistant Secretary of State for Political-Military  
9 Affairs in briefings to Congress. In this capacity, my responsibilities included "clearing on"—  
10 i.e., being a part of the approval process for—all major arms transfers requiring congressional  
11 notification under the Arms Export Control Act (22 U.S.C. §2751 et seq.), and all military  
12 grant assistance notifications to Congress under the Foreign Assistance Act (22 U.S.C. §2151  
13 et seq.). I also played a significant role in policymaking processes concerning broader U.S.  
14 arms transfer policy, including the drafting of the Conventional Arms Transfer (CAT) Policy  
15 that established the executive branch's priorities and framework for adjudicating the export of  
16 arms. In addition, between June and December 2021 I was detailed on a part-time basis to the  
17 U.S. Department of State's Bureau of Democracy, Human Rights, and Labor (DRL), Office of  
18 Security and Human Rights, as a Special Advisor on Arms Transfers, where my responsibilities  
19 included assessing existing processes for the human rights review of proposed arms transfers,  
20 and making recommendations to strengthen those processes. I have previously served as a civil  
21 servant in the U.S. Department of Defense's Office of the Under Secretary of Defense for  
22 Policy (Office of the Deputy Assistant Secretary of Defense for the Middle East (DASD-ME),  
23 and as a National Security Consultant to the Government of Iraq as a civil servant for both the  
24 U.S. Department of Defense and Department of State. I have also held other roles in the  
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- national security and international relations fields.
2. The United States military grant assistance to Israel on an annual basis has for decades exceeded the provision of U.S. military grant assistance to any other country except, during specific periods, to Ukraine, Iraq and Afghanistan.
  3. In 2016, the United States and Israel signed a Memorandum of Understanding that established a 10-year baseline starting in 2018 of annual military assistance to Israel totaling no less than \$3.3 billion in FMF, plus \$500 million in Department of Defense funding for missile defense systems development. This annual baseline funding constitutes between 10–20 percent of Israel’s annual military budget. For Israel, unlike for every other country in the world, the FMF portion of this funding is considered “obligated upon appropriation,” and unlike every other country in the world which receives their FMF in installments, Israel receives its FMF in a lump sum, which, unlike every other country except for Egypt, is held in an interest-bearing account at the Federal Reserve Bank of New York.
  4. The United States is the major foreign supplier to Israel of defense articles and services, funded both through FMF and through Israel's own defense budget. During my tenure in the Department of State, major arms sales notified to Congress for Israel via the FMS process have included, but not been limited to, CH-53K Heavy Lift Helicopters with support and related equipment notified to Congress for an estimated cost of \$3.4 billion; Joint Direct Attack Munition (JDAM) Tail Kits, munitions, and associated equipment, parts and logistical support notified to Congress for an estimated cost of \$1.879 billion; fuels and petroleum-based products notified to Congress at a total value of over \$5 billion; and numerous other cases, including many below the congressional notification threshold. Between 1950 and 2022, Israel was the second greatest customer for U.S. arms by value globally, with combined FMS cases

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totalling over \$53 billion.<sup>1</sup>

5. During my tenure, the United States government notified Congress of the proposed issuance of export licenses via the DCS process for the provision of defense articles and services to Israel also valued in the billions of dollars, including to support the qualification, modification, test, repair, assembly, manufacture, and production of components and parts for integration into the Tamir Interceptor used in the Iron Dome system; M4 5.56mm automatic rifle barrels; for the installation, testing, maintenance, and repair of ASPRO–A (Trophy) anti-tank active protection systems for armored fighting vehicles; to support weapons integration, flight test, and hardware delivery of JDAM variants and Small Diameter Bomb Increment I variants; to support the design, development, engineering, integration, marketing, production, manufacturing, testing, depot level maintenance, modification, demonstration and processing of the Missile Firing Unit (MFU) and Stunner Interceptor Subsystems for the David's Sling Weapon System; to support the production, inspection, assembly, test and repair top-level assemblies, sub-assemblies, and components used in the SPICE Family of Gliding Bomb Assemblies; 5.56mm automatic rifles and major components; to support the performance of maintenance, repair and overhaul services of J52 and F100 engines to maintain readiness of the Israeli Air Force's fleet of A-4, F-15 and F-16 aircraft; to support the development, integration, and support for F–135 propulsion system; Organizational Level (O-Level) maintenance, field training, and services for the operation and sustainment of the F-35 Lightning II air systems operated by the Ministry of Defense in Israel; to support the manufacture, integration, installation, operation, testing, maintenance, and repair of the

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<sup>1</sup> Defense Security Cooperation Agency, U.S. Dept. of Defense, Historical Sales Book, Fiscal Years 1950–2022, <https://www.dsca.mil/sites/default/files/2023-01/FY%202022%20Historical%20Sales%20Book.pdf>.

1 120mm GPS Phase 1 and (SAL/GPS) Phase 2 Dual Mode Mortar; to support the installation,  
2 testing, maintenance, and repair of Trophy anti-tank active protection systems; 2000 lb.  
3 Tritonal-filled MK84 bombs; for the manufacture of F-15 aircraft structural components; to  
4 support the manufacture, maintenance, repair and overhaul of the J79-GE-J1E and J79-17  
5 aircraft engines; for MK80 Series/BLU-109 weapons; the JDAMs and Small Diameter Bomb  
6 (SDB), and numerous other cases below the congressional notification threshold.

7  
8 6. During my tenure, the U.S. has also provided to Israel, via grant and sale, over 500 transfers  
9 of excess defense articles (EDA) from Department of Defense stocks including, but not limited  
10 to, cargo and tanker trucks of multiple types, armored mobile guard towers, camouflage and  
11 deception equipment, parachutes, firefighting equipment, F-15 aircraft, CH-53 and SH-60F  
12 helicopters, communications equipment, barrels for grenade launchers, periscopes for armored  
13 vehicles, M1064 Mortar Carriers, aircraft parts, components and accessories, aircraft  
14 launching, landing and ground handling equipment, medical, dental, and veterinary equipment  
15 and supplies, M109A5 self-propelled howitzers, M270 Multiple Launch Rocket System  
16 launchers, ammunition of various calibers, rifles of various types, and Lantirn Targeting Pods.

17  
18 7. Many of these systems transferred via FMS, DCS, and EDA rely on proprietary U.S.  
19 technologies, meaning they could not be sourced from any supplier other than a U.S. entity or  
20 via the U.S. government.

21  
22 8. Under existing U.S. law, the United States may also make available to Israel, upon  
23 authorization of the Secretary of Defense, defense articles present in the War Reserve Stockpile  
24 for Allies-Israel (WRSA-I) (alternatively known as the War Reserve Stockpile Ammunition-  
25 Israel). Withdrawals of weapons, munitions, and equipment by Israel from WRSA-I do not go  
26 through the regular arms transfer approval process. Rather, upon approval of the Secretary of  
27 Defense, Israel may draw from the stockpile, and an accounting is performed later, which is  
28

1 then typically built into a retroactive FMS case. This means that it has not been possible for  
2 the State Department to apply existing and applicable laws for transfers from WRSA-I, nor to  
3 conduct any review, as it would for FMS, DCS, or EDA transfers, as required by law. As such,  
4 not only does the Executive Branch not apply the Conventional Arms Transfer Policy on  
5 WRSA-I items being provided to Israel, but there is no formal means whatsoever for the  
6 Secretary of State to conduct the “continuous supervision...of economic assistance, military  
7 assistance, and military education and training programs, including but not limited to  
8 determining whether there shall be a military assistance (including civic action) or a military  
9 education and training program for a country and the value thereof, to the end that such  
10 programs are effectively integrated both at home and abroad and the foreign policy of the  
11 United States is best served thereby,” as required under the Foreign Assistance Act (22 U.S.C.  
12 § 2382). The United States has publicly acknowledged, including in Department of Defense  
13 press briefings on October 23 and November 21, 2023, that it has been providing defense  
14 articles from WRSA-I to Israel since after October 7, 2023.  
15

16  
17 9. I resigned from my position by October 20, 2023, because I believed that, in the wake of the  
18 October 7th attack by Hamas, the United States was authorizing transfers of arms to Israel of  
19 weapons that would be used to commit human rights abuses and lead to significant civilian  
20 casualties, and that the policies, laws, and processes in place to prevent the transfer of arms  
21 into such a circumstance were not being adequately followed in the authorization process.  
22

23 10. Since October 7, the United States has provided extensive weapons, munitions, and equipment  
24 to Israel including, according to public reporting, over 57,000 artillery rounds and over 15,000  
25 air-to-ground munitions of various types. It has also been widely reported that Israel is using  
26 U.S.-origin weapons in its current attacks in Gaza, including but not limited to fighter jets,  
27 attack helicopters, and various munitions including 155mm artillery shells, JDAMs, MK84  
28

1 bombs, Hellfire missiles, and tank ammunition. Indeed, it would be impossible for Israel to  
2 have conducted the past two months of military operations as it has without utilizing a vast  
3 amount of U.S.-origin weaponry.

4  
5 11. I believe it is clear that the U.S. government is failing not only to execute the due diligence  
6 required under existing U.S. laws, but is actively creating and utilizing processes that help  
7 insulate Israel from accountability or sanctions in accordance with existing U.S. laws and  
8 policies. In my experience, the U.S. government is aware that U.S.-origin weapons, munitions,  
9 and equipment will be used by Israel in ways that are contrary to U.S. law, including applicable  
10 provisions of the Foreign Assistance Act, Arms Export Control Act, Leahy Laws, the  
11 Conventional Arms Transfer Policy (NSM-18) of February 2023, among others, and Israel's  
12 own commitments to the United States under applicable processes and agreements, and other  
13 requirements that their end use of U.S.-origin weapons, munitions, and equipment be used in  
14 accordance with international law. The failure to execute meaningful due diligence or  
15 adequately apply existing U.S. laws permits the unfettered flow of military assistance to Israel  
16 forces with minimal oversight that leads to unnecessary civilian harm, gross violations of  
17 human rights, and impunity for violations of international law.

18  
19 12. For instance, the Leahy Laws prohibit the provision of military assistance to any unit if the  
20 Secretary of State has credible information that such unit has committed a gross violation of  
21 human rights. For almost every country in the world, this means that all potential recipients of  
22 U.S. military grant assistance, including training, are vetted prior to receiving U.S. weapons,  
23 equipment, or training, down to the unit level, or in some cases, the individual level. For Israel,  
24 however, the United States provides military assistance, and then gathers reports of potential  
25 gross violations of human rights through the Israel Leahy Vetting Forum (ILVF). The  
26 Department of State has received and reviewed multiple reports of potential gross violations  
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28

1 of human rights (GVHRs) in this forum that human rights experts in the Department of State  
2 find credible. For the vast majority of countries that receive U.S. military assistance, a single  
3 stakeholder can raise concern on a specific unit and prevent assistance to that unit, however,  
4 the ILVF first requires consensus from multiple stakeholders, including the Bureau of Near  
5 East Affairs (NEA) and the U.S. Embassy in Jerusalem and then, unlike the regular Leahy  
6 process, approval at the Deputy Secretary of State level. Importantly, the ILVF has never come  
7 to consensus that an Israeli unit should be sanctioned under the Leahy Laws due to a gross  
8 violation of human rights. For Egypt and Ukraine, the two partners where a similar process  
9 exists, there have been no such obstacles to making determinations concerning GVHRs in the  
10 Leahy Vetting Forum process, in some cases with even less compelling evidence than in the  
11 case of Israel. In one case under active consideration by the Department of State during my  
12 period of involvement in the ILVF, involving reporting of the sexual assault of a 15-year-old  
13 Palestinian child in Israeli custody by their interrogators, the Department of State requested  
14 information from the Government of Israel via email on July 28, 2021 – a clear indicator that  
15 the Department considered this allegation to be likely credible. On July 29, 2021, the  
16 Government of Israel raided the offices of the charity that had first reported these allegations,  
17 and confiscated their computers. No sanction has been applied under Leahy vetting or any  
18 other policy or law to the unit involved. Based on my experience, I agree with the assessment  
19 of Tim Rieser, a longtime senior adviser to former Sen. Patrick Leahy and a key architect and  
20 drafter of the Leahy Laws, who recently stated, “The Israelis too often seem to act as though  
21 international law does not apply to them. And our government has acted as though the Leahy  
22 Law doesn’t apply to [the Israelis].”

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26 13. Similarly, in the Fiscal Year 2014 and 2015 State and Foreign Operations Appropriations Bills,  
27 Congress included, via the Senate Report, reporting requirements on crowd control items  
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1 provided to foreign security forces. The same bills contained a requirement in Section 7010  
2 that “[f]unds appropriated by this Act should not be used for tear gas, small arms, light  
3 weapons, ammunition, or other items for crowd control purposes for foreign security forces  
4 that use excessive force to repress peaceful expression, association, or assembly in countries  
5 undergoing democratic transition.” The Department of State never complied with that  
6 congressional reporting directive because the report would have drawn attention to the  
7 significant amount of such materiel that the United States was providing to Israel, and may  
8 have prevented the further provision of such materiel under Section 7010 given that it was  
9 being used, in part, to repress protests calling for equality for Palestinian citizens of Israel and  
10 Palestinians under Israeli rule. After I informed the Senate Appropriations Committee of this  
11 reason for the report not being submitted, the requirement was dropped from future  
12 Appropriations language passed by Congress from Fiscal Year 2016 onwards.  
13  
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15 14. More broadly, the United States does not simply provide weapons to independent actors with  
16 no further consequences or concern for their use, but takes into account, and organizes itself to  
17 address, U.S. intent as to how those weapons are expected to be used—and can and does step  
18 in even after transfers have occurred, to address the ways in which other partners are using  
19 U.S.-origin weapons. For example, the United States takes a Total Package Approach (TPA)  
20 to FMS. As the Department of Defense explains, a “TPA ensures that FMS purchasers can  
21 obtain support articles and services, to include construction of necessary support facilities,  
22 required to introduce and sustain equipment and to operate in a responsible and effective  
23 manner *consistent with U.S. intent* in approving the transfer” (italics added).<sup>2</sup>  
24

25 15. In conclusion, and based on my over 11 years of working within the United States Government  
26

27 <sup>2</sup> Defense Security Cooperation Agency, *Targeting Infrastructure Policy, DSCA Policy 19-58*  
28 [*SAMM E-Change 461*], Nov. 27, 2019, <https://samm.dsca.mil/sites/default/files/DSCA%2019-58.pdf>.



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on arms transfers and security assistance, it is my testimony that the United States provides and transfers to Israel a vast amount of military critical technologies and capabilities; that the United States is aware that these military critical technologies and capabilities will be used in ways that are contrary to U.S. law and Israel's own commitments to the U.S. under applicable processes and agreements, and other requirements including international law; that the U.S. is willing and able to address such violations when they arise, or could arise, with other partners; and, that should the court direct the suspension of such military transfers and assistance to Israel, it would—"more likely than not," to borrow a phrase from the Biden Administration's own Conventional Arms Transfer Policy—have an impact on the Israeli military operations of concern to the Plaintiffs in this case.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 22, 2023, in Chevy Chase, Maryland.



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12 Attorneys for Plaintiffs DEFENSE FOR CHILDREN INTERNATIONAL – PALESTINE, et al.

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 DEFENSE FOR CHILDREN  
16 INTERNATIONAL – PALESTINE; AL-  
17 HAQ; AHMED ABU ARTEMA;  
18 MOHAMMED AHMED ABU ROKBEH;  
19 MOHAMMAD HERZALLAH; A.N.;  
20 LAILA ELHADDAD; WAEIL ELBHASSI;  
21 BASIM ELKARRA; and DR. OMAR EL-  
22 NAJJAR

23 Plaintiffs,

24 v.

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

Defendants.

Case No.: 23-cv-5829

**DECLARATION OF SADAF  
M. DOOST IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

**DECLARATION OF SADAF M. DOOST**

I, Sadaf M. Doost, under penalty of perjury, declare as follows:

1. I represent the Plaintiffs in this action and submit this declaration in support of their Reply Brief in Support of their Motion for Preliminary Injunction, for the purpose of bringing to the Court’s attention official government disclosures and admissions by Defendants and other United States officials since the filing of Plaintiffs’ Motion, as well as updated information in the public domain about the continued mass killings of the Palestinian people in Gaza, the serious physical and mental harm done to them, and the urgent and severe impacts of Israel’s total siege of Gaza on the Palestinian population.

2. My colleagues and I have not heard from Plaintiff Ahmed Abu Artema since Monday, December 11, 2023. We do not know whether he is still alive and healthy, or whether he is able to secure food or water. Although our legal team has not been able to communicate directly with Plaintiff Mohammed Ahmed Abu Rokbeh, we have learned through his colleagues that his mother sustained a gunshot in the leg and he was seeking to evacuate her from Jabaliya refugee camp to Khan Younis, as she required surgery.

**Updated Facts, Casualties, and Circumstances of Israel’s Current  
Military Assault and Siege on Gaza**

3. Since October 7, 2023, Israel’s assault, bombardment, and total siege of Gaza has had catastrophic impacts on the Palestinian population, killing approximately 20,000 – an estimated 70 percent of whom are women and children, and more specifically over 8,000 of whom are children – and injuring approximately 52,586. Over 1.9 million have been forcibly displaced into life-threatening conditions. Since the filing of Plaintiffs’ Complaint and Motion for Preliminary Injunction, the United Nations and humanitarian aid organizations have continued to warn of the deteriorating health and medical situation, including warning of the risk of starvation and dehydration, attacks on health care

1 services and infrastructure, and increases in infections and illnesses. Meanwhile, Israeli officials have  
2 continued and escalated their genocidal campaign against the Palestinian population of Gaza.

3 a. Attached as Exhibit A-1 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*  
4 *Israel: Flash Update #75*, United Nations Office for the Coordination of Humanitarian Affairs  
5 (“OCHA”), Dec. 21, 2023. The Gaza Ministry of Health has not provided an updated number  
6 of casualties since December 19, 2023. “The Gaza Government Media Office reported on the  
7 fatalities as of 21 December, although their methodology is unknown. Taken together, with the  
8 noted caveats, these figures amount to about 20,000. Of them, more than 8,000 are said to be  
9 children and more than 6,200 women.”

10  
11 b. Attached as Exhibit A-2 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*  
12 *Israel: Flash Update #74*, OCHA, Dec. 20, 2023. Between October 7, 2023 and December 19,  
13 2023, at least 19,667 Palestinians have been killed, approximately 70 percent of whom are  
14 women and children. Approximately 52,586 have been injured.

15  
16 c. Attached as Exhibit A-3 is a true and correct [copy](#) of UNRWA Situation Report #54  
17 on the situation in the Gaza Strip and the West Bank, including East Jerusalem, United Nations  
18 Relief & Works Agency for Palestine Refugees in the Near East (“UNRWA”), Dec. 19, 2023.  
19 “Since 7 October, up to 1.9 million people (or over 85 per cent of the population) have been  
20 displaced across the Gaza Strip, some multiple times.”

21  
22 d. Attached as Exhibit A-4 is a true and correct [copy](#) of Mark Landler, ‘*Erase Gaza*’:  
23 *War Unleashes Incendiary Rhetoric in Israel*, The New York Times, Nov. 15, 2023 (just five  
24 weeks into the war, calls for Gaza to be “flattened,” “erased” or “destroyed” were mentioned  
25 approximately 18,000 times as compared to only 16 times in the 6 weeks before October 7).

26  
27 e. Attached as Exhibit A-5 is a true and correct [copy](#) of *Gaza: UN experts call on*  
28 *international community to prevent genocide against the Palestinian people*, United Nations

1 Human Rights Office of the High Commissioner, Nov. 16, 2023, whereby UN experts issued  
2 a press release outlining:

3 Grave violations committed by Israel against Palestinians in the  
4 aftermath of 7 October, particularly in Gaza, point to a genocide in the  
5 making . . . They illustrated evidence of [Israeli officials'] increasing  
6 genocidal incitement, overt intent to “destroy the Palestinian people  
7 under occupation”, loud calls for a ‘second Nakba’ in Gaza and the rest  
8 of the occupied Palestinian territory, and the use of powerful weaponry  
9 with inherently indiscriminate impacts, resulting in a colossal death toll  
10 and destruction of life-sustaining infrastructure.

11 “Many of us already raised the alarm about the risk of genocide in  
12 Gaza,” the experts said. “We are deeply disturbed by the failure of  
13 governments to heed our call and to achieve an immediate ceasefire. We  
14 are also profoundly concerned about the support of certain governments  
15 for Israel's strategy of warfare against the besieged population of Gaza,  
16 and the failure of the international system to mobilise to prevent  
17 genocide,” they said.

18 f. Attached as Exhibit A-6 is a true and correct [copy](#) of Nidal Al-Mughrabi et. al., *Hamas,*  
19 *Israel release more hostages, prisoners in fifth day of Gaza truce*, Reuters, Nov. 28, 2023  
20 (reporting Palestinians are using the humanitarian pause to search for those missing under the  
21 rubble and bury those killed).

22 g. Attached as Exhibit A-7 is a true and correct [copy](#) of Alexander Smith & Keir  
23 Simmons, *Israel and Hamas discuss a broader hostage deal, but a renewed assault still looms*,  
24 NBC News, Nov. 28, 2023 (reporting Israeli Prime Minister Netanyahu declared Israel “will  
25 go to realizing [its] goals with full force” including, *inter alia*, “ensuring that Gaza will not go  
26 back to being what it was”).

27 h. Attached as Exhibit A-8 is a true and correct [copy](#) of Press Release, Prime Minister’s  
28 Office, *Statement by PM Netanyahu*, Nov. 29, 2023, whereby Israeli Prime Minister Netanyahu  
states: “There is no situation in which we do not go back to fighting until the end. This is my

1 policy. The entire Security Cabinet is behind it. The entire Government is behind it. The  
2 soldiers are behind it. The people are behind it — this is exactly what we will do.”

3 i. Attached as Exhibit A-9 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*  
4 *Israel: Flash Update #55*, OCHA, Nov. 30, 2023 (reporting “[w]hile the humanitarian pause  
5 that started on 24 November has largely held, sporadic incidents have been  
6 reported”; providing an account of released Palestinian detainees held in Israeli prisons, and  
7 hostages held in Gaza, during the pause).

8  
9 j. Attached as Exhibit A-10 is a true and correct [copy](#) of an excerpt of Mati Tuchfeld, *The*  
10 *Prime Minister’s plan for the citizens of the Gaza Strip: the direction - out*, Israel Hayom, Nov.  
11 30, 2023, in the automated Google translation of the original Hebrew (reporting that in regards  
12 to “thinning the population of Gaza to the minimum possible” Netanyahu “tasked his confidant  
13 in the War Cabinet, Minister Ron Dermer, to formulate a staff [to] work on the matter.).

14  
15 k. Attached as Exhibit A-11 is a true and correct [copy](#) of an excerpt of *Press Briefing by*  
16 *the United Nations Information Service*, United Nations, Dec. 1, 2023 (reporting that the seven-  
17 day pause permitted the limited entry of required humanitarian aid; around 1,000 children had  
18 amputations in the last week).

19  
20 l. Attached as Exhibit A-12 is a true and correct [copy](#) of *WHO appeals for protection of*  
21 *the health system from further attacks and degradation of its capacity*, World Health  
22 Organization (“WHO”), Dec. 4, 2023 (declaring “[o]nce again, nowhere is safe in Gaza” and  
23 reporting increases in infectious diseases and widespread attacks on healthcare services and  
24 infrastructure).

25  
26 m. Attached as Exhibit A-13 is a true and correct [copy](#) of *Statement of the Humanitarian*  
27 *Coordinator for the Occupied Palestinian Territory*, Lynn Hastings, OCHA, Dec. 4, 2023.

28 According to the Humanitarian Coordinator for the Occupied Palestinian Territory:

1 The conditions required to deliver aid to the people of Gaza do not exist.  
2 If possible, an even more hellish scenario is about to unfold, one in  
3 which humanitarian operations may not be able to respond. What we  
4 see today are shelters with no capacity, a health system on its knees, a  
5 lack of clean drinking water, no proper sanitation and poor nutrition for  
6 people already mentally and physically exhausted: a textbook formula  
7 for epidemics and a public health disaster.

8 n. Attached as Exhibit A-14 is a true and correct [copy](#) of *Hostilities in the Gaza Strip*  
9 *and Israel: Flash Update #60*, OCHA, Dec. 5, 2023 (documenting that the humanitarian  
10 pause lasted from between November 24 to November 30; reporting that “since the  
11 resumption of hostilities on 1 December and until 5 December 18:00, at least 1,207  
12 Palestinians were killed, 70 per cent of whom were children and women.”).

13 o. Attached as Exhibit A-15 is a true and correct [copy](#) of Letter from UNRWA  
14 Commissioner-General Philippe Lazzarini to the UN General Assembly President Dr.  
15 Dennis Francis, Dec. 7, 2023, whereby Lazzarini warns that “UNRWA’s ability to  
16 implement its General Assembly mandate in Gaza is today severely limited with immediate  
17 and dire consequences for the UN humanitarian response and the lives of civilians in Gaza.  
18 The long-term implications for Palestine Refugees and prospects for a fair and lasting  
19 political solution are grave.” Lazzarini outlines that “as a result of Israeli’s military operation,  
20 nearly 1.2 million civilians are sheltering in UNRWA premises,” yet nearly 90 UNRWA  
21 premises have been struck or impacted by munitions; warns of the “collapse of [his]  
22 mandate”; and urges an immediate humanitarian ceasefire, among other actions, to prevent  
23 an “irreversible disaster.”

24 p. Attached as Exhibit A-16 is a true and correct [copy](#) of Allegra Goodwin et. al., *Infants*  
25 *found dead and decomposing in evacuated hospital ICU in Gaza. Here’s what we know*, CNN,  
26 Dec. 8, 2023, reporting that a November 27 video from a Gaza reporter reveals the bodies of  
27 babies which “appear to be darkening and disintegrating from decay, with little more than  
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1 skeletons left in some of the beds” and further describes “[f]lies and maggots are visibly  
2 crawling across the skin of one child.” CNN reports it “geolocated the video to Al-Nasr hospital  
3 in northern Gaza,” which was reportedly evacuated on November 10, and according to one  
4 nurse, the IDF only gave the Al-Nasr staff 30 minutes to evacuate, while no ambulances could  
5 reach the hospital.  
6

7 q. Attached as Exhibit A-17 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*  
8 *Israel - reported impact: Day 63*, OCHA, Dec. 8, 2023.

9 r. Attached as Exhibit A-18 is a true and correct [copy](#) of *WHO Director-General’s*  
10 *opening remarks at the Special Session of the Executive Board on the health situation in the*  
11 *occupied Palestinian territory - 10 December 2023*, World Health Organization (“WHO”),  
12 Dec. 10, 2023 (stating “Gaza’s health system is on its knees and collapsing”).  
13

14 s. Attached as Exhibit A-19 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*  
15 *Israel: Flash Update #68*, OCHA, Dec. 13, 2023 (reporting Israeli forces, upon raid, detained  
16 and beat hospital staff).

17 t. Attached as Exhibit A-20 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*  
18 *Israel: Flash Update #70*, OCHA, Dec. 15, 2023 (reporting about OHCHR in the occupied  
19 Palestinian territory “[e]xpressing its alarm at the unprecedented rate of journalists and media  
20 workers killed in Gaza since 7 October,” and that it “has verified the killing of 50 journalists  
21 and media workers, and received information that 30 more may have died, amounting to  
22 approximately six per cent of all those registered with the Journalists’ Syndicate in Gaza”).  
23

24 u. Attached as Exhibit A-21 is a true and correct [copy](#) of *UN Human Rights Office - OPT:*  
25 *Disturbing reports from the north of Gaza of mass detentions, ill-treatment and enforced*  
26 *disappearances of possibly thousands of Palestinians*, OHCHR (accessible via ReliefWeb  
27 (OCHA)), Dec. 16, 2023, reporting:  
28



1 OHCHR has received numerous disturbing reports from the north of  
2 Gaza of mass detentions, ill-treatment and enforced disappearance of  
3 possibly thousands of Palestinian men and boys, and a number of  
4 women and girls, at the hands of Israeli Defence Forces (IDF). Most  
5 were rounded up as they were attempting to move south or were taken  
6 during operations conducted on their homes, hospitals, schools and  
7 other places of refuge.

8 Reports claim that children as young as 12 and persons as old as 70 are  
9 among those detained. Most concerning, there are numerous reports  
10 that many of those detained were subjected to serious ill-treatment,  
11 which in some instances may amount to torture. This includes  
12 allegations that many were forced to strip down to their underwear, were  
13 blindfolded and tightly handcuffed, and were filmed and photographed  
14 in deliberately humiliating positions prior to being transported, without  
15 their clothing and with little food or water, to unknown places of  
16 detention . . . Credible information has also been received that  
17 approximately 140 women and girls have been arbitrarily detained and  
18 are currently being detained in undisclosed locations.

19 v. Attached as Exhibit A-22 is a true and correct [copy](#) of *UNICEF Geneva Palais briefing*  
20 *note Gaza: The world's most dangerous place to be a child*, UNICEF, Dec. 19, 2023 (reporting  
21 “. . . without sufficient safe water, food and sanitation that only a humanitarian ceasefire can  
22 bring – child deaths due to disease could surpass those killed in bombardments.”).

23 w. Attached as Exhibit A-23 is a true and correct [copy](#) of *WFP Palestine Emergency*  
24 *Response External Situation Report #11*, World Food Programme (“WFP”) (accessible via  
25 ReliefWeb (OCHA)), Dec. 19, 2023 (reporting that 90 percent of the population has “gone a  
26 full day and night without eating,” up to 20 percent of whom “have gone 10 out of 30 days  
27 without food.”).

28 x. Attached as Exhibit A-24 is a true and correct [copy](#) of *WFP delivers first aid convoy*  
*from Jordan to Gaza*, WFP, Dec. 20, 2023 (reporting “half of the population is now starving”  
in Gaza).

**International Calls to Prevent Ongoing Atrocities in Gaza**

1           4.       Contrary to the United States’ position, the overwhelming majority of countries have  
2 called for an immediate ceasefire, and United Nations bodies have issued urgent appeals calling on  
3 states to prevent ongoing atrocities against the Palestinian people.

4           a.       Attached as Exhibit B-1 is a true and correct [copy](#) of Letter by the Secretary-General  
5 to the President of Security Council invoking Article 99 of the United Nations Charter, Dec.  
6 6, 2023 (declaring that “[n]owhere is safe in Gaza” and stating that “[t]he international  
7 community has a responsibility to use all its influence to prevent further escalation and end  
8 this crisis. I urge the members of the Security Council to press to avert a humanitarian  
9 catastrophe. I reiterate my appeal for a humanitarian ceasefire to be declared. This is urgent.”).

10           b.       Attached as Exhibit B-2 is a true and correct [copy](#) of an excerpt of *UN General*  
11 *Assembly votes by large majority for immediate humanitarian ceasefire during emergency*  
12 *session*, UN News, Dec. 12, 2023 (reporting 153 Member States voted in favor of adopting a  
13 United Nations General Assembly resolution favoring an immediate humanitarian ceasefire).

14           c.       Attached as Exhibit B-3 is a true and correct [copy](#) of *Prevention of Racial*  
15 *Discrimination, Including Early Warning and Urgent Action Procedure Decision 2 (2023)*,  
16 UN Committee on the Elimination of Racial Discrimination, Dec. 21, 2023 (calling upon state  
17 parties, which includes the United States, to respond to Israel’s attack on Gaza and “bring an  
18 end [to] the violations that are taking place and to prevent atrocity crimes, particularly  
19 genocide[.]”).  
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23                   **United States’ Continued Failure to Prevent and Complicity in Genocide**

24           5.       As Israel’s genocidal campaign on Gaza has continued, the United States has escalated  
25 its provision to Israel of unconditioned military, financial, and political assistance and cover, despite  
26 Defendants’ knowledge of Israel’s indiscriminate bombardment and siege on Gaza, further  
27 demonstrating Defendants’ failure to prevent, and complicity in, an unfolding genocide.  
28

1 a. Attached as Exhibit C-1 is a true and correct [copy](#) of Robert Tait, *US asks Qatar to*  
2 *'turn down the volume' of Al Jazeera news coverage*, The Guardian, Oct. 27, 2023 (reporting  
3 that Defendant Blinken asked Qatar to moderate Al Jazeera's coverage of Israel's assault on  
4 Gaza).

5 b. Attached as Exhibit C-2 is a true and correct [copy](#) of *Joint open letter on transfer of*  
6 *155mm artillery shells to Israel from humanitarian, national security, human rights, and faith-*  
7 *based organizations*, ReliefWeb (OCHA), Nov. 13, 2023 (urging Defendant Austin “to  
8 withhold authorization” of a “transfer of 155mm artillery shells to the government of Israel,”  
9 explaining that “[i]n Gaza, one of the world’s most densely populated places, 155mm artillery  
10 shells are inherently indiscriminate.”).

11 c. Attached as Exhibit C-3 is a true and correct [copy](#) of an excerpt of *Performing the*  
12 *Duties of Deputy Under Secretary of Defense for Policy Dr. Mara Karlin Hosts Media*  
13 *Roundtable on Strategy and Implementation*, U.S. Dep’t of Defense, Nov. 16, 2023, where  
14 Department of Defense official Dr. Mara Karlin discussed the Pentagon’s daily engagement  
15 with Israeli counterparts: “And as you know, we are communicating with the Israelis every  
16 day.” Dr. Karlin further stated that Defendant “Secretary Austin has had . . . near daily  
17 conversations with Israeli Minister of Defense Gallant since the horrific events of October  
18 7th.”

19 d. Attached as Exhibit C-4 is a true and correct [copy](#) of excerpts of *Transcript: Deputy*  
20 *Pentagon Press Secretary Ms. Sabrina Singh Holds a Press Briefing*, U.S. Dep’t of Defense,  
21 Nov. 21, 2023. When asked if the Pentagon “is actively monitoring reports of civilian  
22 casualties in Gaza” Singh stated “. . . it's accurate for this -- for CHMRO, the Civilian Harm  
23 Mitigation and Response Office, to be doing that,” while reaffirming later in the briefing that  
24 “we don't put conditions on how [weapons supplied to Israel] are used.”  
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1 e. Attached as Exhibit C-5 is a true and correct [copy](#) of excerpts of *Press Briefing by*  
2 *Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John*  
3 *Kirby*, The White House, Nov. 30, 2023. In response to a question relating to “Israel . . .  
4 vow[ing] to resume this fighting will full force” at the end of the humanitarian pause, Kirby  
5 acknowledged this to be the case, stating:

6  
7 [Israel has]. . . spoken for their military campaign, and they have said  
8 very clearly that – that when these pauses are over, they intend to go  
9 back at it. And as they make that decision, they will continue to find  
10 support from the United States in terms of tools and capabilities, the  
11 weapons systems that they need, as well as the advice and the  
12 perspectives that we can offer in terms of urban warfare. . . . [President  
13 Biden] has been clear publicly and certainly in his discussions with the  
14 War Cabinet that they will continue to have the United States’ support  
15 as they go after these terrorists.

16 Kirby also disclosed the United States’ support in Israel’s ground incursion into Gaza,  
17 including by sending “military advisors and experts,” as well as reiterated that the United States  
18 “do[es] not support a permanent ceasefire at this time.”

19 f. Attached as Exhibit C-6 is a true and correct [copy](#) of an excerpt of *Transcript: Senior*  
20 *Advisor to the Secretary and Senior Defense Official Backgrounder on Secretary of Defense*  
21 *Travel to California*, U.S. Dep’t of Defense, Nov. 30, whereby a Senior Military Official states  
22 that the Secretary of Defense will “underscore . . . America's commitment to Israel's security  
23 is ironclad” during his visit to California.

24 g. Attached as Exhibit C-7 is a true and correct [copy](#) of Jared Malsin & Nancy A. Youssef,  
25 *U.S. Sends Israel 2,000-Pound Bunker Buster Bombs for Gaza War*, The Wall Street Journal,  
26 Dec. 1, 2023, outlining that the following weapons, arms, and equipment had been delivered  
27 by the United States to the Israeli government: i) 100 BLU-109 2,000-pound bunker buster  
28 bombs; ii) 5,000 Mk82 “dumb” bombs and iii) 5,400 Mk84 2,000 pound warhead bombs.

1 h. Attached as Exhibit C-8 is a true and correct [copy](#) of an excerpt of *Transcript: Deputy*  
2 *Pentagon Press Secretary Ms. Sabrina Singh Holds an Off-Camera, On-the-Record Press*  
3 *Briefing*, U.S. Dep’t of Defense, Dec. 4, 2023. During the briefing, in response to a request for  
4 an update on the status of “U.S. security assistance to Israel and also on the no conditions  
5 status,” Singh revealed that the United States is “continuing to support Israel in what it needs”  
6 and “security assistance is still flowing.” Singh further states: “Again, we don’t put conditions  
7 on -- on the security assistance[.]”

9 i. Attached as Exhibit C-9 is a true and correct [copy](#) of John Paul Rathbone, *Military*  
10 *briefing: the Israeli bombs raining on Gaza*, Financial Times, Dec. 5, 2023. According to a  
11 recording the newspaper Israel Hayom gained, Israeli Prime Minister Netanyahu stated to local  
12 government officials: “We need three things from the US: munitions, munitions, and  
13 munitions.”

15 j. Attached as Exhibit C-10 is a true and correct [copy](#) of an excerpt of *Transcript:*  
16 *Pentagon Press Secretary Brig. Gen. Pat Ryder Holds a Press Briefing*, U.S. Dep’t of Defense,  
17 Dec. 5, 2023, whereby Ryder, in response to a question about the future of the U.S.’s support  
18 to Israel, discloses that the U.S. “consult[s] closely with Israel, Secretary Austin speaks to his  
19 counterpart on a near daily basis[.]”

21 k. Attached as Exhibit C-11 is a true and correct [copy](#) of an excerpt of *Press Briefing by*  
22 *Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John*  
23 *Kirby*, The White House, Dec. 6, 2023, whereby Kirby states that the United States will  
24 “continue to work with [Prime Minister Netanyahu]” and ensure he “knows the United States  
25 will continue to have [Israel’s] back. . .” Kirby further states “we have done everything we can  
26 — and we’ll continue to do it — not just in terms of weapons and capabilities, but advice and  
27 counsel and perspective and lessons learned from our own experience in this kind of warfare.”  
28

1           l.           Attached as Exhibit C-12 is a true and correct [copy](#) of an excerpt of *US vetoes*  
2           *resolution on Gaza which called for ‘immediate humanitarian ceasefire’*, UN News, Dec. 8,  
3           2023 (reporting “US vetoed a resolution put forward by the United Arab Emirates and backed  
4           by over 90 Member States.”).

5           m.           Attached as Exhibit C-13 is a true and correct [copy](#) of Edith M. Lederer, *US vetoes UN*  
6           *resolution backed by many nations demanding immediate humanitarian cease-fire in Gaza*,  
7           AP News, Dec. 9, 2023 (reporting that the United States Deputy Ambassador Robert Wood on  
8           behalf of the United States vetoed a United Nations resolution “demanding an immediate  
9           humanitarian cease-fire in Gaza” and Israel’s Defense Minister Yoav Gallant “thank[ed] the  
10           United States for its ‘bold leadership.’”).

11           n.           Attached as Exhibit C-14 is a true and correct [copy](#) of *Israel – M830A1 120mm Tank*  
12           *Cartridges*, Defense Security Cooperation Agency, Dec. 9, 2023. “The Secretary of State has  
13           approved a possible Foreign Military Sale to the Government of Israel of 120mm M830A1  
14           High Explosive Anti-Tank Multi-Purpose with Tracer (MPAT) tank cartridges and related  
15           equipment for an estimated cost of \$106.5 million.” The Agency further stated: “The Secretary  
16           of State determined and provided detailed justification to Congress that an emergency exists  
17           that requires the immediate sale to the Government of Israel of the above defense articles and  
18           services in the national security interests of the United States, thereby waiving the  
19           Congressional review requirements under Section 36(b) of the Arms Export Control Act, as  
20           amended.”

21           o.           Attached as Exhibit C-15 is a true and correct [copy](#) of Missy Ryan et. al., *Biden’s*  
22           *arming of Israel faces backlash as Gaza civilian toll grows*, Washington Post, Dec. 9, 2023  
23           (reporting that “[i]n the first month and a half, Israel dropped more than 22,000 guided and  
24           unguided bombs on Gaza that were supplied by Washington . . . And during that time, the  
25

1 United States has transferred at least 15,000 bombs, including 2,000-pound bunker busters,  
2 and more than 50,000 155mm artillery shells.”).

3 p. Attached as Exhibit C-16 is a true and correct [copy](#) of *At cabinet meeting, Netanyahu*  
4 *thanks Biden for UN veto, tank ammo*, The Times of Israel, Dec. 10, 2023, whereby it was  
5 reported that “At the outset of the weekly cabinet meeting, Prime Minister Benjamin  
6 Netanyahu thanks US President Joe Biden for his administration’s vetoing of a UN Security  
7 Council resolution urging a ceasefire, and for its approval of an urgent shipment of some  
8 14,000 tank shells he says is due to start arriving today.”

9 q. Attached as Exhibit C-17 is a true and correct [copy](#) of Michael D. Shear, *Biden Warns*  
10 *Israel It is ‘Losing Support’ Over War*, The New York Times, Dec. 12, 2023 (reporting that  
11 “Prime Minister Netanyahu stated: ‘I greatly appreciate the American support for destroying  
12 Hamas and returning our hostages,’ Mr. Netanyahu said. ‘Following an intensive dialogue with  
13 President Biden and his team, we received full backing for the ground incursion and blocking  
14 the international pressure to stop the war.’”).

15 r. Attached as Exhibit C-18 is a true and correct [copy](#) of Barak Ravid, *Israelis outline*  
16 *post-war Gaza strategy as U.S. ramps up pressure*, Axios, Dec. 12, 2023 (reporting that “[t]op  
17 Israeli military officials are in Washington to show U.S. officials Israel’s military strategy for  
18 Gaza”).

19 s. Attached as Exhibit C-19(i) is a true and correct [copy](#) of an excerpt of *Remarks by*  
20 *President Biden at a Campaign Reception*, The White House, Dec. 12, 2023, whereby  
21 Defendant Biden stated: “. . . [I]n the meantime, we’re not going to do a damn thing other than  
22 protect Israel in the process. Not a single thing.” During his remarks, Defendant Biden  
23 acknowledged Israel’s indiscriminate bombing, while maintaining that the United States  
24 supports Israel:  
25  
26  
27  
28

1 And, folks, look, if you think about it, one of the things that Bibi  
2 understands, I think, now — but I’m not sure Ben-Gvir and his War  
3 Cabinet do, who I’ve spoken to several times — is that Israel’s security  
4 can rest on the United States, but right now it has more than the United  
5 States. It has the European Union, it has Europe, it has most of the  
6 world supporting it. But they’re starting to lose that support by the  
7 indiscriminate bombing that takes place.

8 t. Attached as Exhibit C-19(ii) is a true and correct [copy](#) of an excerpt of Remarks by  
9 President Biden in a Press Conference, The White House, Nov. 16, 2023 (acknowledging  
10 Israel’s actions in Gaza as including “indiscriminate bombing” as early as November 16,  
11 2023).

12 u. Attached as Exhibit C-20 is a true and correct [copy](#) of Ken Klippenstein, *Pentagon*  
13 *Taps “Tiger Team” to Rush Weapons to Israel*, The Intercept, Dec. 14, 2023, which reported  
14 on the Department of Defense’s deployment of a “Tiger Team of experts to facilitate the  
15 transfers” and “expedite weapons exports to Israel,” detailing that the “Tiger Team meets daily  
16 with the Pentagon’s Defense Security Cooperation Agency . . . which executes U.S. arms sales,  
17 to overcome barriers to arms sales to Israel.” The article further reports that civilian harm has  
18 been raised by the Tiger Team, but such issues are “being met with absolute lack of interest  
19 and direction from the top to keep the process moving[.]”

20 v. Attached as Exhibit C-21 is a true and correct [copy](#) of Robin Stein et. al., *A Times*  
21 *Investigation Tracked Israel’s Use of One of Its Most Destructive Bombs in South Gaza*, New  
22 York Times, Dec. 22, 2023 (“During the first six weeks of the war in Gaza, Israel routinely  
23 used” 2,000-pound bombs in Gaza, “one of its biggest and most destructive bombs”).

24 w. Attached as Exhibit C-22 is a true and correct [copy](#) of Julia Frankel, *Israel’s military*  
25 *campaign in Gaza seen as among the most destructive in recent history, experts say*, AP, Dec.  
26 21, 2023 (“But from blast fragments found on-site and analyses of strike footage, experts are  
27 confident that the vast majority of bombs dropped on [Gaza] are U.S.-made.”).



1 **Track Record of U.S. Pressure on Israeli Government, Resulting in Subsiding Violent and**  
2 **Harmful Actions Against Palestinians Has Been Demonstrated for Decades**

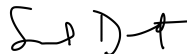
3 6. Historically, when the U.S. has objected to the actions of the Israeli government and its  
4 officials, it has resulted in Israeli officials ending such actions altogether, or taking remedial measures  
5 so as to not violate its agreements with the U.S. government.

6 a. Attached as Exhibit D-1 is a true and correct [copy](#) of *Reagan Demands End To Attacks*  
7 *In A Blunt Telephone Call To Begin*, The New York Times, Aug. 13, 1982 (ceasefire occurred  
8 within 30 minutes of President Ronald Reagan calling Israeli Prime Minister Begin to demand  
9 Israel cease its bombing campaign in Lebanon).

10 b. Attached as Exhibit D-2 is a true and correct [copy](#) of Yaniv Kubovich, *U.S. Pressure*  
11 *Behind Israeli Delay in Evacuating Bedouin Village, Defense Official Says*, Haaretz, June 18,  
12 2019 (reporting that upon pressure by U.S. officials, the Israeli government delayed the forced  
13 evacuation of a Bedouin village in the West Bank).

14 c. Attached as Exhibit D-3 is a true and correct [copy](#) of an excerpt of Barak Ravid, *Under*  
15 *U.S. pressure, Israel allows Palestinian-Americans to travel from West Bank*, Axios, Dec. 11,  
16 2023 (reporting that “[t]wo U.S. and Israeli officials said the Biden administration told the  
17 Israeli government that if the issue [of Israel violating a visa waiver agreement] wasn't resolved  
18 this week it could lead to a suspension of Israel's membership in the U.S. Visa Waiver Program,  
19 which allows a country's citizens to travel to the U.S. for 90 days without first obtaining a  
20 visa.”).

21 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge  
22 and belief. Executed this 22nd day of December, 2023.

23  
24  
25  
26 

27 \_\_\_\_\_  
28 Sadaf M. Doost

# **EXHIBIT A-12**



# WHO appeals for protection of the health system from further attacks and degradation of its capacity

4 December 2023 | Statement | Geneva | Reading time: 3 min (685 words)

[العربية](#)

[中文](#)

[Français](#)

[Español](#)

Once again, nowhere is safe in Gaza. WHO is gravely concerned about the resumption of hostilities, including heavy bombardment in Gaza, and reiterates its appeal to Israel to take every possible measure to protect civilians and civilian infrastructure, including hospitals, as per the laws of war.

We have seen what happened in northern Gaza. This cannot be the blueprint for the south. Gaza cannot afford to lose another hospital as health needs continue to soar.

As more civilians in southern Gaza receive immediate evacuation orders and are forced to move, more people are being concentrated into smaller areas, while the remaining hospitals in those areas run without sufficient fuel, medicines, food, water, or protection of health workers.

WHO and other partners are less able to provide support, given dwindling access to our supplies or any assurance of safety when we move supplies or staff.

This morning WHO was contacted with advice to move as many medical supplies as possible from a warehouse in Gaza, situated in an area ordered to be evacuated. Access to storage could become challenging over the coming days due to ground operations.

Intensifying military ground operations in southern Gaza, particularly in Khan Younis, are likely to cut thousands off from health care – especially from accessing Nasser Medical Complex and European Gaza Hospital, the two main hospitals in southern Gaza – as the number of wounded and sick increases.

Lack of access would also limit WHO's ability to deliver aid to these hospitals.

About 1.9 million people, nearly 80% of Gaza's population, are estimated to be internally displaced. Recent evacuation orders cover 20% of Khan Younis and localities east of Khan Younis, which prior to the hostilities were home to nearly 117 000 and 352 000 people, respectively.

In less than 60 days, the number of functioning hospitals has dropped from 36 to 18. Of these, three are only providing basic first aid, while the remaining hospitals are delivering only partial services. Those able to admit patients are delivering services well over their intended capacities, with some treating two to three times as many patients as they were designed for. The 12 hospitals that are still operational in the south are now the backbone of the health system.

On a recent visit to Nasser Medical Complex in Khan Younis, the WHO team described the situation inside as catastrophic, with the building and hospital grounds grossly overcrowded with patients and displaced people seeking shelter. The emergency ward is overflowing with patients. There is a shortage of health workers compared to the overwhelming needs. Those who are available have been working non-stop and are exhausted. Many patients are being treated on the floor. Bed capacity has been overwhelmed. Patients and families sheltering at the hospital are scared for their security.

Disease surveillance systems are hampered, but syndromic surveillance has noted increases in infectious diseases, including acute respiratory infections, scabies, jaundice, diarrhoea, and bloody diarrhoea. Shelters in the south are also reporting cases of acute jaundice syndrome, a worrisome signal of hepatitis.

From 7 October to 28 November, WHO recorded an unprecedented number of attacks on health care: 203 attacks on hospitals, ambulances, medical supplies, and the detention of health-care workers. This is unacceptable. There are means to protect civilians and civilian infrastructure, and they should be instituted.

The only viable solution is a sustained ceasefire.

**Note to editors:**

On 3 December alone, 349 people were killed and 750 injured according to reports from the Ministry of Health.

According to the Ministry of Health, the bed occupancy rate at operational hospitals stands at 171%, while in the intensive care units the occupancy rate is up to 221%.

Currently, there are 1000 patients and thousands of people sheltering at the 350-bed Nasser Medical Complex, and 1000 patients and an estimated 70 000 people sheltering at the 370-bed European Gaza Hospital. Both hospitals are three times beyond their capacity.

As of 3 December, per Ministry of Health reports, more than 15 899 people have died, over two-thirds of them women and children. An additional 42 003 people, also mostly women and children, have been injured.

# **EXHIBIT A-13**

OPT HOME

# Statement of the Humanitarian Coordinator for the Occupied Palestinian Territory, Lynn Hastings

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*04 Dec 2023*

The 7-day ceasefire brought respite to everyone; hostages were reunited with their families and desperately needed aid went into Gaza. We need more of this; all hostages released and considerably more aid and protection for Palestinian civilians.

But since the resumption of hostilities in Gaza on 1 December, 700 Palestinians have reportedly been killed in addition to the 15,500 already killed. Israeli military operations have expanded into southern Gaza, forcing tens of thousands of others into increasingly compressed spaces, desperate to find food, water, shelter and safety.

Nowhere is safe in Gaza and there is nowhere left to go.

The conditions required to deliver aid to the people of Gaza do not exist. If possible, an even more hellish scenario is about to unfold, one in which humanitarian operations may not be able to respond.

What we see today are shelters with no capacity, a health system on its knees, a lack of clean drinking water, no proper sanitation and poor nutrition for people already mentally and physically exhausted: a textbook formula for epidemics and a public health disaster.

The quantities of relief supplies and fuel allowed in are utterly insufficient. Despite the enormous efforts of the Egyptian and Palestinian Red Crescent Societies, UN agencies and other partners, the use of only the Rafah crossing - meant for pedestrians - to bring in trucks of goods does not work.

**2-ER-242**

Humanitarian operations cannot be kept on a drip feed of fuel. It is the foundation of social services and our operations; including for hospitals, desalination plants, clean drinking water and sanitation.

Space for the humanitarian response allowed inside Gaza is constantly shrinking. The two most important routes – the coastal road and Salahaddin road – are now cut off to our teams and trucks, hindering our ability to help people wherever they are.

The UN and NGOs alone cannot support a population of 2.2 million. Commercial and public sectors must be allowed to bring supplies into Gaza to restock markets. This must include fuel in a manner which ensures Israel's security.

Announcements of establishing so-called safe zones and tented cities without assurances that people will be able to move freely and that assistance can be delivered where there is need are alarming. These zones cannot be safe nor humanitarian when unilaterally declared.

The UN stands ready to work with all parties to expand the number of UN-managed safe shelters and to deliver assistance where it is needed.

\* Also read [statement attributable to the Spokesperson for the Secretary-General – on the Middle East](#)



# **EXHIBIT A-18**



# WHO Director-General's opening remarks at the Special Session of the Executive Board on the health situation in the occupied Palestinian territory – 10 December 2023

10 December 2023

[Français](#)

[Русский](#)

Your Excellency Dr Hanan Mohamed Al Kuwari, Chair of the Executive Board,

Excellencies, dear colleagues and friends,

I think we all agree that this is a meeting we would rather not be having.

As I have said repeatedly, I deplore the barbaric and unjustifiable attacks by Hamas on Israel on the 7<sup>th</sup> of October, which killed more than 1200 people.

I am appalled by reports of gender-based violence during the attacks, and by the mistreatment of hostages.

I am relieved that 114 hostages have now been released, and I repeat my call for the remaining hostages to be released.

I well understand the anger, grief and fear of the Israeli people following the horrific attacks two months ago.

I also understand the anger, grief and fear of the people of Gaza, who had already suffered through 16 years of blockade, and are now enduring the destruction of their families, their homes, their communities and the life they knew.

Dr Mike Ryan and his team will provide a more detailed presentation on the health situation in Gaza, but it is stating the obvious to say that the impact of the conflict on health is catastrophic.

More than 17 000 people are reported to have died in Gaza, including 7000 children – and we don't know how many are buried under the rubble of their homes.

More than 46 000 injuries have been reported.

1.9 million people have been displaced – almost the entire population of the Gaza strip – and are looking for shelter anywhere they can find it. But nowhere and no-one is safe in Gaza.

As more and more people move to a smaller and smaller area, overcrowding, combined with the lack of adequate food, water, shelter and sanitation, are creating the ideal conditions for disease to spread.

On average, there is one shower unit for every 700 people, and one toilet for every 150 people.

There are worrying signals of epidemic diseases including bloody diarrhoea and jaundice, and there have also been reports of high levels of diarrhoeal diseases and respiratory infections.

The risk is expected to worsen with the deteriorating situation and approaching winter conditions.

Gaza's health system is on its knees and collapsing.

Only 14 hospitals out of the original 36 are even partially functional, 2 north of the Wadi Gaza and 12 in the south.

Only 1400 beds are available out of an original 3500, while about two-thirds of primary health care centres are non-functional.

The two major hospitals in southern Gaza are operating at three times their bed capacity, running out of supplies and sheltering thousands of displaced people.

Meanwhile, more than 180 women give birth in Gaza every single day.

There are 2000 patients on cancer therapy;

350 000 patients with diabetes, heart disease and hypertension;

And at least 20 000 civilians in need of acute psychiatric care, and many more are expected to suffer from severe mental disorders as a result of the conflict.

I visited Al-Shifa hospital in Gaza City five years ago, in 2018. I toured a dialysis ward and a neonatal intensive care unit, and spoke with health workers and patients.

Even then, conditions were extremely difficult for health workers, and for patients.

Now the work of the health workers is impossible, and they are directly in the firing line.

Since the 7th of October, WHO has verified more than 449 attacks on health care in Gaza and the West Bank, and 60 attacks on health care in Israel. Health care should never be a target.

I also grieve the loss of more than 100 of our UN colleagues in Gaza, including our own Dima Alhaj, who was killed alongside her six-month old son, her husband and her two brothers.

In summary, health needs have increased dramatically, and the capacity of the health system has been reduced to one third of what it was.

WHO is on the ground in Gaza, alongside our partners, to support health workers, who are physically and mentally exhausted and are doing their best in unimaginable conditions.

By the way, today I have our colleague Rob Holden with us, who just returned from Gaza, and our Regional Director Dr Ahmed Al-Mandhari and his team are with us for any questions you have. They can give you the first-hand situation.

Resupplying these health facilities has become extremely difficult and is deeply compromised by the security situation on the ground and inadequate resupply from outside Gaza.

Humanitarian agencies are struggling to cope.

The resolution you are discussing today, if adopted, asks me as Director-General to do several things:

To report on the public health implications of the crisis;

To assess the extent of psychiatric morbidity;

To strengthen technical and material assistance;

And to strengthen our work with partners.

But I must be frank with you: these tasks are almost impossible in the current circumstances.

Indeed, it is for that reason that the Secretary-General last week invoked Article 99 of the United Nations Charter, and called for a humanitarian ceasefire.

I echo the Secretary-General's call – a call I have made repeatedly myself, including during my report to the Security Council two weeks ago. A ceasefire is the only way to truly protect and promote the health of the people of Gaza.

I deeply regret that the Security Council was unable to adopt a resolution on such a ceasefire last Friday.

I know that negotiations on the resolution for this meeting have been difficult, but I very much appreciate the spirit of cooperation and compromise you have demonstrated, and I welcome your commitment to finding consensus.

It is only through dialogue, mutual understanding and finding common ground that we can ever hope to find a resolution to this crisis, and to the many other crises in our troubled world.

This year is our 75<sup>th</sup> year as WHO. The opening words of our constitution remain more relevant than ever: that health is a fundamental human right for all people, and that health is fundamental to peace and security.

I urge you to use this moment to fulfil that vision, recognising as our founders did in 1948 that there is no health without peace, and no peace without health.

I hope you will use health as a bridge to peace.

Thank you very much, and Chair, back to you.

# EXHIBIT A-22

# UNICEF Geneva Palais briefing note - Gaza: The world's most dangerous place to be a child

*This is a summary of what was said by UNICEF Spokesperson James Elder – to whom quoted text may be attributed - at today's press briefing at the Palais des Nations in Geneva*

19 December 2023



UNICEF/UNI485696/EI Baba

**GENEVA, 19 December 2023** - “The Gaza Strip is the most dangerous place in the world to be a child. And day after day, that brutal reality is reinforced.

“Over the past 48 hours, the largest remaining fully functioning hospital was shelled, twice. That hospital – Al Nasser in Khan Yunis – not only shelters large numbers of children who had already been badly injured in attacks on their homes, but hundreds of women and children seeking safety.

“Over the weekend, UNICEF shared the story of 13-year-old Dina. When her house in Khan Yunis was completely destroyed, she was

injured and later her right leg was amputated. She lost both of her parents and two brothers. But Dina hadn't lost hope. She told us about her dreams of being a lawyer. She said, 'I feel injustice; when I grow up, I will become a lawyer so that I can enjoy my rights and the rights of all children'.

"Dina was one of the people killed at Nasser Hospital on Sunday, the day after she shared her story of hope.

"And so where do children and their families go? They are not safe in hospitals. They are not safe in shelters. And they are certainly not safe in the so-called 'safe' zones.

"Let me explain why these so-called safe zones are anything but safe.

Parties to the conflict have, of course, an obligation to take all feasible precautions to protect the civilian population. In this case, one of the precautions being taken is evacuation. That is, moving to so-called 'safe' zones.

"As the UN said over a month ago: these zones cannot be safe nor humanitarian when unilaterally declared. In addition, under international law, the place where you evacuate people must have sufficient resources for survival – medical facilities, food, and water.

"That is, these so-called safe zones are only safe not just when they are free from bombardment, *but* when these conditions – food, water, medicine, protection - are also met.

"However, under the current besieged conditions, adequate supplies for such zones, are impossible. I have seen for myself this reality.

"These zones are tiny patches of barren land, or street corners, or half-built buildings, with no water, no facilities, no shelter from the cold and the rain.

"And critically no sanitation.

"Currently in Gaza, there's on average around one toilet for 700 children and families. Relocate families to places where there is no toilet and it's tens of thousands of people resorting to buckets, or open defecation.

"And so without water and sanitation, nor shelter, these so-called safe zones have become zones of disease.



“Diarrhea cases in children are above 100,000. Acute respiratory illness cases in civilians are above 150,000. Both numbers will be gross undercounts of the woeful reality.

“With malnutrition soaring among Gaza’s children, diarrheal diseases are becoming deadly. Consider this: More than 130,000 of Gaza’s most vulnerable children (those aged 0 to 23 months) are not receiving the critical life-saving breastfeeding and age-appropriate complementary feeding practices, including micronutrient supplementation.

“With such a scenario - and without sufficient safe water, food and sanitation that only a humanitarian ceasefire can bring - child deaths due to disease could surpass those killed in bombardments.

“Parents are painfully aware that hospitals are not an option for their sick child – both because hospitals are getting hit, and because hospitals are overwhelmed with children and citizens with the ghastly wounds of war.

“As a parent of a critically sick child told me: ‘Our situation is pure misery. I am overwhelmed. My son is very sick. I told my wife we have to lower expectations. All we have is hope. I don’t know if we will make it through this. Please tell the world.’”

“As we speak, the delivery of aid is a matter of life or death for children in Gaza and the conditions to provide that aid are not being met. An immediate and long-lasting humanitarian ceasefire is the only way to end the killing and injuring of children, and child deaths from disease, and enable the urgent delivery of desperately needed lifesaving aid.”

#####

# **EXHIBIT A-23**



# WFP PALESTINE EMERGENCY RESPONSE

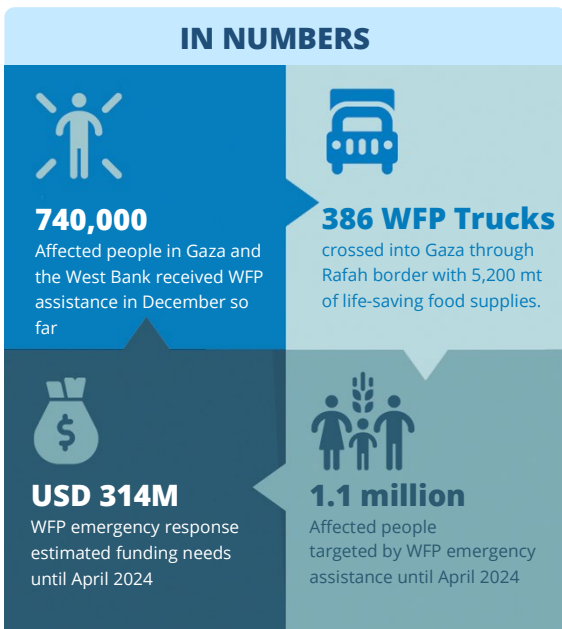
## Situation Report 11

19 December 2023

### HIGHLIGHTS

- After more than two months of conflict, half of the population of Gaza is now facing severe hunger. The latest food security assessment findings show that, in Northern areas, 90 percent of people in Gaza have gone a full day and night without eating. Of those, up to 20 percent have gone 10 out of 30 days without food. In southern areas, one in every two people rely solely on humanitarian assistance to feed their families.
- Upon visiting Gaza on 8 December, WFP Deputy Director Carl Skau witnessed its dire situation with only a fraction of the needed food supplies coming in, absence of fuel, communications interruptions and lack of security for humanitarian staff and civilians at food distributions, hindering WFP operations. Renewed hostilities have further restricted aid efforts, pushing humanitarian operations towards collapse.
- The opening of Kerem Shalom crossing for humanitarian aid trucks into Gaza on 17 December is a long-awaited step to increase the flow of aid into Gaza, which allowed WFP to increase its distributions. However, humanitarian aid alone is not enough. WFP appeals for commercial supply corridors to be restored.
- As needs are soaring, WFP requires a minimum of **USD 314 million** to sustain its emergency response for up to 1.1 million affected people until April 2024. The response is currently 50 percent funded.

### IN NUMBERS



### WFP Operations

#### General Food Assistance (GFA)

- In December so far, WFP reached an estimated **740,000 people** with food and cash assistance across Gaza and the West Bank. Across Gaza, WFP assisted **665,000\* vulnerable people** as follows:
  - Around **760,000 internally displaced people (IDPs) in designated shelters** received fortified biscuits, food parcels or wheat flour over the last two weeks.
  - **17,250 displaced people** in host communities received food parcels to support their food needs for 15 days.
  - WFP is supporting **community-kitchens to provide hot meals to IDPs** in partnership with its cooperating partner (CP), Rebuilding Alliance. WFP provided around 30 mt of wheat flour, chickpeas, and salt to community kitchens that have been reaching around 79,265 people across Gaza.
  - To support 57,500 pregnant and breastfeeding women and children aged 6-59 months, WFP in

*\*The total beneficiaries figure accounts for overlap between people receiving more than one type of assistance.*

### Situation Update

- The resumption of hostilities has pushed people into further displacement. Now, 1.9 million, 85 percent of the population is displaced, with around 1 million people sheltering in Rafah. People are setting up makeshift tents or residing in shelters over-exceeding their capacity, with no food, water, nor basic sanitary conditions.

partnership with the CP Sharek, began distributions of Lipid-Based Nutrient Supplement – a paste specifically made to complement their additional nutritional needs.

- WFP has shifted its cash-based transfer assistance to in-kind as shops have run out of food. WFP is supporting local retailers by setting up food parcel distributions at WFP-contracted shops whose owners receive a transaction fee for their service.

## Supply Chain

- Following the agreement for WFP to pilot the delivery of aid from Jordan to Gaza, 46 trucks organized by WFP and the Jordan Hashemite Charity Organization, carrying around 750 mt of life-saving food are on their way to Gaza through Kerem Shalom border crossing between Jordan and Israel. This would be the first convoy to move through Jordan corridor.
- In the first two weeks of December, around 120 WFP trucks with over 1,600 mt of food items crossed into Gaza and were immediately dispatched for distribution in coordination with CPs. Since 21 October, WFP has delivered over 4,500 mt of food items through 342 trucks into Gaza.
- Currently, **200 WFP** trucks loaded with around 4,000 mt of food commodities in Egypt and **80 trucks** in Jordan are ready to cross into Gaza through Kerem Shalom and Rafah crossing points. Additional 4,000 mt of food stocks are currently at Port Said (Egypt) awaiting clearance, of the and around 9,700 mt are under procurement to support Gaza emergency response.
- WFP has contracted a new warehouse in Rafah with 4,000 m<sup>2</sup> capacity to support the pre-positioning of aid supplies before dispatching to partners and distribution points across Gaza.

## Clusters and Common Services

### Logistics Cluster

- The Logistics Cluster together with the IMPACCT Working Group conducted a debriefing session with partners on 5 December to share the outcomes of the National Workshop on Customs Procedures for the Importation of Humanitarian Aid. The [Debriefing presentation](#) is available on the [Palestine Logistics Cluster operation webpage](#).
- In Gaza, the Logistics Cluster installed a total of 14 mobile storage units (MSUs) to augment the offloading capacity in the Rafah handover point and enhance storage capacity on behalf of four humanitarian partners.

- In Al Arish (Egypt), the Logistics Cell installed 10 MSUs with a 3,200 m<sup>2</sup> space to augment the Egyptian Red Crescent storage capacity. The space has also dedicated set-up for the temperature-controlled cargo through four inflatable cold rooms.
- The temporary storage in Rafah is now operational and has started receiving shipments from partners.

### Emergency Telecommunications Cluster (ETC)

- ETC procured 20 fully activated satellite phones on 8 December to enhance communication amongst humanitarian responders.
- ETC is currently coordinating and engaging with 31 organizations in the Gaza conflict emergency response.

### Funding

- WFP urgently requires at least USD 314 million in funding to provide support for up to 1.1 million people until April 2024.
- As of now, WFP has USD 156.1 million confirmed contributions: USD 139.8 million from government donors (mainly from Canada, European Union (ECHO), France, Germany (GFFO), Sweden, Switzerland, and USA among others) and USD 16.2 million from the private sector including Share The Meal and Individual Giving campaigns.

### Gaza Market Monitoring

- WFP [food security assessment](#) carried out during the humanitarian pause showed that in northern areas, 90 percent of people have gone a full day and night without eating. In southern areas, one in every two people rely solely on humanitarian assistance to feed their families.
- Over the last 12 days since the end of the pause on 1 December, IDP households in southern Gaza showed severe levels of hunger and extreme consumption based coping strategies, higher than during the pause. In the northern governorates, households are expected to face catastrophic situation, having experienced already worse conditions during the pause.

### Accountability to Affected Populations

- WFP received approximately 85,266 calls through the Inter-Agency community feedback mechanism (CFM) helpline, which provides a direct link between WFP and the affected population. Over 75 percent of the calls are requests for food or cash assistance. Some 2,447 are for shelter support.

# EXHIBIT A-24

20 December 2023

# WFP delivers first aid convoy from Jordan to Gaza.



East Jerusalem – A 46-truck convoy, organized by WFP and the Jordan Hashemite Charity Organization (JHCO), on Wednesday carried more than 750 metric tons of life-saving food into Gaza, marking the first time a direct aid convoy from Jordan has reached the Strip since the upsurge in hostilities began on 7 October.

After weeks of coordination with all parties, this crucial first step could pave the way for a more sustainable aid corridor through Jordan and allow for the delivery of more aid at scale. That has so far not been possible with only one route through Egypt.

"Establishing a corridor through Jordan will increase the flow of aid and remove some of the pressure and congestion we are currently facing. This will allow us to secure more supplies and have more trucks on the road," said Samer AbdelJaber, WFP Palestine Representative and Country Director/Emergency Coordinator. "We are very grateful to everyone who made this possible. This is a promising step that will hopefully grant us more sustained and scaled-up access to reach more people in Gaza, faster."

In line with its commitment to provide life-saving food assistance to people in Gaza, WFP has been mobilizing food across all surrounding areas in the region. Delivering food from Jordan, to Gaza through Kerem Shalom crossing will increase the volume and speed of food reaching the Gaza Strip, as millions face the risk of starvation.

WFP has been continuously working with the Government of Jordan to augment the humanitarian response to Gaza since the start of the current crisis. In past weeks, WFP transported aid from Jordan to Gaza through the Aqaba – Nuweiba/Egypt crossing point and facilitated airlifts of inter-agency humanitarian supplies from Jordan to warehouse facilities at Al-Arish for eventual transport to Gaza.

This further collaboration has come following the recent Aqaba Process Meeting, hosted by His Majesty King Abdullah II, which called for the opening of additional border crossings and the use of Jordan as a base for aid entry into Gaza.

After 10 weeks of the crisis in Gaza, half of the population is now starving, with little access to food, water, and shelter. WFP is committed to providing vital food assistance to reach people in Gaza wherever they are in the fastest way possible. To do so, WFP calls for an immediate ceasefire and the opening of all border crossings to provide relief and put an end to the suffering.

# # #

The United Nations World Food Programme is the world’s largest humanitarian organization saving lives in emergencies and using food assistance to build a pathway to peace, stability and prosperity for people recovering from conflict, disasters and the impact of climate change.

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# EXHIBIT C-3

## TRANSCRIPT

# Performing the Duties of Deputy Under Secretary of Defense for Policy Dr. Mara Karlin Hosts Media Roundtable on Strategy Implementation

Nov. 16, 2023

STAFF: Hey, so good afternoon, ladies and gentlemen. Today, we have Dr. Mara Karlin with us. She is performing the duties of the Deputy Undersecretary of Defense for Policy and will be providing you all with an update on the progress with our National Defense Strategy and implementation efforts across the department and whole of government. Additionally, she'll be able to provide some insights on her recent travel to the Indo-Pacific and some ongoing insights on the Secretary's travel in the region as well.

We'll have roughly 40 minutes for the conversation, which will be on record, and I ask that you limit to one question and one follow-up. Lastly, Deputy Press Secretary Sabrina Singh will hold an on camera briefing shortly following this briefing to answer more news of the day questions.

And with that, I'll turn to Dr. Karlin. Ma'am?

PTDO DEPUTY UNDER SECRETARY OF DEFENSE (POLICY) MARA KARLIN: All right. You want me to turn this on? It appears to not actually — all right, great.

Q: The civilian casualty issue, this is coming up with Israel. The Pentagon, under congressional mandate to set up a civilian casualty process for monitoring what U.S. operations may be causing, in terms of civilian casualties. You're aware that it's your office is in charge of that. Is any of that process or mechanism ...

DR. KARLIN: Yes. OSD Policy.

Q: For — for the sake of wholeness

DR. KARLIN: Yeah.

Q: ... is that process at all being used at all in reviewing Israel's use of U.S. equipment and the potential for civilian casualties? Is there any segue at all?

DR. KARLIN: So I think what you're citing is the CHMR effort, the Civilian Harm Mitigation and Reduction [Response] — I'm not getting the acronym entirely right — that — that effort. And we have involved those folks as we have looked at these issues.

Q: How so? Monitoring Human Rights Watch reports or things like that?

DR. KARLIN: We are making sure that we are closely tracking all of the information coming in from various sources and making sure that we understand it. And as you know, we are communicating with the Israelis every day.

Secretary Austin has had tens of conversations, I believe — I think near daily's probably the best way to put it — near daily conversations with Israeli Minister of Defense Gallant since the horrific events of October 7th. And in those conversations, he regularly talks about the importance of protecting civilians.

STAFF: We'll stay on this side of the room. Jim?

DR. KARLIN: Hi.

# **EXHIBIT C-10**

## TRANSCRIPT

# Pentagon Press Secretary Brig. Gen. Pat Ryder Holds a Press Briefing

Dec. 5, 2023

Brigadier General Pat Ryder, Pentagon Press Secretary

BRIGADIER GENERAL PAT RYDER: All right, good afternoon, everyone. I have quite a bit to share at the top today, so thank you in advance for your patience, then we'll get right to your questions.

This morning, the Air Force announced that the search and rescue effort for the Air Force Special Operations Command Osprey aircraft mishap in Japan has transitioned to a search and recovery effort. Of the eight airmen onboard the aircraft at the time of the mishap, the remains of three airmen have already been recovered and the remains of another three airmen have been located and are in the process of being recovered. The recovery operation will now focus on locating and recovering the remaining two airmen and aircraft debris.

All families have been contacted about and notified about the loss of their loved ones, and our deepest condolences go out to the families, friends, and colleagues of these eight American airmen who are impacted by this tragic mishap and the immeasurable loss of life. We want to thank the government of Japan for all of their assistance.

Air Force Special Operations Command is investigating this mishap and I'd refer you to them for any further questions.

GEN. RYDER: I'll have to take that question. I don't have any further information.

Let me go back here to (Waafa ?) and then Nancy.

Q: (Inaudible) Israeli Defense Secretary said the -- or predicted the war and its current intensity will last for at least another two months. Does the Pentagon share this assessment? And will the U.S. (inaudible) be providing or continue to provide Israel with the security assistance as long as this war will take?

GEN. RYDER: Yeah, so I can't put a timeline on an Israeli operation. That's really a question for the Israelis to address. I can tell you what we're focused on -- and you've heard me talk about this before -- number one is protecting U.S. forces and citizens. Number two is ensuring that Israel has what it needs to defend itself from future terrorist attacks by Hamas. We're also continuing to work closely with Israel, in terms of hostage recovery. And then also ensuring that this crisis does not escalate into a broader regional conflict. So that will continue to remain our focus.

Q: And so you -- you continue to provide the military assistance as long as this war will take?

GEN. RYDER: We will continue to consult closely with Israel to ensure that they have what they need to defend themselves, to prevent a future terrorist attack.

Q: One -- one more thing. Can you confirm that the U.S. is flying ISR flights over Lebanon? And also if you can tell us if you resumed the ISR flights over Gaza?

GEN. RYDER: I'll have to take that question. I don't have that.

Nancy?

Q: Thank you. I wanted to follow up on some of the comments that Secretary Austin made over the weekend in his speech. He warned that -- that there was the possibility that an -- that Israel could replace a tactical victory with a strategic defeat.

And so what I'd like to understand is if he is -- if that worry is leading to any changes, in terms of the types of weapons that the United States provides Israel, or -- or how it advises Israel to prevent the strategic defeat that he warned of?

GEN. RYDER: Yeah, thanks, Nancy. So I'm not going to get into the specifics, other than to say again we consult closely with Israel, Secretary Austin speaks to his counterpart on a near daily basis, and part of those discussions includes the kind of security assistance Israel needs to prevent a future terrorist attack in the future.

Those conversations also include a robust discussion, as he highlighted in his remarks, of ensuring that civilian safety is taken into account, as well as the importance of ensuring that humanitarian assistance is being provided to the people of Gaza. So I'll just leave it at that. Thank you very much.

Ma'am?

Q: So the Wall Street Journal actually, they reported yesterday that the Israelis are weighing a plan to flood Gaza's tunnels used by Hamas with seawater. And I'm just wondering if that's something that U.S. defense officials have been told about by their Israeli counterparts, a plan that they've been consulting on and/or something they would support?

GEN. RYDER: Yeah, I'd have to refer you to the IDF to talk about their operations. Thanks, Natasha.

Let me go to the phone here before I get in trouble. Let's go to Lara Seligman with Politico.

Q: Hi. Yes, thanks, Pat. Sorry. I hope you can hear me. I'm in kind of a loud space. But I'm just wondering if the Secretary has (inaudible) discussions or (presented ?) any options about whether to -- about striking back potentially on any of the Houthi targets in -- in Yemen or the Houthis that have been launching attacks at commercial shipping?

GEN. RYDER: Yeah, thanks, Lara. So again, I'm not going to telegraph or speculate on potential strikes in the future. As you've heard us say, we're going to do what's necessary to protect our forces.

# EXHIBIT C-11



DECEMBER 06, 2023

# Press Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby

James S. Brady Press Briefing Room

2:52 P.M. EST

MS. JEAN-PIERRE: What's going on? Where's the rest of the class?

(Cross-talk.)

MS. JEAN-PIERRE: MJ.

Q Sorry. (Laughter.)

MS. JEAN-PIERRE: It's all good.

All right. Good afternoon, everyone.

Q Good afternoon.

MS. JEAN-PIERRE: A strong bipartisan majority of Congress supports Ukraine in its fight against Putin's brutal war.

Unfortunately, some Republicans are now holding urgently needed Ukraine funding hostage to a set of completely unrelated — bipartisan, I should say — border demands.

Instead of negotiating in good faith, as a group of Democrats and Republicans have been doing for some weeks now, they're doubling down on an all-or-nothing approach.

bicameral support for Ukraine up on Capitol Hill. We got a small number of Republicans that are pushing back on that.

The President is not going to give up on this.

Q You've also got a small window now.

MR. KIRBY: Well, the window is definitely getting smaller. I've been saying that for weeks now. The runway is getting shorter and shorter, and we've got, basically, until the end of this month.

Q On Israel, does President Biden regard Prime Minister Netanyahu as a capable or even a great military leader?

MR. KIRBY: The — the President respects the position that Prime Minister Netanyahu is in. This is a man he's known for many, many years. They don't agree on everything. But he is the elected prime minister of our good friend, ally, and partner in Israel.

And we're going to continue to work with him and make sure that he knows the United States will continue to have their back, as well, as they fight Hamas.

Q But he believes that Mr. Netanyahu knows what he's doing right now as a military —

MR. KIRBY: James —

Q — (inaudible)?

MR. KIRBY: James, I'm — I'm not going to play this game, and we're not going to get into characterizing foreign leaders here from this podium.

He's the elected leader of Israel. The President has respect for him. He understands the challenges that the Prime Minister is going through right now. And — and we have done everything we can — and we'll continue to do it — not just in terms of weapons and capabilities, but advice and counsel and perspective and lessons learned from our own experience in this kind of

warfare.

Q But, presumably, the President would not preside over the provision of all of this money and intelligence and weaponry and strategic counsel to Mr. Netanyahu if Mr. Biden felt that Mr. Netanyahu did not know what he was doing with it all.

MR. KIRBY: He feels that Israel has every right and responsibility to defend itself against a truly genocidal threat represented by Hamas — a threat that was on display for the whole world to see in sickening ways on the 7th of October.

He's coming at this from years and years of support and experience with Israel and leaders of all sizes and stripes coming from Israel. That's where this is coming from: a true love and respect for Israel as a nation and the Israeli people and the right for themselves to — to be able to live in peace and security.

Thanks.

MS. JEAN-PIERRE: Thanks. Thanks, Admiral.

Q Thanks, John.

Q Thank you, John.

MR. KIRBY: Thank you, guys.

MS. JEAN-PIERRE: Thank you so much, Admiral.

All right, Aamer.

Q Thanks. Just going back on the Ukraine/border conversation with Republicans. Can you drill down specifically on what some of the compromises the President is willing to support?

MS. JEAN-PIERRE: I mean, look, I'm just going to reiterate what my colleague just s- — just stated, that there is — there is no negotiating from

# EXHIBIT C-14



Defense Security Cooperation Agency  
**NEWS RELEASE**

On the web: <http://www.dsca.mil>

Media/Public Contact:  
[pm-cpa@state.gov](mailto:pm-cpa@state.gov)

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Transmittal No. 24-15

## **Israel – M830A1 120mm Tank Cartridges**

WASHINGTON, December 9, 2023 - The Secretary of State has approved a possible Foreign Military Sale to the Government of Israel of 120mm M830A1 High Explosive Anti-Tank Multi-Purpose with Tracer (MPAT) tank cartridges and related equipment for an estimated cost of \$106.5 million. The Defense Security Cooperation Agency delivered the required certification notifying Congress of this possible sale on December 8, 2023.

The Government of Israel has requested to buy thirteen thousand nine hundred eighty-one (13,981) 120mm M830A1 High Explosive Anti-Tank Multi-Purpose with Tracer (MPAT) tank cartridges. Also included are publications and technical documentation; U.S. Government and contractor engineering, technical, and logistics support services; studies and surveys; and other related elements of logistics and program support. The estimated total cost is \$106.5 million.

The Secretary of State determined and provided detailed justification to Congress that an emergency exists that requires the immediate sale to the Government of Israel of the above defense articles and services in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

Israel will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

This will be a sale from U.S. Army inventory. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

The description and dollar value are for the highest estimated quantity and dollar value based on initial requirements. Actual dollar value will be lower depending on final requirements, budget authority, and signed sales agreement(s), if and when concluded.

All questions regarding this proposed Foreign Military Sale should be directed to the State Department's Bureau of Political Military Affairs, Office of Congressional and Public Affairs, [pm-cpa@state.gov](mailto:pm-cpa@state.gov).

-30-

# EXHIBIT C-15

# The Washington Post

*Democracy Dies in Darkness*

## Biden's arming of Israel faces backlash as Gaza's civilian toll grows

Critics, including fellow Democrats, say the administration must do more to ensure proper use of U.S. weapons

By [Missy Ryan](#), [Michael Birnbaum](#), [Abigail Hauslohner](#) and [John Hudson](#)

December 9, 2023 at 6:41 p.m. EST

The Biden administration faces mounting pressure over its provision of powerful weapons to Israel, with the spiraling death toll in Gaza deepening questions about whether the United States, as the country's chief military backer, must do more to ensure civilians' safety.

Rights groups, along with a growing bloc from within President Biden's Democratic Party, are intensifying scrutiny of the arms flow to Israel that has included tens of thousands of bombs since [Hamas](#) militants' bloody attacks of Oct. 7. Local authorities say that at least 17,700 people, many of them civilians, have been killed in Israel's operation to dismantle the Palestinian group.

At the heart of the debate, as [Biden seeks billions of dollars](#) in additional military aid for Israel's Gaza operation, are [the administration's own rules](#) for arming foreign nations, which indicate weapons transfers must not take place when the U.S. government assesses that violations of international law are "more likely than not" to occur.

Administration officials, offering the first detailed account of their approach to navigating those guidelines, say they have held extensive discussions with Israeli counterparts to ensure they understand the country's obligations under international humanitarian law. But they acknowledge the United States is not conducting real-time assessments of Israel's adherence to the laws of war.

A senior U.S. official, who like other officials spoke on the condition of anonymity to describe sensitive internal discussions, said the administration was unable to make a contemporaneous evaluation of Israel's compliance in part because officials lack access both to the intelligence Israeli forces use to plan their operations and to commanders' intentions.

"What we can do from here in real time, feasibly but still rigorously, is to talk about the framework, the legal principles, talk about even some pretty nuanced, particular points of it," the official said, referring to international norms governing conflict.



The United States on Friday abstained from a vote on a U.N. Security Council resolution in support of an indefinite pause in fighting to allow the flow of humanitarian aid to the Gaza Strip. More than 20,000 people have been killed in the enclave during the war between Israel and Hamas, according to the Gaza Health Ministry.

**For context:** Understand what's behind the Israel-Gaza war.

(Oded Balilty/AP)

In certain instances, administration officials have posed specific questions to the Israelis, as they did following an October strike that killed more than 100 people in a refugee camp. In such cases, Israeli officials have shared information about their targeting and legal analysis, affirming U.S. officials' conclusion that Israel shares their understanding of its obligations.

"We're having some very rigorous and at times very tough conversations," the official said.

Some legal experts say those discussions must be followed by more active monitoring of what occurs with American weapons before additional arms are supplied.

"That's just the first step," said Brian Finucane, a former State Department lawyer who now serves as senior adviser with the International Crisis Group. "Even if the U.S. and Israel agree on the same black letter rule, in this case the rules relevant to the conduct of hostilities and targeting, that still leaves open the question of how those rules are being interpreted."

The heightened focus on American arms supplies comes as Israel intensifies its operations in southern Gaza, with the goal of ensuring that Hamas can never again mount the kind of assault that killed at least 1,200. Biden has vowed unqualified support to Washington's closest Middle East ally, which for decades has ranked as the top recipient of U.S. security aid. This week, his administration took the unusual step of invoking an emergency declaration to expedite a sale of tank rounds to Israel despite mounting congressional concerns.

American-made arms have played a central role in the war. In the first month and a half, Israel dropped more than 22,000 guided and unguided bombs on Gaza that were supplied by Washington, according to previously undisclosed intelligence figures provided to Congress. And during that time, the United States has transferred at least 15,000 bombs, including 2,000-pound bunker busters, and more than 50,000 155mm artillery shells.

Gaza, meanwhile, is gripped by humanitarian crisis as millions seek shelter from Israeli airstrikes and a ground offensive that have turned to rubble vast swaths of the Palestinian enclave. The United Nations has warned of catastrophe if shipments of vital supplies are not increased significantly.

The situation presents a worsening dilemma for Biden, who has vowed absolute support for Israel's security but has also promised to put human rights at the center of U.S. foreign policy.

His administration has established a new system at the Pentagon for curbing civilian deaths in U.S. military operations and launched a separate initiative at the State Department to track harm caused by allies employing U.S. arms. Last year, the United States endorsed a global declaration designed to curb the use of explosive weapons in urban areas.

The suffering in Gaza has prompted unusual public admonitions from senior officials including Defense Secretary Lloyd Austin and Secretary of State Antony Blinken, who has pressed Israeli officials to proceed with greater caution.

Since fighting resumed after a seven-day cease-fire on Dec. 1, administration officials have lamented Israel's use of powerful bombs near densely populated areas — a practice U.S. officials had urgently discouraged in private conversations and meetings in Israel, two U.S. officials said.

“There does remain a gap between exactly what I said when I was there, the intent to protect civilians, and the actual results that we’re seeing on the ground,” Blinken said Thursday.

Israel's military has sought to outline its procedures for avoiding civilian deaths but has also stressed what it says is the urgent threat facing its citizens. Like the United States, the Israeli military has lawyers who provide commanders with input, attempt to distinguish between combatants and civilians, and provide advance notice of airstrikes in certain situations. Israeli officials say, however, that Hamas embeds militants within civilian sites or in tunnels under them, including hospitals and apartment buildings, and that the group violated the laws of war, including by executing and kidnapping civilians, in its October assault.

U.S. officials who have met with Israeli counterparts in recent weeks cite the process Israeli forces use for calculating the value of individual militant targets and how many civilians are considered acceptable collateral damage. But they also said that Israel's bar is far higher than the United States' would be.

Publicly, U.S. officials say that it is too soon to judge whether Israel's conduct complies with the laws of war and that the administration is gathering information to ensure U.S. aid is not being used in ways that violate U.S. laws, a process that could outlast the current conflict.

“This is an extremely challenging space where there is fog of war, where there are challenges to our ability to get proper information,” Mira Resnick, deputy assistant secretary of state in charge of arms transfers, said in a recent interview.

“We don't have information that would indicate that we have crossed that more-likely-than-not threshold,” she said.

The Biden administration has not declined any request from Israel, officials said, and no cutoff of military assistance is being considered or communicated. And officials stressed that the administration believes it can better influence Israel's treatment of civilians if it maintains strong backing for the Jewish state.

Still, the senior U.S. official cautioned that the Biden administration's viewpoint may evolve as the conflict wears on.

“There is never a final answer to this and never a ‘put your pencil down’ moment in looking at what other actors are doing in the world, especially ones we’re providing support to,” the senior official said. “We are always evaluating, and reevaluating and reevaluating, our understanding of what they’re doing with it and our comfort with it.”

The situation recalls earlier moments when Washington has faced difficult decisions about arming allies, as it did in 2016, when the Obama administrations suspended certain arms sales to Saudi Arabia over its repeated bombing of civilian sites in Yemen. The decision followed warnings from State Department lawyers who worried that the United States risked becoming complicit in potential Saudi war crimes in Yemen because it supplies arms to Riyadh.

During the Reagan administration, the United States did suspend arms shipments to Israel over concerns about the use of cluster munitions in neighboring Lebanon.

Annie Shiel, U.S. advocacy director for the Center for Civilians in Conflict, questioned how Biden’s position achieves his stated goal of protecting innocent Gazans.

“On one hand, U.S. officials are saying Israel must do more to protect civilians, while on the other essentially providing a blank check, with no conditions, for how Israel is actually using U.S. assistance,” she said. “Where is the leverage in that?”

It is unclear whether the administration can allay growing concerns in Congress. Democrats have flagged the potential use of American weapons in lethal attacks involving civilians, including an incident in which, according to Amnesty International, U.S. bombs were used in what the group called an unlawful strike that killed 43 civilians in Gaza. Civil society groups have also voiced concerns that U.S. artillery shells could be used in a way that endangers Gazans.

This week, five senators appealed to Biden, condemning the Hamas attack but also decrying the human suffering resulting from Israel’s campaign.

“The risk of violating international law and our own standards increases as Israel uses explosive weapons in densely populated areas,” Sens. Elizabeth Warren (D-Mass.), Jeff Merkley (D-Ore.), Bernie Sanders (I-Vt.), Tim Kaine (D-Va.), and Martin Heinrich (D-N.M.) wrote.

Lawmakers also complain about the administration’s lack of transparency about the weapons provided to Israel, a stark contrast to how it has accounted for aid to Ukraine. A measure introduced this week by Sen. Chris Van Hollen (D-Md.) would require the administration to verify that arms are being used in accordance with international law.

In an interview, Warren said the U.S. government had an obligation to condition assistance on compliance with U.S. and global laws.

“It is critical, she said, “that we follow in real time whether those who receive our aid are, in fact, protecting civilian lives.”