

No. 24-704

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

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

17 Plaintiffs,

18 v.

19 JOSEPH R. BIDEN, Jr., *President of the*
20 *United States*; ANTHONY J. BLINKEN,
United States Secretary of State; LLOYD
21 JAMES AUSTIN III *United States Secretary*
of Defense, in their official capacities,

22 Defendants.
23
24

No. 4:23-cv-05829-JSW

**DEFENDANTS' NOTICE OF
MOTION, MOTION TO DISMISS,
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF AND IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: January 26, 2024 at 9:00 am

Honorable Jeffrey S. White
United States District Judge

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18 U.S. Dep’t of State, *Secretary Blinken’s Travel to Israel, Jordan, Qatar, Bahrain,*
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 MOT. FOR PRELIMINARY INJUNCTION, CASE NO. 4:23-cv-05829-JSW

NOTICE OF MOTION

Please take notice that on January 26, 2024, at 9 a.m., Defendants Joseph R. Biden, Jr., President; Antony J. Blinken, Secretary of State; and Lloyd James Austin, III, in their official capacities, will and hereby do move the Court to dismiss this action.

MOTION TO DISMISS

Defendants move to dismiss this action for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure and for failure to state a claim under Rule 12(b)(6) for the reasons set forth in the following Memorandum of Points and Authorities.

* * *

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS AND IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs—Palestinian advocacy organizations based in Ramallah, Palestinian residents of the Gaza Strip, and U.S. citizens with relatives in Gaza—sued pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”), Dec. 9, 1948, 78 U.N.T.S. 277, and its implementing criminal legislation, 18 U.S.C. §§ 1091 *et seq.* They seek a mandatory injunction compelling the President and the Secretaries of State and Defense to take all measures within their power to prevent Israel from purportedly committing genocide against the Palestinian people in Gaza. They also seek to enjoin any further U.S. military or financial assistance to Israel, including any diplomatic support for Israel in the international community. Plaintiffs have also moved for a preliminary injunction, seeking part of the ultimate relief requested in the Complaint—the halting of aid to Israel.

This Court should dismiss the Complaint and deny the preliminary injunction motion for three independent reasons: (1) this suit presents a quintessential nonjusticiable political question, (2) Plaintiffs cannot meet the Article III standing requirements, and (3) neither the Genocide Convention nor its implementing criminal statute creates a private right of action.

Since Hamas’s October 7, 2023 terrorist attack on Israel, the President and the Secretaries of State and Defense have been working to mitigate the humanitarian crisis unfolding in Gaza, to prevent the escalation of the armed conflict between Israel and Hamas into a broader regional

1 conflict, and to support Israel’s right to defend itself. These diplomatic efforts helped lead to a
2 seven-day pause in the fighting that permitted more humanitarian aid to flow into Gaza and saw
3 the release of some hostages, including U.S. nationals. Although the pause has ended, intense
4 diplomatic efforts are ongoing. Plaintiffs seek to have the Court override the Executive Branch’s
5 foreign policy and national security determinations. But decisions about whether and how to
6 attempt to influence foreign nations, and whether and how to provide them military assistance,
7 financial assistance, or other support, are constitutionally committed to the political branches of
8 the Government. Plaintiffs’ suit thus presents a nonjusticiable political question, and this Court
9 has no subject matter jurisdiction to proceed. *See Republic of Marshall Islands v. United States*,
10 865 F.3d 1187 (9th Cir. 2017); *Corrie v. Caterpillar, Inc.*, 503 F.3d 974 (9th Cir. 2007).

11 Even if the political-question doctrine did not preclude judicial review here (which it does),
12 Plaintiffs still cannot overcome another jurisdictional hurdle—their lack of standing. Plaintiffs’
13 alleged injuries are the result of the military and other activities of an independent foreign
14 sovereign, Israel, over which this Court has no authority. There is no order that is within this
15 Court’s jurisdiction to fashion that could provide effective relief to Plaintiffs—namely, preventing
16 Israel from taking the sovereign actions it chooses to take to respond to the October 7th attack.
17 Plaintiffs therefore cannot meet the causation or redressability prongs of the standing requirements.

18 Beyond these jurisdictional bars, Plaintiffs fail to state a claim upon which relief can be
19 granted. Fed. R. Civ. P. 12(b)(6). Plaintiffs assert two claims under the Genocide Convention and
20 its implementing legislation, respectively: Count I, “Violation of the Duty to Prevent Genocide,”
21 and Count II, “Complicity in Genocide.” Plaintiffs also suffuse among those two purported causes
22 of action references to customary international law prohibiting genocide. However, “customary
23 international law is not a source of judicially enforceable private rights[.]” *Serra v. Lappin*, 600
24 F.3d 1191, 1197 (9th Cir. 2010). A treaty may in some cases provide a source of judicially
25 enforceable private rights if it is self-executing, but the Genocide Convention is not self-executing.
26 Instead of providing for enforcement under domestic law, Article V of the Convention requires
27 implementing legislation by the contracting parties to give effect to its provisions. Moreover, the
28 Genocide Convention Implementation Act, a criminal statute in Title 18 enforceable only by the

1 federal government, affords Plaintiffs no relief because it explicitly provides that “[n]othing in this
2 chapter [i.e. Chapter 50A on Genocide] shall be construed as . . . creating any substantive or
3 procedural right enforceable by law by any party in any proceeding.” 18 U.S.C. § 1092. Thus,
4 the criminal statute is likewise not a source of private rights.

5 Finally, although the Court need not consider the preliminary injunction factors because
6 Plaintiffs’ claims fail as a matter of law, the balance of equities weighs overwhelmingly against
7 the issuance of a preliminary injunction. The Constitution squarely commits foreign policy and
8 national security decisions to the political branches of the Government. Plaintiffs, however, ask
9 the Court to override those decisions in violation of the constitutional separation of powers, which
10 is decidedly against the Government and public interest. Plaintiffs’ asserted harms are not
11 redressable by this Court, which further warrants the denial of Plaintiffs’ extraordinary request for
12 preliminary injunctive relief, even if the Court were not inclined to dismiss their Complaint.

13 BACKGROUND

14 I. FACTUAL BACKGROUND

15 On October 7, 2023, Israel was attacked by Hamas. Since then, Israel has been mounting
16 a military campaign against Hamas in the Gaza Strip. The President, the Secretary of State, and
17 numerous other senior administration officials have been engaged in diplomatic discussions with
18 actors throughout the region regarding the conflict. The President has visited the region to
19 reinforce the United States’ support for Israel and the families of victims, including U.S. nationals
20 killed or taken hostage, while making clear that “[t]he United States unequivocally stands for the
21 protection of civilian life,” and emphasizing that “[t]he vast majority of Palestinians are not
22 Hamas.”¹ Since his trip to Israel, the President has “been focused on accelerating the delivery of
23 humanitarian assistance to Gaza in coordination with the United Nations and the Red Cross.”² The
24 President has also appointed a Special Envoy for Middle East Humanitarian Issues, who is leading
25

26 ¹ The White House, *Remarks by President Biden on the October 7th Terrorist Attacks and*
27 *the Resilience of the State of Israel and Its People* (Oct. 18, 2023), <https://perma.cc/D7A9-RSBU>.

28 ² The White House, *Remarks by President Biden on the Release of Hostages from Gaza*
(Nov. 24, 2023), <https://perma.cc/UR4Z-EG8F>.

1 diplomatic efforts in the region to address the humanitarian crisis and facilitate the provision of
2 life-saving assistance to the most vulnerable people.³

3 In addition to U.S. commitments related to military assistance to Israel for 2019–2028 as
4 reflected in a Memorandum of Understanding signed in 2016, Compl. ¶ 168,⁴ the President has
5 also requested supplemental funding from Congress to strengthen Israel’s defense through
6 Department of State assistance, bolster the Israel Defense Forces through Department of Defense
7 assistance, ensure Israel’s air and missile defense systems’ readiness, enhance U.S. embassy
8 security, and extend humanitarian assistance to civilians impacted by the war in Israel and Gaza.⁵

9 Meanwhile, the Secretary of State has traveled to Israel, Jordan, Qatar, Bahrain, Saudi
10 Arabia, the United Arab Emirates, and Egypt to emphasize the United States’ “condemnation of
11 the terrorist attacks in Israel,” “reaffirm the United States’ solidarity with the government and
12 people of Israel,” and “engage regional partners on efforts to help prevent the conflict from
13 spreading, secure the immediate and safe release of hostages, and identify mechanisms for the
14 protection of civilians.”⁶ In another trip to Israel, Jordan, Ramallah, Iraq, and Turkey in early
15 November, the Secretary of State further “discussed urgent mechanisms to stem violence, calm
16 rhetoric, reduce regional tensions, and reaffirm the U.S. commitment to working with partners to
17 set the conditions necessary for a durable and sustainable peace in the Middle East, to include the
18 establishment of a Palestinian state.”⁷ And in his most recent trip towards the end of the seven-
19 day humanitarian pause in the fighting—which the United States helped secure through close talks
20 with Israel, Qatar, and Egypt—the Secretary met with the Israeli Prime Minister to reaffirm U.S.

21
22 ³ U.S. Dep’t of State, *Appointment of David Satterfield as Special Envoy for Middle East Humanitarian Issues* (Oct. 15, 2023), <https://perma.cc/C2LA-7YUF>.

23 ⁴ In the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year
24 2021, Pub. L. No. 116-283, § 1273, 134 Stat. 3388, 3979, Congress authorized “not less” than \$3.3
billion in annual military aid to Israel through 2028.

25 ⁵ The White House, *FACT SHEET: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), <https://perma.cc/B8AJ-V4LC>.

26 ⁶ U.S. Dep’t of State, *Secretary Blinken’s Travel to Israel, Jordan, Qatar, Bahrain, Saudi Arabia, the United Arab Emirates, and Egypt* (Oct. 12, 2023), <https://perma.cc/275U-6FSC>.

27 ⁷ U.S. Dep’t of State, *Travel to Tel Aviv, Amman, Ramallah, Baghdad, Ankara, Tokyo, Seoul, and New Delhi, November 2–10, 2023*, <https://perma.cc/HRV9-LHYU>.

1 support for Israel’s right to protect itself while complying with international humanitarian law,
2 stress the imperative of accounting for humanitarian and civilian protection needs in southern
3 Gaza, and discuss the need to accelerate the delivery of critical, life-saving humanitarian assistance
4 to Gaza.⁸

5 At the same time, the Secretary of Defense has ordered the movement of U.S. forces to the
6 Middle East region to “bolster regional deterrence efforts, increase force protection for U.S. forces
7 in the region, and assist in the defense of Israel,”⁹ while also expressing to Israeli military leaders
8 “the need to prioritize civilian safety in military operations . . . and urg[ing] continued progress to
9 increase assistance to civilians in Gaza.”¹⁰

10 While the humanitarian pause has ended, the United States has not “stopped [its] efforts . .
11 . trying to work hour by hour to see if [it] can get [the humanitarian] pause reinstated[,] . . . get
12 those hostages out,” and increase the delivery of “humanitarian assistance.”¹¹ The United States
13 has also reiterated its expectations that security assistance is “going to be used in keeping with
14 [the] law of armed conflict.”¹²

15 **II. PLAINTIFFS’ COMPLAINT AND THE PRELIMINARY INJUNCTION MOTION**

16 On November 13, 2023, Plaintiffs filed this suit seeking to compel the President and
17 Secretaries of Defense and State to “take all measures within their power to prevent Israel’s
18 commission of [allegedly] genocidal acts against the Palestinian people of Gaza.” Compl. at
19

20 ⁸ U.S. Dep’t of State, *Secretary Blinken’s Meeting with Israeli Prime Minister Netanyahu*
21 (Nov. 30, 2023), <https://perma.cc/M33P-3CHF>. See also U.S. Dep’t of State, *Secretary Antony J.*
22 *Blinken at a Press Availability* (Nov. 30, 2023), <https://perma.cc/R4T8-7ZSC> (“Israel has the right
23 to do everything it can to ensure that the slaughter Hamas carried out . . . can never be repeated,”
but “[i]t’s imperative that Israel act in accordance with international humanitarian law and the laws
of war, even when confronting a terrorist group that respects neither”).

24 ⁹ U.S. Dep’t of Defense, *Statement from Secretary of Defense Lloyd J. Austin III on Steps*
25 *to Increase Force Posture* (Oct. 21, 2023), <https://perma.cc/S9VA-VMYD>.

26 ¹⁰ U.S. Dep’t of Defense, *Readout of Secretary of Defense Lloyd J. Austin III’s Call with*
27 *Israeli Minister of Defense Yoav Gallant* (Oct. 31, 2023), <https://perma.cc/AW85-ZGPR>.

28 ¹¹ CBS News, *Transcript: John Kirby on “Face the Nation,” Dec. 3, 2023*, *Face the Nation*
(Dec. 3, 2023), <https://perma.cc/JY23-Y7TX>.

¹² *Id.*

1 Prayer for Relief, ECF No. 1. Count I of the Complaint alleges that Defendants violated their duty
2 under Article I of the Genocide Convention¹³ by supporting Israel’s military actions against Hamas
3 in Gaza. *Id.* ¶¶ 313-21. Count II alleges that Defendants, by providing diplomatic, financial, and
4 military support to Israel, are complicit in Israel’s purported commission of genocide, in violation
5 of Article III(e) of the Genocide Convention¹⁴ and its implementing legislation, the Genocide
6 Convention Implementation Act, 18 U.S.C. § 1091, which makes genocide a federal crime.
7 Compl. ¶¶ 322-40. Plaintiffs seek an order declaring that Defendants have violated “customary
8 international law, [purportedly] as part of federal common law,” and requiring Defendants to, *inter*
9 *alia*, “exert influence over Israel to end its bombing of the Palestinian people of Gaza, . . . to lift
10 the siege on Gaza, . . . [and to] prevent the ‘evacuation’ or forcible transfer and expulsion of
11 Palestinians from Gaza.” *Id.* at Prayer for Relief. Plaintiffs also seek an order enjoining
12 Defendants from providing further military or financial assistance to Israel and “from obstructing
13 attempts by the international community, including at the United Nations, to implement a ceasefire
14 in Gaza and lift the siege on Gaza.” *Id.*

15 On November 16, 2023, Plaintiffs filed a motion for preliminary injunction seeking to
16 halt all U.S. “military or financial support, aid, or any form of assistance” to Israel’s response to
17 Hamas’s October 7th attack. Notice of Mot. & Mot. for Prelim. Inj.; Mem. of P. & A. in Supp.
18 Thereof at 1, ECF No. 19 (“PI Br.”).

19 ARGUMENT

20 I. LEGAL STANDARDS

21 A preliminary injunction is “an extraordinary and drastic remedy, one that should not be
22 granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v.*
23 *Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted). To satisfy this standard, a plaintiff must
24 establish that he or she is likely to succeed on the merits, likely to suffer irreparable harm in the

25 ¹³ Article I of the Convention states that “[t]he Contracting Parties confirm that genocide,
26 whether committed in time of peace or in time of war, is a crime under international law which
27 they undertake to prevent and to punish.” Genocide Convention, art. 1, 78 U.N.T.S. at 280.

28 ¹⁴ Article III of the Convention states that “[t]he following acts shall be punishable: . . . (e)
Complicity in genocide.” *Id.* art. III(e), 78 U.N.T.S. at 280.

1 absence of preliminary relief, that the balance of equities tips in his or her favor, and that an
2 injunction is in the public interest. *Am. Beverage Ass’n v. City & Cnty. of San Francisco*, 916 F.3d
3 749, 754 (9th Cir. 2019) (en banc) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
4 (2008)). “The first factor under *Winter* is the most important,” such that the Court need not
5 consider the remaining factors if a plaintiff fails to show a likelihood of success on the merits.
6 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc).

7 Moreover, where “a party seeks mandatory preliminary relief that goes well beyond
8 maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a
9 preliminary injunction.” *Martin v. Int’l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984). For
10 mandatory preliminary relief, a plaintiff must show that the law and facts clearly favor his or her
11 position. *Garcia*, 786 F.3d at 740. Further, “courts have been reluctant to grant an affirmative
12 injunction where the effect would be to grant final relief before the claims are adjudicated.” *Eagle*
13 *Broadband, Inc. v. Transcon. Props., Inc.*, No. 2:05-CV-1525, 2006 WL 8441642, at *2 (D. Nev.
14 Apr. 4, 2006); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th Cir. 1963) (“[I]t is
15 not usually proper to grant the moving party the full relief to which he might be entitled if
16 successful at the conclusion of a trial.”); *Sims v. Stuart*, 291 F. 707, 707-08 (S.D.N.Y. 1922)
17 (Learned Hand, J.) (explaining that while equity “will at times affirmatively restore the status quo
18 ante pending the suit,” it will not, “[u]nder the guise of a mandatory injunction,” “take jurisdiction
19 over a legal claim merely to hurry it along by granting final relief at the outset of the cause”).

20 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
21 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
22 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In reviewing
23 a motion to dismiss, the court considers “the complaint in its entirety, as well as . . . documents
24 incorporated into the complaint by reference, and matters of which a court may take judicial
25 notice.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007).¹⁵ The court accepts

26 _____
27 ¹⁵ In considering the Government’s motion to dismiss, the Court may take judicial notice
28 of government officials’ public statements. *See Saldana v. Occidental Petroleum Corp.*, 774 F.3d
544, 551 n.1 (9th Cir. 2014) (taking judicial notice of government presentations to Congress); *see*

1 the factual allegations as true but “bare assertions” and “conclusory” allegations are “not entitled
2 to be assumed true.” *Iqbal*, 556 U.S. at 678, 681. The court applies this standard both when
3 analyzing whether the Complaint alleges facts sufficient to establish subject matter jurisdiction
4 and when analyzing whether the Complaint states a valid claim for relief. *See, e.g., Terenkian v.*
5 *Republic of Iraq*, 694 F.3d 1122, 1131 (9th Cir. 2012).

6 **II. THE COURT LACKS JURISDICTION OVER THIS MATTER**

7 **A. Plaintiffs’ Claims Raise A Nonjusticiable Political Question**

8 This Court lacks authority to decide the current dispute because “‘a determination of
9 whether foreign aid to Israel is necessary at this particular time is’ . . . inappropriate for judicial
10 resolution.” *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) (quoting *Dickson v.*
11 *Ford*, 521 F.2d 234, 236 (5th Cir. 1975)); *see also Abusharar v. Hagel*, 77 F. Supp. 3d 1005, 1006
12 (C.D. Cal. 2014) (“[T]he decision to provide military [or financial] support to a foreign nation is a
13 quintessential political question.”). “The political question doctrine first found expression in Chief
14 Justice Marshall’s observation that ‘[q]uestions, in their nature political, or which are, by the
15 constitution and laws, submitted to the executive, can never be made in this court.’” *Caterpillar*,
16 503 F.3d at 980 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803)); *see also El-*
17 *Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 840 (D.C. Cir. 2010) (en banc) (the
18 doctrine recognizes that “some ‘[q]uestions, in their nature political,’ are beyond the power of the
19 courts to resolve” (quoting *Marbury*, 5 U.S. at 170)). “The Supreme Court has since explained
20 that ‘[t]he nonjusticiability of a political question is primarily a function of the separation of
21 powers.’” *Caterpillar*, 503 F.3d at 980 (quoting *Baker v. Carr*, 369 U.S. 186, 211 (1962)).
22 Accordingly, the doctrine “excludes from judicial review those controversies which revolve
23 around policy choices and value determinations constitutionally committed for resolution to the
24 halls of Congress or the confines of the Executive Branch.” *Japan Whaling Ass’n v. Am. Cetacean*
25 *Soc’y*, 478 U.S. 221, 230 (1986).

26
27 *also Matar v. Dichter*, 500 F. Supp. 2d 284, 294 n.4 (S.D.N.Y. 2007) (“For purposes of the political
28 question inquiry, the Court may take judicial notice of the ‘official policy and opinion’ of the
United States and Israel.” (citation omitted)), *aff’d*, 563 F.3d 9 (2d Cir. 2009).

DEFS.’ NOTICE OF MOTION, MOTION TO DISMISS, AND MEM. IN SUPPORT AND OPP’N TO PLS.’ MOT.
FOR PRELIMINARY INJUNCTION, CASE NO. 4:23-cv-05829-JSW

1 In *Baker v. Carr*, the Supreme Court identified six factors to determine whether a case
2 presents a political question:

3 [1] a textually demonstrable constitutional commitment of the issue to a coordinate
4 political department; or [2] a lack of judicially discoverable and manageable
5 standards for resolving it; or [3] the impossibility of deciding without an initial
6 policy determination of a kind clearly for nonjudicial discretion; or [4] the
7 impossibility of a court's undertaking independent resolution without expressing
8 lack of the respect due coordinate branches of government; or [5] an unusual need
9 for unquestioning adherence to a political decision already made; or [6] the
10 potentiality of embarrassment from multifarious pronouncements by various
11 departments on one question.

12 369 U.S. at 217. “[T]o find a political question, [the Court] need only conclude that one factor is
13 present, not all.” *Republic of Marshall Islands*, 865 F.3d at 1200 (quoting *Schneider v. Kissinger*,
14 412 F.3d 190, 194 (D.C. Cir. 2005)); *see also Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012)
15 (discussing only the first two *Baker* factors).

16 Plaintiffs’ requested relief plainly implicates matters that are textually committed to the
17 political branches of the Government. Plaintiffs seek an order compelling Defendants to “take all
18 measures within their power” to prevent Israel from committing what Plaintiffs characterize as
19 “genocide against the Palestinian people of Gaza.” Compl. at Prayer for Relief. Plaintiffs also
20 attempt to invoke the power of this Court to require the Executive Branch to “exert influence over
21 Israel” to end Israel’s bombing in Gaza, to “lift the siege on Gaza,” and to “prevent the [purported]
22 ‘evacuation’ or forcible transfer and expulsion of Palestinians from Gaza.” *Id.* And Plaintiffs ask
23 for an injunction to stop Defendants from providing military or financial assistance to Israel, or
24 the sale or delivery of weapons and arms. *Id.* These are matters “intimately related to foreign
25 policy and national security,” *Haig v. Agee*, 453 U.S. 280, 292 (1981), and thus are “largely
26 immune from judicial inquiry or interference,” *Harisiades v. Shaughnessy*, 342 U.S. 580, 589
27 (1952).¹⁶

28 ¹⁶ *See also Haig*, 453 U.S. at 292 (foreign policy and national security matters are “rarely
proper subjects for judicial intervention”); *Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333
U.S. 103, 111 (1948) (“[T]he very nature of executive decisions as to foreign policy is political,
not judicial. . . . They are decisions of a kind for which the Judiciary has neither aptitude, facilities
nor responsibility and have long been held to belong in the domain of political power not subject
to judicial intrusion or inquiry.”); *Luftig v. McNamara*, 373 F.2d 664, 665-66 (D.C. Cir. 1967) (“It

1 “The conduct of the foreign relations of our government is committed by the Constitution
2 to the executive and legislative—‘the political’—departments of the government.” *Oetjen v. Cent.*
3 *Leather Co.*, 246 U.S. 297, 302 (1918); accord *Republic of Marshall Islands*, 865 F.3d at 1200-
4 01. It has long been recognized that “[t]he President is the sole organ of the nation in its external
5 relations, and its sole representative with foreign nations.” *United States v. Curtiss-Wright Exp.*
6 *Corp.*, 299 U.S. 304, 319 (1936) (citation omitted); see also *Am. Ins. Ass’n v. Garamendi*, 539
7 U.S. 396, 414 (2003) (“historical gloss on the ‘executive Power’ vested in Article II of the
8 Constitution has recognized the President’s ‘vast share of responsibility for the conduct of our
9 foreign relations’” (citation omitted)). “[T]he Constitution plainly grants the President the
10 initiative in matters directly involved in the conduct of diplomatic affairs.” *Earth Island Inst. v.*
11 *Christopher*, 6 F.3d 648, 653 (9th Cir. 1993) (citation omitted); see also *Jensen v. Nat’l Marine*
12 *Fisheries Serv. (NOAA)*, 512 F.2d 1189, 1191 (9th Cir. 1975) (similar). When diplomacy fails, it
13 is also the President who has the constitutionally vested authority as Commander in Chief to deploy
14 our military. See U.S. Const. art. II, § 2, cl. 1; *Chi. & S. Air Lines*, 333 U.S. at 109–10. To address
15 Plaintiffs’ claims here, therefore, would contravene the political question doctrine, straying far
16 beyond the “familiar judicial exercise” of how a statute should be interpreted or whether it is
17 constitutional. *Zivotofsky*, 566 U.S. at 196.

18 The Court of Appeals’ decision in *Corrie v. Caterpillar, Inc.*, 503 F.3d 974 (9th Cir. 2007),
19 is dispositive here. There, the plaintiffs’ family members were killed or injured when the Israel
20 Defense Forces (“IDF”) allegedly demolished their homes in the Palestinian Territories using
21 bulldozers manufactured by Caterpillar, Inc., a U.S. corporation, and paid for by the United States.
22 *Id.* at 977-78. The plaintiffs sued Caterpillar, raising state and federal law claims and alleging that
23 Caterpillar knew its equipment would be used in violation of international law, and thus aided and
24 abetted those violations. *Id.* at 979. The plaintiffs sought to enjoin further sales, among other
25 relief. *Id.*

26
27
28 is difficult to think of an area less suited for judicial action than . . . the use and disposition of
military power; these matters are plainly the exclusive province of Congress and the Executive.”).

1 The court found the case presented a nonjusticiable political question as resolving it would
2 require the court to “examine the United States government’s role in financing the IDF’s purchases
3 of . . . [the] bulldozers.” *Id.* But “these sales were financed by the executive branch pursuant to a
4 congressionally enacted program calling for executive discretion as to what lies in the foreign
5 policy and national security interests of the United States.” *Id.* at 982. To allow the action to
6 proceed, the court said, “would necessarily require the judicial branch of our government to
7 question the political branches’ decision to grant extensive military aid to Israel.” *Id.* The matter
8 thus failed the first *Baker* factor because, as the court reasoned, the judiciary “cannot intrude into
9 our government’s decision to grant military assistance to Israel”—“that foreign policy decision is
10 committed under the Constitution to the legislative and executive branches.” *Caterpillar*, 503 F.3d
11 at 983. The court further noted that a ruling in the plaintiffs’ favor would implicate several of the
12 other *Baker* factors. For example, it would require the court to “implicitly question[], and even
13 condemn[], United States foreign policy toward Israel,” and to “potential[ly] . . . caus[e]
14 international embarrassment” if the court were to “undermine foreign policy decisions in the
15 sensitive context of the Israeli-Palestinian conflict.” *Caterpillar*, 503 F.3d at 983-84. Further, the
16 court was sensitive to the State Department’s imperative to “choose [its] words carefully,” and
17 recognized that entering “a declaration that the IDF has systematically committed grave violations
18 of international law” would “subvert United States foreign policy.” *Id.* at 984. The *Caterpillar*
19 court’s analysis applies with even greater force here, as that case raised only an “indirect[]”
20 challenge to the Government’s foreign policy, *id.*, whereas this case raises a direct one.

21 Also instructive is the Court of Appeals’ decision in *Republic of Marshall Islands v. United*
22 *States*, a case involving the United States’ alleged breach of the Treaty on the Non-Proliferation
23 of Nuclear Weapons, which “calls on each party to the Treaty ‘to pursue negotiations in good faith
24 on effective measures’ to end the nuclear arms race and accomplish nuclear disarmament.” 865
25 F.3d at 1190 (citation omitted). In addition to finding the treaty to be non-self-executing and
26 plaintiffs’ asserted injuries not redressable, the court held that the case presented a nonjusticiable
27 political question because, among other things, “the decision of when, where, whether, and how
28 the United States will negotiate with foreign nations to end the nuclear arms race and accomplish

1 nuclear disarmament” is textually committed in the Constitution to a coordinate political
2 department. *Id.* at 1200. As the court reasoned, “[w]e simply cannot square the primacy of the
3 Executive in the conduct of foreign relations and the Executive Branch’s lead role in foreign
4 policy’ . . . with an injunction that compels the United States to ‘call[] for and conven[e]
5 negotiations for nuclear disarmament in all its aspects.’” *Id.* at 1201 (cleaned up). The same is
6 true of Plaintiffs’ request to compel the Executive Branch to “exert influence over Israel.” Compl.
7 at Prayer for Relief.

8 Not only is judicial review of Plaintiffs’ claims foreclosed by *Caterpillar* and *Republic of*
9 *Marshall Islands*, but numerous other courts also have found challenges to the United States’
10 financial and diplomatic support of Israel to be nonjusticiable. *See Dickson*, 521 F.2d at 236
11 (dismissing on political question grounds a challenge to a statute appropriating funds for military
12 assistance to Israel);¹⁷ *Abusharar*, 77 F. Supp. 3d at 1006 (dismissing on political question grounds
13 suit to enjoin the Secretaries of State and Defense from providing military support to Israel after
14 the plaintiff’s home in the Gaza Strip was allegedly destroyed in a bombing by the Israeli military);
15 Memorandum Op. at 15, *John Doe I v. Israel*, No. 1:02-cv-01431 (D.D.C. Oct. 3, 2003), ECF No.
16 42 (attached as Ex. A) (“claims involving arms sales to Israel—which occur pursuant to a sensitive
17 and detailed statutory and regulatory scheme inextricably intertwined with critical foreign policy
18 decisions—are nonjusticiable political questions better left to consideration by the political
19 branches”); *Mahorner v. Bush*, 224 F. Supp. 2d 48, 53 (D.D.C. 2002) (claim seeking to enjoin the
20 President and Treasury Secretary from providing financial aid to Israel presented nonjusticiable
21 political question), *aff’d*, 2003 WL 349713 (D.C. Cir. Feb. 12, 2003); *cf. Bernstein v. Kerry*, 962
22 F. Supp. 2d 122, 126 & n.6 (D.D.C. 2013) (dismissing challenge to U.S. funding of the Palestinian
23 Authority on standing grounds and because “this case is fraught with serious political questions
24 that deprive the Court of jurisdiction”), *aff’d*, 584 F. App’x 7 (D.C. Cir. 2014).

25
26 ¹⁷ *Cf. Lamont v. Woods*, 948 F.2d 825, 833 (2d Cir. 1991) (distinguishing *Dickson* on other
27 grounds, but remarking that had the plaintiffs in *Dickson* “been successful, Congress’s foreign
28 policy goal—to maintain the balance of power in the Middle East and to preserve Israel’s capacity
to defend herself—could not have been achieved. Effectively, then, the challenge in *Dickson* was
to the foreign policy itself” (citations omitted)).

1 While “[i]t is hard to conceive of an issue more quintessentially political in nature than the
2 ongoing Israeli-Palestinian conflict,” *Doe I v. State of Israel*, 400 F. Supp. 2d 86, 111–12 (D.D.C.
3 2005), courts similarly have yielded to the political branches when addressing challenges to U.S.
4 military or other aid in other conflicts. *See, e.g., Crockett v. Reagan*, 558 F. Supp. 893, 899-900
5 (D.D.C. 1982) (dismissing challenge to military aid to El Salvador due to lack of standards to
6 assess nature of U.S. involvement there), *aff’d*, 720 F.2d 1355 (D.C. Cir. 1983); *Sanchez-Espinoza*
7 *v. Reagan*, 568 F. Supp. 596, 601 (D.D.C. 1983) (court lacks standards to assess U.S. actions in
8 Nicaragua), *aff’d*, 770 F.2d 202 (D.C. Cir. 1985); *Aerotrade, Inc. v. U.S. Agency for Int’l Dev.*
9 *Dep’t of State*, 387 F. Supp. 974, 975-77 (D.D.C. 1974) (dismissing action challenging aid to
10 Haiti); *Holtzman v. Schlesinger*, 484 F.2d 1307, 1311 (2d Cir. 1973) (challenge to U.S. bombing
11 and other military activities in Cambodia presented a political question); *Sarnoff v. Connally*, 457
12 F.2d 809, 809-10 (9th Cir. 1972) (affirming dismissal of challenge to the Vietnam War because
13 challenges to “foreign aid and appropriations aspects of congressional cooperation in [a military]
14 conflict . . . presents a political question”).

15 In sum, this case presents a political question, and “the presence of a
16 political question deprives a court of subject matter jurisdiction.” *Caterpillar*, 503 F.3d at 980;
17 *see also Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974) (“[T]he
18 concept of justiciability, which expresses the jurisdictional limitations imposed upon federal courts
19 by the ‘case or controversy’ requirement of Art. III, embodies . . . the political question
20 doctrine[.]”).

21 **B. Plaintiffs Lack Standing Because Their Alleged Injuries Are Caused by an**
22 **Independent Third-Party, Israel, Over Which the Court Lacks Authority**

23 “Federal courts are courts of limited jurisdiction,” and it is therefore “presumed that a cause
24 lies outside this limited jurisdiction” unless a party demonstrates that jurisdiction exists. *Kokkonen*
25 *v. Guar. Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).¹⁸ To satisfy the jurisdictional requirement

26 _____
27 ¹⁸ At a minimum, the President is not a proper defendant because the Court lacks
28 “jurisdiction of a bill to enjoin the President in the performance of his official duties,” at least
outside of purely ministerial duties. *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (citation
omitted).

1 of standing, Plaintiffs bear the burden of establishing the following three elements: “(1) he or she
2 has suffered an injury in fact that is concrete and particularized, and actual or imminent; (2) the
3 injury is fairly traceable to the challenged conduct; and (3) the injury is likely to be redressed by a
4 favorable court decision.” *Salmon Spawning & Recovery All. v. Gutierrez*, 545 F.3d 1220, 1225
5 (9th Cir. 2008) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Where the
6 elements of standing “depend[] on the unfettered choices made by independent actors not before
7 the courts and whose exercise of broad and legitimate discretion the courts cannot presume to
8 control or to predict,” standing “is not precluded, but it is ordinarily substantially more difficult to
9 establish.” *Lujan*, 504 U.S. at 562 (citation omitted). In such circumstances “causation and
10 redressability ordinarily hinge on the response of . . . [a] third party to the government[’s] action
11 or inaction.” *Id.* Courts have been particularly “reluctant to endorse standing theories that require
12 guesswork as to how independent decisionmakers will exercise their judgment.” *Clapper v.*
13 *Amnesty Int’l USA*, 568 U.S. 398, 413 (2013). The burden is on the plaintiff to allege facts
14 sufficient to show that the third party’s behavior is causally linked to the government’s conduct
15 and “permit[s] redressability of injury.” *Lujan*, 504 U.S. at 562. Plaintiffs have not done so here.

16 Israel, a sovereign nation, is an independent actor not before the Court. While the United
17 States is providing military assistance and other support to Israel, it does not control Israel’s
18 military operations. *See, e.g.*, Compl. ¶¶ 226-27 (quoting statements of the Pentagon’s Deputy
19 Press Secretary Sabrina Singh indicating that the United States is not directing Israel’s ground
20 operations). Plaintiffs have not shown that their alleged injuries are fairly traceable to the United
21 States’ provision of military, financial, or diplomatic support to Israel. *Salmon Spawning*, 545
22 F.3d at 1228 (noting the lack of traceability where even if the U.S. withdrew from an international
23 agreement, the plaintiff could still be injured by the independent acts of another country). More
24 importantly, even if the Court were to order the United States to withdraw such support, there is
25 no indication that such an order would change Israel’s military operations in a way that would
26 redress Plaintiffs’ alleged injuries. *Cf. Bernstein*, 962 F. Supp. 2d at 130 (“The Executive Branch
27 has decided that the provision of foreign aid [to Palestinian organizations] encourages the peace
28

1 process and . . . Plaintiffs’ disagreement . . . with this policy and their belief that a change in policy
2 would [remedy the asserted harm] . . . is, at best, mere speculation.”).

3 Indeed, courts “have been particularly reluctant to find standing where the third party upon
4 whose conduct redressability depends is a foreign sovereign.” *Cierco v. Mnuchin*, 857 F.3d 407,
5 419 (D.C. Cir. 2017).¹⁹ For example, in *Republic of Marshall Islands v. United States*, 79 F. Supp.
6 3d 1068 (N.D. Cal. 2015) (White, J.), *aff’d*, 865 F.3d 1187 (9th Cir. 2017), in which, as discussed
7 above, the plaintiffs sought to compel the United States’ compliance with the Non-Proliferation
8 Treaty, this Court found it could not redress the plaintiffs’ alleged injury by compelling the
9 performance of “only one nation to the Treaty”; that is, it could not fashion any meaningful decree
10 that could “account for the participation of all of the nuclear and non-nuclear states that are parties
11 to the Treaty but are not parties to this suit.” *Id.* at 1072. The same is true here. Israel is an
12 independent sovereign that is not a party before this Court. The Court cannot fashion a remedy
13 that could redress Plaintiffs’ alleged injuries. Accordingly, Plaintiffs lack standing to pursue their
14
15
16

17 ¹⁹ See, e.g., *Talenti v. Clinton*, 102 F.3d 573, 577-78 (D.C. Cir. 1996) (dismissing action
18 seeking to suspend aid to Italy given the possibility that Italy might respond in a way that would
19 not redress the plaintiff’s alleged injury); *Greater Tampa Chamber of Com. v. Goldschmidt*, 627
20 F.2d 258, 263 (D.C. Cir. 1980) (holding that plaintiffs lack standing to challenge the validity of an
21 international agreement between the United States and another foreign sovereign regarding air
22 travel where no order could force the other nation to agree to terms that would redress plaintiffs’
23 injuries); *Indigenous People of Biafra v. Blinken*, 639 F. Supp. 3d 79, 87 (D.D.C. 2022) (noting
24 difficulty of finding redressability when the dispute involves “independent actors” who are
25 “foreign sovereigns over whom the Court exercises no authority”); *Fryshman v. U.S. Comm’n for*
26 *Pres. of Am.’s Heritage Abroad*, 422 F. Supp. 3d 1, 8 (D.D.C. 2019) (“Federal courts are simply
27 not well-suited to draw the types of inferences regarding foreign affairs and international responses
28 to U.S. policy that Plaintiffs’ theory of causation posits.” (citation omitted)); *Do Thi Tran v. U.S.*
Dep’t of State, Civ. A. No. 13-646, 2014 WL 1877414, at *4 (E.D. La. May 9, 2014) (“[I]t is mere
speculation to assume that a court order halting aid [to Vietnam] . . . would assist in resolution of
Plaintiffs’ land disputes.”); *Bernstein*, 962 F. Supp. 2d at 129-30 (“It is nothing more than
conjecture to argue that changing U.S. funding policies [for the Palestinian people] will reduce
terrorism or plaintiffs’ subjective fears.”); and *Betterroads Asphalt Corp. v. United States*, 106 F.
Supp. 2d 262, 267 (D.P.R. 2000) (“[T]he possibility that Plaintiff would recover its debt from the
Government of the Dominican Republic if the United States withheld foreign assistance is too
speculative to support standing.”).

1 claims. *See also Republic of Marshall Islands*, 865 F.3d at 1119 (finding the plaintiffs’ asserted
2 injuries were not redressable because the cited treaty was not self-executory).²⁰

3 **III. PLAINTIFFS’ CLAIMS FAIL AS A MATTER OF LAW**

4 Plaintiffs assert claims under Articles I and III(e) of the Genocide Convention and the
5 Genocide Convention Implementation Act. 18 U.S.C. §§ 1091 *et seq.*, *see* Compl. ¶¶ 313-40
6 (Counts I & II). And while Plaintiffs do not explicitly allege a separate cause of action for
7 violations of “customary international law” prohibiting genocide, they appear to raise the specter
8 of such a claim. *See id.* ¶¶ 278-312, 313 & Prayer for Relief.

9 “[C]ustomary international law,” however, “is not a source of judicially enforceable private
10 rights.” *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010) (citing *Princz v. Fed. Republic of*
11 *Germany*, 26 F.3d 1166, 1174 n.1 (D.C. Cir. 1994) and *Sosa v. Alvarez-Machain*, 542 U.S. 692,
12 720 (2004)). As for the Genocide Convention, it is not a source of a privately enforceable right.
13 Courts have “long recognized the distinction between treaties that automatically have effect as
14 domestic law, and those that . . . do not by themselves function as binding federal law’ enforceable
15 in domestic courts.” *Republic of Marshall Islands*, 865 F.3d at 1192 (quoting *Medellin v. Texas*,
16 552 U.S. 491, 505 (2008)). The former is referred to as a self-executing treaty. *Serra*, 600 F.3d
17 at 1197; *Medellin*, 552 U.S. at 505. The latter “requires congressional action via implementing
18 legislation or, in some cases, is addressed to the executive branch.” *Republic of Marshall Islands*,
19 865 F.3d at 1192. Notably, “[i]f the treaty calls for the signatory nations to enact legislation
20 implementing the agreement, the treaty is considered executory and no private rights are conferred
21 by it.” *Hanoch Tel-Oren v. Libyan Arab Republic*, 517 F. Supp. 542, 547 (D.D.C. 1981)), *aff’d*,
22 726 F.2d 774 (D.C. Cir. 1984); *see Republic of Marshall Islands*, 865 F.3d at 1194.

23
24 ²⁰ In addition, the individual plaintiffs who are not currently in the Gaza Strip—Waeil
25 Elbhassi, Mohammad Herzallah, A.N., Laila Elhaddad, and Basim Elkarra, Compl. ¶¶ 25–29—
26 have not alleged that they face an imminent future threat of harm to themselves. Rather, they
27 allege that they fear for the safety of their family in Gaza. *Id.* The absence of an “an allegation of
28 personal injury” to themselves, strips these plaintiffs of both constitutional and third-party
standing. *Coal. of Clergy, Laws., & Professors v. Bush*, 310 F.3d 1153, 1163 (9th Cir. 2002); *see*
also Fleck & Assocs., Inc. v. Phoenix, 471 F.3d 1100, 1105 (9th Cir. 2006) (noting that to overcome
the prudential rule against asserting third-party rights, a litigant must “already [meet] the
constitutional requirements” of “alleg[ing] a cognizable personal injury”).

1 Here, Article V of the Convention requires the enactment of “the necessary legislation to
2 give effect to the provisions of the [] Convention.” Genocide Convention, art. V, 78 U.N.T.S. at
3 280. The U.S. Senate conditioned its advice and consent to the ratification of the Convention on
4 the enactment of the “implementing legislation referred to in Article V.” 132 Cong. Rec. 2295,
5 2350 (1986). The Senate’s statement “was intended to ‘reinforce[] the fact that the Convention is
6 not self-executing.’” *Demjanjuk v. Meese*, 784 F.2d 1114, 1117 (D.C. Cir. 1986) (quoting Staff of
7 Senate Comm. on Foreign Relations, 99th Cong., 1st Sess., *Report on Genocide Convention* 26
8 (Comm. Print 1985)); *see generally Republic of Marshall Islands*, 865 F.3d at 1197 (noting the
9 significance of the President and the Senate’s intentions regarding the self-executing nature of a
10 treaty’s provisions). Accordingly, Plaintiffs cannot assert any claim under the Convention itself.

11 Congress did enact the Genocide Convention Implementation Act of 1987, 18 U.S.C.
12 §§ 1091 *et seq.*, which “attach[es] criminal penalties to the norm against genocide.” *Sosa*, 542
13 U.S. at 749. But federal *criminal* law can only be enforced by the Executive Branch, *United*
14 *States v. Texas*, 599 U.S. 670, 678 (2023), and private litigants lack standing to enforce it, *Linda*
15 *R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). As to *civil* actions brought under the Act,
16 Congress stated explicitly that “[n]othing in this chapter shall be construed as . . . creating any
17 substantive or procedural right enforceable by law by any party in any proceeding.” 18 U.S.C.
18 § 1092. *See also Sosa*, 542 U.S. at 748–49 (Scalia, J., concurring in part) (noting that in enacting
19 the Genocide Convention Implementation Act, Congress and the Executive made the
20 determination that the “norm [against genocide] should *not* give rise to a private cause of
21 action”). Accordingly, courts have consistently held that the Act provides no private right of
22 action. *See, e.g., Snyder v. Chi. Transit Auth.*, No. 22 CV 6086, 2023 WL 7298943, at *4 (N.D.
23 Ill. Nov. 6, 2023); *Hughes v. United States*, Civ. A. No. 2:19-cv-00037, 2020 WL 4196459, at *4
24 (S.D. W. Va. May 11, 2020); *Nietzche v. Freedom Home Mortg. Corp.*, Case No. 3:18-cv-1930,
25 2019 WL 5057174, at *6 (D. Or. Oct. 8, 2019), *aff’d*, 2023 WL 2570417 (9th Cir. Mar. 20,
26 2023); and *Manybeads v. United States*, 730 F. Supp. 1515, 1521 (D. Ariz. 1989).

27 Because Plaintiffs’ claims fail as a matter of law, the Complaint should be dismissed under
28 Fed. R. Civ. P. 12(b)(6). Indeed, the U.S. District Court for the Middle District of Florida recently
DEFS.’ NOTICE OF MOTION, MOTION TO DISMISS, AND MEM. IN SUPPORT AND OPP’N TO PLS.’ MOT.
FOR PRELIMINARY INJUNCTION, CASE NO. 4:23-cv-05829-JSW

1 dismissed, *sua sponte* and with prejudice, a nearly identical case on the basis that the complaint in
2 that case failed to “state a valid, nonfrivolous claim for relief that is plausible on its face.”
3 Endorsed Order, *Muslim Citizens of the State of Israel v. United States*, No. 8:23-cv-2697 (M.D.
4 Fla. Nov. 27, 2023), ECF No. 3 (attached as Ex. B).

5 **IV. THE BALANCE OF EQUITIES TIPS AGAINST ISSUANCE OF AN INJUNCTION**

6 Because Plaintiffs’ claims fail as a matter of law, the Court should dismiss the Complaint
7 and deny the preliminary injunction motion. But even if the Court is not inclined to dismiss the
8 Complaint, Plaintiffs have not demonstrated a substantial likelihood of success on the merits,
9 which is a “threshold inquiry,” and accordingly, the Court “need not examine the remaining three”
10 injunction factors under *Winter*. *Garcia*, 786 F.3d at 740 (quoting *Ass’n des Eleveurs de Canards*
11 *et d’Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)). Citing a pre-*Winter*, D.C.
12 Circuit decision, Plaintiffs argue that “a motion for preliminary injunction cannot fail as a matter
13 of law if the prospective harm is sufficiently grave, even in cases in which success on the merits
14 is ‘far from clear.’” PI Br. at 7 (quoting *Belbacha v. Bush*, 520 F.3d 452, 459 (D.C. Cir. 2008)).
15 That is not the law of this circuit, nor is it a correct recitation of the law of the D.C. Circuit. *See*
16 *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (“[W]e read *Winter* at least to suggest if
17 not to hold ‘that a likelihood of success is an independent, free-standing requirement for a
18 preliminary injunction.’” (quoting *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1296
19 (D.C. Cir. 2009)).

20 In any event, the balance of equities tips against issuance of a preliminary injunction here.
21 *Nken v. Holder*, 556 U.S. 418, 435 (2009) (the balance of harms and public interest factors “merge
22 when the Government is the opposing party”). The public and the Government have a strong
23 interest in maintaining the constitutional separation of powers under which the Judiciary is
24 restrained “from inappropriate interference in the business of the other branches of Government.”
25 *United States v. Munoz-Flores*, 495 U.S. 385, 394 (1990). While the loss of civilian lives on both
26 sides of the conflict is tragic, the Constitution has assigned to the political branches the
27 responsibility of determining the United States’ foreign policy regarding the conflict, including
28 whether to provide military, financial or diplomatic support to Israel and under what

1 circumstances. “[T]he propriety of what may be done in the exercise of this political power is not
2 subject to judicial inquiry or decision,” *First Nat’l City Bank v. Banco Nacional de Cuba*, 406 U.S.
3 759, 766 (1972) (citations omitted). Accordingly, issuing the requested preliminary injunction in
4 the circumstances here, which effectively would grant final relief to Plaintiffs, is decidedly against
5 the public and government interest.

6 **CONCLUSION**

7 For the foregoing reasons, the Court should grant Defendants’ motion to dismiss and deny
8 Plaintiffs’ motion for a preliminary injunction.

9
10 Dated: December 8, 2023

Respectfully submitted,

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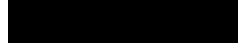
CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2023, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF system for filing.

Dated: December 8, 2023

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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-5829

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing: January 11, 2024 at 1:00 pm

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1 PLEASE TAKE NOTICE that Plaintiffs Defense for Children International–Palestine, Al-
2 Haq, Ahmed Abu Artema, Dr. Omar Al-Najjar, Mohammed Ahmed Abu Rokbeh, Mohammad
3 Herzallah, Laila Elhaddad, Waeil Elbhassi, Bassim Elkarra, and A.N. hereby move the Court for a
4 preliminary injunction. A hearing is scheduled for January 11, 2024, at 1:00 p.m., in the courtroom of
5 the Hon. Donna M. Ryu, located at 1301 Clay Street, Oakland, California.
6

7 Plaintiffs seek an order enjoining Defendants and all persons associated with them from
8 providing any further military or financial support, aid, or any form of assistance to Israel’s attacks
9 and maintenance of a total siege on Palestinians in Gaza, in accordance with their duty under federal
10 and customary international law to prevent, and not further, genocide. This Motion is brought pursuant
11 to Federal Rule of Civil Procedure 65 and is based on this Motion and materials cited herein; the
12 accompanying declarations; the pleadings and evidence on file in this matter; and such other materials
13 and argument as may be presented in connection with the hearing on the Motion.
14

15 **STATEMENT OF ISSUES**

16 Based on the last reports available five days before the date of this filing, in little more than a
17 month, the Israeli military has killed more than 11,000 Palestinian civilians, over 4,500 of them
18 children, forced the displacement of approximately 1.6 million persons, and otherwise sown
19 unrelenting terror, trauma and familial destruction throughout the Gaza Strip – and, increasingly in the
20 Occupied West Bank, including East Jerusalem. These actions have been preceded and accompanied
21 by statements from high level Israeli political and military officials expressing their intent to destroy
22 the Palestinian people in Gaza, in whole or in part – an intent that is ultimately genocidal. The
23 relentless military assault has destroyed critical civilian infrastructure – leveling multiple hospitals,
24 schools, universities, refugee camps, and UN safe havens, shattering almost all other essential
25 attributes of a civil society, and destroying or damaging at least 45 percent of all housing units in Gaza.
26
27 And the total siege, on top of Israel’s 16-year-long blockade of Gaza, has further deprived Palestinians
28

1 in Gaza of their basic survival needs, including food, water, fuel, electricity, and medicine.
2 International law which forms part of federal law, makes clear that the October 7 attacks by Hamas’s
3 military wing—including unlawful direct attacks against civilians that killed approximately 1,200
4 civilians and soldiers, and led to the taking of 240 civilian hostages and military captives—cannot
5 justify the campaign of killing and total siege denying basic necessities for life to the Palestinian people
6 in Gaza aimed at their destruction, in whole or in part.

7
8 United States officials, including the named Defendants in this case, have known of widely-
9 publicized statements of genocidal intent at the highest levels of the Israeli government and have been
10 put on notice of the unfolding genocide by United Nations experts and officials, and others. As
11 accompanying expert declarations by leading scholars and experts on genocide describe, under
12 customary international law, as codified in the Convention on the Prevention and Punishment of the
13 Crime of Genocide (“Genocide Convention”),¹ United States officials, including the President of the
14 United States, have a firm duty to prevent ongoing or even incipient genocide – a duty defendants are
15 willfully choosing to defy in the face of all evidence. Instead, they continue to supply weapons and
16 equipment to Israel, even expediting deliveries to assist in the military assault, refusing to place any
17 conditions or “red lines” on this support, while offering diplomatic and political support and
18 obstructing calls for a ceasefire.

19
20
21 Plaintiffs, Palestinian human rights organizations, Palestinian residents of Gaza, and
22 Palestinians in the United States with family members in Gaza, urgently seek an injunction ordering
23 the United States to cease and desist aiding and abetting Israel's genocidal campaign through provision
24 of financial and military aid and other forms of support.

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28 ¹ Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277.

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STATEMENT OF FACTS

Gaza is a 25-mile strip of land often described as an open-air prison, where many of the 2.2 million Palestinian residents are refugees and descendants of people who were expelled from their land by Zionist militias and the Israeli army during the 1947-1949 Nakba. Declaration of Pamela Spees, annexed hereto, (hereinafter “Spees Decl.”), Exs. A-1, A-2, at ¶ 5, E-12; Declaration of Dr. John Cox, Dr. Victoria Sanford, and Dr. Barry Trachtenberg, annexed hereto at ¶ 25 (“Genocide Scholars Decl.”). Nearly half of all Gaza residents are children. Spees Decl., Exs. E-18, B-7, at ¶ 1. Israel has occupied Gaza since 1967, blockaded it since 2007 (*id.*, Exs. A-2, at ¶ 5, B-6, at ¶ 14, B-1), and it has subjected the Palestinian people in Gaza to at least five military assaults since this blockade, resulting in the death of 4,269 Palestinians in Gaza, including 1,025 children, and injuring 41,348 (*id.*, Ex. B-7, at ¶¶ 30-31). The blockade itself has been so severe and debilitating that United Nations experts forecast that Gaza would be unliveable by 2020. *Id.*, Ex. B-5.

Despite these persistent violations of international law (*id.*, Ex. A-2, at ¶¶ 6, 71-72), the United States has provided Israel with unequivocal and unconditional support. Israel is the largest cumulative recipient of United States foreign assistance since World War II: since 1946, it has sent \$260 billion (inflation-adjusted) dollars in military and economic assistance to Israel. *Id.*, Ex. C-1, at 1. Since 1999, this support has been carried out through 10-year memoranda of understanding between the United States and Israel, the most recent of which pledges \$38 billion in military assistance to Israel over the 10-year period of fiscal years 2019-2028. *Id.*, Exs. C-1, at 78; C-2. As of 2022, U.S. military assistance to Israel constituted at least 16 percent of Israel’s defense budget. *Id.*, Ex. C-1, at 10. Israel also enjoys special access to U.S. military stockpiles stored in Israel, which may be worth up to \$4.4 billion, *id.* at 28, and access to weapons produced in the United States, *id.* at 15. The United States has also long provided political and diplomatic cover to Israel by using its veto power to block efforts at the UN

1 Acting upon these statements of intent, Israel has bombed or attacked schools, hospitals,
2 ambulances, shelters, bakeries, and entire refugee camps. Spees Decl., Exs. D-10, D-27, D-28, D-30.
3 It has ordered civilians to evacuate certain areas, only to bomb designated “safe zones” and routes. *Id.*,
4 Exs. D-10, D-16, D-17. It has imposed a total siege on Gaza: restricting, and prohibiting, the entry of
5 basic necessities for human survival including food and medicine, and has cut off internal access to
6 electricity and water, including by actively striking water wells and tanks. *Id.*, Exs. D-3, D-6, D-7, D-
7 10, D-11, D-12, D-27, D-28. In one month, Israel has damaged or destroyed at least 45 percent of all
8 housing units in Gaza. *Id.*, Ex. D-31. Since October 7, the U.S. Defendants have supported,
9 communicated and coordinated closely with Israel and its military. *Id.*, Exs. E-1, E-2, E-3, E-4, E-15,
10 E-20, E-22, E-33. As Israel’s Prime Minister Netanyahu affirmed, Defendant Biden’s “support every
11 day in the depth and breadth of cooperation” has been “unprecedented” from the United States. *Id.*,
12 Ex. E-21. In some instances Defendants have influenced or even, in Defendant Austin’s
13 spokesperson’s own words, “guided” Israel’s military strategy, *id.*, Ex. E-38, including for the purpose
14 of securing the release of American-Israeli hostages, *id.*, Ex. E-41, but have not exercised the same
15 influence to prevent the continued killing of Palestinians and siege of Gaza, even as Defendants have
16 been repeatedly put on notice of the risk or indicators of genocide, including by UN experts and
17 officials, and as calls for a ceasefire have grown. *Id.*, Exs. E-12, E-16, E-17, E-18, E-24, E-36, E-40,
18 E-45, E-46. Defendants have expedited delivery to Israel of an overwhelming amount of unconditional
19 military assistance and weapons, *id.*, Exs. E-28, E-39, E-10, E-26, but have refused to monitor how
20 assistance or weapons are used, *id.*, Ex. E-26, to condition assistance, *id.*, Exs. E-34, E-48, E-42, E-
21 38, or to initiate internal processes to assess whether there is an unfolding genocide, *id.*, Exs. E-46, E-
22 49, despite warnings from their staff of the necessity of this monitoring. *Id.*, Exs. E-16, E-17, E-19.
23 On November 8, 2023, U.S. Assistant Secretary of State Barbara Leaf confirmed to lawmakers at a
24 hearing before the House Committee on Foreign Affairs that the number of Palestinians killed in Gaza
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1 is likely “higher than is being cited.” *Id.*, Exs. E-53, E-54. At the same hearing, Dana Stroul, Deputy
2 Assistant Secretary of Defense, reconfirmed that the department’s commitment to Israel is “ironclad”
3 and further advised lawmakers that “[d]eliveries [including of artillery and ammunition] are taking
4 place on a near daily basis.” *Id.*, Exs. E-52, E-54, E-55.

5
6 As of the date of this filing, it is not even possible to provide current estimates of those killed
7 in Gaza due to the “collapse of services and communications” at hospitals, which has prevented the
8 Ministry of Health in Gaza from updating casualty figures for five consecutive days. *Id.*, Ex. D-1. The
9 last figures provided by the Ministry on November 10 reported that 11,078 Palestinians in Gaza had
10 been killed, 4,506 of whom were children, 27,490 were injured, and about 2,700, including
11 approximately 1,500 children, were missing, and 1.5 million had been internally displaced. *Id.* The
12 Washington Post has reported that the last fatality figures reported (just over 11,000) translated into
13 one person killed for every 200 people in Gaza. *Id.*, Ex D-33.

14
15 Plaintiffs Defense for Children International-Palestine (“DCIP”) and Al-Haq (“Organizational
16 Plaintiffs”) are nongovernmental human rights organizations in Palestine with staff members in Gaza.
17 Compl. ¶¶ 18-21; Al Haq. Decl. ¶ 9. Plaintiffs Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh,
18 and Omar Al-Najjar are Palestinian residents of Gaza. Compl. ¶¶ 22-24; Al-Najjar Decl. ¶ 1; Abu
19 Rokbeh Decl. ¶ 1; Abu Artema Decl. ¶ 1. Plaintiffs Laila Elhaddad, Waeil Elbhassi, Basim Elkarra,
20 Mohammad Herzallah, and A.N. are U.S. citizens and residents of Palestinian origin with family
21 members in Gaza. Compl. ¶¶ 25-29. Collectively, Plaintiffs and their relatives have been displaced,
22 injured, and lost family members to Israel’s bombardment; they or their families have been deprived
23 of basic necessities for their survival as a result of Israel’s total siege of Gaza; they have witnessed
24 atrocities against their people; and they fear for their lives and the lives of their loved ones. Compl. ¶¶
25 18-29; Al-Najjar Decl. ¶ 8; Abu Rokbeh Decl. ¶¶ 5-7, 9; Abu Artema Decl. ¶ 22. In the face of this
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1 unrelenting destruction of Palestinian life, they come to this Court to seek enforcement of Defendants’
2 duty under international law and federal common law to prevent, not further, an unfolding genocide.

3 4 **ARGUMENT**

5 When moving for a preliminary injunction, a plaintiff “must establish that he is likely to
6 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
7 that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Saravia*
8 *ex rel. A.H. v. Sessions*, 905 F.3d 1137, 1142 (9th Cir. 2018) (quoting *Winter v. Nat. Res. Def. Council,*
9 *Inc.*, 555 U.S. 7, 20 (2008)). “When the government is a party, these last two factors merge.” *Drakes*
10 *Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citation omitted). A preliminary
11 injunction may also issue where the plaintiff raises “serious questions going to the merits . . . and the
12 balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d
13 1127, 1135 (9th Cir. 2011) (citation omitted). A motion for preliminary injunction cannot fail as a
14 matter of law if the prospective harm is sufficiently grave, even in cases in which success on the merits
15 is “far from clear.” *See Belbacha v. Bush*, 520 F.3d 452, 459 (D.C. Cir. 2008) (finding risk of torture
16 sufficiently grave to warrant preliminary injunction).

17
18 Plaintiffs meet the threshold necessary for a preliminary injunction. Their claims that
19 Defendants are failing to prevent, and are complicit in, an unfolding genocide, the “crime of crimes,”
20 could not be more grave. Plaintiffs will suffer the most irreparable—and unfathomable—of harms if
21 Defendants’ conduct is not enjoined. The public interest necessitates upholding the *jus cogens*
22 customary international law obligation to prevent, not further, genocide.

23 24 **I. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY ABSENT AN INJUNCTION.**

25 Irreparable harm is “[p]erhaps the single most important prerequisite for the issuance of a
26 preliminary injunction.” *Singleton v. Kernan*, No. 16-cv-02462-BAS-NLS, 2017 WL 4922849, at *3
27 (S.D. Cal. Oct. 31, 2017), *aff’d*, 730 F. App’x 540 (Mem.) (9th Cir. 2018) (internal quotation omitted).
28

1 Plaintiffs need not demonstrate that irreparable injury is certain, but only that it “is *likely* in the absence
2 of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in original). The irreparable injury in this case—
3 genocide, or even the risk of it occurring—is grave.

4
5 Absent an injunction, Plaintiffs Abu Rokbeh, Abu Artema, and Al-Najjar, as well as some staff
6 members of Plaintiffs DCIP and Al-Haq, who are currently in Gaza, face the risk of death as a result
7 of Israel’s assault and siege that Defendants are failing to prevent and thus enabling. Compl. ¶¶ 18-
8 29; Al-Najjar Decl. ¶ 8; Abu Rokbeh Decl. ¶¶ 4, 9; Abu Artema Decl. ¶ 22-23; Al Haq Decl. ¶¶ 13-
9 14. There could be no harm greater and more irreparable than death or severe injury in a genocidal
10 attack, as even one death is precisely the type of irreparable harm preliminary injunctions are designed
11 to prevent. *See, e.g., Harris v. Bd. of Supervisors*, 366 F.3d 754, 766 (9th Cir. 2004) (holding that
12 “pain, infection, amputation, medical complications, and death” constitute irreparable harm); *Williams*
13 *v. Chrans*, 50 F.3d 1363, 1364 (7th Cir. 1995) (per curiam) (“In this case, as in all death cases, there
14 is no question of irreparable injury.”). Short of death, or serious bodily or mental injury, Plaintiffs will
15 continue to face conditions of life that are calculated to destroy, including starvation, dehydration, lack
16 of access to medical care, fuel and electricity. *See, e.g., Manrique v. Kolc*, 65 F.4th 1037, 1041 (9th
17 Cir. 2023) (risks of “contracting a fatal illness or experiencing other serious health declines” as a result
18 of prison conditions in Peru constituted irreparable injury).

19
20
21 The unfolding genocide of Plaintiffs’ people has other obvious and severe consequences for
22 Plaintiffs. Collectively, at least 115 family members of Plaintiffs Abu Artema, Al-Najjar, Elbhassi,
23 Herzallah, Elhaddad, Elkarra, and of staff of Plaintiff Al-Haq, have already been killed by Israel’s
24 assault on Gaza. Compl. ¶¶ 22-29; Al-Najjar Decl. ¶ 19; Abu Artema Decl. ¶¶ 6-10; Abu Rokbeh Decl.
25 ¶ 15; Al-Haq Decl. ¶¶ 9-10. Other Plaintiffs have family members or staff at risk of death in Gaza.
26 Compl. ¶¶ 18-29; Al-Haq Decl. ¶¶ 7-11; Abu Artema Decl. ¶¶ 12-14; Al-Najjar Decl. ¶¶ 16,20; Abu
27 Rokbeh Decl., ¶¶ 3-9. If injunctive relief is not granted, Individual Plaintiffs, staff members of
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1 Organizational Plaintiffs, and their family members will continue to suffer grave psychological and
2 emotional terror, and potentially physical pain and suffering, that results from being subjected to a
3 genocide and the irreparable and irreplaceable loss of their family members, or the fear of this loss,
4 and the loss of more of the Palestinian people caused by Defendants’ actions. Al-Najjar Decl. ¶¶ 8,
5 24; Abu Rokbeh Decl. ¶¶ 3-9; Abu Artema Decl. ¶¶ 22-24. This constitutes irreparable harm. *See, e.g.,*
6 *Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 709 (9th Cir. 1988) (“emotional stress,
7 depression and reduced sense of well-being,” which are forms of “psychological and physiological
8 distress,” can constitute irreparable injury for purposes of preliminary injunction) (internal quotation
9 omitted); *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1192 (N.D. Cal.), *appeal dismissed and*
10 *remanded*, 802 F.3d 1090 (9th Cir. 2015) (same).

11
12 Plaintiffs will also experience the irreparable harm of the most extreme form of discrimination
13 based on nationality or ethnicity: Plaintiffs’ people—Palestinians in Gaza (Compl. ¶¶ 18-29; Al-Najjar
14 Decl. ¶ 24)—as a group will continue to be targeted. As the Supreme Court has held, “stigmatizing
15 members of the disfavored group as ‘innately inferior’ and therefore as less worthy participants in the
16 political community . . . can cause serious non-economic injuries to those persons.” *Heckler v.*
17 *Mathews*, 465 U.S. 728, 739–40 (1984) (internal quotation omitted).

18
19 Organizational Plaintiffs’ staff will continue facing the irreparable harm described above,
20 including displacement and potentially death, which is a direct harm to Organizational Plaintiffs
21 themselves and additionally, compounded by the fact that those staff members also lack freedom of
22 movement and access to telecommunications, Al-Haq Decl. ¶¶ 9, 12, 13; Abu Rokbeh Decl. ¶ 16,
23 frustrates the organizations’ missions by harming their ability to function and operate, and exist.
24 Moreover, Defendants’ actions have caused Organizational Plaintiffs to divert their resources toward
25 immediate intervention in preventing the further commission of genocide instead of toward their core
26 programs. Al-Haq Decl. ¶¶ 3-7, 14, 15; Compl. ¶¶ 18-19. *See E. Bay Sanctuary Covenant v. Biden*,

1 993 F.3d 640, 677-78 (9th Cir. 2021) (government action that frustrates organizational plaintiffs’
2 missions and forces them to divert resources away from core programs constitutes irreparable harm).

3 It is “likely” that “in the absence of an injunction,” Plaintiffs will experience these harms.
4 *Winter*, 555 U.S. 7 at 22. Between October 7 and November 10 (the latest date on which OCHA was
5 able to update its casualty figures given the collapse of services and communications at hospitals in
6 Gaza), Israel has killed 11,078 Palestinians, including 4,506 children. Spees Decl., Exs. D-1, D-31.
7 That is 316 people, including 128 children, a day. The number of people injured since October 7 is
8 27,490, and 1.6 million people have been displaced. *Id.* Israel has continued its siege on Gaza,
9 depriving residents of food, water, fuel, and electricity. *Id.* At the same time, Defendants have
10 continued to unconditionally support Israel’s genocidal assault on Gaza, rejected all calls for a
11 ceasefire, *id.*, Exs. E-50, E-51, and have continued to transfer and approve more weapons and funds
12 to fuel the ongoing genocide. *Id.*, Exs. E-28, E-39. Every day that passes without an injunction,
13 Plaintiffs will continue facing the harm caused by Defendants’ actions.
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16 **II. DEFENDANTS WILL NOT SUFFER SUBSTANTIAL HARM AND A**
17 **PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST.**

18 When the government is a party to a case, the balance of the equities, which takes into
19 consideration harm to defendants, and the public interest, merge. *E. Bay Sanctuary Covenant*, 993
20 F.3d at 668. Defendants cannot be harmed by a preliminary injunction enjoining them to comply with
21 the law, to take measures within their power to prevent the unfolding genocide of which they are on
22 notice, and to cease being complicit in the genocide. Such an injunction serves humanity and therefore
23 the public interest.
24

25 An injunction that confines the government’s behavior to its lawful bounds is necessarily in
26 the public interest. *See, e.g., Brady v. Maryland*, 373 U.S. 83, 87 (1963); *E. Bay Sanctuary Covenant*,
27 993 F.3d at 679 (the public has an interest in ensuring that executive follows statute as well as
28 congressional intent reflected in the signing of the 1951 Refugee Convention). This applies with equal

1 if not greater force when the law at issue is a *jus cogens* norm—the most supreme of international
2 laws—which, as described in greater detail below, the prohibition on genocide is. *See, e.g., Sideman*
3 *de Blake v. Republic of Argentina*, 965 F.2d 699, 716 (9th Cir. 1992) (“the supremacy of *jus cogens*
4 extends over all rules of international law”); *Yousuf v. Samantar*, 699 F.3d 763, 775 (4th Cir. 2012) (a
5 *jus cogens* norm is a “peremptory norm of general international law”). The prohibition on genocide is
6 considered absolute, and as the International Court of Justice (“ICJ”) has stated with regard to the
7 Genocide Convention: “States do not have any interests of their own; they merely have, one and all, a
8 common interest Consequently, in a convention of this type one cannot speak of individual
9 advantages or disadvantages to States” *Reservations to Convention on Prevention and Punishment*
10 *of Crime of Genocide*, Advisory Opinion, 1951 I.C.J. 15, at 23 (May 28).

11
12 More fundamentally, there is a moral imperative and a national security interest, and therefore
13 a public interest, in preventing and prohibiting genocide. *See, e.g., Nat’l Coal. Gov’t of Union of*
14 *Burma v. Unocal, Inc.*, 176 F.R.D. 329, 354 (C.D. Cal. 1997) (“it would be difficult to contend that .
15 . . . alleged *jus cogens* violations of international human rights were ‘in the public interest’”). In 1945,
16 Justice Robert R. Jackson stated in his opening at the Nuremberg Trials, where the concept of genocide
17 took shape: “The wrongs which we seek to condemn and punish have been so calculated, so malignant,
18 and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their
19 being repeated.”² In 1988, the Senate Committee on the Judiciary wrote in its report recommending
20 the passage of the Genocide Convention Implementation Act, 18 U.S.C. § 1091, co-sponsored by then-
21 senator Defendant Biden, that the Act “would reaffirm the values upon which our society was founded
22 and which have been woven into the Convention: respect for the dignity and freedom of each
23 individual and the preservation of human rights for all.” S. Rep. No. 100-333, at 4 (1988). In 2021,
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27 ² Robert H. Jackson, Chief Counsel for United States, Opening Statement before the International
28 Military Tribunal (Nuremberg) (Nov. 21, 1945), <https://www.roberthjackson.org/speech-and-writing/opening-statement-before-the-international-military-tribunal/>.

1 Defendant Biden reiterated this commitment, stating, “I recommit to the simple truth that preventing
2 future genocides remains both our moral duty and a matter of national and global importance.”³ In
3 2016, the Obama-Biden Administration issued Executive Order 13729, affirming that “preventing
4 mass atrocities and genocide is a core national security interest and a core moral responsibility of the
5 United States.” Exec. Order No. 13,729, 81 Fed. Reg. 32,611 (May 18, 2016). The Elie Wiesel
6 Genocide and Atrocities Prevention Act of 2018, enacted to “help prevent acts of genocide and other
7 atrocity crimes, which threaten national and international security,” declared as a matter of federal
8 policy that prevention of atrocities including genocide is in the “national interest.” Pub. L. No. 115-
9 441, § 3(1), 132 Stat. 5586 (2019).

11 **III. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS**
12 **ON THE MERITS.**

13 Plaintiffs can show through compelling evidence that the Israeli government is undertaking a
14 campaign to destroy, in whole or in part, the Palestinian people in Gaza through mass killings,
15 deliberate infliction of conditions of life calculated to bring about their destruction, and serious bodily
16 or mental harm, which, as discussed below, is the definition of genocide. Plaintiffs can further show
17 that Defendants have not only failed in their legal obligation to prevent this unfolding genocide, they
18 are enabling its development through their efforts to expedite and provide massive amounts of military
19 assistance – weapons and equipment that have been used in the mass bombardments of Palestinians in
20 Gaza.
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26 _____
27 ³ *Statement by President Joseph R. Biden, Jr. on International Holocaust Remembrance Day*,
28 WhiteHouse.gov (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/statement-by-president-joseph-r-biden-jr-on-international-holocaust-remembrance-day/>.

1 true that United States courts apply international law as a part of our own in appropriate
2 circumstances”), *superseded on other grounds by statute, Fed. Republic of Ger. v. Philipp*, 141 S. Ct.
3 703 (2021); *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981) (recognizing that
4 “international disputes implicating . . . our relations with foreign nations” are one of the “narrow areas”
5 in which “federal common law” continues to exist); *Sarei v. Rio Tinto, PLC*, 671 F.3d 736, 751 (9th
6 Cir. 2011), *vacated on other grounds sub nom. Rio Tinto PLC v. Sarei*, 569 U.S. 945 (2013) (courts
7 permitted to “develop the federal common law by incorporating into it certain claims that derive from
8 norms of international law”).

9
10 The Genocide Convention was also ratified by the United States in 1988, via legislation co-
11 sponsored by then-Senator Joseph Biden, and Congress enacted a criminal statute to provide for
12 criminal liability in United States courts for those found guilty of, or complicit in, genocide. 18 U.S.C.
13 § 1091, *et seq.* The treaty ratification and the criminal statute codify and reaffirm the pre-existing legal
14 prohibition against and right of action for genocide under customary international law. *Kadić v.*
15 *Karadžić*, 70 F.3d 232, 242, 242 n.6 (2d Cir. 1995) (finding that a private remedy for genocide pre-
16 existed and continued after ratification of Genocide Convention and enactment of criminal statute);
17 *see also Sarei v. Rio Tinto, PLC*, 671 F.3d at 759 (same).

18
19 Article II of the Genocide Convention defines genocide as certain acts “committed with intent
20 to destroy, in whole or in part, a national, ethnical, racial or religious group, as such,” including: 1)
21 killing members of the group; 2) causing serious bodily or mental harm to members of the group; and
22 3) deliberately inflicting conditions of life calculated to bring about its physical destruction in whole
23 or in part. Genocide Convention art. II.

24
25 Article I of the Convention imposes an obligation on all parties to prevent genocide. Schabas
26 Decl. ¶¶ 18-25. And Article III(e) of the Convention includes “complicity in genocide” as one of the
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1 forms of liability that can be punished under the Convention, alongside direct commission, conspiracy,
2 attempt and incitement.

3 **1. Killings of Palestinian People in Gaza and Causing Serious Bodily or Mental Harm**

4 As set out in the Complaint, and as set forth in the declarations annexed hereto, the Israeli
5 government's campaign of genocide against the Palestinian people in Gaza has so far resulted in the
6 killing of over 11,000 people, the majority of whom have been women and children, in just a little
7 over a month. Spees Decl., Exs. D-1, D-31. These attacks have injured tens of thousands more. *Id.*
8 These killings and widespread, serious harm have been committed in large part through aerial
9 bombardment with emphasis on "damage and not on accuracy." *Id.*, Exs. D-4, D-5, D-24. The Israeli
10 military has bombed schools, hospitals, refugee camps, and even designated "safe zones" to which
11 Israeli officials had instructed civilians to evacuate. *Id.*, Exs. D-1, D-10, D-16, D-17, D-23, D-28, D-
12 30, D-31. Over 1.6 million Palestinian people have been forcibly displaced in Gaza, exacerbating
13 already debilitating conditions of life calculated to bring about their destruction. *Id.*, Ex. D-31.

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15
16 For the purposes of genocide, *killing* is equated with murder, meaning causing the death by an
17 act or omission, with the intent to either kill or cause serious bodily harm that would likely lead to
18 death. *Prosecutor v. Setako*, Case No. ICTR-04-81-A, Appeal Judgement, ¶ 257 (Sept. 28, 2011).
19 There is no minimum number of people killed necessary to establish that genocide has been
20 committed. *See Prosecutor v Muhimana*, Case No. ICTR-95-1B-T, Trial Judgement and Sentence, ¶
21 498 (Apr. 28, 2005); Genocide Scholars Decl. ¶¶ 18-24. Because of the obligation on states to take all
22 measures to prevent genocide, as well as the prohibition on the "attempt" to commit genocide, state
23 obligations are triggered when killings are done in a manner that reveals an intention to destroy a
24 targeted population, in whole or in part. *See Schabas Decl.* ¶¶ 23-25, 28.

25
26 Bodily harm, when done with the intent to destroy a people in whole or in part, constitutes an
27 act of genocide. War crimes tribunals have recognized as genocidal injuries which damage health or
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1 cause disfigurement or serious injury to the external or internal organs of members of the targeted
2 group. *Prosecutor v Karadžić*, Case No. IT-95-5/18-T, Trial Judgement Vol. I, ¶ 545 (Int’l Crim. Trib.
3 for the Former Yugoslavia Mar. 24, 2016); *Akayesu*, ¶ 503-04.

4
5 Deportation and forced displacement have been recognized as causing serious bodily or mental
6 harm, based on the recognition that “the forced displacement of women, children and elderly people
7 [is] itself a traumatic experience.” *Prosecutor v. Blagojević & Jokić*, Case No. IT-02-60-T, Trial
8 Judgement, ¶¶ 646, 650 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 17, 2005) (citing CrimC (DC
9 Jer) 40/61 *Att’y Gen. of Gov’t of Isr. v. Eichmann* (Dec. 11, 1961) (Isr.), 36 I.L.R. 5 (1968)). Other
10 examples of mental harm as a form of genocide have included threats of death and knowledge of
11 impending death. *Prosecutor v Tolimir*, No. IT-05-88/2-T, Trial Judgement, ¶¶ 754-55 (Int’l Crim.
12 Trib. for the Former Yugoslavia Dec. 12, 2012). War crimes tribunals have specifically recognized
13 the serious mental harm caused by the threat of indiscriminate killings: “[t]he fear of being captured,
14 and, at the moment of the separation, the sense of utter helplessness and extreme fear for their family
15 and friends’ safety, is a traumatic experience from which one will not quickly – if ever – recover.”
16 *Blagojević*, ¶ 647.

17
18 Finally, torture, as an underlying act of genocide, means causing serious physical or mental
19 harm, such as through physical injuries or by threats to harm or kill a person (or relative or loved one)
20 in order to coerce or punish, with the intention of producing mental suffering such as fear. *Akayesu*, ¶
21 503. It also includes “starvation, deportation and persecution,” and placement in “conditions which
22 were designed to cause their degradation, deprivation of their human rights as human beings and to
23 suppress them and cause them inhumane suffering and torture.” *Id.* (quoting CrimC (DC Jer) 40/61
24 *Att’y Gen. of Gov’t of Isr. v. Eichmann* (Dec. 11, 1961) (Isr.), 36 I.L.R. 5 (1968)).
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1 Nations warned years ago that Gaza would be “unliveable” by 2020. *Id.*, Ex. B-5. The gravity and
2 severity of the current restrictions must be understood in that context—that Palestinian life in Gaza
3 was already precarious and endangered as a result of Israel’s 16-year blockade. Now, as Professor
4 Schabas describes, the “avowed policy of depriving Gaza of water, food, medicine and electricity,
5 bearing in mind the rather desperate economic situation in the territory prior to the conflict and the
6 fact that the borders are sealed, leaving the people of Gaza with nowhere to go, will inexorably lead
7 to their physical destruction. If the siege and blockade continue, there can be no other outcome.”
8 Schabas Decl. ¶ 17.

9
10 **3. Specific Intent to Destroy Palestinian People in Gaza, as Such, in Whole or in Part**

11 The constituent acts of genocide, whether killings, or causing bodily or mental harm, or
12 imposing life-threatening conditions, must be committed “with the intent to destroy, in whole or in
13 part, a national, ethnical, racial or religious group, as such.” Genocide Convention art. II. Genocidal
14 or specific intent means that the result of destroying the group (in whole or in part) is clearly intended.
15 See e.g., *Application of Convention on Prevention and Punishment of Crime of Genocide (Croat. v.*
16 *Serb.)*, Judgment, 2015 I.C.J. 3, ¶ 139 (Feb. 3). “In part” is understood as a substantial part of a
17 particular group, which can be part of the larger group “within a geographically limited area.”
18 *Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v.*
19 *Serb. & Montenegro)*, Judgment, 2007 I.C.J. 43, ¶ 199 (Feb. 26); *Croat. v. Serb.*, 2015 I.C.J. at 66, ¶
20 142. This specific intent may be proven from the facts and circumstances of a case. *Prosecutor v.*
21 *Jelisić*, Case No. IT-95-10-A, Appeal Judgement, ¶ 47 (Int’l Crim. Trib. for the Former Yugoslavia
22 July 5, 2001).

23 Evidence of specific intent can include, but is not limited to: the general context, the scale of
24 atrocities, the systematic targeting of victims on account of their membership in a particular group,
25 other culpable acts systematically directed against the same group, or the repetition of destructive and
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1 discriminatory acts. *Id.*; *Prosecutor v. Karadžić*, ¶ 550. While forcible transfer is not deemed a stand-
2 alone indicia of the intent to destroy, it is a relevant consideration when assessing genocidal intent.
3 *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Trial Judgement, ¶ 824 (Int’l Crim. Trib. for the
4 Former Yugoslavia June 10, 2010). The existence of a plan or policy can also be a factor used to
5 establish specific intent, but it is not required. *Jelisić*, ¶ 48. Genocidal intent may also be inferred from
6 public speeches and statements by officials. *See generally Prosecutor v. Nahimana et al.*, (“Media
7 Trial”), Case No. ICTR-99-52-A, Appeal Judgement (Nov. 28, 2007).

9 When considering a request for provisional measures in regard to the unfolding genocide of
10 Rohingya in Myanmar (Burma), the ICJ looked at various United Nations fact-finding missions,
11 reports and resolutions to assess whether it was “plausible” that the underlying acts and genocidal
12 intent were satisfied. The court specifically noted “the systematic stripping of human rights, the
13 dehumanizing narratives and rhetoric, the methodical planning, mass killing, mass displacement, mass
14 fear, overwhelming levels of brutality, combined with the physical destruction of the home of the
15 targeted population, in every sense and on every level” to grant provisional measures. *Application of*
16 *Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.)*, Order on Request
17 for Indication of Provisional Measures, 2020 I.C.J. 3, ¶¶ 55-56 (Jan. 23).

19 Israel’s attack on the Palestinian people in Gaza exhibits the hallmarks of genocidal intent and
20 action. As Professor Schabas notes, “there is much direct evidence in the form of statements by senior
21 officials and politicians in Israel indicating an intent to destroy the people of Palestine.” Schabas Decl.
22 ¶ 17. Israeli officials and prominent, influential individuals have used dehumanizing rhetoric to
23 describe the Palestinians in Gaza while defiantly refusing to distinguish between the civilian
24 population and combatants, including describing them as “human animals,” Spees Decl., Exs. D-3, D-
25 11, and “children of darkness,” *id.*, Exs. D-18, D-25, and declaring that “an entire nation out there is
26 responsible [for the October 7 attack].” *Id.*, Ex. D-11. Israeli officials have repeatedly declared and
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1 acknowledged—or confessed—that their plan and policy is to destroy the Palestinian people in Gaza,
2 promising that Israel will “eliminate everything.” *Id.*, Ex. D-15.

3 Early in this genocidal campaign, Netanyahu ordered the more than two million Palestinian
4 people in Gaza to “get out now” before bombardments and a ground invasion. *Id.*, Ex. D-2; *see also*
5 *id.*, Exs. D-13, D-19, D-24, D-28. That these families and communities were trapped inside Gaza and
6 had nowhere to go because of Israel’s closure is further evidence of an official policy and intent to
7 destroy them. To further demonstrate the specific intent underlying Israel’s statements and actions,
8 this cruel, feigned “evacuation” order, *id.*, Exs. D-12, D-19, followed an announcement by the Israeli
9 Minister of Defense Yoav Gallant that “[t]here will be no electricity, no food, no fuel, everything is
10 closed. We are fighting human animals and we are acting accordingly.” *Id.*, Ex. D-3. Gallant also
11 threatened to bomb those attempting to provide aid to Palestinians in Gaza. *Id.*, Ex. D-7. These
12 statements and dehumanizing rhetoric and vows to “eliminate everything,” *id.*, Ex. D-15, have been
13 accompanied by “methodical planning, mass killing, mass displacement, mass fear, overwhelming
14 levels of brutality,” and “the physical destruction of the home of the targeted population.” *See Gam.*
15 *v. Myan.*, 2020 I.C.J. at 23-24, ¶ 55-56.

18 Israeli officials are informing the world of what they intend, and what it is they are doing:
19 setting out to destroy the Palestinian people in Gaza.

21 **B. Obligation to Prevent Genocide**

22 Because genocide is a *jus cogens* violation binding on all states at all times and is considered
23 so grave and serious that it harms the international community as a whole, Article I of the Genocide
24 Convention emphasizes a legal duty to prevent genocide.⁵ This undertaking to prevent genocide is not
25 a passive obligation, but rather “is one of conduct and not one of result” where States are obligated
26

27 ⁵ Article I of the Genocide Convention provides: “The Contracting Parties confirm that genocide,
28 whether committed in time of peace or in time of war, is a crime under international law which they
undertake to prevent and to punish.”

1 “to employ all means reasonably available to them . . . to prevent genocide.” *Bosn. & Herz.*, 2007
2 I.C.J. at 221, ¶ 430. This obligation to prevent reflects the international community’s collective
3 commitment to ensure that no human beings and groups are targeted for destruction because of their
4 identity or affiliation with a group or collectivity. The ICJ has made clear that “a State’s obligation to
5 prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should
6 normally have learned of, the existence of a serious risk that genocide will be committed.” *Id.* at 222,
7 ¶ 431. “[I]t would be quite illogical to contend that there is only an obligation to prevent genocide
8 after it has been committed.” Schabas Decl. ¶ 24. That the duty to prevent genocide arises as soon as
9 there is a known serious risk of genocide is a position that the United States has adopted in an
10 intervention in the ongoing proceedings at the International Court of Justice between the Ukraine and
11 the Russian Federation. Schabas Decl. ¶ 29; Spees Decl. Ex. E-43.

12
13
14 States are required to take all measures “reasonably available to them” to prevent this risk from
15 that moment onwards, “if the State has available to it means likely to have a deterrent effect on those
16 suspected of preparing genocide, or reasonably suspected of harbouring specific intent.” Schabas Decl.
17 ¶ 25; *Bosn. & Herz.*, 2007 I.C.J. at 221-22, ¶¶ 430-31. Whether a State has breached its duty to prevent
18 depends on the State’s ability to effectively influence the actions of the people likely to commit, or
19 already committing, genocide; strong political links, as well as links of all other kinds, between the
20 authorities of that State and the main actors in the events are indicia of capacity to prevent genocide.
21 Schabas Decl. at ¶ 23. States will be held responsible for failing to prevent “if the State manifestly
22 failed to take all measures to prevent genocide which were within its power, and which might have
23 contributed to preventing the genocide.” *Bosn. & Herz.*, 2007 I.C.J. at 221, ¶ 430.

24
25 As set forth above, in the Complaint, and in the Declarations enclosed herewith, acts of
26 genocide are underway in Gaza, and they are being carried out with an intent on the part of Israeli
27 officials to destroy the Palestinian population in Gaza, in whole, or in part, including by and through
28

1 mass killings, serious bodily and mental harm, and inflicting on Palestinians the conditions of life
2 calculated to bring about their physical destruction, in whole or in part, through the siege on the most
3 basic necessities required for survival including food, fuel, water and electricity while in the closed
4 Gaza Strip under continual massive bombardment. Spees Decl., Exs. D-1, D3, D-6, D-9, D-12, D-24,
5 D-30, D-31. Defendants have been on notice of the risk of genocide since at least October 9, if not
6 already on October 7, through the public and widely-circulated statements and actions by Israeli
7 officials with whom they were in close, regular contact and consultation, as well as by warnings of
8 indicators of genocide from United Nations officials and other sources) that have only increased since
9 then. Spees Decl., Exs. E-12, E-18, E-24, E-36, E-40.

11 The United States, through Defendants, is uniquely positioned to prevent Israel's genocide
12 campaign from commencing in the first place, and from continuing, because of their unparalleled,
13 decades-long close relationship, as well as the military support and assistance that the United States
14 has provided to the Israeli government. Schabas Decl. ¶ 26; Spees Decl., Ex. C-1. Since October 7,
15 Defendants themselves, or their spokespeople, have unambiguously admitted to and recognized their
16 influence over Israel's military strategy, which Defendant Austin's spokesperson admits has
17 "informed and at least guided" (Spees Decl., Ex. E-38) and Defendant Biden admits has "convince[d]"
18 (*id.*, Ex. E-41) Israel of certain military decisions. Acknowledging the depth of this influence, the
19 Israeli Minister of Defense put it plainly: "[t]he Americans insisted and we are not in a place to refuse
20 them. We rely on them for planes and military equipment. What are we supposed to do? Tell them
21 no?" *Id.*, Ex. E-29.

24 Defendants are failing in their duty to prevent this unfolding genocide by, as described in
25 greater detail below, providing financial and material assistance, as well as unequivocal moral,
26 political, and diplomatic support, for Israel's assault and siege on Gaza. *See* Schabas Decl. ¶ 31.
27 Additionally, Defendants have failed to use all measures within their power to prevent this crime, *id.*,
28

1 including by: refusing to call for an end to the siege on Gaza and explicitly rejecting the possibility of
2 ceasefire, describing it as not “appropriate” as recently as on November 9, Spees Decl., Exs. E-37, 5-
3 50, 5-51; placing no “conditions,” “constraints,” or “limits” on how Israel uses the military assistance
4 provided by the United States, *id.*, Exs. E-38, E-42, E-47; stating repeatedly that they have not placed,
5 or even discussed, “red lines” that Israel could possibly cross to jeopardize the support from the United
6 States, *id.*, Exs. E-34, E-48; repeatedly obstructing and blocking efforts by the international
7 community, including at the UN Security Council, to call for a ceasefire in Gaza, *id.*, Exs. E-22, E-23,
8 E-24; refusing to monitor how U.S. weapons transferred to Israel are used, *id.*, Ex. E-47; and refusing
9 to engage internal processes to even assess whether Israel’s actions constitute a genocide—which
10 Defendant Blinken’s spokesperson claims exist but admits have not been initiated for Israel’s assault
11 and siege on Gaza. *Id.*, Exs. E-46, E-49.

14 C. Complicity

15 Complicity to commit genocide is a standalone crime, triggering both State responsibility and
16 individual criminal responsibility, regardless of position, under the Genocide Convention. *See Bosn.*
17 *& Herz.*, 2007 I.C.J. at 114, 200, ¶¶ 167, 381; Genocide Convention art. III(e), art. 4 (“Persons
18 committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public
19 officials or private individuals”). Complicity can only exist when there is a punishable act of genocide
20 by another State or persons, with which the accomplice associates itself, even if the principle
21 perpetrator has not been tried. *Bosn. & Herz.*, 2007 I.C.J. at 120, ¶ 182. As the ICJ has explained, for
22 purposes of State responsibility under the Genocide Convention, complicity “includes the provision
23 of means to enable or facilitate the commission of the crime . . . it is similar to a category found among
24 the customary rules constituting the law of State responsibility, that of the ‘aid or assistance’ furnished
25 by one State for the commission of a wrongful act by another State.” *Bosn. & Herz.*, 2007 I.C.J. at
26 217, ¶ 419. It is enough that a State acts with “knowledge . . . of the wrongful act”—in this case
27
28

1 genocide—when it provides aid or support; it does not need to share the specific intent to commit
2 genocide. *Id.* at ¶¶ 420 (looking to aiding and abetting under the International Law Commission’s
3 Articles of State Responsibility art. 16), 421.

4 Under customary international law, a defendant is liable for aiding and abetting a violation of
5 international law when they knowingly provide assistance, encouragement, or moral support that has
6 a substantial effect on the violation. *Doe I v. Cisco Sys., Inc.*, 73 F.4th 700, 724 (9th Cir. 2023)
7 (collecting cases). Provision of arms and ammunition, personnel, and operational support and advice,
8 which armed forces used in committing atrocities, have been found to constitute assistance with a
9 “substantial effect” on the crimes. *Id.* at 726. *See also Prosecutor v. Musema*, Case No. ICTR-96-13-
10 T, Trial Judgement and Sentence, ¶¶ 176, 178 (Jan. 27, 2000) (complicity accomplished by aiding and
11 abetting, or by procuring the means for the commission of the genocide). The accomplice does not
12 have to share the perpetrator’s the genocidal intent—the specific intent to destroy a group in whole or
13 in part. *Id.* at ¶ 181. Rather, the *mens rea* for aiding and abetting liability under international law is
14 “knowledge that a defendant’s actions will assist in the commission of an international law violation”
15 or “awareness of a substantial likelihood that [their] acts would assist” such a violation, not that the
16 defendant act with the purpose of facilitating the crime. *Doe I v. Cisco*, 73 F.4th at 729-34 (internal
17 quotation omitted). *See also Prosecutor v. E. Ntakirutimana & G. Ntakirutimana*, Cases Nos. ICTR-
18 96-10-A & ICTR-96-17-A, Appeal Judgement, ¶ 501 (Dec. 13, 2004).

19 As set forth in the Complaint and shown in the exhibits annexed hereto, Defendants have
20 continued to provide the Israeli government with significant amounts of military assistance,
21 equipment, and weapons. Since October 7, Defendants have sent military advisors to Israel, Spees
22 Decl., Ex. E-32, and transferred a significant amount of military equipment and weapons to Israel,
23 including: Joint Direct Attack Munition, *id.*, Exs. E-10, E-25, E-26; ammunition, *id.*, Exs. E-26, E-27;
24 small diameter bombs, *id.*, Exs. E-10, E-26; interceptors, *id.*, Ex. E-10; alongside other military
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1 equipment, *id.*, Ex. E-7, E-11, E-15. On October 20, Defendants requested authorization from
2 Congress for \$14.1 billion in additional military assistance to Israel, *id.*, Ex. E-28, and on October 31,
3 Defendant Blinken approved a \$320 million transfer of military equipment to an Israeli manufacturer
4 of precision bomb kits. *Id.*, Ex. E-39. On November 8, Dana Stroul, Deputy Assistant Secretary of
5 Defense, advised lawmakers that “[d]eliveries [including of artillery and ammunition] are taking place
6 on a near daily basis” to Israel. *Id.*, Exs. E-52-55. Defendants have admitted that they are coordinating
7 closely with Israel, *id.*, Exs. E-1, E-2, E-3, E-4, E-15, E-20, E-22, E-33, at times even guiding them.
8 *Id.*, Ex. E-41. And finally, as described above, Defendants have provided moral, diplomatic, and
9 political support, to the Israeli government in full awareness of its plans to target the Palestinian
10 population in Gaza for destruction, in whole or in part.
11

12
13 **CONCLUSION**

14 For the reasons stated above, Plaintiffs respectfully request that the Court enjoin Defendants
15 and all persons associated with them from providing any further support, aid, or assistance to Israel’s
16 genocidal acts, including transferring any financial or material assistance to Israel.
17

18 Dated: November 16, 2023

Respectfully submitted,

/s/ Maria C. LaHood

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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 AHMED ABU
ARTEMA IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: January 11, 2024 at 1:00 p.m.

1 7. On the morning of October 24, I was sitting in the living room of my father's home
2 with three of my four children and other relatives, when an Israeli airstrike hit the three-story building.
3 I lost consciousness from the impact, but when I opened my eyes I initially saw only dust and rubble.
4 I could not hear anything. I soon realized that the house was destroyed, and that my family and I were
5 under the rubble.
6

7 8. My two aunts Fatema, and Khayriya, 65, were immediately killed by the airstrike. My
8 stepmother Intisar, who was in her mid-50s, and my cousin Fawziyah, in her 40s, were also killed.

9 9. My eldest son, Abdallah, and my niece Joud, 10, were severely injured by the airstrike.

10 10. After a day in intensive care, Abdallah died as a result of his injuries. Joud died the
11 following day.
12

13 11. The neighbor Mohammed was also killed in the same airstrike.

14 12. My son Mohammad, my daughter Batool, and I suffered multiple injuries from the
15 airstrike, including second-degree burns.

16 13. My 9-year old son was spared because he wasn't home: he had been standing in the
17 long line at the bakery to get bread and had been there for five hours when the blast hit my father's
18 home.
19

20 14. My three sisters were also injured by the airstrike.

21 15. I initially received first aid at a nearby clinic for my injuries before being transferred
22 first to Rafah hospital and then another hospital in the southern Gaza Strip. One of my sons, my
23 daughter, and I are still being treated for our injuries.

24 **Impact of Israel's Attacks on Food, Water, and Electricity in Gaza**

25 16. After Yoav Gallant announced he was going to cut off all our electricity, our life
26 changed suddenly. At first, we were relying on generators, but even those ran out of fuel and we can't
27 find fuel. So now the only thing available are solar panels. Some hospitals have solar panels, and many
28

1 people go to the few locations where there are panels to charge their phones. But now Israel has started
2 targeting places that have solar panels.

3 17. Before I was injured, I would spend the day searching for someone with a solar panel
4 just so we could charge our phones. Lights for our homes at night are out of the question, that's not
5 even a thing Gazans expect anymore. We can't use our fridge or any appliances since this all started.
6 But we try to find a source of power just so that at least we can charge our phones, and keep some
7 communication with the outside world.
8

9 18. The last words exchanged between me and Abdallah right before he was killed, I was
10 asking him to go to the school near where we were staying, where I was charging my phone as they
11 had a solar panel to bring my phone back. He was just getting up and told me "baba (dad), I'm going
12 to go and get the phone now," and that's when the strike hit.
13

14 19. There are long lines for bread. We look for alternative: biscuits, rice, although rice is
15 barely available. And rice needs fuel to cook, so people are searching for firewood.

16 20. Food is hard to come by. Many don't even have one meal a day. And now, hospitals
17 are starting to run out of electricity.

18 21. The hospital that I am in with my children, my family can't even come see us because
19 there are no cars. Some of the most simple things we need, medicines, are impossible to come by.
20

21 22. My father's house was completely destroyed. All my surviving relatives who lived in
22 that house, which was three stories, now rent a small flat. None of them, and none of us, are safe.

23 23. I believe that Israel is intentionally targeting entire families, as is evidenced by how
24 many families have been eliminated. This is an eliminatory war against the Palestinian people.

25 24. I understand that the United States continues to supply weapons to the Israeli military
26 like the one that hit my father's house and killed my son and relatives, and left all of us injured and
27 traumatized.
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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.;
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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 MOHAMMED ABU
ROKBEH IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: January 11, 2024 at 1:00 p.m.

1 situation, took the women and children inside their house, while I, my elderly father and siblings
2 waited in the courtyard of the UNRWA school. After sitting for about two hours feeling lost and not
3 knowing what to do, facing death regardless of whether I risked returning home or remaining in the
4 streets, I decided to take my wife and children to my sister's house in Gaza City. We got there after 5
5 p.m. My brother Sayed and other family members returned to their home in our building, despite the
6 threat.
7

8 6. My children had not eaten at all on October 11, 2023, so upon arrival at my sister's
9 home, I began preparing food for them. I was really worried about my brother Sayed, and every time
10 I heard explosions throughout the night, I would call my siblings and confirm whether they were still
11 alive.
12

13 7. I eventually returned to our home in the north on October 13, just as Israeli warplanes
14 dropped evacuation order leaflets ordering the evacuation of northern Gaza. Israeli authorities ordered
15 over 1.1 million Palestinian residents of northern Gaza to flee to the southern part of the Gaza Strip.
16 On October 17, I took the difficult decision to flee with my wife and children to the southern part of
17 Gaza.
18

19 8. My brother, Sayed, and his family joined us in southern Gaza after several days
20 sheltering in the overcrowded UNRWA-run school.
21

22 9. On October 23, 2023, around 9 a.m, I was eating breakfast with my wife and children
23 in the place we are sheltering in when an Israeli warplane suddenly bombed a nearby residential
24 building just 50 feet away causing significant damage to the building we are staying in. The glass
25 shattered all over our heads. We were all trembling, and although I was terrified, I tried to pretend that
26 I was strong for my children.
27
28

1 **Impact of Israel’s Attacks on Food, Water, and Electricity in Gaza**

2 10. Grocery stores are nearly empty, and many food varieties have become scarce. I tried
3 to find a bag of flour to secure bread for a short period, but I could not find any. I learned from the
4 seller that the price has surged to 3-4 times its normal value, and it is usually unavailable.
5

6 11. The queue at bakeries takes 5-6 hours, starting at 6 a.m., and requires intense
7 competition. Standing in the line itself is unsafe, with the constant fear of airstrikes, as Israel targeted
8 about 15 bakeries across Gaza, exacerbating the citizens’ crisis. People also fight to get the limited
9 bread supplies.

10 12. The gas cylinder is among the challenges we face, as it is running out, and we do not
11 know how long this war will continue. We now buy wood and firewood to cook food and make tea
12 and coffee on an open fire, as if we have regressed a hundred years. Even lighting the fire could be
13 dangerous as it could be seen by Israeli warplanes, but we have no other option.
14

15 13. Walking the streets is very dangerous because we do not know which house Israeli
16 warplanes might target next without warning.

17 14. I do not know if my home is still standing.

18 **Israeli strike kills my relatives**

19 15. On November 8, an Israeli airstrike killed my aunt, three of my cousins and at least 4
20 of their children in Jabalia.
21

22 16. My access to the internet, phone lines and electricity is unpredictable, and my ability
23 to communicate with my loved ones, colleagues, and the outside world is severely limited.

24 17. I have authorized my attorney to sign on my behalf, since signing this document is
25 virtually impossible given that I have weak internet connectivity and no electricity. If required to do
26 so, I will provide a signature when I am able to do so.
27

1 I declare under penalty of perjury that the foregoing information is true and correct to the best of my
2 knowledge.

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Maria C LaHood

Maria LaHood signing on behalf of Mohammed Abu Rokbeh

Date: November 13, 2023

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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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16 INTERNATIONAL – PALESTINE; AL-
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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 SUSAN POWER
FOR AL-HAQ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: January 11, 2024 at 1:00 p.m.

DECLARATION OF SUSAN POWER FOR AL-HAQ

I, Susan Power, under penalty of perjury declare as follows:

1. My name is Susan Power and I am the Head of Legal Research and Advocacy at Al-Haq. I have worked at Al-Haq for 10 years. I am usually based in Ramallah but relocated to Ireland because of the procedural difficulties obtaining a visa to work in the Palestinian NGO sector, which is a category of work not provided for under the Israeli military’s new procedures on entry into the West Bank published in 2022- COGAT’s “Procedure for Entry and Residence of Foreigners in the Judea and Samaria Area.”

2. Al-Haq is an independent Palestinian non-governmental human rights organization based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), which includes the West Bank including East Jerusalem, and the Gaza Strip. The organization has special consultative status with the United Nations Economic and Social Council.

3. Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The United States’ support of Israel’s current attack on Gaza has disrupted Al-Haq’s mission and forced Al-Haq to divert significant capacity, attention, and resources away from its core programs to facilitate and strategize the survival of its staff, members, and the broader civilian population, including facilitating communication and evacuations.

4. This is the first time in the history of Al-Haq that we have been unable to document atrocities on the ground due to the intense and relentless nature of the hostilities.

5. Due to Israel’s military offensive on the Gaza Strip, Al-Haq completely restructured the work of two of its core departments, the Monitoring and Documentation Department and that of

1 the Legal Research and Advocacy Department. In the first days of the military offensive, Al-Haq
2 collaborated with Al Mezan Center for Human Rights and Palestinian Centre for Human Rights
3 (PCHR) to combine the three organisations' monitoring and documentation departments and legal
4 research and advocacy units into two large emergency response units. The focus of these two units is
5 directed fully to the documentation of the unfolding hostilities on the ground, including drafting field
6 reports, taking witness testimonies, and establishing the pattern of violations on the ground, in addition
7 to the legal and advocacy responses to the UN mechanisms and Third States.

9 6. All projects that Al-Haq previously worked on were suspended, and the core resources
10 of the organisation have been directed to the emergency response, putting us at risk of breaching our
11 immediate project commitments to donors.

12 7. As the conflict entered into its ninth day, Israel's bombing along with the widespread
13 and systematic attacks on infrastructure across the Gaza Strip meant that the joint emergency field
14 team in Gaza could no longer function. The field team was prevented from documenting and drafting
15 field reports or taking affidavits due to the danger and life-threatening nature of the bombardments.

17 8. Members and staff of Al-Haq have been subjected to indiscriminate bombardment and
18 displacement themselves.

19 9. Al-Haq has struggled to maintain daily contact with its two field researchers based in
20 the Gaza Strip and the hostilities have taken a catastrophic toll on the families of our colleagues. Our
21 legal researcher and advocacy officer Ahmed Abofoul, who is from Gaza but lives in The Hague, lost
22 five members of his extended family who were killed and several critically injured in airstrikes on the
23 Gaza Strip on 19 October, and on 23 October in another strike a sixth, his cousin's child, aged four,
24 died a day later from his critical injuries.

1 10. Our field researcher Tareq Zaqout lost three family members when an airstrike on a
2 neighbouring home on 22 October killed his sister’s three children in Rafah. His sister was seriously
3 injured and it took three days to carry out her surgeries.

4 11. Before the blackout on 27 October, our colleague Mohammad Abu Rahmeh sent a
5 testimony, explaining how “death has become a routine with every morning and every evening. The
6 nights are no longer for laughter and chats, not even for sleep and dreams. Rather the night is now a
7 silent persistent murderer - a preferred time for our enemy to kill.” The previous week, Mohammad’s
8 family home was bombed and all his possessions, and the possessions of his wife and two children,
9 were destroyed. The family took refuge in his wife’s sisters house, and that too was bombed some
10 days later.

11 12. Al-Haq was also coordinating with phone companies in the West Bank to ensure both
12 Al-Haq colleagues from Gaza and directors of Gaza’s organisations Al Mezan and PCHR could
13 communicate from the Gaza Strip. However, due to the communication blackouts over the last week,
14 this has become more difficult to maintain.

15 13. As we write, our organisation is facing profound difficulty in trying to contact long-
16 standing human rights partners in Gaza, who face risks to their lives. Some have been trapped behind
17 Israel’s encirclement in Gaza City, unable to move south, which might be safer – but still brings no
18 guarantee of safety. Many of the roads from parts of northern Gaza are completely destroyed and
19 blocked off. We have tried to engage diplomatic channels to secure a humanitarian passage for our
20 partners safe evacuation.

21 14. Al-Haq has also had to shift focus from its broader programming to issue near daily
22 advocacy reports and statements to the international community urging immediate intervention to
23 prevent the further commission of genocide against the Palestinian population. Since 7 October, most
24 of our staff are now working 14-hour days, seven days a week to respond to the unfolding human
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1 rights and humanitarian crisis. We have broadly directed our advocacy and legal efforts internationally
2 at Third States, the EU and through UN mechanisms.

3 15. In particular we have called for the protection of the civilian population in the Gaza
4 Strip from forcible transfer, and urged the provision of basic humanitarian necessities vital for the
5 survival of the civilian population, along with the clear and emphatic call for an immediate ceasefire.
6 Israel's total siege of Gaza, alongside the statements of intent to starve and deny basic necessities to
7 the civilian population, point to genocidal acts and intent. Al-Haq has been amplifying the United
8 States' and other countries responsibility to intervene to prevent genocide and bring such acts to an
9 end.
10

11
12 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge
13 and belief.
14

15
16 

17 _____
Susan Power

Executed this 12th day of November, 2023

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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 DR. OMAR AL-
NAJJAR IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing: January 11, 2024 at 1:00 p.m.

1 9. Tens of thousands of displaced people are sheltering at Nasser Medical Complex.

2 10. We receive hundreds of injured people daily. Often we receive dozens of injured people
3 at once because they were all injured by the same Israeli airstrike. Most of them are women and
4 children.

5 11. I have treated children who are sole survivors of their families.

6 12. I have treated injuries that include burns, fractures, dismemberments, gouging eyes,
7 and amputated limbs.
8

9 13. I recall that on October 26^w a fellow medical student, Abdelrahman Abu Shammala,
10 was brought into Nasser Medical Complex. I knew him well, but he was unrecognizable due to his
11 injuries. He got immediate medical care, but doctors were unable to save him. More than 22 people
12 from his family were killed that day.
13

14 14. On another day, I received the deceased body of another medical student, Ibtihal al-
15 Astal, who I worked with and the bodies of her family members. These are tough moments filled with
16 sadness and loss of hope. These were the people meant to treat patients.

17 15. The scenes are numerous and horrific. When I recall them, I feel like I am reopening a
18 door to hell.

19 **Impact of Israel's Attacks on My Family**

20 16. On October 8, I, together with four members of my immediate family (mother, father,
21 brother, sister) left our home in the village of Khuza'a because of artillery shelling, and because of
22 direct threats from the Israeli military that we received by phone and through social media posts.

23 17. After my family members left, the village of Khuza'a was destroyed. My family home
24 there, where I was raised, was partially destroyed by artillery shelling during the early days of Israel's
25 attack. I have not been able to return there since, and I do not know the current extent of the
26 destruction.
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1 18. After my immediate family left Khuza'a, the Israeli army contacted my family via
2 phone and social media with direct threats that it would directly target us should we return.

3 19. Since Israel's assault on Gaza began, specifically on October 10, five of my extended
4 family members were killed by Israeli bombing after evacuating Khuza'a and seeking safety with
5 relatives who lived closer to Khan Yunis.

6 20. Since my family's displacement on October 8, my sister and niece are sheltering in an
7 UNRWA school, and the rest of my family including my parents, one sister and my brother, is staying
8 with a relative east of Khan Yunis.

9
10 **Impact of Israel's Attacks on Food, Water, and Electricity in Gaza**

11 21. The situation with food, water and electricity is dire. Each family, regardless of its size,
12 is only allowed to buy 1 dollar worth of bread, equivalent to half a package of bread. People stand in
13 lines for 5-6 hours to purchase their portion of bread. As of November 8, my family has not been able
14 to buy any bread for 3 days, as the only bakery is functioning just 4 hours a day due to lack of water
15 and fuel. In the hospital, each doctor receives two pieces of bread per day.

16 22. There is no drinkable water at the supermarket or here in the hospital. People have to
17 wait in line at the water station to get water. Sometimes my family calls me to bring them water and I
18 have to walk around one kilometer to find any water. There is only one water station in the entire
19 governorate of Khan Yunis.

20 23. We have not had electricity since October 11, and the internet connectivity is extremely
21 weak. Municipal services have stopped and garbage is piling up in the streets. Buildings have
22 collapsed.

23 24. I have heard what Israeli officials have said about us Palestinians in Gaza – that we are
24 “animals,” that we are all “terrorists,” that they want to shut off all food, water, and electricity. That
25 they want to destroy us. It is horrifying for me, as a Palestinian, to hear what this occupying
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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 WILLIAM A.
SCHABAS IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: January 11, 2024 at 1:00 p.m.

1 Legal opinion on the obligation to prevent genocide in international law

2 I, William A. Schabas, pursuant to 28 U.S.C. § 1746, declare the following is true and correct:

- 3 1. I have been asked by the Center for Constitutional Rights to provide an opinion on the
4 obligation to prevent genocide under international law, and its current application in relation
5 to the United States of America in regard to Israel's actions against the Palestinian population
6 in Gaza. I understand the opinion is to be submitted in support of an application for declaratory
7 and injunctive relief in the Federal Court of the United States on behalf of Palestinian human
8 rights organizations and individuals against President Biden, Secretary of State Blinken and
9 Secretary of Defense Austin (sued in their official capacity) for violations of customary
10 international law, as codified in the Genocide Convention and under United States law.
11
12 2. I am professor of international law at Middlesex University London, emeritus professor of
13 international criminal law and human rights at Leiden University in the Netherlands and
14 emeritus professor of human rights law at the University of Galway in Ireland. I am a past
15 president of the International Association of Genocide Scholars. I am the author of *Genocide*
16 *in International Law* (Cambridge University Press, 2000, second edition 2009), of the chapter
17 on 'Genocide' in the Max Planck Encyclopedia of International Law and of many other
18 publications on the law of genocide. I am the presenter on the topic of 'Genocide' in the United
19 Nations Audiovisual Library of International Law. A full curriculum vitae is annexed to this
20 opinion.
21
22 3. In preparation for this opinion, I have been shown the application. For the purposes of this
23 opinion, I am assuming that the factual allegations it makes are supported by admissible and
24 credible evidence.
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1 **The Genocide Convention and customary international law**

2 4. On 11 December 1946 the United Nations General Assembly adopted unanimously a resolution
3 entitled The Crime of Genocide, A/RES/96 (I). The resolution is understood to be declaratory
4 of international law at the time, confirming that the obligations to prevent and punish the crime
5 of genocide precede the drafting and adoption of the Convention on the Prevention and
6 Punishment of the Crime of Genocide, which was to follow. In other words, the obligations to
7 prevent and punish the crime of genocide are part of customary international law. The General
8 Assembly resolution calls upon States ‘to enact the necessary legislation for the prevention and
9 punishment of this crime’. When the Resolution was being adopted, the representative of the
10 United States in the General Assembly said ‘the United States supported the affirmation that
11 this horrible crime was a crime against the community of nations’.¹

12
13
14 5. The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by
15 the United Nations General Assembly on 9 December 1948. It entered into force on 12 January
16 1951, having obtained the requisite twenty ratifications or accessions. There are now 153 States
17 Parties to the Convention. In proceedings before the International Court of Justice in 1951 the
18 United States of America explained its view of the origins of the Convention: ‘The Genocide
19 Convention resulted from the inhuman and barbarous practices which prevailed in certain
20 countries prior to and during World War II, when entire religious, racial and national minority
21 groups were threatened with and subjected to deliberate extermination. The practice of
22 genocide has occurred throughout human history. The Roman persecution of the Christians,
23 the Turkish massacres of Armenians, the extermination of millions of Jews and Poles by the
24 Nazis are outstanding examples of the crime of genocide.’²

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27 ¹ A/C.6/SR.32, 9 December 1946, p. 172.

28 ² *Reservations to the Convention on the Prevention of Genocide, Advisory Opinion, Pleadings, Oral Arguments, Documents*, ‘Written Statement of the United States of America’, pp. 23–47, at p. 25.

1 6. The United States of America signed the Convention on the Prevention and Punishment of the
2 Crime of Genocide (the ‘Genocide Convention’) on 11 December 1948, two days after its
3 adoption by the United Nations General Assembly. The United States ratified the Convention
4 on 25 November 1988. The ratification was accompanied by two reservations that do not
5 appear to be relevant to the present litigation. It was also accompanied by five
6 ‘understandings’, of which three may be germane to the proceedings: ‘(1) That the term ‘intent
7 to destroy, in whole or in part, a national, ethnical, racial, or religious group as such’ appearing
8 in article II means the specific intent to destroy, in whole or in substantial part, a national,
9 ethnical, racial or religious group as such by the acts specified in article II’; ‘(2) That the term
10 ‘mental harm’ in article II (b) means permanent impairment of mental faculties through drugs,
11 torture or similar techniques’; ‘(4) That acts in the course of armed conflicts committed without
12 the specific intent required by article II are not sufficient to constitute genocide as defined by
13 this Convention.’

14
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16 7. Israel signed the Genocide Convention on 17 August 1949 and ratified it on 9 March 1950,
17 without any reservation or other declaration. The State of Palestine acceded to the Genocide
18 Convention on 2 April 2014, without any reservation or other declaration.

19
20 8. That the obligations to prevent and punish genocide are derived both from treaty law – the
21 Genocide Convention, with respect to States Parties – and customary international law is
22 uncontroversial. The customary law applicable to genocide is in some respects even broader
23 than that set out in the Convention. In 1961 the District Court of Jerusalem in the *Eichmann*
24 *case* described the 1948 Genocide Convention as ‘the confirmation of certain principles as
25 established rules of law in customary international law’.³ The District Court relied upon the
26 1951 Advisory Opinion of the International Court of Justice which said ‘that the principles
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28 ³ *A-G Israel v. Eichmann*, (1968) 36 ILR 5 (District Court, Jerusalem), para. 21.

1 underlying the Convention are principles which are recognized by civilized nations as binding
2 on States, even without any conventional obligation'.⁴

3 **The definition of genocide and the specific intent**

4
5 9. The crime of genocide is defined in article II of the 1948 Convention:

6 In the present Convention, genocide means any of the following acts committed with intent
7 to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- 8 (a) Killing members of the group;
- 9 (b) Causing serious bodily or mental harm to members of the group;
- 10 (c) Deliberately inflicting on the group conditions of life calculated to bring about its
11 physical destruction in whole or in part;
- 12 (d) Imposing measures intended to prevent births within the group;
- 13 (e) Forcibly transferring children of the group to another group.

14
15 10. This remains the authoritative definition and has been incorporated in much more recent
16 international instruments, such as the Statutes of the International Criminal Tribunals for the
17 former Yugoslavia and Rwanda and the Rome Statute of the International Criminal Court as
18 well as in the national criminal law of many States, including the United States of America.

19
20 11. The definition consists of two components. The first is the introductory paragraph or *chapeau*
21 wherein are contained what are called the contextual elements: the 'intent to destroy, in whole
22 or in part, a national, ethnical, racial or religious group, as such'. The second, consisting of
23 five sub-paragraphs, lists the punishable acts. Each of the punishable acts has its own *actus*
24 *reus* and *mens rea*. However, genocide is considered to be a crime of 'specific intent'. None of
25 the punishable acts can be considered an act of genocide unless committed with the 'specific
26 intent' set out in the preliminary paragraph.

27
28 ⁴ *Reservations to the Convention on Genocide, Advisory Opinion, ICJ Reports 1951*, p. 15, at p. 24.

1 12. In the present conflict in Gaza, there is certainly evidence of the commission of the first three
2 punishable acts of genocide. The acts of killing members of the group and of causing serious
3 bodily or mental harm to members of the group are not in any significant way different from
4 how these concepts are understood in the national criminal law of most if not all countries. As
5 for ‘deliberately imposing conditions of life calculated to destroy the group in whole or in part’,
6 this has been described by the International Court of Justice as covering ‘methods of physical
7 destruction, other than killing, whereby the perpetrator ultimately seeks the death of the
8 members of the group’.⁵ The authoritative Elements of Crimes of the International Criminal
9 Court provide that ‘[t]he term “conditions of life” may include, but is not necessarily restricted
10 to, deliberate deprivation of resources indispensable for survival, such as food or medical
11 services, or systematic expulsion from homes’.⁶ International case law has provided many
12 examples, including subjecting the group to a subsistence diet, failing to provide adequate
13 medical care, systematically expelling members of the group from their homes, poisoning of
14 wells, and ‘generally creating circumstances that would lead to a slow death such as the lack
15 of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to
16 excessive work or physical exertion’.⁷ The term ‘deliberately’ and the phrase ‘calculated to
17 destroy the group in whole or in part’ are somewhat redundant to the extent that they repeat
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23 ⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*
24 (*Croatia v. Serbia*), Judgment, I.C.J. Reports 2015, p. 3, para. 161.

25 ⁶ Elements of Crimes, ICC-ASP/1/3, p. 114.

26 ⁷ *Prosecutor v. Karadžić* (IT-95-5/18-T), Judgment, 24 March 2016, para. 547; *Prosecutor v. Brđanin*
27 (IT-99-36-T), Judgment, 1 September 2004, para. 691; *Prosecutor v. Stakić* (IT-97-24-T), Judgment,
28 31 July 2003, para. 517; *Prosecutor v. Musema* (ICTR-96-13-T), Judgment, 27 January 2000, para.
157; *Prosecutor v. Bashir* (ICC-02/05-01/09), Second Decision on the Prosecution's Application for a
Warrant of Arrest (12 July 2010), para. 38; *Application of the Convention on the Prevention and*
Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015, p. 3, para.
161. Also Report of the detailed findings of the Independent International Fact-Finding Mission on
Myanmar, A/HRC/39/CRP.2 (17 September 2018), para. 1401.

1 components of the specific intent which is set out in the preliminary paragraph or *chapeau* of
2 article II of the Convention.

3 13. Each of the sub-paragraphs in article II refers to ‘the group’ or to ‘members of the group’. This
4 requires reference to the phrase ‘national, ethnical, racial or religious group’ in the preliminary
5 paragraph. Case law of international tribunals has identified various groups for the purposes of
6 applying the Convention, including Bosnian Muslims, Croats, Krajina Serbs in Croatia and
7 Hutu, Tutsi and Twa in Rwanda. I cannot imagine that there could be any dispute about
8 describing the Palestinian people as a group protected by one or more of the adjectives listed
9 in article II of the Genocide Convention.

10 14. The preliminary paragraph of article II of the Convention as well as sub-paragraph (c) employ
11 the phrase ‘in whole or in part’. As mentioned above, at the time it ratified the Convention the
12 United States formulated an understanding that this means ‘in whole or in substantial part’. In
13 fact, the additional qualifier ‘substantial’ is widely accepted in international case law.⁸ There
14 are two approaches to this issue in the present case. One would be to consider the Palestinians
15 of Gaza as a distinct group. The second would be to consider them as a part of a larger group,
16 namely, the Palestinians. If the latter approach is adopted, they constitute approximately 40%
17 of the 5 million Palestinians resident in both Gaza and the West Bank, in which case they are
18 a ‘substantial part’ of a distinct group.

19 15. The phrase ‘intent to destroy’, which also appears in the preliminary paragraph of article II of
20 the Convention, has been held to refer only to physical destruction (or ‘biological’ destruction
21 in the case of imposing measures to prevent births within the group). Thus, it excludes from
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27 ⁸ For example, *Prosecutor v. Krstić* (IT-98-33-A), Judgment, 19 April 2004, paras. 8-11; *Application*
28 *of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and*
Herzegovina v. Serbia and Montenegro), Judgment, *I.C.J. Reports 2007*, p. 43, para. 201.

1 the scope of the Genocide Convention measures intended to destroy the culture of the group
2 with a view to its assimilation.

3 16. Because the intent to destroy the group in whole or in part is a specific intent, the intent cannot
4 be presumed in the way that it is for ordinary crimes where only general intent is required. The
5 evidence of specific intent may be direct, in the form of documents and statements, for
6 example, but it may also be based upon inferences drawn from what international tribunals
7 have referred to as a ‘pattern of conduct’.

8
9 17. In the present case, there is much direct evidence in the form of statements by senior officials
10 and politicians in Israel indicating an intent to destroy the people of Palestine. Furthermore,
11 the conduct of the State of Israel provides evidence from which genocidal intent may be
12 inferred. The avowed policy of depriving Gaza of water, food, medicine and electricity, bearing
13 in mind the rather desperate economic situation in the territory prior to the conflict and the fact
14 that the borders are sealed, leaving the people of Gaza with nowhere to go, will inexorably lead
15 to their physical destruction. If the siege and blockade continue, there can be no other outcome.

16
17 **The obligation to prevent genocide**

18 18. The full title of the Convention is the Convention on the Prevention and Punishment of the
19 Crime of Genocide. Article I of the Convention declares that genocide ‘is a crime under
20 international law which [the Contracting Parties] undertake to prevent and to punish’. The
21 Convention is quite laconic. Most of its provisions deal with matters relating to the punishment
22 of the crime and the implementation of the Convention itself. The Convention itself provides
23 little guidance on the interpretation and application of the terms ‘prevention’ and ‘prevent’.
24 The prohibitions of ‘conspiracy’ and ‘direct and public incitement’ are directed at prevention
25 because they are inchoate in nature. Our contemporary understanding of the obligation to
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1 prevent genocide is largely based on case law and in particular the 2007 judgment of the
2 International Court of Justice in *Bosnia v. Serbia*.

3 19. The reference to prevention in article I of the Genocide Convention is not merely ‘hortatory or
4 purposive’ the International Court of Justice said in its seminal judgment of February 2007 on
5 Bosnia and Herzegovina’s application against Serbia. The undertaking to prevent and punish
6 genocide is unqualified, said the Court. ‘It is not to be read merely as an introduction to later
7 express references to legislation, prosecution and extradition . . . That conclusion is also
8 supported by the purely humanitarian and civilizing purpose of the Convention.’⁹ The Court
9 explained that the preparatory work (*travaux préparatoires*) of the Convention confirms the
10 ‘operative and non-preambular character of Article I’.¹⁰

11
12 20. The International Court of Justice concluded that Serbia¹¹ had breached international law not
13 because it was directly responsible for perpetration of the crime but because it had failed to
14 prevent it. The Court had reached the conclusion that the massacre of several thousand
15 Muslims of Eastern Bosnia, in the Srebrenica enclave, constituted the crime of genocide. Its
16 perpetrators were Bosnian Serb forces, one of the factions in the civil war in Bosnia and
17 Herzegovina. However, the neighbouring State of Serbia was the respondent in the case. The
18 Court did not find sufficient evidence to attribute responsibility to Serbia for the killings.

19
20 21. The Court concluded that even if a State itself is not responsible for actually committing
21 genocide, it may nevertheless incur liability for failing to prevent genocide that is perpetrated
22 by others outside its own borders. In other words, this obligation to prevent genocide is not
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26 ⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 162.

27 ¹⁰ *Ibid.*, para. 164.

28 ¹¹ Note that at the time of the massacre, Serbia was known as the Federal Republic of Yugoslavia. Its capital was and remains Belgrade.

1 only a collective one, in that it calls for appropriate action by international bodies like the
2 United Nations, but it is also an obligation that is imposed upon States individually.

3 22. This is a quite extraordinary obligation, one that underscores the importance of the duty to
4 prevent genocide under customary law as well as pursuant to the Convention. Some other
5 international treaties include a call for prevention. For example, the Convention against Torture
6 and Other Cruel, Inhuman or Degrading Treatment or Punishment imposes an obligation of
7 prevention but it specifies that this applies ‘in any territory under its jurisdiction’.¹² Three
8 other treaties specify an obligation of prevention but it is explicitly confined to ‘their respective
9 territories’.¹³ In *Bosnia v. Serbia* the International Court of Justice made reference to these
10 treaties.¹⁴ All four treaties presented as examples confine the obligation to prevent to the
11 territory of the State Party. By contrast, and underscoring the unique and fundamental
12 importance of prevention of genocide, the Court said that the obligation has an extraterritorial
13 scope.
14

15
16 23. The obligation to prevent is one of means rather than one of result. The Court spoke of this as
17 a duty of ‘due diligence’ that varies depending upon circumstances, involving several
18 parameters:

19 The first, which varies greatly from one State to another, is clearly the capacity to
20 influence effectively the action of persons likely to commit, or already committing,
21 genocide. This capacity itself depends, among other things, on the geographical
22 distance of the State concerned from the scene of the events, and on the strength of the
23 political links, as well as links of all other kinds, between the authorities of that State
and the main actors in the events. The State’s capacity to influence must also be
assessed by legal criteria, since it is clear that every State may only act within the limits

24 ¹² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
(1987) 1465 UNTS 85, arts. 2(1), 16(1).

25 ¹³ Convention on the Prevention and Punishment of Crimes against Internationally Protected
26 Persons, Including Diplomatic Agents, (1977) 1035 UNTS 167, art. 4; Convention on the Safety of
United Nations and Associated Personnel, (1999) 2051 UNTS 363, art. 11; International Convention
27 on the Suppression of Terrorist Bombings, (2001) 2149 UNTS 256, art. 15.

28 ¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*
(*Bosnia and Herzegovina v. Serbia and Montenegro*), *Judgment*, *I.C.J. Reports 2007*, p. 43, para.
429.

1 permitted by international law; seen thus, a State's capacity to influence may vary
2 depending on its particular legal position vis-à-vis the situations and persons facing the
3 danger, or the reality, of genocide.¹⁵

4 24. I draw attention to the phrases 'likely to commit' and 'the danger ... of genocide'. These dictate
5 action to prevent genocide before it has been committed. Indeed, it would be quite illogical to
6 contend that there is only an obligation to prevent genocide after it has been committed.

7 25. Indeed, this is precisely what the International Court of Justice said in the *Bosnia v. Serbia*
8 case: '[A] State's obligation to prevent, and the corresponding duty to act, arise at the instant
9 that the State learns of, or should normally have learned of, the existence of a serious risk that
10 genocide will be committed. From that moment onwards, if the State has available to it means
11 likely to have a deterrent effect on those suspected of preparing genocide, or reasonably
12 suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of
13 these means as the circumstances permit.'¹⁶

14 26. In my opinion, the United States of America's relationship to Israel has many parallels with
15 that between Serbia and the Bosnian Serb forces at the time of the Srebrenica massacre in 1995.
16 The Bosnian Serb forces were very dependent upon weaponry and other logistical support from
17 Serbia, and there were strong political and economic ties. There has been a close relationship
18 between the United States of America and Israel for many decades, manifested in high levels
19 of development assistance, supply of weaponry and sharing of military technology and
20 intelligence.

21 27. In assessing Serbia's failure to prevent genocide, the Court noted its 'undeniable influence'
22 over the Bosnian Serbs, and said its federal authorities should 'have made the best efforts
23 within their power to try and prevent the tragic events then taking shape, whose scale, though
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27 _____
28 ¹⁵ *Ibid.*, para. 430.

¹⁶ *Ibid.*, para. 431.

1 it could not have been foreseen with certainty, might at least have been surmised'. It noted that
2 Serbia and its leaders 'were fully aware of the climate of deep-seated hatred which reigned
3 between the Bosnian Serbs and the Muslims in the Srebrenica region'. The Court recognized
4 that 'it has not been shown that the decision to eliminate physically the whole of the adult male
5 population of the Muslim community of Srebrenica was brought to the attention of the
6 Belgrade authorities'. Nevertheless, 'given all the international concern about what looked
7 likely to happen at Srebrenica' and the fact that 'the dangers were known and that these dangers
8 seemed to be of an order that could suggest intent to commit genocide, unless brought under
9 control, it must have been clear that there was a serious risk of genocide in Srebrenica'.¹⁷

10
11 28. I note that the Court did not require Serbia to make a definitive determination that genocide
12 was actually taking place or that it had taken place. I draw attention to the Court's observation
13 that the 'dangers were known' and 'seemed to be of an order that could suggest intent to commit
14 genocide, unless brought under control'. Nor is it necessary, for the purposes of this opinion,
15 to reach such a conclusion. For the duty to prevent genocide to arise it is sufficient that there
16 be a serious risk the crime will be committed.

17
18 29. This is the position of the United States of America, formulated in a Declaration that was
19 submitted to the International Court of Justice in the ongoing proceedings between Ukraine
20 and the Russian Federation based upon the Genocide Convention. There, the United States
21 referred to its 'long history of supporting efforts to prevent and punish genocide'. The United
22 States cited the *Bosnia v. Serbia* judgment of the International Court of Justice, noting that 'the
23 Court has interpreted Article I [of the 1948 Convention], in particular its undertaking to prevent
24 genocide, to create obligations distinct from those that appear in the subsequent articles of the
25 Convention, which primarily address the punishment of genocide by individuals'. It went on
26
27

28 ¹⁷ *Ibid.*, para. 438.

1 to refer to the same paragraphs in the judgment that I have cited in the preceding paragraphs
2 of this opinion. The Declaration reproduced the following phrase, italicizing the words ‘serious
3 risk’: ‘[A] State’s obligation to prevent, and the corresponding duty to act, arise at the instant
4 that the State learns of, or should normally have learned of, the existence of a *serious risk* that
5 genocide will be committed.’¹⁸
6

7 30. The Declaration was filed with the Court in accordance with article 63 of the Statute of the
8 International Court of Justice, accompanied by a covering letter from Secretary of State Antony
9 Blinken dated 29 August 2022. Article 63(2) of the Statute declares that if a State exercises its
10 right to intervene in proceedings, ‘the construction given by the judgment will be equally
11 binding upon it’. The Court has yet to rule on the merits of the *Ukraine v. Russia* case, and it
12 may make no pronouncement on the obligation to prevent genocide if it deems this to be
13 unnecessary. It is very unlikely that the Court will in any way reverse what it said in the 2007
14 judgment about the duty to prevent genocide. Regardless of the outcome of the *Ukraine v.*
15 *Russia* case, I consider that the Declaration of the United States is a unilateral act that has legal
16 effects, and that the United States is bound by the interpretation of the duty to intervene that it
17 set out, including its endorsement of the reasoning of the International Court of Justice.
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27 ¹⁸ *Ukraine v. Russian Federation*, Declaration of Intervention of the Government of the United
28 States of America pursuant to article 63 of the Statute of the International Court of Justice, 6
September 2022, para. 22.

1 31. I conclude that there is a serious risk of genocide committed against the Palestinian population
2 of Gaza and that the United States of America is in breach of its obligation, under both the
3 1948 Genocide Convention to which it is a party as well as customary international law, to use
4 its position of influence with the Government of Israel and to take the best measures within its
5 power to prevent the crime taking place.
6

7
8 I declare under penalty of perjury under the laws of the United States of America that the foregoing
9 is true and correct. Executed on 9 November 2023 in Paris, France.
10

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12 

13 Prof. William A. Schabas OC MRIA
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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
AUSTIN III, *Secretary of Defense*, in their
official capacities,

Defendants.

Case No.: 23-cv-05829

**DECLARATION OF DR. JOHN COX,
DR. VICTORIA SANFORD AND DR.
BARRY TRACHTENBERG IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Hearing: January 11, 2024 at 1:00 p.m.

28 DECLARATION OF DR. JOHN COX,
DR. VICTORIA SANFORD, AND
DR. BARRY TRACHTENBERG

1 internationally recognized expert on the Guatemalan genocide and is the author of seven single-
2 authored books, one co-authored book and two co-edited volumes including *Buried Secrets: Truth and*
3 *Human Rights in Guatemala* (Palgrave Macmillan, 2003) and *Gender Violence in Peace and War ~*
4 *States of Complicity* (Rutgers, 2016). Dr. Sanford directed research for the Guatemalan Forensic
5 Anthropology Foundation 1999 report to the Commission for Historical Clarification (the Guatemalan
6 truth commission). She served as an invited expert in the Spanish National Court's genocide case
7 against the Guatemalan generals and in indigenous land rights and indigenous/gender discrimination
8 cases in the Inter-American Court of Human Rights. Dr. Sanford is an Advisory Board member of the
9 CUNY Center for the Study of the Holocaust, Genocide, and Crimes Against Humanity and the Reiff
10 Center for Human Rights and Conflict Resolution at Christopher Newport University. She is an
11 Affiliated Scholar at the Center for the Study of Genocide and Human Rights, Rutgers University.
12

13
14 4. **Dr. Barry Trachtenberg** is a scholar of modern Jewish history and the Nazi
15 Holocaust, with a PhD in History from the University of California, Los Angeles. Since 2016, he has
16 been employed as The Michael H. and Deborah K. Rubin Presidential Chair of Jewish History and as
17 of 2023 is tenured Professor at Wake Forest University in Winston-Salem, North Carolina, where he
18 is a member of the interdisciplinary programs in Jewish Studies and Middle East and South Asian
19 Studies. He serves on the Board of Scholars of Facing History and Ourselves and for six years was a
20 member of the Academic Council of the Holocaust Educational Foundation of Northwestern
21 University. Prior to working at Wake Forest University, he taught from 2003 to 2016 at the State
22 University of New York, Albany, where he directed the programs in Judaic Studies and Hebrew
23 Studies from 2010 to 2016. Dr. Trachtenberg is the author of three books, most recently *The Holocaust*
24 *& the Exile of Yiddish: A History of the Algemeyne Entsiklopedye* (Rutgers, 2023) and *The United*
25 *States and the Holocaust: Race, Refuge, and Remembrance* (Bloomsbury, 2018), and various articles
26
27

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1 — both scholarly and media — on many aspects of modern Jewish history and the Holocaust. For
2 many years, he has taught academic courses and given community lectures on modern Jewish history,
3 Zionism, Israel, antisemitism and the Nazi Holocaust. In 2017, Dr. Trachtenberg testified to Congress
4 on the issue of antisemitism on college campuses.

5
6 5. We make this declaration based on our expert professional knowledge as scholars of
7 genocide and Holocaust studies. Given the high threshold to establish a case of genocide under the
8 UN Convention on the Prevention and Punishment of the Crime of Genocide (December 1948),
9 particularly because of the requirement to prove an “intent to destroy, in whole or in part, a national,
10 ethnical, racial or religious group, as such,” it is remarkable, as discussed below, that much evidence
11 points to the crime of genocide in Israel's attack on Gaza after October 7, 2023.

12
13 6. Individuals targeted in genocidal violence are targeted specifically as members of a
14 group. If intent is established, the list of violent acts recognized as genocide includes killing and
15 causing serious bodily or mental harm to members of the group, and deliberately inflicting upon the
16 group conditions of life calculated to bring about its physical destruction.¹

17
18 7. Even if the available evidence so far (November 13) would only point to the
19 “possibility of genocide” because of the “gravity of the current situation”—as 880 scholars of
20 international law, conflict studies, and Holocaust and Genocide Studies wrote in a statement on
21 October 15²—that would still place our conclusions within the normative framework of the
22 Convention, which requires Contracting Parties to act to prevent genocide before it happens or to stop
23 it (Article 1). Absent such intervention and enjoying United States, British, and European Union
24 support, the Israeli attack against Gaza since the warning by scholars on October 15 has escalated
25

26
27 ¹ <https://www.un.org/en/genocideprevention/genocide.shtml>

² <https://twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza>

1 markedly, raising the numbers of Palestinians that Israeli forces killed from over 2,300 on October 15
2 to more than 11,000 now (November 13), including more than 4,600 children and youths. Israeli forces
3 have so far wounded more than 30,000 Palestinians, displaced more than 1.5 million Palestinians of a
4 population (in Gaza) of 2.2 million, and destroyed or damaged over half of all housing units in the
5 Gaza Strip.

6
7 Legal and Historical Elements of the Crime of Genocide in Israel's Attack on Gaza

8 8. The assessment of genocide against Palestinians in Israel's attack on Gaza after October
9 7 rests primarily on two key elements:

- 10 i. Clear expressions of the special intent (*dolus specialis*) to commit genocide by state
11 leaders and senior army officers, that is, those with command authority. Past historical
12 precedents reveal that intent is often articulated through explicitly dehumanizing and
13 demonizing language. We see the same kind of language in this case, specifically the
14 description of Palestinians in Gaza as “human animals.”
15
16 ii. The nature of the Israeli attack, specifically the levels of destruction and killings
17 through carpet bombings on one of the most densely populated areas in the world that
18 at the same time is put under “total siege”—which deprives the civilian population of
19 food, water, fuel, and medical supplies—are measures that, when combined with
20 explicit intent, are “deliberately inflicting on the group conditions of life calculated to
21 bring about its physical destruction in whole or in part” (UN Genocide Convention,
22 Article II (c)).
23

24 Israel's Genocidal Intent

25 9. Perpetrators of genocide rarely express their intentions as directly as Israeli state
26 leaders and senior army officers have done after October 7.
27

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1 10. On October 9, Israel Defense Minister Yoav Gallant proclaimed: “We are imposing a
2 complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed. We are
3 fighting human animals, and we will act accordingly.”

4 11. Israeli President Isaac Herzog repeated Israel's intention to commit genocide against
5 the civilian population of 2.2 million—half of whom are children and youth under the age of 18—
6 when he asserted, on October 13, that “it's an entire nation out there [in Gaza] that is responsible. It's
7 not true this rhetoric about civilians not being aware, not involved. It's absolutely not true.”

8 12. Other Israeli state leaders and senior army officers preferred incendiary language
9 different than what Gallant chose, focusing more on defining Palestinians as Nazis who act strictly out
10 of antisemitic motives. Former Israeli prime minister Naftali Bennett expressed this in an interview
11 on 12 October: “We're fighting Nazis.”

12 13. Finally, Israeli Prime Minister Benjamin Netanyahu, promised to turn Gaza “into
13 rubble,” and on October 29 declared a religious war as Israeli forces began their ground invasion into
14 the Gaza Strip, and he invoked the biblical story of the *total* destruction of Amalek by the Israelites.
15 Netanyahu referred to this story again in a special letter on November 3 to the soldiers and officers in
16 the Israeli army.

17 14. Each of the statements quoted in this section by people with command authority on its
18 own would be cause for great alarm; taken together, they demonstrate clear “intent to destroy”
19 Palestinians in Gaza “as such.”

20 Israel's Genocidal Actions

21 15. Some of the key facts so far about Israel's attack on Gaza include:

- 22 • Gaza is one of the most densely populated areas in the world. Since October 9,
23 Israel has dropped more than 20,000 tons of explosives on Gaza, which are at
24

1 least 1.5 times more explosives than the atomic bomb that the United States
2 dropped on Hiroshima at the end of World War II. Israel has so far (November
3 13) killed over 11,000 Palestinians, wounding more than 30,000.

- 4 • Among the Palestinians that Israel has so far (November 13) killed in Gaza
5 include more than 4,100 children and youths—more than the annual number of
6 children killed across the world’s conflict zones since 2019.
- 7 • Human Rights Watch has confirmed the use of white phosphorous bombs in
8 Israel’s attack on Gaza. White phosphorous sets fire to bodies and buildings,
9 creating flames that are not extinguishable on contact with water.
- 10 • Israel has destroyed or damaged more than half of all the housing in the Gaza
11 Strip, also seriously damaging more than 220 schools and 12 hospitals, as well
12 as dozens of mosques and several churches. This confirms what Israeli army
13 spokesperson Daniel Hagari said on October 10: “Gaza will eventually turn into
14 a city of tents. There will be no buildings,” adding “the emphasis is on damage
15 and not on accuracy.”

16
17
18 16. These levels of destruction and killings in just over one month, together with the
19 annihilatory language expressed by Israeli state leaders and senior army officers, point not to targeting
20 of individual Hamas militants or Hamas military targets, but to the unleashing of deadly violence
21 against Palestinians in Gaza “as such,” in the language of the UN Genocide Convention.

22
23 Recent Comparative Instances of Genocide

24 17. We view that all Palestinians in Gaza are right to fear for their lives, for the coordinated
25 attacks on them now alarmingly resemble those of genocidal campaigns in recent decades, such as in
26 the 1982 genocide of Mayan people in Guatemala, the 1994 Rwandan genocide of Tutsis, the 1995
27

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DR. BARRY TRACHTENBERG

1 genocide of Bosnian Muslims, the 2003-2005 genocide in Darfur, the 2014 genocide against Yazidis
2 in Iraq, and the 2016-17 genocide against Rohingya Muslims.

3 18. We emphasize that although the death tolls in these genocides vary considerably, they
4 are considered genocides on account of the clear “intent to destroy, in whole or in part, a national,
5 ethnical, racial or religious group” as defined in the UN Convention on the Prevention and Punishment
6 of the Crime of Genocide (December 1948). As we now see in Gaza, each of these genocides involved
7 the widespread killing of non-combatants and mass displacement based upon either racial, religious,
8 or ethnic identity, deliberately inflicting upon the group conditions of life calculated to bring about its
9 physical destruction.
10

11 19. The extreme violence committed against Guatemala's Ixil Maya population escalated
12 to genocide in 1982, following General Efraín Ríos Montt’s seizure of power through a military coup
13 in March. From March 1982 to August 1983, he conducted a systematic campaign to annihilate more
14 than 400 Mayan villages, as indigenous Maya were deemed internal enemies of the regime. Using
15 strategies such as cordoning off villages, separating Ixil Maya by gender, committing mass sexual
16 assault, and massacring entire villages, Rios Montt’s forces were responsible for the slaughter of an
17 estimated 75,000 persons in this army campaign begun in 1982. All told, the Guatemalan army
18 committed 626 known massacres and killed an estimated 200,000 civilians — more than 80 percent
19 Maya. Using dehumanizing language such as referring to Ixil women as “cockroaches” and Ixil
20 children as “chocolates,” the systematic slaughter of unarmed men, women, and children, and the
21 burning of hundreds of villages were reduced to a simple order: “Kill the cockroaches and leave no
22 chocolates.”
23

24 20. In 1994, Hutu state authorities, militia groups, and civilians massacred 800,000 Tutsis
25 within three months. The Hutu majority in Rwanda saw the Tutsi minority as foreigners who did not
26
27

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DR. BARRY TRACHTENBERG

1 belong in the nation; this idea was a legacy of Belgium colonial rule, which had divided and
2 “racialized” the colonized population into “indigenous” Hutus and “superior” Tutsis who, in the
3 Belgium imagination, hailed from the Horn of Africa. In 1962, when Hutus achieved independence,
4 they recast Tutsis as dangerous foreigners and invaders residing in the Hutu state. This dehumanizing
5 and murderous rhetoric reached a crescendo following the assassination of Rwanda’s Hutu president
6 in April 1994. Calls to eliminate the Tutsi “cockroaches” became ubiquitous on a popular radio station
7 as well as in pronouncements of the hard-line Hutu Power politicians who seized power. The case of
8 Rwanda is also instructive in relation to Israel’s current genocidal attack on Gaza, because as it was
9 happening, United States President Bill Clinton and his administration chose not to recognize the
10 unfolding mass violence for what it clearly was: genocide. Wary of intervening in Africa following
11 the loss of United States soldiers in Somalia the previous year, the United States government denied
12 that genocide was happening in Rwanda, as that would require, according to the UN Genocide
13 Convention, intervention to stop it.

16 21. The following year, in July 1995, during the Bosnian War, which was a consequence
17 of the breakup of Yugoslavia, an estimated 8,000 Bosnian Muslim men and boys from the city of
18 Srebrenica were murdered by Bosnian Serbian forces led by Radovan Karadžić with the aim of ridding
19 the territory of Muslims in order to create an ethnically pure Greater Serbia. In spite of a UN presence
20 in the city—and the UN’s declaration that Srebrenica was a protected “safe area”—on July 6, 1995,
21 Serbian forces broke with international regulations and attacked the city, causing UN peacekeepers to
22 retreat. More than 20,000 Muslims fled the city and within a week, Bosnian Serb troops had captured
23 Srebrenica. Along with hunting down and murdering an estimated 3,000 men and boys trying to
24 escape, Bosnian Serb forces seized approximately 5,000 Muslim men and boys from a UN shelter and
25 systematically murdered and buried them in mass graves. As in Rwanda, the United States government
26

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DR. VICTORIA SANFORD AND
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1 and the “international community” failed to take action to prevent these crimes, which were easily
2 foreseen, as they occurred in the fourth year of the ruinous war.

3 22. Between 2003 and 2005, an estimated 200,000 (UN estimates range as high as 300,000)
4 ethnic Darfuri civilians were murdered in western Sudan during a civil war in what has been
5 considered the first genocide of the twenty-first century. These crimes persisted for several more years.
6 Central to the murders were the religious and racial differences of minority Fur, Zaghawa, and Masalit
7 peoples who were systematically slaughtered by government-organized militias known as the
8 Janjaweed, who engaged in the destruction of thousands of villages, with inhabitants murdered,
9 sexually assaulted, and maimed. More than 2.5 million people were forcibly displaced. The United
10 States government and UN spent considerable time debating how to define these crimes, but took no
11 action to stop or ameliorate them.
12

13 23. In 2014 the Islamic State (ISIL) carried out a genocide against the Yazidi religious
14 community in northern Iraq. In the course of this campaign, ISIL murdered approximately 5,000 men
15 (some estimates are as high as 12,000) and held as many as 7,000 women in sexual slavery, in what
16 was determined by the United Nations to have been a genocide. According to the UN, “the intent of
17 these acts was to permanently destroy the capacity of these women and children to have children and
18 build families within the Yazidi community.” Central to the efforts of ISIL was the forcible
19 displacement of Yazidis from their homes with the intent to prevent the continuation of the Yazidi
20 people. More than 200,000 Yazidi people remain displaced from their homeland.
21

22 24. The genocide of the Rohingya Muslims by the Myanmar military occurred from
23 October 2016 to January 2017. As a marginalized religious minority living within the Buddhist state,
24 the Rohingya people were targeted for ethnic cleansing and genocide in a series of massacres that
25 resulted in the murder of more than 25,000 people and sexual violence against 18,000 women and
26
27

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DR. VICTORIA SANFORD AND
DR. BARRY TRACHTENBERG

1 girls. As a result, over one million Rohingya were forced to flee the country, most into refugee camps
2 in neighboring Bangladesh.

3 The Israeli Political Imagination of a Jewish State without Palestinians, Past and Present

4 25. A large body of scholarship addresses, from various perspectives, what historian Alon
5 Confino has recently described as an Israeli political imagination of a Jewish state without
6 Palestinians. This vision sits at the core of a long history of Israeli mass violence, stretching from the
7 Nakba—the massacres and mass deportations of more than 750,000 Palestinians and the destruction
8 of hundreds of villages and towns by Israeli forces in the 1948 war—through the continued assault on
9 Palestinians since then, including military occupation of the West Bank, East Jerusalem, and the Gaza
10 Strip after 1967; mass incarceration; destruction of water sources; killings; denial of access to food
11 and water, and the attack against Palestinian children and youth.
12

13 26. The underlying urge for a Greater Israel with as few Palestinians as possible escalated
14 in 2023. Combined state and settler violence rendered 2023 the most lethal year for Palestinians in the
15 occupied West Bank since 2005, even prior to October 7.
16

17 27. Historical examples such as the forced displacement of Herero by Germany in
18 Southwest Africa (today’s Namibia) in 1904, Armenians by Ottomans in 1915, and Polish Jews by
19 Germany from 1939-45 demonstrate that forced displacement has regularly escalated to systematic
20 mass murder and genocide.
21


22 28. Israeli government proposals to force *all* Palestinians from Gaza to the Sinai desert, as
23 laid out in a document prepared by the Israeli Intelligence Ministry on October 13, is particularly
24 chilling in view of twentieth-century historical precedents. On October 12, over one million
25 Palestinians were directed to leave the northern Gaza Strip within just twenty four hours, producing
26 what United Nation officials called “devastating humanitarian consequences” that “could transform
27

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DR. VICTORIA SANFORD AND
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1 what is already a tragedy into a calamitous situation.” Expelled Palestinians have since faced regular
2 air attacks while en route southward. The International Committee of the Red Cross warned on October
3 12 that “hospitals risk turning into morgues without electricity,” a prediction that has now become
4 fact. This has occurred in just over one month since the beginning of the Israeli attack, with no end in
5 sight—a new and particularly terrible chapter in the Israeli drive to realize a Greater Israel without
6 Palestinians.

7
8 29. Our research and studies of these past genocides lead us to the conclusion that the time
9 for legal remedies is now, especially considering calls for a “second Nakba,” by members of the
10 Knesset (the Israeli parliament). Ariel Kallner from the ruling Likud party, for example, posted on
11 social media on October 7 the following vision: “Nakba to the enemy now. ... Now, only one goal:
12 Nakba! Nakba that will overshadow the Nakba of 1948. Nakba in Gaza and Nakba to whoever dares
13 to join [them].” The stage is thus set for more than the Nakba, indeed for genocide.

14
15
16 We hereby declare under the penalty of perjury pursuant to the laws of the United States that the
17 above is true and correct to the best of our knowledge.

18
19
20
21 
22 John Cox


Victoria Sanford


Barry Trachtenberg

23 EXECUTED this 13th day of November, 2023
24
25
26
27

28 DECLARATION OF DR. JOHN COX,
DR. VICTORIA SANFORD AND
DR. BARRY TRACHTENBERG

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28 AUSTIN III, *Secretary of Defense*, in their
official capacities,

Defendants.

Case No.: 23-CV-5829

**DECLARATION OF PAMELA
C. SPEES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: January 11, 2024 at 1:00 p.m.

DECLARATION OF PAMELA SPEES

I, Pamela Spees, under penalty of perjury declare as follows:

1. I represent the Plaintiffs in this action and submit this declaration in support of their motion for a preliminary injunction, for the purpose of bringing to the Court’s attention official government disclosures and admissions by Defendants and other United States officials, as well as information in the public domain, about the mass killings of Palestinian people in Gaza, the serious physical and mental harm done to them, and the urgent and severe impacts of the escalation of Israel’s 16-year-long blockade of Gaza into a total siege, which has restricted nearly all access to food, water, fuel, electricity and other basic necessities for survival.

Israel’s Prolonged Occupation of Palestine and Blockade of Gaza Are Historic Precursors That Have Enabled the Conditions for the Presently Unfolding Genocide

2. Gaza is a 25-mile strip of land often described as an open-air prison, where many of the 2.2 million Palestinian residents are refugees and descendants of people who were expelled from their land by Zionist militias and the Israeli army during the 1947-1949 Nakba. Half of Gaza residents are children.

a. Attached as Exhibit A-1 is a true and correct [copy](#) of a portion of a historical timeline published by the United Nations entitled “The Question of Palestine,” which briefly describes the Nakba, which means “[C]atastrophe” in Arabic, and refers to the mass displacement of and dispossession of Palestinians in 1947-48.

b. Attached as Exhibit A-2 is a true and correct copy of a [report by Francesca Albanese](#), the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, U.N. Doc. A/77/356, Sept. 21, 2022, in which she observed, at para. 6:

Since 1967, the human rights situation in the occupied Palestinian territory has been steadily deteriorating, primarily as a result of gross violations of international law, including racial segregation and subjugation by the occupying Power, Israel. This has taken various forms: draconian restrictions on Palestinian movement inside and

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1 outside the occupied Palestinian territory; repression of political and
2 civic participation; denial of residency rights, status and family
3 unification; dispossession of Palestinian land and property; forcible
4 transfers; unlawful killings; widespread arbitrary arrests and detention,
5 including of children; the obstruction and denial of humanitarian aid and
6 cooperation; the denial of ownership and access to natural resources;
7 settler violence; and violent suppression of popular resistance against
8 the occupation. All together, these practices constitute collective
9 punishment of the Palestinian people.

10 3. Israel has occupied Gaza since 1967, blockaded it since 2007, and it has subjected the
11 Palestinian people in Gaza to at least five military assaults since this blockade.

12 a. Attached as Exhibit B-1 is a true and correct copy of a [Press Release](#) issued by the Israeli
13 Prime Minister's Media Adviser, entitled, *Security Cabinet declares Gaza hostile territory*, Sept.
14 19, 2007, in which he announced that restrictions on movement of people to and from the Gaza
15 Strip would be imposed, along with restrictions on the passage of various goods to Gaza, and a
16 reduction of the supply of fuel and electricity.

17 b. Attached as Exhibit B-2 is a true and correct [copy](#) of *Where We Work: Gaza Strip*, United
18 Nations Relief and Works Agency for Palestine Refugees in the Near East, last updated August
19 2023 (noting that 63 percent of the population is food-insecure, with 82 percent unable to
20 refrigerate food, and 95 percent unable to access clean water, and that in 2021, human rights
21 organizations reported that 97 percent of Gaza's water was rendered contaminated).

22 c. Attached as Exhibit B-3 is a true and correct copy of a [report](#) by Medical Aid for Palestinians
23 and Al-Mezan Center, entitled, *Delayed, Denied and Deprived: Collective Punishment of
24 Palestinian Patients in Gaza in the Context of Israel's 15-year Blockade*, June 2022.

25 d. Attached as Exhibit B-4 is a true and correct [copy](#) of *Overview: November 2021*, United
26 Nations Office for the Coordination of Humanitarian Affairs, Nov. 3, 2021 (reporting on the
27 escalation of Israeli attacks in Gaza in the wake of protests of the forced evictions of Palestinian
28

1 families in Sheikh Jarrah, as a result of which 261 Palestinians in Gaza were killed, including 67
2 children and 41 women).

3 e. Attached as Exhibit B-5 is a true and correct [copy](#) of *Gaza Ten Years Later*, United Nations
4 Country Team in the occupied Palestinian Territory, July 2017 (noting that since its earlier finding
5 in 2012 that Gaza would become “unliveable” by 2020 based on the trends they reviewed, the
6 “deterioration has accelerated, sped-along not least by a devastating round of hostilities in 2014”).

7
8 f. Attached as Exhibit B-6 is a true and correct [copy](#) of a report by Francesca Albanese, the
9 United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories
10 Occupied Since 1967, U.N. Doc. A/HRC/53/59, June 9, 2023. In it she notes the legal framework
11 of occupation is applicable to Gaza and the West Bank, including East Jerusalem.

12
13 g. Attached as Exhibit B-7 is a true and correct [copy](#) of a report by Francesca Albanese, the
14 United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories
15 Occupied Since 1967, U.N. Doc. A/78/545, Oct. 20, 2023.

16 **The United States’ Influence Over and Historic Support for Israel Despite**
17 **Its Persistent Violations of International Law**

18 4. The United States exercises significant influence over Israel, in no small part due to their
19 historically close relationship and unparalleled U.S. support for Israel’s military, which the United
20 States has maintained despite Israel’s persistent violations of international law.

21 a. Attached as Exhibit C-1 is a true and correct [copy](#) of Jeremy M. Sharp, *U.S. Foreign Aid*
22 *to Israel*, Congressional Research Service (updated Mar. 1, 2023), describing history of U.S.
23 military assistance to Israel as of March 1, 2023.

24
25 b. Attached as Exhibit C-2 is a true and correct [copy](#) of Press Release, The White House
26 Office of the Press Secretary, FACT SHEET: Memorandum of Understanding Reached with
27 Israel, Sept. 14, 2016.

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1 **The Current Military Assault and Siege on Gaza**

2 5. Since the attacks on October 7, 2023, by fighters from Hamas’s military wing, which
3 included unlawful direct attacks against civilians that killed approximately 1,200 civilians and soldiers
4 and led to the taking of 240 hostages and military captives, Israel has launched its most recent and
5 already-deadliest assault on Gaza in response. As of the date of this filing, Israel’s assault on Gaza has
6 killed at least 11,078 Palestinians in Gaza, mostly civilians, including women and children, injuring
7 tens of thousands, and forcibly displacing more than 1.6 million into conditions that are life-threatening.
8 At the same time, Israeli officials have continued and escalated their dangerous and dehumanizing
9 rhetoric, voicing a genocidal intent.
10

11 a. Attached as Exhibit D-1 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*
12 *Israel” Flash Update #37*, Nov. 12, 2023. The report notes that as of November 10, 11,078
13 Palestinians have been killed including 4,506 children and 3,027 women. Approximately 2,700
14 others, including some 1,500 children, “have been reported missing and may be trapped or dead
15 under the rubble, awaiting rescue or recovery.” Another 27,490 have been injured. This was the
16 last update provided as the Ministry of Health in Gaza had not been able to provide updated
17 casualty figures since Nov. 10th due to the “collapse of services and communications at hospitals.”
18

19 The report also notes that at Al Shifa Hospital, “two premature babies and ten other patients
20 have died” since the power outage that started on 11 November, “compounded by the lack of
21 medical consumables” and “[a]nother 36 babies in incubators as well as kidney dialysis patients
22 are at heightened risk of death.” According to the report, Israeli authorities continue to ban the
23 entry of fuel, “which is desperately needed to operate electricity generators to run life-saving
24 equipment.”
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1 Schools, hospitals, and refugee camps continued to be hit, with the report specifically citing
2 airstrikes hitting a clinic in Ash Shati camp, Al Mahdi Hospital, and an UNRWA school in Beit
3 Lahiya.

4 Across the Gaza Strip, “all municipal water wells” were forced to “shut down again due to lack
5 of fuel,” raising serious concerns about the consequences of water consumption from unsafe
6 sources, including risks of dehydration and waterborne diseases. Food insecurity has been
7 reportedly increasing, with lack of electricity and fuel contributing to the issue, as has waiting in
8 long queues for food – in some instances over 5 hours – which exposes those in line to airstrikes.

9
10 b. Attached as Exhibit D-2 is a true and correct [copy](#) of *Netanyahu: We will target Hamas*
11 *everywhere it operates; Gazans should ‘get out now,’* The Times of Israel, Oct. 7, 2023 (quoting
12 Prime Minister Netanyahu as ordering more than two million Palestinians in Gaza to “get out
13 now,” threatening that Israel “will operate everywhere and with full force”).

14
15 c. Attached as Exhibit D-3 is a true and correct [copy](#) of Emanuel Fabian, *Defense minister*
16 *announces ‘complete siege’ of Gaza: No power, food or fuel,* The Times of Israel, Oct. 9, 2023
17 (quoting Israeli Defense Minister Yoav Gallant saying “I have ordered a complete siege on the
18 Gaza Strip. There will be no electricity, no food, no fuel, everything is closed” and “We are
19 fighting human animals and we are acting accordingly.”).

20
21 d. Attached as Exhibit D-4 is a true and correct [copy](#) of Bethan McKernanon & Quique
22 Kierszenbaum, *‘Emphasis is on damage, not accuracy’: ground offensive into Gaza seems*
23 *imminent,* The Guardian, Oct. 10, 2023 (quoting Israeli Defense Forces spokesperson Daniel
24 Hagari announcing that the Israeli military had already dropped “hundreds of tons of bombs” and
25 that “the emphasis is on damage and not on accuracy”).

26
27 e. Attached as Exhibit D-5 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*
28 *Israel: Flash Update #4,* United Nations Office for the Coordination of Humanitarian Affairs, Oct.

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1 10, 2023 (reporting that by October 10, 2023, seven journalists had been killed as well as six
2 healthcare workers, and that “heavy Israeli bombardments from air, sea, and land have continued
3 almost uninterrupted across the Gaza Strip” which led to a “significant increase in the death toll,
4 including among children and women”).

5
6 f. Attached as Exhibit D-6 is a true and correct [copy](#) of Ibrahim Dahman, *Gaza’s sole power
7 station stops working as fuel runs out, after Israel orders ‘complete’ blockade*, CNN, Oct. 11, 2023
8 (reporting that Gaza’s sole power plant shut down after its fuel ran out under Israel’s siege of the
9 entire Strip, resulting in the loss of electricity for over 2 million Palestinians).

10 g. Attached as Exhibit D-7 is a true and correct [copy](#) of *Israel/occupied Palestinian territory:
11 UN experts deplore attacks on civilians, call for truce and urge international community to address
12 root causes of violence*, United Nations Office of the High Commissioner, Oct. 12, 2023 (noting
13 reporting that after the Israeli Defense Minister threatened to bomb those attempting to provide
14 humanitarian aid to Gaza, “Israel reportedly bombed the Rafah crossing at the Gaza-Egyptian
15 border, disrupting movement in and out of Gaza, rendering the crossing closed and the enclave
16 completely blockaded”).

17
18 h. Attached as Exhibit D-8 is a true and correct [copy](#) of *Questions and Answers on Israel’s
19 Use of White Phosphorus in Gaza and Lebanon*, Human Rights Watch, Oct. 12, 2023
20 (documenting Israel’s use of white phosphorous in densely populated areas across Gaza, which
21 can cause severe burns “down to the bone” and often fatal even if exposed on only 10 percent of a
22 human body, and can cause organ failure).

23
24 i. Attached as Exhibit D-9 is a true and correct [copy](#) of a tweet issued by the verified account
25 of the Israeli Air Force, Oct. 12, 2023, announcing that the IAF had dropped “about 6,000 bombs.”

26 j. Attached as Exhibit D-10 is a true and correct [copy](#) of *Today’s top news: Occupied
27 Palestine Territory, Afghanistan*, United Nations Office for the Coordination of Humanitarian
28

1 Affairs, Oct. 12, 2023 (reporting that Israeli forces struck seven water and sewage facilities that
2 served more than one million people, as well as 88 education facilities, including 18 UN-run
3 schools, two of which were being used as emergency shelters for displaced Palestinians, and 70
4 other schools).

5
6 k. Attached as Exhibit D-11 is a true and correct [copy](#) of Paul Blumenthal, *Israeli President*
7 *Suggests that Civilians in Gaza Are Legitimate Targets*, Huffington Post, Oct. 13, 2023. The article
8 quotes Israeli President Isaac Herzog saying: “It is an entire nation out there that is responsible. It
9 is not true this rhetoric about civilians not being aware, not involved. It’s absolutely not true.” It
10 also quotes Israeli Defense Force Maj. Gen. Ghassan Alian as saying: “Human animals must be
11 treated as such. There will be no electricity and no water [in Gaza], there will only be destruction.
12 You wanted hell, you will get hell.”

13
14 l. Attached as Exhibit D-12 is a true and correct [copy](#) of a Twitter Post by Israeli Minister of
15 Energy and Infrastructure Israel Katz, Oct. 13, 2023, which states, “All the civilian population in
16 [G]aza is ordered to leave immediately. We will win. They will not receive a drop of water or a
17 single battery until they leave the world.”

18
19 m. Attached as Exhibit D-13 is a true and correct [copy](#) of *Israel must rescind evacuation order*
20 *for northern Gaza and comply with international law: UN expert*, United Nations, Oct. 13, 2023
21 (communication from UN Special Special Rapporteur on the human rights of internally displaced
22 persons demanding that Israel “rescind its order for 1.1 million Palestinians to leave northern Gaza
23 within 24 hours, condemning the evacuation order as a crime against humanity and a blatant
24 violation of international humanitarian law.”).

25
26 n. Attached as Exhibit D-14 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*
27 *Israel: Flash Update #6*, United Nations Office for the Coordination of Humanitarian Affairs, Oct.
28

1 13, 2023, Reliefweb (noting accounts of incidents where “civilians and civilian objects appear to
2 have been directly targeted by Israeli airstrikes”).

3 o. Attached as Exhibit D-15 is a true and correct [excerpt](#) of Paul Cunningham, *Death toll*
4 *rises, chaos reigns as invasion of Gaza inevitable*, RTÉ News, Oct. 14, 2023 (quoting Israeli
5 Minister of Defense Yoav Gallant as saying: “Gaza won’t return to what it was before. We will
6 eliminate everything.”).

7
8 p. Attached as Exhibit D-16 is a true and correct [copy](#) of Bethan McKernan & Sufian Taha,
9 *Gaza civilians afraid to leave home after bombing of ‘safe routes’*, The Guardian, Oct. 15, 2023
10 (reporting on forensic analysis of aerial photos and social media posts that confirmed at least 12
11 people, including women and children, were killed on one of the two roads the Israeli army had
12 identified as a “safe route”).

13
14 q. Attached as Exhibit D-17 is a true and correct [copy](#) of *UNRWA SITUATION REPORT*
15 *#7 ON THE GAZA STRIP AND THE WEST BANK*, United Nations Relief and Works Agency for
16 Palestine Refugees in the Near East (as of Oct. 16, 2023) (reporting that “Israeli Air Forces
17 continued to strike also in Khan Younis and other southern areas despite the directive for people
18 in Gaza to move south;” that Gaza’s last functioning desalination plant had collapsed, increasing
19 concerns over dehydration and waterborne diseases; and at least 14 of the agency’s staff had been
20 killed since October 7th, but expected that the number was likely higher).

21
22 r. Attached as Exhibit D-18 is a true and correct [copy](#) of *Ministry of Foreign Affairs, Excerpt*
23 *from PM Netanyahu’s remarks at the opening of the Winter Assembly of the 25th Knesset’s Second*
24 *Session*, Oct. 16, 2023. In this speech, Netanhayu stated: “This is a struggle between the children
25 of light and the children of darkness, between humanity and the law of the jungle.”

26
27 s. Attached as Exhibit D-19 is a true and correct [copy](#) of *Israel/OPT: Israeli army threatens*
28 *ordering residents of northern Gaza to leave may amount to war crimes*, Amnesty International,

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1 Oct. 25, 2023. This report explains that the Israeli army’s messages in dropped leaflets “warning”
2 residents to leave immediately as inadequate and “cannot be considered an effective warning to
3 civilians,” serving as “further evidence that Israel aims to forcibly displace civilians in northern
4 Gaza. . .[and] may amount to the war crime of collective punishment.”

5
6 t. Attached as Exhibit D-20 is a true and correct [copy](#) of *Barkat: We’ll wipe Iran’s leaders*
7 *off the face of the earth if they expand conflict*, Times of Israel, Oct. 23, 2023 (quoting Israel’s
8 Minister of Economy Nir Barkat who said: “Israel has a very clear message to our enemies. We
9 are saying to them, look what’s happening in Gaza – you are going to get the same treatment if
10 you attack us. We are going to wipe you off the face of the earth.”).

11 u. Attached as Exhibit D-21 is a true and correct [copy](#) of Hagar Shezaf, *‘Wait for the Great*
12 *Nakba’: Palestinians Find Threatening Leaflets on Cars in West Bank*, Haaretz, Oct. 27, 2023
13 (describing leaflets placed on cars in a village in the West Bank warning Palestinians that it was
14 their “last chance to flee to Jordan in an orderly manner before we forcefully expel you from our
15 holy lands bequeathed to us by God” and promising a “great” Nakba or “catastrophe”).

16
17 v. Attached hereto as Exhibit D-22 is a true and correct [copy](#) of Mirna Alsharif, *Netanyahu*
18 *invokes ‘Amalek’ narrative in speech about expanding ground operation in Gaza*, NBC News,
19 Oct. 29, 2023 (explaining that Netanyahu’s invocation of the story of Amalek, when he stated
20 “You must remember what Amalek has done to you, says our Holy Bible, and we do remember,
21 and we are fighting,” drew criticism because of scripture suggesting that Amalekites must not be
22 spared, as they are seen as the “archetypal enemy of the Jews”).

23
24 w. Attached as Exhibit D-23 is a true and correct [copy](#) of Kareem Khadder, *Catastrophic*
25 *damage after second Israeli airstrike hits Gaza refugee camp*, CNN, Nov. 1, 2023 (reporting on
26 catastrophic damage caused by two Israeli strikes on the densely populated refugee camp of Jabalia
27
28

1 (“Jabalya”), which killed and wounded hundreds of Palestinians, as well a relief workers; and
2 noting that the Israeli Defense Forces took responsibility for the bombing).

3 x. Attached as Exhibit D-24 is a true and correct [copy](#) of *Israel hits Gaza Strip with the*
4 *equivalent of two nuclear bombs*, Euro-Med Human Rights Monitor, Nov. 2, 2023. The report
5 notes Israel has dropped more than 25,000 tons of explosives on the Gaza Strip since the start of
6 its siege on October 7, which is the equivalent of two nuclear bombs. The report notes that the
7 Israeli army had “admitted to bombing over 12,000 targets in the Gaza Strip, with a record tally of
8 bombs exceeding 10 kilograms of explosives per individual.” It also noted that Israel had used
9 internationally banned weapons in its attacks on Gaza, in particular the use of cluster and
10 phosphorous bombs.

11 y. Attached as Exhibit D-25 is a true and correct [copy](#) of *Netanyahu to soldiers: New pages*
12 *in Israel's history are being written by you*, The Jerusalem Post, Nov. 3, 2023 (noting that Prime
13 Minister Netanyahu reiterated again the war between light and dark: “This is the war between the
14 sons of light and the sons of darkness. We will not let up on our mission until the light overcomes
15 the darkness – the good will defeat the extreme evil that threatens us and the entire world.”).

16 z. Attached as Exhibit D-26 is a true and correct [copy](#) of a post to the official verified Twitter
17 feed of Prime Minister Netanyahu, Nov. 3, 2023, in the original Hebrew with automated Twitter
18 translation (referring again to the scriptural story of Amalek as he sent Israel IDF soldiers on their
19 mission).

20 aa. Attached as Exhibit D-27 is a true and correct [copy](#) of *Israel is Waging an Extensive War*
21 *of Starvation against Gaza’s Civilian Population*, Euro-Med Human Rights Monitor, Nov. 5, 2023
22 (reporting on Israel’s attacks on food and water sources, facilities, and infrastructure including
23 flour stores, bakeries, and fisherman’s boats; health consequences due to inadequate access to food
24
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1 and water especially on pregnant people and children; and the imminent risk of child deaths due
2 to an increasing need of medical attention from acute malnutrition).

3 bb. Attached as Exhibit D-28 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*
4 *Israel: Flash Update #30*, OCHA, Nov. 5, 2023. The report notes that as of Nov. 5, 2023, and
5 since Oct. 7, 2023, 9,770 people have been killed in Gaza, including 4,008 children and 2,550
6 women; 2,260 others are reporting missing in Gaza, including 1,270 children, most of whom are
7 presumed to be trapped under rubble; and 1.5 million people are in Gaza are internally displaced.

8 The report also noted that between November 4-5, “[i]ntense bombardments took place across
9 the Gaza Strip, including Deir Al Balah and the southern areas,” that airstrikes targeted residential
10 buildings in three refugee camps, and that “Gaza remains under a full electricity blackout since 11
11 October, following Israel’s halt of its power and fuel supply.”

12 While a severe water shortage continues, the report notes that seven water facilities across the
13 Gaza Strip were directly hit in the Israeli bombardment between November 4 and 5 and sustained
14 major damage.

15 cc. Attached as Exhibit D-29 is a true and correct [excerpt](#) of *A third of buildings in northern*
16 *Gaza are damaged or destroyed, analysis estimates*, New York Times, Nov. 7, 2023, reporting
17 that approximately “a third of all buildings in northern Gaza have been damaged or destroyed.”

18 dd. Attached as Exhibit D-30 is a true and correct [excerpt](#) of *Israel-Hamas War: The W.H.O.*
19 *chief says more than 250 attacks on Gaza and West Bank health care facilities have been verified*,
20 Nov. 11, 2023 reporting that “The United Nations has verified more than 250 attacks on health
21 care facilities in Gaza and the West Bank, including hospitals, clinics, ambulances and patients,
22 with five hospitals hit in the last week alone, according to the director general of the United
23 Nations’ World Health Organization.”

1 ee. Attached as Exhibit D-31 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*
2 *Israel - reported impact: Day 35*, OCHA, Nov. 10, 2023 (reporting 11,078 fatalities including
3 4,506 children and 3,027 women, 27,490 injuries, about 1.6 million internally displaced people
4 (70% of Gaza), and at least 45 percent of all housing units in Gaza have been destroyed or
5 damaged).

6
7 ff. Attached as Exhibit D-32 is a true and correct [copy](#) of *Framework of Analysis for Atrocity*
8 *Crimes: A Tool for Prevention*, United Nations (2014).

9 gg. Attached as Exhibit D-33 is a true and correct [copy](#) of Ruby Mellen, Artur Galocha, and
10 Julia Ledur, *Gaza reports more than 11,100 killed. That's one out of every 200 people.*, The
11 Washington Post, Nov. 13, 2023.

12 hh. Attached as Exhibit D-34 is a true and correct [copy](#) of *Hostilities in the Gaza Strip and*
13 *Israel" Flash Update #39*, Nov. 14, 2023.

14 15 **United States' Failure to Prevent and Complicity in Genocide**

16 6. Defendants have repeatedly refused to use their obvious and considerable influence to set
17 conditions or place limits on Israel's massive bombing and total siege of Gaza. They have done so
18 despite escalating evidence of Israeli acts directed at inflicting mass harm to the Palestinian population
19 in Gaza, including the creation of conditions of life calculated to bring about their physical destruction
20 through a total siege, and even in the face of mounting deaths including of thousands of children.
21 Instead, their actions to fund, arm, and endorse Israel's devastating bombing campaign and total siege
22 of the Palestinians in Gaza constitutes a failure to prevent an unfolding genocide and complicity in its
23 development.
24

25 a. Attached as Exhibit E-1 is a true and correct [copy](#) of *Statement from President Joe Biden*
26 *Condemning Terrorist Attacks in Israel*, The White House, Oct. 7, 2023 (quoting President Biden
27 as saying that the United States "stand[s] ready to offer all appropriate means of support to the
28

1 Government and people of Israel,” and declared, “[m]y Administration’s support for Israel’s
2 security is rock solid and unwavering.”).

3 b. Attached as Exhibit E-2 is a true and correct [copy](#) of *Joint Statement on Israel*, The White
4 House, Oct. 9, 2023 (President Biden, joined by leaders from France, Germany, Italy, and the
5 United Kingdom, released a statement of support for Israel and declaring their commitment to
6 remain “united and coordinated... to ensure Israel is able to defend itself, and to ultimately set the
7 conditions for a peaceful and integrated Middle East region.”).

8 c. Attached as Exhibit E-3 is a true and correct [copy](#) of the first page and excerpt of
9 *Department Press Briefing – October 10, 2023*, U.S. Dept. of State (transcript) (when asked about
10 \$4 billion a year in U.S. aid to Israel and the complete blockade and impact on civilians, Matthew
11 Miller, a spokesperson for the U.S. Department of State stated: “Israel has a right to conduct an
12 aggressive response to respond to the terrorism that’s been committed against its citizens. We
13 expect them to follow international law, we believe that they will, and we will remain in close
14 contact with them about it.”).

15 d. Attached as Exhibit E-4 is a true and correct [copy](#) of *Readout of President Biden and Vice*
16 *President Harris’ Call with Prime Minister Netanyahu*, The White House, Oct. 11, 2023 (noting
17 that President Biden and Vice President Harris “spoke with Prime Minister Netanyahu to discuss
18 ongoing U.S. support for Israel as Israel defends itself and protects its people”).

19 e. Attached as Exhibit E-5 is a true and correct [copy](#) of *Secretary Antony J. Blinken and*
20 *Israeli Prime Minister Benjamin Netanyahu After Their Meeting*, U.S. Dept. of State, Oct. 12,
21 2023 (noting that Secretary of State Antony Blinken reaffirmed to Prime Minister Netanyahu that
22 the United States “will always be there, by your side,” a message he said was delivered from
23 President Biden to Netanyahu “from the moment this crisis began” and was communicated to
24 Israeli counterparts “on a daily-even an hourly-basis”).

1 f. Attached as Exhibit E-6 is a true and correct [copy](#) of Creede Newton, *A history of the US*
2 *blocking UN resolutions against Israel*, Al Jazeera, May 19, 2021 (noting that over the past 50
3 years, the United States has vetoed of resolutions at the United Nations Security Council that were
4 critical of Israel, including at least 53 since 1972).

5 g. Attached as Exhibit E-7 is a true and correct [copy](#) of *Statement From Secretary Lloyd J.*
6 *Austin III on U.S. Force Posture Changes in the Middle East*, U.S. Dept. of Defense (Oct. 8, 2023),
7 in which Secretary of Defense Lloyd Austin states that he had directed an aircraft carrier strike
8 group to the Eastern Mediterranean and that the U.S. government would “be rapidly providing the
9 Israel Defense Forces with additional equipment and resources, including munitions.” He further
10 stated:
11

12
13 Strengthening our joint force posture, in addition to the material support
14 that we will rapidly provide to Israel, underscores the United States’
15 ironclad support for the Israel Defense Forces and the Israeli people. My
16 team and I will continue to be in close contact with our Israeli
17 counterparts to ensure they have what they need to protect their citizens
18 and defend themselves against these heinous terrorist attacks.

19 h. Attached as Exhibit E-8 is a true and correct [copy](#) of Anthony Capaccio, *Boeing Sped 1,000*
20 *Smart Bombs to Israel After Hamas Attacks*, Bloomberg, Oct. 10, 2023.

21 i. Attached as Exhibit E-9 is a true and correct [copy](#) of the first page and excerpt of *Press*
22 *Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic*
23 *Communications John Kirby*, The White House, Oct. 12, 2023, in which National Security Council
24 Coordinator John Kirby stated:

25 We are providing [Israel] military aid as we speak. So, no, there’s no
26 plans of — of holding back military assistance. We wouldn’t do that.
27 The President has been talking now for three days about how we’re
28 going to keep giving them the capabilities that they need.

j. Attached as Exhibit E-10 is a true and correct [copy](#) of the first page and excerpts of *Senior*
Defense Official Holds a Background Briefing on Israel, U.S. Dept. of Defense, Transcript, Oct.

1 12, 2023. In the background briefing, the senior defense official admits that small diameter bombs
2 and JDAMs were to be sent to Israel in the short term.

3 k. Attached as Exhibit E-11 is a true and correct [copy](#) of the first page of *Secretary of Defense*
4 *Lloyd J. Austin III Joint Press Conference With Israeli Defense Minister Yoav Gallant in Tel Aviv,*
5 *Israel*, U.S. Dept. of Defense, Transcript, Oct. 13, 2023. In the joint press conference, Secretary
6 Austin confirmed that the U.S. was prepared to deploy additional military assistance to Israel, and
7 that “munitions, air defense capabilities and other equipment and resources” were already “rapidly
8 flowing.” Israel’s Defense Minister, Yoav Gallant, acknowledged the extensive support and
9 assistance, and close coordination between the two countries:
10

11 I briefed the secretary on strategic developments in our region, and the
12 chief of staff together with the IDF leadership shared our operations.
13 Defense cooperation and U.S. support in the Pentagon, in the White
14 House, in the Congress ensure freedom of operation and enforce our
15 capabilities. In fact, today we will receive the second aircraft carrying
16 essential munitions to the IDF. U.S. deployment of assets on land, in air
and at sea sends a strong message to both partners and enemies in the
region. On behalf of Israel's defense establishment and on behalf of our
citizens, Mr. Secretary, thank you very much.

17 l. Attached as Exhibit E-12 is a true and correct [copy](#) of *UN expert warns of new instance of*
18 *mass ethnic cleansing of Palestinians, calls for immediate ceasefire*, Press Release, UN Special
19 Procedures, Oct. 14, 2023.

20 m. Attached as Exhibit E-13 is a true and correct [copy](#) of *Readout of President Biden’s Call*
21 *with Prime Minister Netanyahu of Israel*, The White House, Oct. 14, 2023 (President Biden
22 reiterates “unwavering U.S. support for Israel” and “updated Prime Minister Netanyahu on U.S.
23 military support”).

24 n. Attached as Exhibit E-14 is a true and correct [copy](#) of *Secretary Antony J. Blinken Remarks*
25 *to the Press*, U.S. Dept. of State, Oct. 15, 2023 (Where Blinken stated: “We will stand with [Israel]
26 today, tomorrow, and every day, and we’re doing that in word and also in deed;” and “we’ve
27
28

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1 backed that up not only with the words that we’re saying, but with what we’re actually doing,
2 including the deployment of [U.S.] aircraft carrier battle groups.”).

3 o. Attached as Exhibit E-15 is a true and correct [copy](#) of *DOD Remains Resolute in Support*
4 *of Israel*, U.S. Dept. of Defense, Oct. 16, 2023 (reporting that Secretary Austin had ordered 2,000
5 U.S. military troops to prepare for deployment in support of Israel and quoting Department of
6 Defense Press Secretary as saying: “Since leaving Israel, [Defendant Austin] has held calls with
7 [Minister of Defense] Gallant . . . on a near daily basis and will likely have another call today,”
8 and further that “[w]e are working to meet Israel’s needs, which include air defense, precision
9 guided munitions, artillery and medical supplies.”).

10
11 p. Attached as Exhibit E-16 is a true and correct [copy](#) of a letter from Josh Paul, dated Oct.
12 18, 2023, explaining his resignation as former director in the State Department’s Bureau of
13 Political-Military Affairs, “due to a policy disagreement concerning [the United States’] continued
14 lethal assistance to Israel.”

15
16 q. Attached as Exhibit E-17 is a true and correct [copy](#) of Josh Paul, *Opinion This is not the*
17 *State Department I know. That’s why I left my job*. Washington Post, Oct. 23, 2023, in which Paul
18 states: “Israeli requests for munitions started arriving immediately, including for a variety of
19 weapons that have no applicability to the current conflict.” Paul further stated “[t]he risk is obvious
20 that American weapons provided to Israel, especially air-to-ground munitions, will inflict civilian
21 harm and violate human rights.” According to Paul, the administration’s unwillingness to engage
22 in debate on the wisdom of these decisions was “proof of our willingness to abandon our values
23 and turn a blind eye to the suffering of millions in Gaza when it is politically expedient.”

24
25 r. Attached as Exhibit E-18 is a true and correct [copy](#) of *Gaza: UN experts decry bombing of*
26 *hospitals and schools as crimes against humanity, call for prevention of genocide*, Press Release,
27 United Nations Special Procedures, Oct. 19, 2023 (stating that “[c]onsidering statements made by
28

1 Israeli political leaders and their allies, accompanied by military action in Gaza and escalation of
2 arrests and killing in the West Bank, there is also a risk of genocide against the Palestinian People”
3 and calling for a ceasefire, humanitarian aid, and a guarantee of physical safety for civilians).

4 s. Attached as Exhibit E-19 is a true and correct [copy](#) of Akbar Shahid Ahmed, *Exclusive:*
5 *‘Mutiny Brewing’ Inside State Department Over Israel-Palestine Policy, Huffington Post*, Oct. 19,
6 2023 (reporting that State Department staffers were frustrated that Blinken and his team were not
7 interested in the advice of their own experts as they supported unconditionally Israel’s expanding
8 operation in Gaza and that there is “basically a mutiny brewing within State at all levels”).

9 t. Attached as Exhibit E-20 is a true and correct [copy](#) of the first page and excerpt of *Remarks*
10 *by President Biden on the October 7th Terrorist Attacks and the Resilience of the State of Israel*
11 *and its People, Tel Aviv, Israel, The White House*, Oct. 18, 2023, in which President Biden told
12 Prime Minister Netanyahu: “[m]y administration has been in close touch with your leadership from
13 the first moments of [the October 7 attack], and we are going to make sure we have — you have
14 what you need to protect your people, to defend your nation.” He went on to say, “For decades,
15 we’ve ensured Israel’s qualitative military edge. And later this week, I’m going to ask the United
16 States Congress for an unprecedented support package for Israel’s defense.”).

17 u. Attached as Exhibit E-21 is a true and correct [copy](#) of the first page of *Remarks by*
18 *President Biden and Prime Minister Netanyahu of Israel Before Bilateral Meeting | Tel Aviv,*
19 *Israel, The White House*, Oct. 18, 2023, during which Netanyahu stated:

20 I’ve seen your support every day in the depth and breadth of cooperation
21 that we have had since the beginning of this war, a level of cooperation
22 that is truly unprecedented in the history of the great alliance between
23 our two nations. We see that support in your steadfast commitment to
24 provide Israel with the tools we need to defend ourselves.

25 v. Attached as Exhibit E-22 is a true and correct [copy](#) of *Israel-Gaza crisis: US vetoes*
26 *Security Council resolution*, UN News, Oct. 18, 2023 (noting that United States Ambassador to
27
28

1 the United Nations vetoed a Security Council resolution condemning all violence against civilians
2 and urging “humanitarian pauses” to deliver aid to Palestinians in Gaza).

3 w. Attached as Exhibit E-23 is a true and correct [copy](#) of *Gaza crisis: Deadlock deepens as*
4 *Security Council rejects competing resolutions by US and Russia*, UN News, Oct. 25, 2023.

5 x. Attached as Exhibit E-24 is a true and correct [copy](#) of Michelle Nichols, *UN*
6 *overwhelmingly calls for aid truce between Israel and Hamas*, Reuters, Oct. 28, 2023 (noting that
7 the United States voted against the resolution calling for a ceasefire, which was passed by the
8 overwhelming majority of countries represented).

9 y. Attached as Exhibit E-25 is a true and correct [copy](#) of Anthony Capaccio, *Boeing*
10 *Accelerates Delivery of Up to 1,800 GPS-Guidance Bomb Kits to Israel*, Bloomberg, Oct. 18, 2023
11 (noting that under guidance from the Pentagon, Boeing was “speeding” delivery of 1,800 Joint
12 Direct Attack Munition (“JDAM”) kits to Israel, after the Israeli Air Force publicly confirmed that
13 it had dropped 6,000 bombs in the first five days of the conflict).

14 z. Attached as Exhibit E-26 is a true and correct [copy](#) of *Transcript: Senior Defense Official,*
15 *Senior Military Official Hold a Background Briefing on Israel*, U.S. Dept. of Defense, Oct. 23,
16 2023 (Senior Defense Department official confirmed that tens of thousands of 155mm artillery
17 shells that had been set aside for Ukraine had been withdrawn and redirected to Israel, and that
18 JDAMs, small diameter bombs, and ammunition were provided to Israel.).

19 aa. Attached as Exhibit E-27 is a true and correct [copy](#) of Nancy A. Youssef, *Israel Receives*
20 *Ammunition From U.S.*, The Wall Street Journal, Oct. 19, 2023 (Defense Department official
21 confirmed that the U.S. shipped nearly a million rounds of 7.62mm ammunition and tens of
22 thousands of 30mm rounds to Israel).

1 bb. Attached as Exhibit E-28 is a true and correct [copy](#) of *Letter from Shalanda D. Young,*
2 *Director of the Office of Management and Budget in the Executive Office of the President,* dated
3 Oct. 20, 2023, requesting \$14.1 billion from Congress in additional military assistance to Israel.

4 cc. Attached as Exhibit E-29 is a true and correct [copy](#) of an excerpt of *Gallant: We can't say*
5 *'no' to the US on humanitarian aid given how much they do for us,* The Times of Israel, Oct. 20,
6 2023 (reporting that Israeli Defense Minister Yoav Gallant was criticized by Israeli lawmakers
7 about why he agreed to allow humanitarian aid into Gaza from Egypt before hostages were
8 returned to which he replied, “The Americans insisted and we are not in a place where we can
9 refuse them. We rely on them for planes and military equipment. What are we supposed to do?
10 Tell them no?”)

11 dd. Attached as Exhibit E-30 is a true and correct [copy](#) of the first page and excerpt of *Remarks*
12 *by President Biden on How Bidenomics and the Investing in America Agenda are Growing the*
13 *Economy in Every Region of the Country,* The White House, Oct. 23, 2023 (President Biden
14 continues to reject suggestion of cease-fire until hostages are released).

15 ee. Attached as Exhibit E-31 is a true and correct [copy](#) of Hind Hassan and Lama Al Arian,
16 *US Should Press Israel to Implement Measures to Save 'Tens of Thousands of Lives' in Gaza:*
17 *Internal Cable,* Vice, Oct. 28, 2023 (reporting on “growing discontent” among U.S. officials in
18 multiple departments of the Administration over “Israel’s military offensive” and existence of an
19 diplomatic cable from the U.S. Office for Palestinian Affairs in Jerusalem, which reports directly
20 to the Department of State for Palestinian issues, warning the White House of the need to “take
21 immediate action in order to ‘save the lives of tens of thousands of people’”).

22 ff. Attached as Exhibit E-32 is a true and correct [copy](#) of Tara Copp and Aamer Madhani,
23 *Pentagon rushes Marine Corps general, other advisors to Middle East,* Associated Press, Oct. 23,
24 2023 (reporting that Pentagon sent Marine Corps general “versed in urban warfare, to Israel to aid

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1 in its war planning and is speeding multiple sophisticated air defense systems to the Middle East
2 days ahead of an anticipated ground assault into Gaza”).

3 gg. Attached as Exhibit E-33 is a true and correct [copy](#) of the first page and excerpt of *Press*
4 *Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic*
5 *Communications John Kirby*, Oct. 23, 2023. In this briefing, Kirby confirmed the U.S. had
6 continued to be in close communication with Israel about its military strategy:
7

8 I can tell you, we have, since the beginning of the conflict, in the early
9 hours, maintained a level of communication with our Israeli
10 counterparts to ascertain their intentions, their strategy, their aims to —
11 to see what their answers are to the kinds of tough questions that any
12 military ought to be asking before you launch any kind of a major
operation. Have you thought through the branches? Have you thought
through the sequels? Have you thought through the unintended
consequences?

13 hh. Attached as Exhibit E-34 is a true and correct [copy](#) of the first page and excerpt of *Press*
14 *Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic*
15 *Communications John Kirby*, Oct. 24, 2023. When asked whether the United States had discussed
16 any possible “red lines” with Israel, Kirby said “no.”
17

18 ii. Attached as Exhibit E-35 is a true and correct [copy](#) of the first page and excerpt of *Press*
19 *Briefing by Press Secretary Karine Jean-Pierre, National Economic Council Director Lael*
20 *Brainard, and NSC Coordinator for Strategic Communications John Kirby*, The White House,
21 Oct. 26, 2023 (Kirby confirms that President Biden “continues to be routinely updated by the
22 national security team on the situation there. Obviously continuing to support . . . Israel’s military”
23 and “[s]ecurity assistance continues to flow to them as needed, almost on a daily basis.”).
24

25 jj. Attached as Exhibit E-36 is a true and correct [copy](#) of Volker Turk, *Gaza: Continued*
26 *violence is not the answer*, UN High Commissioner for Human Rights, Oct. 28, 2023 (UN’s
27 Human Rights chief calls “on all parties as well as third States, in particular those with influence
28 over the parties to the conflict, to do all in their power to de-escalate this conflict.”).

3-ER-405

1 kk. Attached as Exhibit E-37 is a true and correct [copy](#) of the first page and excerpt of *Press*
2 *Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic*
3 *Communications John Kirby*, The White House, Oct. 30, 2023 (Kirby states unequivocally that
4 the administration still does “not support a ceasefire at this time” and also confirmed that the
5 United States had influenced Israel to restore telecommunications in Gaza).

6
7 ll. Attached as Exhibit E-28 is a true and correct [copy](#) of the first page and excerpt of
8 *Transcript: Deputy Pentagon Press Secretary Sabrina Singh Holds an Off-Camera, On-the-*
9 *Record Press Briefing*, U.S. Dept. of Defense, Oct. 30, 2023. In the briefing, Singh admitted that
10 “conversations both [at the Department of Defense] and across other agencies and all the way up
11 to the president have certainly informed and at least guided some of what the Israelis are doing on
12 the ground in their ground operation,” but concluded “we’re not directing them.” Singh also
13 reiterated that the United States was “not putting any limits on how Israel uses weapons that is
14 [sic] provided. That is really up to the Israel Defense Force to use in how they are going to conduct
15 their operations. But we're not putting any constraints on that.”

16
17 mm. Attached as Exhibit E-29 is a true and correct [copy](#) of Congressional Notification
18 Transmittal Letter from United States Department of State to Congress (Oct. 31, 2023) approving
19 transfer of \$320 million sale by U.S. company of defense articles to Israeli manufacturer of
20 precision bomb kits.

21
22 nn. Attached as Exhibit E-40 is a true and correct [copy](#) of *Press Release: Gaza is ‘running out*
23 *of time’ UN experts warn, demanding a ceasefire to prevent genocide*, Nov. 2, 2023 (“We remain
24 convinced that the Palestinian people are at grave risk of genocide. The time for action is now.
25 Israel’s allies also bear responsibility and must act now to prevent its disastrous course of
26 action.”).

1 oo. Attached as Exhibit E-41 is a true and correct [copy](#) of *Biden tells a heckler calling for*
2 *cease-fire: 'I think we need a pause'*, The Hill, Nov. 1, 2023 (Biden admits “convincing” Israel to
3 pause airstrikes to release American hostages).

4 pp. Attached as Exhibit E-42 is a true and correct [copy](#) of the first page and excerpt of *Remarks*
5 *by Vice President Harris in Press Gaggle, Bletchley, United Kingdom*, The White House, Nov. 2,
6 2023 (Harris states: “[w]e are not going to create any conditions on the support that we are giving
7 to Israel to defend itself.”).

8 qq. Attached as Exhibit E-43 is a true and correct [copy](#) of *Ukraine v. Russian Federation*,
9 Declaration of Intervention of the Government of the United States of America pursuant to article
10 63 of the Statute of the International Court of Justice, Sept. 7, 2022, para. 22.

11 rr. Attached as Exhibit E-44 is a true and correct [copy](#) of the first page and excerpt of *Biden*
12 *calls Russian war in Ukraine 'genocide'*, PBS News Hour, April 13, 2023 (quoting President
13 Biden as having described Russia’s war in Ukraine as a genocide: “Yes, I called it genocide. It’s
14 become clearer and clearer that Putin is just trying to wipe out the idea of even being a Ukraine.”).

15 ss. Attached as Exhibit E-45 is a true and correct [copy](#) of *Secretary-General's Press*
16 *Conference - on the Middle East*, United Nations Secretary-General, Nov. 6, 2023, describing that
17 “Gaza is becoming a graveyard for children. Hundreds of girls and boys are reportedly being
18 killed or injured every day.”

19 tt. Attached as Exhibit E-46 is a true and correct [copy](#) of the first page and excerpt of
20 *Department Press Briefing*, U.S. Dept. of State, Nov. 7, 2023. In this press briefing, after asked by
21 a reporter about the unfolding genocide in Gaza, Department of State Deputy Press Spokesperson
22 Patel explained that there is generally “a rigorous process in place for evaluating whether
23 something constitute as genocide or not,” but admitted that there was no such “active, ongoing
24 process” for Israel’s actions in Gaza.
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1 uu. Attached as Exhibit E-47 is a true and correct [copy](#) of the first page and excerpt of *Deputy*
2 *Pentagon Press Secretary Sabrina Singh Holds an On-Camera Press Briefing*, U.S. Dept of
3 Defense, Nov. 7, 2023. In this briefing, Singh admits that “we don’t put conditions on weapons
4 that . . . we’re sending or that Israel is using.” When asked whether there was any sort of end use
5 monitoring in place for weapons transferred to Israel, as is required under U.S. law (22 U.S.C. §
6 2785), she admits, “I wouldn’t say it’s necessarily an end use monitoring”, but stated only “we
7 expect them to be used in accordance with [humanitarian] laws.”

9 vv. Attached as Exhibit E-48 is a true and correct [copy](#) of the first page and excerpt of *Press*
10 *Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic*
11 *Communications John Kirby*, The White House, Nov. 7, 2023. During this briefing, the National
12 Security Council Spokesperson John Kirby was asked by a reporter whether the Administration
13 was still not drawing any “red lines” for Israel, in light of the death toll of Palestinian civilians that
14 keeps going up, Kirby responded “that is still the case.”

16 ww. Attached as Exhibit E-49 is a true and correct [copy](#) of the first page and excerpt of
17 *Department Press Briefing, U.S. Dept of Defense*, Nov. 9, 2023. In it, Department of State Deputy
18 Spokesperson Vedant Patel confirms that the “rigorous process” for evaluating whether something
19 constitute a genocide, has not been initiated in the case of Gaza.

21 xx. Attached as Exhibit E-50 is a true and correct [copy](#) of the first page and excerpt of *Remarks*
22 *by President Biden Before Marine One Departure*, The White House, Nov. 9, 2023. In it, Biden
23 says there is “no possibility” of ceasefire in Gaza.

24 yy. Attached as Exhibit E-51 is a true and correct [copy](#) of the first page and excerpt of *Press*
25 *Gaggle with NSC Coordinator for Strategic Communications John Kirby*, The White House, Nov.
26 9, 2023. In it, Kirby confirms that the position of the Biden Administration is that it “still [does
27 not] believe a ceasefire is appropriate at this time.”

1 zz. Attached as Exhibit E-52 is a true and correct [copy](#) of C. Todd Lopez, *Defense Official*
2 *Said U.S. Won't Hesitate to Defend Its Troops in Middle East*, Department of Defense News, Nov.
3 9, 2023 (noting that Defense official Dana Stroul testified before the House Committee on Foreign
4 Affairs that the department is “working around-the-clock to determine which munitions and
5 equipment from U.S. inventory can quickly be made available,” that “[a]ir defense is a high
6 priority, as are medical supplies, artillery, ammunition and precision-guided munitions” and that
7 “[d]eliveries are taking place on a near daily basis”).

8
9 aaa. Attached as Exhibit E-53 is a true and correct [copy](#) of Maziar Motamedi, *How are Gaza*
10 *casualty updates affected by Israeli attacks on hospitals?*, Al Jazeera, Nov. 12, 2023 (noting that
11 United States Assistant Secretary of State for Near East Affairs, Barbara Leaf, testified before a
12 House panel on November 8, 2023, and confirmed that the number of those killed in Gaza is like
13 “higher than is being cited”).

14
15 bbb. Attached as Exhibit E-54 is a true and correct [copy](#) of Hearing Notice: Friend and Ally:
16 U.S. Support for Israel after Hamas’ Barbaric Attack, Foreign Affairs Committee, U.S. House of
17 Representatives, Nov. 8, 2023 (notice of hearing featuring U.S. Assistant Secretary of State for
18 Near East Affairs, Barbara Leaf, and Deputy Assistant Defense Secretary, Dana Stroul, before the
19 House Committee on Foreign Affairs.)

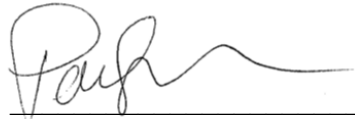
20
21 ccc. Attached as Exhibit E-55 is a true and correct [copy](#) of Tony Capaccio, *US is quietly*
22 *sending Israel more ammunition, missiles*, Bloomberg News, Nov. 14, 2023 (noting that the
23 Defense Department “quietly ramped up military aid to Israel,” including “more laser-guided
24 missiles for its Apache gunship fleet, as well as 155mm shells, night-vision devices, bunker-buster
25 munitions and new army vehicles”).

26 ddd. Attached as Exhibit E-56 is a true and correct [copy](#) of *Joint Letter to Secretary of*
27 *Defense Lloyd Austin Opposing 155mm Artillery Shell Transfer to Israel*, Nov. 13, 2023 (letter
28

3-ER-409

1 from humanitarian and faith-based organizations expressing alarm about transfer of 155mm shells
2 to Israel and citing sources showing that “[w]hen explosive weapons are used in populated areas,
3 on average 90 percent of the victims are civilians” and that use of these shells is “inherently
4 indiscriminate” in Gaza, as “one of the world’s most densely populated places”).
5

6
7 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge
8 and belief. Executed this 15th day of November, 2023.

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11 PAMELA C. SPEES
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EXHIBIT

D -31

HOSTILITIES IN THE GAZA STRIP AND ISRAEL - REPORTED IMPACT

10 November 2023 at 23:59

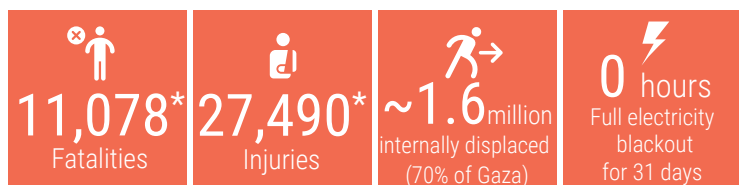
DAY 34

OVERVIEW

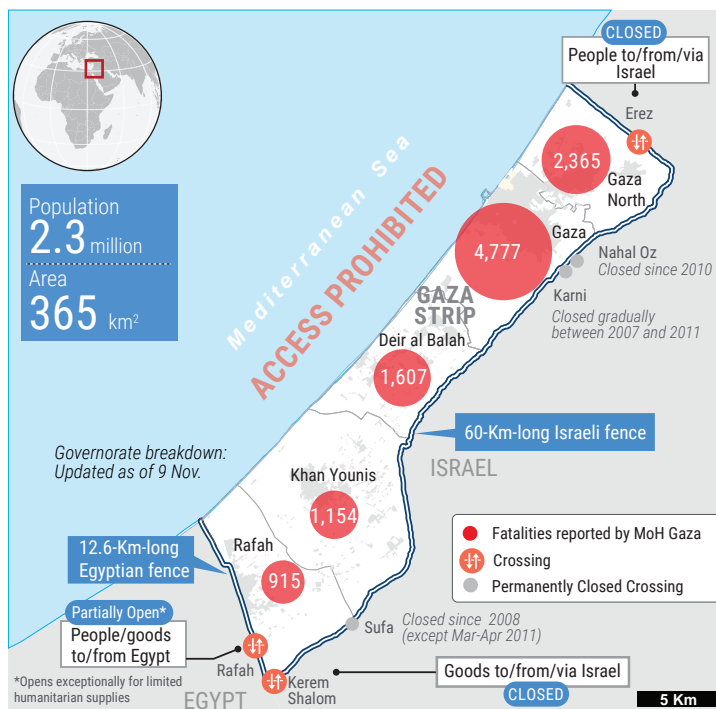
The snapshot provides a comprehensive overview of the ongoing humanitarian crisis in Gaza as of 10 November 2023, including casualties, particularly among women and children.

Significant damage has been inflicted upon critical infrastructure and essential services, affecting people's ability to maintain their dignity and basic living standards.

This snapshot highlights reported figures on the impact of hostilities on people in Gaza, where a major humanitarian crisis has unfolded.

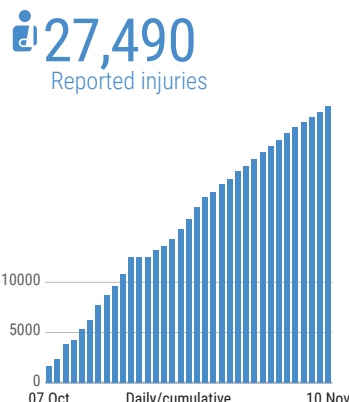
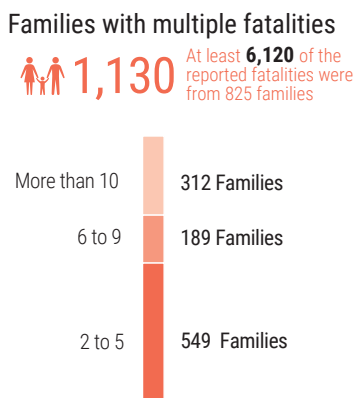


*Reported by MoH Gaza

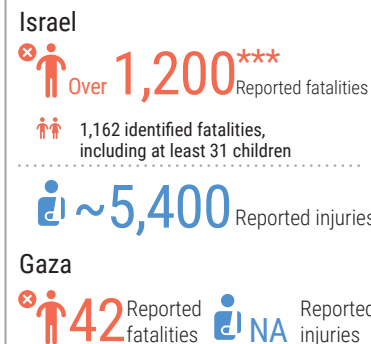


REPORTED CASUALTIES (Cumulative) as of 10 November 2023

Palestinians*

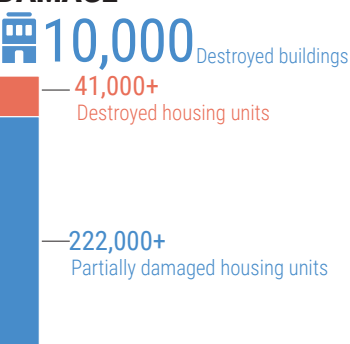


Israelis**



** According to Israeli media citing official sources
***The reported estimate, which includes foreign nationals, has been changed by the Israeli sources

DAMAGE*



- At least 45% of Gaza's housing units reportedly destroyed or damaged
- 279 education facilities reportedly damaged
- 135 health facilities attacked
- 11 bakeries reportedly destroyed
- 21 hospitals and 47 Health care center out of service
- 53 ambulances damaged
- 20 WASH facilities damaged
- At least 3 churches and 67 mosques damaged

*Ministry of public works and housing as of 6 Nov.

BASIC SERVICES AND LIVELIHOODS

FOOD SECURITY
Market stocks of essential food*: Wheat flour (12 days), Vegetable oil (0 days), Pulse (0 days), Sugar (0 days), Rice: (0 day).

*Source: WFP

The **only** operative mill cannot transform wheat due to electricity outages
4-6 hours average waiting time to receive half of normal bread portion

WATER AND SANITATION
90% less water consumption than pre-hostilities (average)
Most of 65 sewerage pumping are not operational
50% leakage in a main water pipeline between Rafah and Khan Younis
Two of the 3 water pipelines from Israel are functioning

HEALTH
Shut down over 1/2 of the hospitals and nearly 2/3 of primary health care shut down

At high risk
At least 1,000 kidney failure, >2,000 cancer patients, 130 neonates in incubators

Critical shortages of drugs, blood products and supplies (Fuel at the hospitals is being severely rationed)

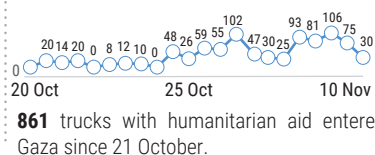
Evacuation orders
All 13 hospitals still operational in Gaza city and Northern Gaza have received evacuation orders

EDUCATION
625K (100%) Students with no access to education
Over 51% of Gaza's education facilities have been hit

HUMANITARIAN OPERATION
at least 198 medical staff (according to the MoH), of whom at least 16 were on duty when killed (WHO), 99 UNRWA staff, 20 Palestinian Civil Defense personnel and 49 Journalists. 50 UNRWA installations damaged

MOVEMENT AND ACCESS
Closure of crossings with Israel. Rafah crossing with Egypt is partially open. Prohibition of sea access and restrictions near Israel's perimeter fence.

INCOMING TRUCKLOADS
500 trucks pre-crisis average per working day in 2023



EXHIBIT

E-15

DOD Remains Resolute in Support of Israel

Oct. 16, 2023 | By Joseph Clark , DOD News

Secretary of Defense Lloyd J. Austin III is continuing to coordinate closely with his Israeli counterpart in response to last week's deadly attacks by Hamas terrorists, Deputy Pentagon Press Secretary Sabrina Singh said today.



Since meeting with Israeli Prime Minister Benjamin Netanyahu, Defense Minister Yoav Gallant and members of the Israeli War Cabinet in Tel Aviv on Friday, Austin has remained fully engaged with the country's leaders as the U.S. works ensure Israel has what it needs to defend itself from further attacks.

"Since leaving Israel, he has held calls with MOD Gallant ... on a near daily basis and will likely have another call today," Singh said. "We are working to meet Israel's needs, which include air defense, precision guided munitions, artillery and medical supplies."

In addition to quickly fielding U.S. aid to Israel, the U.S. has bolstered its presence in the region to deter further aggression.

“ The increases to U.S. force posture signal the United States' ironclad commitment to Israel's security and our resolve to deter any state or non-state actor seeking to escalate this war.”

~Secretary of Defense Lloyd J. Austin III

Over the weekend, Austin directed the USS Dwight D. Eisenhower Carrier Strike Group to join the USS Gerald R. Ford Carrier Strike Group which arrived in the Eastern Mediterranean last week.

The Navy units are part of a broader bolstering of U.S. forces in the region. Last week, the Air Force announced the deployment of F-15 and F-16 fighter squadrons and A-10 attack squadrons to the region.



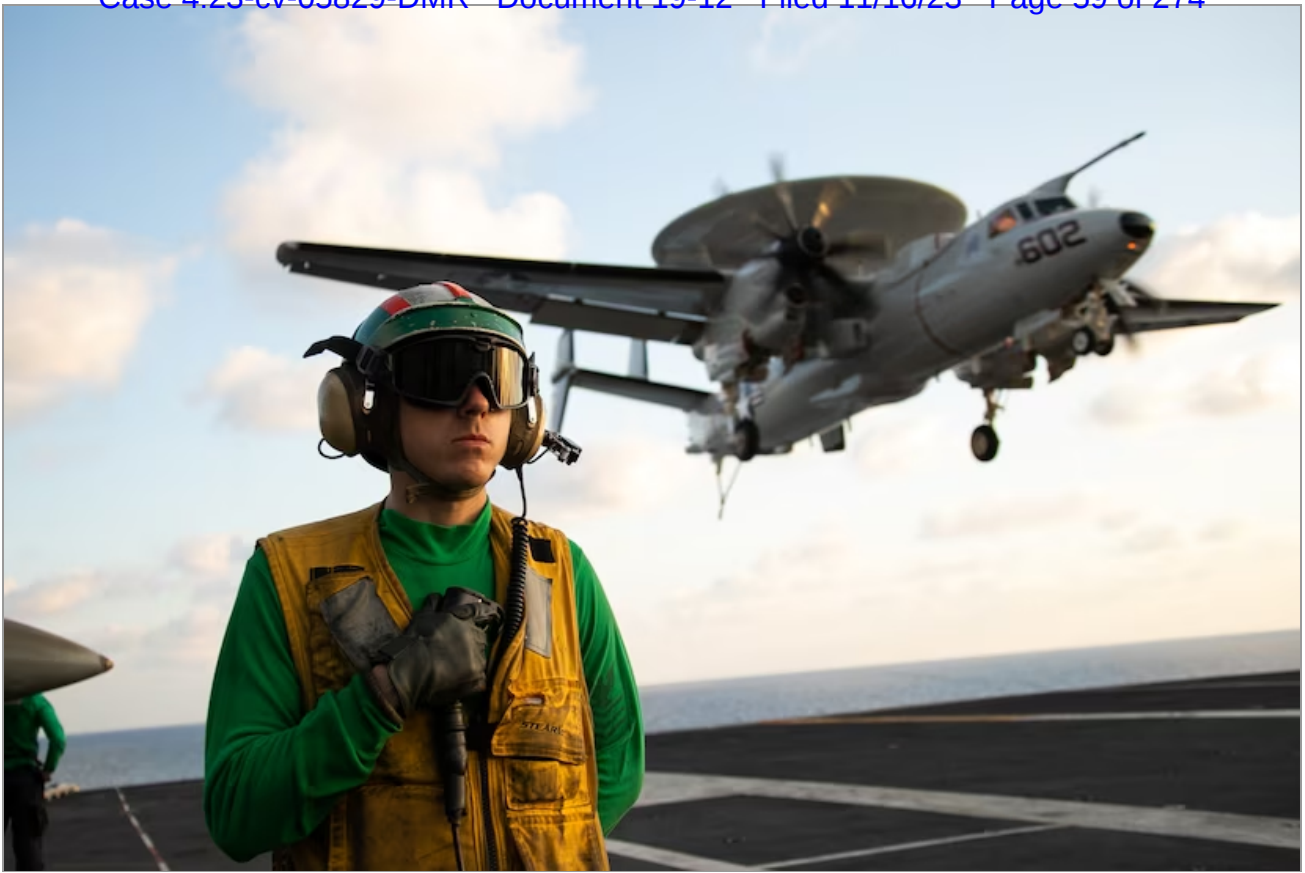
"The increases to U.S. force posture signal the United States' ironclad commitment to Israel's security and our resolve to deter any state or non-state actor seeking to escalate this war," Austin said in a statement over the weekend.

Singh noted that the U.S. is also providing planning and intelligence support to the Israeli-led hostage recovery efforts following last week's attack.

That support includes a "small number of personnel in support of this effort as augmentation to the embassy staff," Singh said.

"As the president stated, any presence of military personnel will be to advise and consult on hostage recovery efforts," she said.

Singh said DOD remains focused on supporting Israel's defenses, containing the conflict in Gaza, deterring other state or non-state actors from entering the battle space and protecting U.S. forces.



During his visit to Tel Aviv last week, Austin condemned the "bloodthirsty, fanatical and hateful" attacks by Hamas terrorists.

"The world has just witnessed a great evil: the deadliest attack on civilians in the history of the state of Israel and the bloodiest day in Jewish history since the end of the Holocaust," Austin said after meeting with Israeli officials.

"So, make no mistake: The United States will make sure that Israel has what it needs to defend itself," he said.

Austin said U.S. support to Israel remains "non-negotiable" and that additional security assistance would continue to "flow at the speed of war."

"For any country, for any group or anyone thinking about trying to take advantage of this atrocity to try to widen the conflict or to spill more blood, we have just one word: Don't," Austin said.

"The world is watching," he said. "So are we. And we aren't going anywhere."

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Katherine Gallagher, *pro hac vice* motion pending
Maria C. LaHood, *pro hac vice* motion pending
Astha Sharma Pokharel, *pro hac vice* motion pending
Samah Sisay, *pro hac vice* motion pending
Pamela C. Spees, *pro hac vice* motion pending
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New York, NY 10012
(212) 614-6464

[REDACTED]

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.: 3:23-cv-5829

COMPLAINT

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INTRODUCTION

1. This case is brought on behalf of Palestinian human rights organizations and individuals to enforce what is perhaps the most basic and important legal, and moral, obligation in the world – the obligation to prevent genocide, the destruction of a people. This duty is enshrined in the 1948 Genocide Convention, to which the United States, Israel and Palestine have all acceded, and it is judicially enforceable as a preemptory norm of customary international law. Plaintiffs seek an order of this Court requiring that the President of the United States, the Secretary of State, and the Secretary of Defense adhere to their duty to prevent, and not further, the unfolding genocide of Palestinian people in Gaza. If the legal responsibility to prevent an unfolding genocide is to mean anything – indeed, if the rule of law is to signify anything – courts must have a role and responsibility to enforce these foundational international law principles. The lives of so many more people are at stake.

2. For the past five weeks the world has watched the Palestinian people of Gaza, half of whom are children, be subjected to an unrelenting and unprecedented bombing campaign unleashed by the Israeli military – a campaign that is both overwhelming in its destructive scale and seemingly indiscriminate in its devastation of Gazan life, infrastructure and the basic human conditions of livelihood. The bombings have leveled critical civilian infrastructure – approximately a third in northern Gaza alone has been damaged or destroyed – taking in its destruction numerous hospitals, schools and universities, United Nations safe havens as well as all the elementary attributes necessary for the existence of civilian life, including water, fuel, medicine and food.

3. This military bombardment has killed over 11,000 Palestinian civilians, more than 4,500 of them children, as well as entire families, numerous journalists and UN workers. The number of casualties has not been updated since November 10 following the collapse of services and communications at hospitals in Northern Gaza. The bombardment has left many hundreds or thousands more civilians suffocating and suffering under rubble; it has forced the displacement of

1 approximately 1.6 million persons, including in a manner likely designed to prevent their return to
2 their homes. This bombardment has been accompanied by a total siege of Gaza, depriving Palestinians
3 in Gaza the conditions of life necessary for human survival: food, water, medicine, fuel, and electricity.

4
5 4. This unfolding genocide of the Palestinian people in Gaza has so far been made
6 possible because of the unconditional support given by the named official-capacity defendants in this
7 case, President Joseph Biden, Secretary of State Antony Blinken and Secretary of Defense Lloyd
8 Austin, constituting a breach of U.S. responsibilities under customary international law, as codified in
9 the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide
10 Convention”), Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277, to prevent, and not
11 further, genocide.

12
13 5. Genocide, the gravest of crimes under international law, defined in the Genocide
14 Convention and implemented in U.S. domestic law at 18 U.S.C. § 1091 upon ratification, constitutes
15 certain acts “committed with the intent to destroy in whole *or in part* a national ethnical, racial or
16 religious group as such” by, among other things: (i) killing members of the group, (ii) deliberating
17 inflicting upon the group conditions of life calculated to bring about its physical destruction in whole
18 *or in part*; and (iii) causing serious bodily or mental harm. For the past 38 days, the world has watched
19 senior Israeli officials use dehumanizing language in connection with their expressed intent to destroy
20 and displace Palestinians in Gaza while imposing an unrelenting siege, and intentionally depriving
21 Palestinians the conditions of life necessary for human survival. The Israeli military has dropped an
22 estimated 25,000 tons of explosives on Palestinians in Gaza – the approximate explosive power of two
23 nuclear bombs.

24
25 6. The United States has been obligated, from the time it learned of the specter of a
26 genocide of the Palestinian people, to exercise its clear and considerable influence on Israel to prevent
27 this grave crime from unfolding. The President and the Secretaries of State and Defense have not only
28

1 been failing to uphold the country’s obligation to prevent a genocide, but have enabled the conditions
2 for its development by providing unconditional military and diplomatic support – disavowing any
3 constraint or “red lines” on Israel’s military campaign even in the face of numerous Israeli
4 governmental statements reflecting a genocidal intent. Defendants have refused to even initiate
5 internal processes to assess whether there is a genocide unfolding in Gaza, or to monitor how U.S.
6 weapons are used there.

7
8 7. The attacks by Hamas on October 7, including unlawful direct attacks against civilians,
9 killed approximately 1,200 civilians and soldiers, and led to the taking of approximately 240 civilian
10 hostages and military captives who are still held in Gaza. Targeting civilians violates international
11 law. Still, under foundational legal principles that Plaintiffs invoke, even attacks that result in atrocity
12 crimes can never justify, as a matter of law or morality, the form of lethal collective punishment and
13 destruction against the Palestinian population that is unfolding, nor do those attacks obviate the United
14 States’ corresponding duty to prevent its continuation.

15
16 8. Plaintiffs Defense for Children International - Palestine (“DCIP”) and Al-Haq
17 (collectively “Organizational Plaintiffs”) are Palestinian nongovernmental human rights organizations
18 dedicated to preserving and promoting the human rights of Palestinian people across the Occupied
19 Palestinian Territory, including Gaza. They are joined by individual Plaintiffs Ahmed Abu Artema,
20 Mohammed Ahmed Abu Rokbeh and Dr. Omar Al-Najjar, each of whom reside in Gaza and have
21 surviving family members there, where they have been subjected to a suffocating siege, coupled with
22 near-continuous Israeli bombardment that killed six members of Mr. Abu Artema’s family, including
23 his son, five members of Dr. Al-Najjar’s family and ten members of Mr. Abu Rokbeh’s family and
24 displaced them all. They are also joined by Plaintiffs Mohammad Herzallah, A.N., Laila Elhaddad,
25 Waeil Elbhassi, and Bassim Elkarra: all are U.S. citizens of Palestinian origin and current residents of
26 the United States, who have family members that have been subjected to repeated Israeli bombing
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1 strikes, have fled their homes in search of elusive safety to escape the bombing and who remain
2 precariously vulnerable to Israel’s continuous bombardment, and its continued withholding of critical
3 life-supporting necessities including water, food, fuel and electricity.

4
5 9. Collectively, the Palestinian Organizational Plaintiffs and Individual Plaintiffs bring
6 this action pursuant to the Court’s federal question jurisdiction to hear claims brought under customary
7 international law as part of federal common law, against the federal official-capacity defendants.
8 Plaintiffs seek declaratory relief and an injunction requiring the United States to fulfill its international
9 law duty to prevent and cease being complicit – through unconditional financial and diplomatic
10 support – in the unfolding genocide in Gaza.

11
12 10. Evidence of Israeli government officials’ specific intent to undertake and persist in
13 undertaking such genocidal acts is significant and overt, and sits on top of a longer history of Israeli
14 dispossession and killing of Palestinians in Gaza as well as the West Bank. This evidence pronounced
15 by senior Israeli officials, including the Prime Minister, the President and the Minister of Defense,
16 belies any legitimate claim to “self-defense.” Indeed, this evidence – that Israel also fails to distinguish
17 between a civilian population and armed groups – reflects the kind of dehumanizing and totalizing
18 rhetoric that genocide scholars and historians, including those opining in this action, recognize
19 typically precede, accompany and continue to fuel genocidal acts. It is designed to characterize victims
20 as deserving of destruction, humiliation and dispossession and correspondingly unworthy of
21 elementary principles of humanity and foundational principles of international law.

22
23 11. Those statements of intent – when combined with the total siege, destruction, and
24 killing on the ground – reveal evidence of an unfolding crime of genocide. The statements, more
25 thoroughly described below, include: On October 7, Prime Minister Benjamin Netanyahu ordered 2.2
26 million Palestinians in Gaza to “*get out now*” as “[Israel] will be everywhere and with all our might.”
27 Two days later, the Israeli Defense Minister announced, “I have ordered a complete siege on the Gaza
28

1 Strip. ***There will be no electricity, no food, no fuel***, everything is closed” and “We are fighting ***human***
2 ***animals*** and we are acting accordingly.” The next day, the Israeli Major General who heads the
3 Coordinator of Government Activities in the Territories (“COGAT”) echoed him, stating, “***Human***
4 ***animals*** must be treated as such. There will be no electricity and no water [in Gaza], there will ***only***
5 ***be destruction***. You wanted hell, you will get hell.” On October 10, the Israel Defense Forces
6 spokesperson announced dropping “hundreds of tons of bombs,” as “the ***emphasis is on damage*** and
7 not on accuracy.”

9 12. On October 12, when the Israeli military ordered the more than one million Palestinians
10 in northern Gaza to “evacuate” to southern Gaza within 24 hours, the Minister of Energy and
11 Infrastructure said, “Humanitarian aid to Gaza? No electrical switch will be turned on, no water
12 hydrant will be opened and no fuel truck will enter until the Israeli abductees are returned home.” He
13 later said “They will not receive a drop of water or a single battery ***until they leave the world.***” On
14 October 13, Israeli President Isaac Herzog announced: “It is an entire nation out there that is
15 responsible. It is not true this rhetoric about civilians not being aware, not involved. It’s absolutely not
16 true.” Israeli Defense Minister Gallant stated: “Gaza won’t return to what it was before. ***We will***
17 ***eliminate everything.***” On October 15, as Israeli airstrikes killed over 2,670 Palestinian civilians,
18 including 724 children, Prime Minister Netanyahu stated that Israeli soldiers “understand the scope of
19 the mission” and stand ready “to defeat the bloodthirsty monsters who have risen against [Israel] to
20 destroy us.”

23 13. On October 29, as the number of people killed by Israel in Gaza rose to 8,000, Prime
24 Minister Netanyahu invoked the story of Amalek in the Bible to justify Israel’s assault on Gaza,
25 stating, “You must remember what Amalek has done to you, says our Holy Bible, and we do
26 remember, and we are fighting.” In the Bible, God commands the extermination of Amalekite men,
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1 women, children, and animals, and this commandment has been described by one scholar as “divinely
2 mandated genocide.”

3
4 14. Immediately after the Hamas attacks and the launch of the Israeli assault on Gaza,
5 President Biden offered “unwavering” support for Israel’s military campaign, which he and
6 administration officials have consistently repeated even as mass civilian casualties escalated, Gaza
7 was sealed and basic necessities for life cut, alongside Israeli genocidal rhetoric. On October 15, for
8 example, Secretary of State Blinken unconditionally pronounced that “We will stand with [Israel]
9 today, tomorrow, and every day, and we’re doing that in word and also in deed.” U.S. National
10 Security Council Coordinator John Kirby has repeatedly and publicly proclaimed that there would be
11 no “red lines” to American moral, political or military support to Israel. That support also came by
12 repeatedly vetoing UN resolutions calling for a ceasefire in Gaza, ignoring warnings from UN experts
13 of a “grave risk of genocide” on the Palestinian people in Gaza, the high-profile resignation of the
14 director of the New York office of the United Nations High Commissioner of Human Rights who
15 described what is happening in Gaza as a “textbook case of genocide,” and the resignation of a senior
16 State Department official who acknowledged that U.S. weapons were being used to “massacre
17 civilians in Gaza.”
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20 15. That U.S. support also takes significant material form. Since October 7, the United
21 States has provided Israel with expedited and unconditional military financial assistance, equipment,
22 and personnel to support and further its assault on Gaza, which comes on top of access to the existing
23 stockpile of U.S. weapons already in Israel, estimated to be worth up to \$4.4 billion. U.S. munitions
24 and equipment are being delivered on a near daily basis. The combat aircraft and munitions killing
25 Palestinians in the Gaza Strip are predominantly American-made and Israel’s ability to use U.S.
26 military assistance funding to purchase weapons from Israeli companies means that U.S.-funded
27 Israeli weapons are also killing Palestinians in Gaza. And Defendants intend to provide even more
28

1 military assistance: since October 7, they have requested from Congress \$14.1 billion to support
2 Israel's military, and have approved the sale of \$320 million worth of military equipment to Israel to
3 manufacture precision bomb kits.

4
5 16. After World War II and the horror of the Holocaust, the United States was among the
6 world's leaders in developing universal norms designed to protect civilians and peoples from being
7 targeted because of their ethnicity, nationality, race or religion. Despite having condemned other
8 genocidal campaigns, including by intervening in proceedings in the International Court of Justice to
9 affirm the customary international law obligation to prevent genocide, the United States has now
10 chosen to set aside those norms – and the international humanitarian order they were designed to
11 preserve – while the Israeli government is undertaking genocidal acts that have already killed more
12 than 11,000 Palestinians in Gaza, forcibly displaced hundreds of thousands, and produced such
13 deprivation and suffering in Gaza that it is functionally uninhabitable.

14
15 17. The Court must hold these United States Defendants, including the President of the
16 United States, to their obligations under the law to prevent the unfolding crime of genocide, and cease
17 providing support for it. In the face of continuing death and destruction of their people, these Plaintiffs
18 and the 2.2 million Palestinians they stand for, half of whom are children, have no other choice but to
19 seek the relief of law from this court.

20
21 **PARTIES**

22 18. **Defense for Children International - Palestine** (DCIP) is an independent non-
23 governmental organization, founded in 1991, that is dedicated to defending the rights of Palestinian
24 children. DCIP is based in Ramallah, with offices and staff throughout the occupied West Bank,
25 including East Jerusalem, and in the Gaza Strip. DCIP investigates, documents, and exposes grave
26 human rights violations against children; provides legal aid and counseling to children in urgent need;
27 works to hold Israeli and Palestinian authorities accountable to international law; promotes child
28

1 empowerment and child participation through community mobilization programs; and advocates at
2 the international and national levels to advance access to justice and protection for children.

3 19. DCIP members and staff have been subjected to indiscriminate bombardment and
4 displacement from the Israeli assaults, which have damaged property and threatened the lives and
5 well-being of staff; they are also are unable to carry out their roles and responsibilities due to lack of
6 freedom of movement, lack of telecommunications access including from repeated blackout and risk
7 of death or serious injury. Defendants have frustrated DCIP's mission and forced DCIP to divert
8 significant capacity, attention, and resources away from its core programs to facilitate and strategize
9 the survival of its staff, members, and the broader civilian population. DCIP has had to shift focus
10 from its broader child protection and empowerment programming to escalate monitoring and
11 documentation efforts and directly engage the international community to help facilitate immediate
12 child protection interventions to prevent the further commission of genocide against the Palestinian
13 population.
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16 20. **Al-Haq** is an independent Palestinian non-governmental human rights organization
17 based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule
18 of law in the Occupied Palestinian Territory (OPT), the organization has special consultative status
19 with the United Nations Economic and Social Council. Al-Haq documents violations of the individual
20 and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and
21 seeks to end such breaches by way of advocacy before national and international mechanisms and by
22 holding the violators accountable. Defendants have frustrated Al-Haq's mission and forced Al-Haq to
23 divert significant capacity, attention, and resources away from its core programs to facilitate and
24 strategize the survival of its staff, members, and the broader civilian population.
25

26 21. Members of Al-Haq and its staff have been subjected to indiscriminate bombardment
27 and displacement themselves, and their relatives have been killed. And, due to Israel's military
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1 offensive and total siege on the Palestinian population of the Gaza Strip, Al-Haq completely
2 restructured the work of its core departments, merging them with two organizations in Gaza, to meet
3 the emergency response. Al-Haq shifted focus from its broader programming to issue near daily
4 advocacy reports and statements to the international community urging immediate intervention to
5 prevent the further commission of genocide against the Palestinian population. All projects that Al-
6 Haq had been working on were suspended, and core resources directed to the emergency response,
7 putting the organization at risk of breaching its immediate project commitments to donors. As the
8 conflict entered its ninth day, the intensity of the bombing along with the widespread and systematic
9 attacks on infrastructure across the Gaza Strip, meant that the joint emergency field team in Gaza could
10 no longer respond to the violations. Due to the intense and relentless nature of the hostilities, this is
11 the first time in Al-Haq's history that it has been unable to document human rights atrocities in Gaza.
12 Communication blackouts in Gaza have made communications with staff on the ground and partner
13 organizations difficult, if not impossible, to maintain.

16 22. Plaintiff **Ahmed Abu Artema** is a Palestinian writer, a poet and a peace activist. Mr.
17 Abu Artema's family are refugees in Gaza; his grandfather is from Ramla, in the center of what is now
18 Israel. Mr. Abu Artema and his family live in the area that Israeli authorities instructed civilians from
19 the North to go to for safety. On October 24, 2023, Mr. Abu Artema was in the living room at his
20 father's house with three of his four children and several other relatives when an Israeli airstrike hit
21 their home. His son, Abdallah, 12 years and 10 months old, was killed by the blast. Ahmad and his
22 two children Mohammad, 11, and Batool, 8, suffered second degree burns, and are still being treated
23 in the hospital. His fourth son, Abdelrahman, 9 years old, was not injured because he had been standing
24 in the long line at the bakery to get bread and had been there for five hours when the strike hit the
25 family's home. Other relatives who died were his 8 year old niece Joud, his 85-year old aunt Fatema,
26 his cousin (Fatema's daughter) Fawziyah who was in her 40s, his aunt Khayriya, 65 years old, and his
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1 stepmother Intisar. His neighbor Hamad was also killed in the same blast. His three sisters and
2 remaining relatives were all also injured, one of them critically. Due to the ongoing siege, inability to
3 access basic necessities including food and water and the constant airstrikes, Mr. Abu Artema fears
4 for the life of his remaining children and his remaining family.
5

6 23. Plaintiff **Dr. Omar Al-Najjar** is a 24-year old intern physician at the Nasser Medical
7 Complex in Khan Yunis City in Gaza. He is Palestinian and was born and raised in Khuza'a, a border
8 village east of Khan Yunis City. Khan Yunis is far south of the evacuation zone boundary announced
9 by Israel. Almost all of Dr. Al-Najjar's family are refugees who live in Gaza. On October 8, Dr. Al-
10 Najjar, together with his parents and siblings, left his family home in Khuza'a in response to artillery
11 shelling and direct threats from the Israeli military. His family home was later partially destroyed. On
12 October 10, Israeli bombing killed 5 members of his extended family, although they had also fled
13 Khuza'a. Dr. Al-Najjar is at Nasser Medical Complex 24 hours a day, where he hears constant
14 bombings nearby and fears for his life, and where he treats people, mostly women and children, with
15 severe bodily injuries caused by Israel's bombings. Since October 7, at the Nasser Medical Complex,
16 he has witnessed at least two medical colleagues and many of their family members die as a result of
17 injuries. Since October 7, Dr. Al-Najjar and his family have had severe difficulty getting basic
18 necessities for their survival, including food, water, and electricity.
19

20 24. Plaintiff **Mohammed Ahmed Abu Rokbeh** is a Palestinian born in Jabalia, Gaza and
21 is a field researcher at DCIP. He lives in the Tal Al-Zaatar neighborhood, east of Jabalia in the northern
22 Gaza Strip. Mr. Abu Rokbeh fears for his life and the lives of his family. Mr. Abu Rokbeh, his wife,
23 and four children live together on the fourth floor of a five-story residential building owned by his
24 parents. Mr. Abu Rokbeh's parents and siblings live in the rest of the building, which houses a total
25 of 27 people. On October 11, 2023, Israeli warplanes bombed Mr. Abu Rokbeh's neighbors' house,
26 killing everyone inside. Mr. Abu Rokbeh's home was partially damaged, with windows and doors
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1 destroyed due to the strength of the bombing. Israeli warplanes dropped evacuation orders in Mr. Abu
2 Rokbeh's area, but he had nowhere to go. Mr. Abu Rokbeh and his family have moved several times
3 over the course of the last weeks, seeking refuge from place to place, sometimes multiple times in a
4 single day, eventually returning home in the North on October 13, just as the Israeli warplanes dropped
5 evacuation order leaflets ordering the evacuation of northern Gaza. On October 17, Mr. Abu Rokbeh
6 and his family finally decided to flee to the southern part of Gaza. On October 23, 2023, after finding
7 shelter for his family in a home in the South, an Israeli warplane bombed a nearby residential building
8 50 feet away causing significant damage to the building he is staying in. Mr. Abu Rokbeh remains
9 fearful for his life and the lives of his family in Gaza. His family is limited to one meal a day and has
10 limited access to drinking water. On November 8, an Israeli strike killed ten members of Mr. Abu
11 Rokbeh's family. He does not have reliable access to the phone or internet. Mr. Abu Rokbeh does not
12 know if his home is still standing.
13
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15 25. Plaintiff **Waeil Elbhassi** is a United States citizen of Palestinian origin, and resident of
16 San Ramon, California. Mr. Buhaissi has relatives and extended family in Gaza, primarily in Deir El
17 Balah and Khan Yunis. On October 12, an Israeli airstrike killed his cousin Mohamed, Mohamed's
18 son Hamdan, 33, and Hamdan's 1-year-old daughter Nour. They were standing near their home in the
19 Central Gaza Strip. The same strike killed 14 members of their neighbor's family. On October 19, his
20 cousin's son Samer, 26, was killed during an airstrike on the mosque where he was praying. Samer's
21 body is still under the rubble. Elbhassi is worried for the remaining members of his family who are
22 still in Gaza, who are unable to access basic necessities such as food and water, and who are at risk of
23 losing their life
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25 26. Plaintiff **Mohammad Herzallah** is a United States citizen of Palestinian origin, and
26 resident of Fairfield, California. Since October 7, 2023, Israel has killed 7 members of Mr. Herzallah's
27 extended family, including a 4-year-old. Mr. Herzallah is in regular communication with his extended
28

1 family, including his young niece. She sent him frequent videos on WhatsApp to let him know she is
2 still alive, and to urge him to try to do something to stop the genocide against her people. Recently,
3 she had to flee her family home in the north of Gaza towards the south, and informed him that she is
4 no longer able to send him video messages because the host family is fearful of retaliation as
5 individuals who post on social media are believed to be targeted by Israeli airstrikes. Mr. Herzallah is
6 fearful for his remaining relatives, who are unable to access basic necessities such as food and water,
7 and who are at risk of losing their life

9 27. Plaintiff **A.N.**¹ is a United States citizen of Palestinian origin, residing in Massachusetts
10 with his wife and children, who was born and raised in Gaza and is registered as a Gaza resident in
11 Israel's population registry. Mr. A.N's family were forcibly displaced in 1948 from their home in the
12 northern village of Asdod, and have been refugees in Gaza since. Mr. A.N.'s parents, four sisters and
13 three brothers and all of their children are in Gaza. On October 27, Mr. A.N's father and cousin were
14 injured by an Israeli airstrike that hit the mosque where they were praying. Mr. A.N's family have
15 remained together in the family home, where they host more than 120 members of their extended
16 family who have fled the northern Gaza strip. Since Israel's military attack on Gaza, they have not had
17 adequate food or water. They have resorted to drinking boiled sea water or contaminated tap water.
18 Mr. A.N. has not been able to communicate with them regularly since the bombing and total siege
19 began. Mr. A.N's parents both rely on medication that they have had difficulty accessing and he does
20 not know if they still have any left. Mr. A.N's mother has kidney stones, and due to the lack of clean
21 water available in Gaza she has been hospitalized. Mr. A.N. is very fearful for his parents and siblings
22 and their families' lives and health.

23 28. Plaintiff **Laila Elhaddad** is a United States citizen of Palestinian origin, and a resident
24 of Clarksville, Maryland. She has previously lived in Gaza City. Ms. Elhaddad is a journalist, policy
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28 ¹ Plaintiff A.N. is concurrently filing a motion for leave to file under a pseudonym.

1 analyst, and an award-winning author. Ms. Elhaddad’s uncles, aunts, and cousins are all in Gaza
2 City and Khan Yunis. Ms. Elhaddad fears for the lives of her relatives. Her relatives in Gaza City
3 started fleeing to the southern part of the Gaza Strip as instructed by the Israeli military, but they were
4 unable to make it there. The roads were congested as thousands of people fled, they had nowhere to
5 go, and the sight of thousands of other Gazans walking with all their belongings reminded them of
6 what their parents and grandparents experienced during the Nakba in 1948. Her cousins wrote to her
7 on October 13, “We have decided to stay in Gaza City and die in dignity.” That family has now
8 relocated on three occasions seeking safety within the city. They are currently being hosted by friends,
9 and they report to Ms. Elhaddad that they are completely besieged. On November 11, they wrote to
10 Ms. Elhaddad telling her that they have run out of drinking water and cannot safely leave their home
11 to find any. On November 2, 2023, an Israeli strike killed Ms. Elhaddad’s aunt, three adult cousins
12 and her cousin’s wife, and critically injured another cousin, while they were in their home in Gaza
13 City. Ms. Elhaddad is extremely worried about her remaining family in Gaza.

16 29. Plaintiff **Basim Elkarra** is a United States citizen of Palestinian origin, and lives in
17 Sacramento, California. Mr. Elkarra’s extended family is in the southern Gaza Strip. Israel has killed
18 more than 60 members of Mr. Elkarra’s extended family since October 7. Mr. Elkarra’s cousin’s son
19 and grandson were killed in an airstrike on October 23. On November 6, his maternal aunt’s four-story
20 home, which housed her whole family, was fully destroyed by an airstrike. Some of Mr. Elkarra’s
21 cousins report that they are making the difficult decision to split their children up between the two
22 parents, to increase the chances that some survive if one group gets hit by an airstrike. They say that
23 food and water have been difficult to find. Mr. Elkarra was last in Gaza in 2005, but has remained in
24 frequent communication with his relatives there. Since the assault began, before Mr. Elkarra goes to
25 bed in California, he checks on his family in Gaza when they should be waking up to see if they are
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1 34. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
2 1391(e)(1) as this case is brought against United States officials acting in their official capacity, and
3 Plaintiff Waeil Elbhassi resides in this judicial district.

4 **DIVISIONAL ASSIGNMENT**

5 35. Because Plaintiff Elbhassi resides in San Ramon in Contra Costa County, this case
6 should be assigned to the San Francisco/Oakland Division of this Court.
7

8 **FACTUAL BACKGROUND**

9 **I. ISRAEL'S PROLONGED OCCUPATION OF PALESTINE AND BLOCKADE OF** 10 **GAZA ARE HISTORIC PRECURSORS THAT HAVE ENABLED THE** 11 **CONDITIONS FOR THE PRESENTLY DEVELOPING GENOCIDE.**

12 **A. The Historical Policy and Practice of Seizure of Palestinian Land and Dispossession of** 13 **the Palestinian People.**

14 36. The current Israeli government's campaign of mass killings, imposition of a closure
15 and total siege, and displacement of Palestinians is resonant of the foundational tragedy in Palestinian
16 identity and memory – the 1948 Nakba, or catastrophe. Even a brief depiction of this history elucidates
17 the force of the Israeli government's present statements of genocidal intent and the intergenerational
18 trauma and terror they impose on Palestinian people, and in particular, on Gaza's majority refugee
19 population.

20 37. Between 1947-1949, carrying out sentiments reflected in future Prime Minister David
21 Ben Gurion's 1937 letter to his son that "we must expel the Arabs and take their places," Zionist
22 militias forced the displacement of 85% of the Palestinian population, destroyed 531 villages across
23 Palestine, killed approximately 15,000 Palestinians and violently forced the expulsion of 750,000
24 Palestinians from their ancestral homes, rendering them refugees. In one particularly devastating
25 massacre in Deir Yassin in 1948, the Lehi unit of the Zionist armed forces killed more than 100
26 Palestinians, including children.
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1 38. Indeed, a great number of refugees from the 1948 Nakba were displaced to Gaza, where
2 now 2/3 of the current population is refugees. Later, in the 1967 Six Day War, Israel occupied the
3 West Bank, including East Jerusalem, and the Gaza Strip, which resulted in the expulsion of 145,000
4 registered Palestinian refugees for the second time in 19 years. Reflecting a goal of its expropriation
5 of Palestinian territory for Israeli possession, former Defense Minister Moshe Dayan stated in 1969
6 that “We came to this country which was already populated by Arabs and we are establishing . . . a
7 Jewish state. . . There is not one place built in this country that did not have a former Arab population.”

9 39. As well-documented by numerous human rights groups, Israel state practice and policy
10 of prolonged military occupation and annexation has reflected a steady, incremental process of
11 forcibly removing Palestinians and concentrating them into enclaves, while transferring its own Israeli
12 civilian population into occupied territory, in violation of Article 49 of the 1949 Geneva Convention
13 Relative to the Protection of Civilian Persons in Time of War (“Fourth Geneva Convention”), Aug.
14 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. Palestinian protests over their dispossession and denial of
15 fundamental rights and dignity, including the right to self-determination, including in the First Intifada
16 from 1987-1993, the Second Intifada from 2000-2005 and in subsequent protests of military assaults
17 on Palestinian territory in the 2010s, have been met with military repression, excessive force, killings,
18 arbitrary detention and collective punishment by the Israeli military and state security forces, including
19 police.
20

21
22 40. Consistently, these campaigns have been accompanied by dehumanizing statements by
23 Israeli officials that signal an intention to displace, if not destroy, the Palestinian people, as a group,
24 as reflected in a 1983 statement of Israeli Army Chief of Staff, who proclaimed that “When we have
25 settled the land, all the Arabs will be able to do is scurry around like drugged roaches in a bottle.” The
26 forcible displacement of the Palestinian people for the benefit of the Israeli population has prompted
27 Israeli historians such as Ilan Pappé to warn of an “incremental genocide” of Palestinians.
28

1 41. Prime Minister Netanyahu, now at the helm of the Israeli “war cabinet,” has for years
2 been engaged in racist, dehumanizing rhetoric toward Palestinians (though he refuses to call them
3 Palestinian, as this would give legitimacy to their claims to a homeland, and defaults to his ethno-
4 nationalistic worldview in referring to them derisively as “Arabs”). In just one example, in 2016, he
5 referred to Palestinians as “wild beasts” when announcing a plan to build a massive border wall to
6 isolate Palestinians.

8 42. In 2018, the Knesset acted to enshrine Jewish supremacy, apartheid and Palestinian
9 dispossession into law when it passed a “Basic Law” that formally declared Israel the “nation-state of
10 the Jewish People.” Also referred to as the Nation-State Law, it established that “the right to exercise
11 national self-determination” in Israel is “unique to the Jewish people,” and established “Jewish
12 settlement as a national value,” requiring that the state “labor to encourage and promote its
13 establishment and development.” It also established Hebrew as the official language, relegating Arabic
14 to a lesser “special status.” The law thus explicitly excluded the 1.96 million Palestinian citizens of
15 Israel from full citizenship and targeted Palestinians for more forced displacement.

17 43. And, two months before the current assault, Prime Minister Netanyahu pronounced –
18 in front of the United Nations – his vision that the entirety of Palestine would become exclusively
19 Israeli. On September 22, 2023, Netanyahu held up a map before the UN General Assembly titled
20 “Israel in 1948,” which excluded *any* representation of Palestinians. He then held up a map titled “The
21 New Middle East,” which also eliminated any depiction of Palestinian territory, thereby connecting
22 the historical erasure of Palestinians to a future state policy that completely eliminates Palestinians.
23 This is the vision of the current leader of Israel.

25 44. As described in greater detail below, since the October 7 attacks, Israeli officials have
26 increasingly echoed past and present calls for the erasure, expulsion, dehumanization, persecution, and
27

1 ultimately, genocide of Palestinians. They did so often with implicit and explicit reference to the
2 Nakba.

3 **B. Israel’s Occupation and Blockade of Gaza**

4 45. Since 1967, Gaza and the West Bank, including East Jerusalem, have been under
5 military occupation by Israel. While Israel withdrew its ground forces and settlers from Gaza in 2005,
6 its occupation there did not end: Israel has continued to maintain effective control over Gaza.²
7 Likewise, the recognition of the State of Palestine as a non-member observer State in the United
8 Nations does not affect Palestine’s status as occupied territory.
9

10 46. As the Occupying Power, Israel is required under the 1907 Hague Regulations,
11 Convention Respecting the Laws and Customs of War on Land (Hague, Annex IV) (“Hague
12 Regulations”), Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, the Fourth Geneva Convention and
13 customary international law to ensure the overall safety of the population under occupation, sufficient
14 hygiene and public health standards, the provision of food and medical care, among other obligations.
15 Forcible transfer, collective punishment, measures of intimidation, and reprisals against the protected
16 population or their property are prohibited.
17

18 47. In 2007, Israel instituted a land, sea, and air closure of Gaza in a demonstration of its
19 continued effective control. For the past sixteen years, Palestinians in Gaza, approximately half of
20 whom are children and have only known life under closure, have been subjected to this blockade and
21 the ensuing denial of fundamental rights. Israel has further subjected the Palestinian population to five
22 large-scale military assaults and incursions since the closure was imposed. *See infra* ¶¶ 54-55.
23

24
25 ² *See, e.g., What does the law say about the responsibilities of the Occupying Power in the*
26 *occupied Palestinian territory?*, Int’l Comm. of the Red Cross (Mar. 28, 2023),
27 [https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-](https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-territories)
28 [territories](https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-territories) (“The ICRC considers Gaza to remain occupied territory on the basis that Israel still exercises key elements of authority over the strip, including over its borders (airspace, sea and land – at the exception of the border with Egypt”). *See infra* note 4.

1 48. When Israel instituted the closure, it declared Gaza – with its then-population of
2 approximately 1.4 million people – “hostile territory” and the population an “enemy entity.”

3 49. Israel’s closure policy severely restricts the movement of goods and people in and out
4 of Gaza, and has resulted in a denial of fundamental rights, including the right to freedom of
5 movement; life and physical security; adequate standard of living, including adequate food, water, and
6 housing; health; education and work; family; and self-determination.³

8 50. Because of Israel’s closure of Gaza, it has been described as an “open-air prison.”

9 51. As a result of this closure and exacerbated by repeated military assaults which have
10 resulted in extensive destruction of civilian infrastructure (e.g., power plants, water infrastructure and
11 sanitation facilities), Palestinians in Gaza have suffered from severe shortages of food, and
12 deterioration of Gaza’s critical infrastructure, including safe drinking water, electricity, and essential
13 medical services and medicine.

14 52. Preceding Israel’s complete siege on all food, water, and electricity in Gaza in October
15 2023, 63 percent of the population was reported food insecure, with 82 percent unable to refrigerate
16 food, and 95 percent unable to access clean water. In 2021, human rights organizations reported that
17 97 percent of Gaza’s water was rendered contaminated. This is in large part due to Israel’s restrictions
18 on electricity, which obstruct the operation of water wells, and seawater desalination and sewage
19 treatment plants.

20 53. Israeli authorities regularly subject Palestinians, particularly in Gaza, to multiple forms
21 of collective punishment, including sustained military campaigns. These campaigns, including the
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25 ³ See Palestinian Human Rights Organizations & Victims Communication to the International
26 Criminal Court Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution
27 of the Illegal Closure of the Gaza Strip: Persecution and Other Inhumane Acts Perpetrated against the
28 Civilian Population as Crimes Against Humanity (Nov. 2016),
<https://ccrjustice.org/sites/default/files/attach/2016/11/GAZA%20CLOSURE%20FOR%20ICC%20November%202022%202016.pdf>.

1 ongoing military assault on Gaza, have each resulted in the mass killings of Palestinian civilians,
2 including children.

3 54. Over the course of the 16-year closure, and prior to the current military attack, Israel
4 carried out at least five mass military attacks on the Palestinian civilian population in Gaza:
5

6 (1) On December 27, 2008, Israel launched a 22-day military assault, known as “Operation
7 Cast Lead.” Israeli forces killed around 1,400 Palestinians, the majority of whom were
8 civilians, including over 300 children, over 100 women, and over 100 elderly. In the aftermath
9 of the assault, a UN-appointed fact finding mission found that Israel had committed war crimes
10 and crimes against humanity.

11 (2) Between November 14 and November 21, 2012, Israel carried out an 8-day campaign,
12 known as “Operation Pillar of Defense,” launching over 1,500 air strikes and killing at least
13 174 Palestinians – the majority of which were civilians including 33 children and 13 women.

14 (3) Between July 8 and August 26, 2014, Israel carried out a 50-day military assault against
15 Palestinians in Gaza, which killed 2,251 Palestinians, including 551 children and 299 women.
16 At least 11,231 Palestinians were injured, including 3,540 women and 3,436 children. As a
17 result of these injuries, about one-third of them suffer from life-long disabilities.

18 (4) Beginning in March 2018, Palestinians in Gaza organized weekly, non-violent mass
19 demonstrations demanding the right of return for the millions of Palestinian refugees who were
20 forcibly expelled by Israel, and demanding an end to Israel’s then-11-year-long illegal
21 blockade. Israel deployed tanks, military vehicles, and soldiers, and ordered soldiers, including
22 snipers, to “shoot anyone within several hundred [meters] of the fence.” Israeli forces’ use of
23 live ammunition during these demonstrations killed at least 180 protesters, and according to
24 OCHA, Israeli forces injured 23,000 others within the context of these demonstrations.

25 (5) Between May 10-21, 2021, Israel again escalated military violence against Palestinians in
26 Gaza after protests erupted across occupied Palestine and elsewhere in response to the forced
27 removal of Palestinians from their homes in Sheikh Jarrah, Jerusalem and restrictions in access
28 to Al-Aqsa mosque during Ramadan. As a result, 261 Palestinians were killed in Gaza,
including 67 children and 41 women. More than 85% of Palestinians killed during this
escalation were killed by air-launched explosive weapons.

55. Through these military assaults even before October 7, 2023, Israel has killed at least
4,269 Palestinians, including 1,025 children, as well as journalists, medical workers, and unarmed
protestors, injured tens of thousands, with widespread destruction to civilian housing units and,
repeatedly across successive military assaults, critical civilian infrastructure including medical
facilities, health clinics and educational facilities. As successive United Nations fact-finding missions

1 and commissions of inquiry have found, Israel’s military assaults on Gaza are evidence of its continued
2 effective control.⁴

3 56. Israel’s sustained military hostilities and assaults against Palestinians, even when
4 alleged to be “self-defense,” breach fundamental principles of international law. As the Occupying
5 power, Israel cannot both exercise control over territory it occupies (the occupied Palestinian territory,
6 including Gaza) and simultaneously militarily attack that territory on the claim that it is “foreign” or
7 imputable to a “foreign State.” Article 51 of the U.N. Charter, which sets the confines for the
8 invocation and use of self-defense by States, is inapplicable when the threat originates from a territory
9 over which Israel exercises control. *See Legal Consequences of Construction of a Wall in Occupied*
10 *Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 78, 139 (July 9).

11
12 57. More broadly, the International Court of Justice (“ICJ”) has been clear that self-defense
13 under Article 51 of the U.N. Charter is “subject to certain constraints . . . inherent in the very concept
14 of self-defense.” It found that the right of self-defense must be subjected to “the conditions of necessity
15 and proportionality [as] a rule of customary international law.” *See Legality of Threat or Use of*
16 *Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶¶ 40-41 (July 8). *See also Prosecutor v. Kordić*
17 *& Čerkez*, Case No. IT-95-14/2, Trial Judgement, ¶ 452 (Int’l Crim. Trib. for the Former Yugoslavia
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22 ⁴ See Report of the United Nations Fact Finding Mission on the Gaza Conflict (“Goldstone
23 Report”), ¶ 276, 12th Sess., Agenda Item 7 (Sept. 25, 2009), U.N. Doc. A/HRC/12/48; Report of the
24 Detailed Findings of the UN Independent International Commission of Inquiry established pursuant
25 to Human Rights Council Resolution S-21/1 (“2014 Assault Commission of Inquiry”), ¶ 30, 29th
26 Sess., Agenda Item 7 (June 22, 2015), U.N. Doc. A/HRC/29/CRP.4; Report of the Detailed Findings
27 of the UN Independent International Commission of Inquiry on the 2018 Protests in the Occupied
28 Palestinian Territory (“Great March of Return Commission of Inquiry”), ¶ 67, 40th Sess., Agenda Item
6 7 (Mar. 18, 2019), U.N. Doc. A/HRC/40/CRP.2; Report of the Independent International Commission
of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, ¶¶ 15-19, 50th
Sess., Agenda Item 2 (May 9, 2022), U.N. Doc. A/HRC/50/21. Israel also controls Gaza’s airspace,
maritime areas, telecommunications, water, electricity, sewage networks, population registry,
monetary market and customs. *See A/HRC/50/21*, ¶16.

1 Feb. 26, 2001) (emphasizing that under customary international law “military operations in self-
2 defense do not provide a justification for serious violations of international humanitarian law”).

3 58. Furthermore, Israel and often members of the international community use the term
4 “ Hamas ” without explanation or apparent limitations. Hamas (an acronym for “Islamic Resistance
5 Movement”) is a political party, serving as de facto governing authority in the Gaza Strip, where it
6 fulfills administrative governmental functions, such as running schools, the health sector, social
7 affairs, policing, and security. The civil servants who carry out such administrative functions are
8 civilians; separately, military groups associated with Hamas, such as the al Qassam Brigade, carried
9 out the October 7 attacks. However, as recognized under IHL, applicable to the international armed
10 conflict (occupation), a clear distinction must be drawn between the political wings and the military
11 wings of all organizations or groups. As such, a clear distinction must be drawn between those
12 members of Hamas who are carrying out solely civilian functions, who must never be targeted, and
13 those members who participate in armed resistance or directly participate in hostilities, who must
14 comply with IHL, including the prohibition on targeting civilians, and can be directly targeted under,
15 but only in accordance with, IHL. Moreover, civilians in Gaza must be granted the full protections of
16 international humanitarian law, irrespective of political affiliation.

17 59. On October 7, 2023, the military wing of Hamas launched a series of attacks outside
18 Gaza including direct attacks against civilians in predominantly residential areas, which killed
19 approximately 1,200 Israeli civilians and soldiers, and took approximately 240 civilian hostages and
20 military captives back into Gaza. The killing and abduction of civilians are serious crimes under
21 international law. These unlawful attacks cannot, however, justify the campaign against Palestinians
22 in Gaza as a policy of collective punishment, direct targeting and attack, and corresponding
23 international law violations of war crimes, crimes against humanity and, ultimately, genocide.
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1 60. Israel has also steadily subjected Palestinians in the West Bank including East
2 Jerusalem, which has also been under military occupation since 1967, to systematic dispossession and
3 displacement, killings, and collective punishment.

4 61. The Israeli policy of annexation in the West Bank has been marked by a steady,
5 incremental process of forcibly removing Palestinians and concentrating them into enclaves, while
6 transferring its own Israeli civilian population into occupied territory, in violation of Article 49 of the
7 Fourth Geneva Convention. Israel has seized approximately 250,000 acres of occupied Palestinian
8 land to be used for the exclusive use of Jewish (but not Palestinian) Israeli citizens. Human rights
9 organizations, journalists and United Nations bodies have extensively documented the combination of
10 administrative measures, discriminatory land regime and dispossession of land and resources, mass
11 detention, as well as state and settler violence over the past decades. In response to Palestinian protest
12 and uprisings to these intolerable conditions, the Israeli military has responded with massive military
13 repression, excessive force, killings and collective punishment
14

15 62. In 2023 alone, several Palestinian communities in the occupied West Bank were
16 forcibly displaced at alarming rates.
17

18 63. Between October 7 and November 12 2023, attacks on Palestinians in the occupied
19 West Bank have been surging, with at least 172 Palestinians killed, 2,586 injured and at least 1,149
20 forcibly displaced from their homes. Israeli soldiers have filmed themselves abusing, torturing and
21 humiliating Palestinians in the West Bank. Israeli settlers have killed at least eight Palestinians since
22 October 7, and injured 74 others. Israeli authorities have distributed hundreds of assault rifles to Israeli
23 settlers, and have sought 24,000 assault rifles from the United States to be distributed to Israeli police
24 as well as civilians. Israeli forces and settlers, accompanied by the military or wearing reserve
25 uniforms, have raided Palestinian villages at night and given them ultimatums to leave within 24 hours
26 or be killed, that they would do to them what they did to Gaza. Israeli settlers and Israeli forces have
27
28

1 also cut off Palestinian communities from vital resources like water and electricity, and stolen their
2 vehicles, making their lives unlivable.

3 64. In the villages in the Masafer Yatta area alone in the Southern West Bank, these assaults
4 on the Palestinian population are escalating at rapid speed: On October 20, in the village of Maktal
5 Msalam, armed settlers wearing military uniforms assaulted the head of the resident family and
6 ordered him to move his family by the next day. Three army jeeps followed and threatened to shoot
7 the family if they did not leave. The family moved that night. On October 23, all the families of the
8 community of ‘Atiriya left after several settler attacks, culminating in a nighttime threat to harm their
9 families if they did not leave within 24 hours. On October 28, Israeli settlers, some of whom were
10 wearing army uniforms, ransacked homes, cut off access to the water supply of the villages of Tuba
11 and Tha’la. Armed Israeli settlers, along with Israeli soldiers, reportedly threatened Palestinians in the
12 village of Khirbet Zanuta, giving them a 24-hour ultimatum to leave and telling them that if they failed
13 to leave, they will do to them what they’re doing to Gaza, including killing them and destroying their
14 homes. The next day, all 150 residents of the village packed their belongings and left, out of fear for
15 their lives. That evening, on October 28, Israel soldiers and settlers made the same threats to the village
16 of Susiya. On October 29, the community of A’nizan was also forcibly displaced due to intimidation
17 by settlers and soldiers. On October 30, settlers torched a home in the village of Tuba, and dozens of
18 settlers attacked the communities of Kh. a-Safai a-Tahta, and cut power cables to a home.

19 65. These threats are accompanied by calls for forcible transfer and deportation. Leaflets
20 have been distributed across the West Bank, particularly in the areas near the border with Jordan,
21 telling Palestinian communities to move to Jordan.

22
23
24 **II. EVIDENCE OF ISRAEL’S EMERGING GENOCIDE AGAINST PALESTINIANS IN**
25 **GAZA**
26

27 66. On October 7, after Hamas’s attacks, Israel launched its most recent, and already
28 deadliest, assault on Gaza and the 2.2 million Palestinians there. Since then, Israeli officials have made

1 statements evidencing an intent to destroy the Palestinian population in Gaza in whole or in part, of
2 which nearly half is children, including by creating conditions of life calculated to bring about the
3 population's destruction (in whole or in part). Senior Israeli officials, including the Prime Minister,
4 the President and the Minister of Defense, have used dehumanizing language including referring to
5 Palestinians as "human animals," and referred to the entire Palestinian population of Gaza, without
6 distinction between civilians and those directly participating in hostilities, as "the enemy" or
7 "terrorists," who need to "leave the world." These statements of intent have been accompanied by
8 affirmative acts to advance a genocide against the Palestinian people: mass killings and targeting of
9 civilian infrastructure, systemic collective punishment, forced expulsion, use of chemical weapons of
10 warfare, and deprivation of the most basic necessities of life.

11
12
13 **A. Israeli Officials Escalate Military Assault, Announcing Campaign of Erasure and
Destruction of Palestinians in Gaza.**

14 67. On October 7, Israeli Prime Minister Benjamin Netanyahu stated: "The enemy will pay
15 an unprecedented price," signaling the acts of genocide to follow, and directed at the Palestinian
16 population of Gaza as a whole and without distinction from Hamas militants. He ordered the more
17 than two million Palestinians in Gaza to "get out now" despite the fact that they have nowhere to go
18 due to Israel-imposed closures, threatening that "[Israel] will be everywhere and with all our might."

19
20 68. In addition to Netanyahu's announcement of an unprecedented military assault and the
21 mass forced expulsion of Gaza's civilians, Israel's Energy Minister Israel Katz announced an order
22 cutting off all electricity to the entire Gaza Strip. Signaling the intention of meting out catastrophic
23 damage, he said, "What was will not be."

24
25 69. Language calling for the elimination of large segments of Palestinians from Gaza was
26 echoed by elected officials. Ariel Kallner, a Member of the Knesset and Prime Minister Benjamin
27 Netanyahu's Likud, stated: "Right now, one goal: Nakba! A Nakba that will overshadow the Nakba
28

1 of 48. Nakba in Gaza and Nakba to anyone who dares to join!” Israeli Member of the Knesset Haim
2 Katz stated: “We need to deal a blow that hasn’t been seen in 50 years and take down Gaza.”

3 70. Immediately following these statements, Israeli forces launched airstrikes targeting and
4 destroying houses and multi-story buildings with residential units in Gaza.

5 71. Within the first day, Israel had killed at least 232 Palestinians, injured almost 1,700
6 others, and displaced at least 20,000.

7
8 **B. Israeli Officials Expand Calls for Collective Punishment of “Human Animals,”**
9 **Implement Use of Starvation and Dehydration as a Weapon of Warfare.**

10 72. On October 9, Israeli Minister of Defense Yoav Gallant referred to the Palestinian
11 population in Gaza as “human animals” and expanded on previous calls for collective punishment
12 through conditions that would cause serious physical harm, if not death, to Palestinians in Gaza. He
13 announced: “I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food,
14 no fuel, everything is closed,” and “We are fighting human animals and we are acting accordingly.”
15 As reported by the UN, the Minister also threatened to “bomb those attempting to provide
16 humanitarian aid to the Gaza Strip.”

17
18 73. That same day, Israel bombed the Rafah crossing at the Gaza-Egyptian border,
19 damaging the crossing and blockading Palestinians – from movement or supplies – in Gaza.

20 74. On October 10, Israel Defense Forces (IDF) spokesperson Daniel Hagari announced
21 that the Israeli military had already dropped “hundreds of tons of bombs,” adding that “the emphasis
22 is on damage and not on accuracy.” Israeli Major General Ghassan Alian, the head of the Coordinator
23 of Government Activities in the Territories (“COGAT”), explicitly stated the intention to destroy
24 Palestinian life in Gaza: “Human animals must be treated as such. There will be no electricity and
25 no water [in Gaza], there will only be destruction. You wanted hell, you will get hell.”

26
27 75. Not only did Israel continue to maintain the complete siege – including of water – on
28 Palestinians, but it also damaged infrastructure which exacerbated the consequences of the siege: the

1 UN warned that 400,000 Palestinians in Gaza did not have running water due to the damage
2 sustained by Israeli airstrikes and actions.

3 76. By October 10, the death toll rose to 830, including at least 140 children. At least 4,250
4 Palestinians had been injured.

5 77. Israel's attacks increasingly targeted and killed healthcare workers and journalists.
6 Specifically, by October 10, seven journalists were killed and the World Health Organization
7 documented 37 attacks on the healthcare workers and facilities, killing 6 healthcare workers and
8 injuring 8 others.
9

10 **C. Threatening to Eliminate Palestinians, Israel Advances Genocide Through Continued**
11 **Siege Blocking All Essential Necessities, Widescale Bombing, Use of Chemical**
12 **Weapons, and Forced Evacuation Orders.**

13 78. On October 11, as the death toll rose to at least 1,100, including at least 326 children,
14 IDF spokesperson Lieutenant Colonel Jonathan Conricus reported that the 300,000 reservists, as
15 well as “infantry, armored soldiers, artillery corps and many other soldiers from the reserves,” were
16 “close to the Gaza Strip,” threatening a ground invasion into the 25 mile-long stretch of land.

17 79. That day, Israeli forces intentionally targeted Palestinian Red Crescent Society
18 (“PCRS”) medical teams, killing at least four paramedics in less than half an hour despite the fact
19 that there had been prior coordination with the PRCS.
20

21 80. Also that day, Israel used white phosphorus in densely populated areas across Gaza, in
22 direct violation of international law. White phosphorus – a chemical weapon which ignites after
23 exposure to atmospheric oxygen – causes severe burns, sometimes to the bone, and is often fatal
24 even if exposed on only 10 percent of a human body.⁵ Even exposure to *fragments* of white
25

6 ⁵ *Questions and Answers on Israel's Use of White Phosphorus in Gaza and Lebanon*, Hum. Rts.
27 Watch (Oct. 12, 2023), <https://www.hrw.org/news/2023/10/12/questions-and-answers-israels-use-white-phosphorus-gaza-and-lebanon> (“Human Rights Watch verified videos taken in Lebanon and
28 Gaza on October 10 and 11, 2023, respectively, showing multiple airbursts of artillery-fired white

1 phosphorus, which can enter one’s bloodstream, can lead to organ failure. Wounds, when re-exposed
2 to oxygen after removal of dressings, can reignite.

3 81. It was also on October 11 that Gaza’s sole power plant shut down after its fuel ran out
4 under Israel’s siege over the entire Strip, resulting in the loss of electricity for over 2 million
5 Palestinians, except for those who had smaller generators.

6 82. Israel’s shutdown of Gaza’s electricity was particularly devastating for injured civilians
7 who had survived Israeli airstrikes and were in hospitals. The spokesperson for the Palestinian
8 Ministry of Health in Gaza warned that life-saving machines in hospitals were running on generators
9 and would “soon stop working,” causing mass Palestinian injuries and deaths.

10 83. On October 12, the Israeli military ordered the entire population of northern Gaza –
11 over one million people including UN staff and civilians sheltered in UN facilities – to “evacuate”
12 to southern Gaza within 24 hours, an order that spread terror and sought to effectuate forcible
13 transfer.
14
15



24 *Israel orders expulsion of 1.1 million Palestinians in north Gaza in 24 hours as ground invasion*
25 *looms, Mada Masr (Oct. 13, 2023), <https://www.madamasr.com/en/2023/10/13/news/u/israel->*

26
27
28 phosphorus over the Gaza City port and two rural locations along the Israel-Lebanon border, and interviewed two people who described an attack in Gaza.”).

1 [orders-expulsion-of-1-1-million-palestinians-in-north-gaza-in-24-hours-as-ground-invasion-looms-](#)
2 [2/](#).

3 84. Israeli Minister of Energy and Infrastructure Israel Katz, after Israel's previous threats
4 to bomb aid trucks from Egypt at least two days prior, affirmed Israel's continued blockade of
5 humanitarian assistance, with disregard for the serious bodily harm such action would cause to all
6 Palestinians, including the risk of death. Katz stated, "Humanitarian aid to Gaza? No electrical
7 switch will be turned on, no water hydrant will be opened and no fuel truck will enter until the Israeli
8 abductees are returned home. Humanitarianism for humanitarianism. And no one will preach us
9 morality [*sic*]."

10
11 85. In addition to announcing the complete siege of water, food, and electricity, Israeli
12 airstrikes targeted civilian infrastructure, further exacerbating the humanitarian catastrophe.

13 86. For example, as of October 12, Israeli forces hit seven water and sewage facilities
14 which more than one million people rely on, and over 2,500 housing units had become uninhabitable
15 due to severe damage or destruction.

16
17 87. Israel maintained its cessation of any and all humanitarian aid into Gaza for 10 more
18 days, even as 200 aid trucks carrying 3,000 tons of humanitarian aid awaited at or near Egypt's
19 Rafah crossing border for days. It was not until October 21 that Israel agreed to permit the first aid
20 convoy to enter Gaza, but only allowed 20 trucks to enter the southern part of Gaza. This failed to
21 meet the urgent needs of the population even under pre-October 7 standards when "about 500 trucks
22 a day were crossing into Gaza."

23
24 88. Further, on October 12 alone, Israeli forces killed 250 people, including 44 members
25 of the Shebab family – 16 of whom were children between the ages of 2 and 14. Ambulances,
26 including medical personnel, were targeted and killed during humanitarian missions to evacuate
27 Palestinians.
28

1 89. Within 24 hours, 338,000 Palestinians had been displaced across the Gaza Strip. 88
2 schools were struck by Israeli strikes, including 18 UNRWA schools and 70 Palestinian Authority
3 schools.

4 90. It was also on October 12 that the Israeli Air Force announced it had dropped an
5 estimated 6,000 bombs on Gaza since the start of the escalations on October 7, killing at least 1,537
6 Palestinians, 500 of whom were children, and injuring 6,612.

7 91. On October 13, Israeli President Isaac Herzog announced: “It is an entire nation out
8 there that is responsible. It is not true this rhetoric about civilians not being aware, not involved. It’s
9 absolutely not true.” Israel’s infantry released their first official account of ground raids into Gaza,
10 with Israeli Prime Minister Netanyahu declaring: “We are striking our enemies with unprecedented
11 might . . . I emphasise that *this is only the beginning*.”
12

13 92. On October 13, civilians evacuating from north Gaza to the south were killed on a road
14 identified as a “safe route.”
15

16 93. In the aftermath of one such incident, Al-Haq/Forensic Architecture Investigation Unit
17 and the BBC geolocated the site of an October 13 strike by aerial photos and social media posts,
18 revealing that at least 12 people, including women and children, were killed while traveling on Salah-
19 al-Din Road, one of the two roads that the Israeli army had previously identified as a “safe route”
20 south.
21

22 94. That same day, journalists in Gaza reported that Israeli forces “targeted ambulances,
23 cars, and buses” of people seeking safety. Many Palestinians thereafter feared heeding the Israeli
24 evacuation orders, deemed them a “trick” especially after the designated safe route was bombed, and
25 did not relocate.

6 95. Additionally, on October 13, Israeli Minister of Energy and Infrastructure Israel Katz
27 declared: “All the civilian population in [G]aza is ordered to leave immediately. We will win. They
28

1 will not receive a drop of water or a single battery *until they leave the world.*” Later, an official
2 document dated October 13 from the Israeli Ministry of Intelligence was leaked that assessed various
3 options for the fate of Palestinians in the Gaza Strip in the context of Israel’s attack; it ultimately
4 recommended the forcible and permanent transfer of all Palestinians from Gaza and into Egypt.
5

6 96. Current and previous Israeli government officials voiced acceptance of, if not support
7 for, the suffering it would cause the Palestinian population as a whole. For example, IDF
8 spokesperson Lt. Col. Conricus stated, “We will not allow anything into the Gaza [S]trip that
9 supports the fighting ability of Hamas. If it comes to the price of inconvenience for the population,
10 so be it.””

11 97. Meanwhile, on the same day, the Israeli army issued evacuation orders to 23 hospitals
12 in northern Gaza, which human rights and humanitarian organizations warned would result in the
13 utter collapse of Gaza’s healthcare system, describing it as a “death sentence” issued to those
14 suffering from serious injuries or illnesses.
15

16 98. The views of Israeli officials that Palestinians are not human and should be destroyed
17 were promoted by the 95-year old Israeli army reservist Ezra Yachin, who was reportedly called for
18 his reserve duty to “boost morale” ahead of any ground incursions. While dressed in military
19 fatigues, he declared in a clip widely circulated on social media, speaking to other soldiers in
20 statements aimed at inciting others to act:
21

22 Be triumphant and finish them off and don’t leave anyone behind. Erase
23 the memory of them. *Erase them, their families, mothers and children.*
24 *These animals can no longer live. . . .* Every Jew with a weapon should
25 go out and kill them. If you have an Arab neighbour, don’t wait, go to
26 his home and shoot him. . . . We want to invade, not like before, *we want*
27 *to enter and destroy what’s in front of us, and destroy houses, then*
28 *destroy the one after it.* With all of our forces, complete destruction,
enter and destroy. As you can see, we will witness things we’ve never
dreamed of. *Let them drop bombs on them and erase them.*” (emphases
added).

1 Yachin was a member of the Zionist Lehi unit, which in April 1948 was involved in the Deir Yassin
2 massacre where Zionist militias killed more than 100 Palestinians including children.

3 99. That same day, Israeli Defense Minister Gallant stated: “*Gaza won’t return to what it*
4 *was before. We will eliminate everything.* If it doesn’t take one day, it will take a week. It will take
5 weeks or even months. We will reach all places.”

6 100. On October 14, Israeli Minister Gideon Sa’ar, who was newly appointed by Prime
7 Minister Netanyahu to the country’s emergency war cabinet, stated in an interview on Israel’s
8 Channel 12 News that the Gaza Strip “must be smaller at the end of the war” and, evincing both
9 intention and no fear in announcing that intention to the international community, that “we must
10 make the end of our campaign clear to everyone around us.”

11 101. It was further reported on October 14 that Tzipi Navon, a close adviser and office
12 manager for Prime Minister Netanyahu’s wife, Sara Netanyahu, publicly called on Israel to torture
13 Palestinians in Gaza: “We keep saying to flatten Gaza, flatten Gaza, and I think that’s not enough . .
14 . It won’t calm the storm of emotions, it won’t dull the intensity of the rage and pain that can’t find
15 an outlet for them.” She proposed that “*the people of Gaza should be captured and tortured ‘one-*
16 *by-one’ by pulling out their nails and skinning them alive*” and that men’s genitals should be cut off,
17 fried, and fed to the captured.

18 102. By October 14, Israeli forces had killed at least 2,370 Palestinians including at least
19 721 children and 390 women.

20 103. On that day, Euro-Med Human Rights Monitor reported that Israel was killing at least
21 14 Palestinians every hour. Israel had annihilated 45 Palestinian family lines by killing all the living
22 generations of those families and, according to the Gaza Health Ministry, wiping them entirely from
23 the Gaza Civil Registry.
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1 104. On October 15, as Israeli airstrikes killed over 2,670 Palestinians, including 724
2 children, Prime Minister Netanyahu stated that the entire nation is behind Israel’s soldiers, who
3 “understand the scope of the mission” and stand ready “to defeat the bloodthirsty monsters who have
4 risen against [Israel] to destroy us.”
5

6 105. By this date, health officials in Gaza City were storing bodies in ice cream freezer
7 trucks as they prepared to dig mass graves to accommodate all the bodies.

8 106. It was further reported by the Gaza Health Ministry that between October 7 and October
9 15, 9,600 Palestinians had been injured.⁶ According to UNRWA, nearly 1 million had been
10 displaced.

11 107. On October 16, the death count of Palestinian children surpassed 1,000, and Israeli
12 Prime Minister Netanyahu appeared to justify the mass killings of children, stating: “This is a
13 struggle between the children of light and the children of darkness, between humanity and the law
14 of the jungle.” As Israel continued to subject Palestinians in Gaza to a complete siege, UNRWA
15 cautioned that “concerns over dehydration and waterborne diseases are high given the collapse of
16 water and sanitation services, including today’s shutdown of Gaza’s last functioning seawater
17 desalination plant.”
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22 ⁶ 724 Palestinian children killed in Gaza as Israel targets civilians, DCI-Palestine (Oct. 14,
23 2023), [https://www.dci-
24 palestine.org/724_palestinian_children_killed_in_gaza_as_israel_targets_civilians](https://www.dci-palestine.org/724_palestinian_children_killed_in_gaza_as_israel_targets_civilians); Gaza: 2,670
25 Palestinians killed, since the start of escalation on the morning of 7 October, and 9,600 citizens were
26 injured, Palestinian Ministry of Health (Oct. 15, 2023), [https://www.moh.gov.ps/portal/gaza-2670-
27 palestinians-killed-since-the-start-of-escalation-on-the-morning-of-7-october-and-9600-citizens-
28 were-injured/](https://www.moh.gov.ps/portal/gaza-2670-palestinians-killed-since-the-start-of-escalation-on-the-morning-of-7-october-and-9600-citizens-were-injured/); Nidal Al-Mughrabi & Emily Rose, *Israel vows to demolish Hamas as troops prepare
to move on shattered Gaza*, Reuters (Oct. 15, 2023), [https://www.reuters.com/world/middle-east/gaza-
braces-israeli-ground-assault-fears-conflict-spreading-grow-2023-10-15/](https://www.reuters.com/world/middle-east/gaza-braces-israeli-ground-assault-fears-conflict-spreading-grow-2023-10-15/); Yakoota Al Ahmad, *Over
last week, Israel killed 47 families in Gaza made up of 500 Palestinians: News agency*, AA (Oct. 15,
2023), [https://www.aa.com.tr/en/middle-east/over-last-week-israel-killed-47-families-in-gaza-made-
up-of-500-palestinians-news-agency/3020636](https://www.aa.com.tr/en/middle-east/over-last-week-israel-killed-47-families-in-gaza-made-up-of-500-palestinians-news-agency/3020636).

1 108. By this date, Israeli hostilities had killed at least 2,670, and injured 9,600. 1,000 were
2 reported to be missing – believed to be buried under rubble.

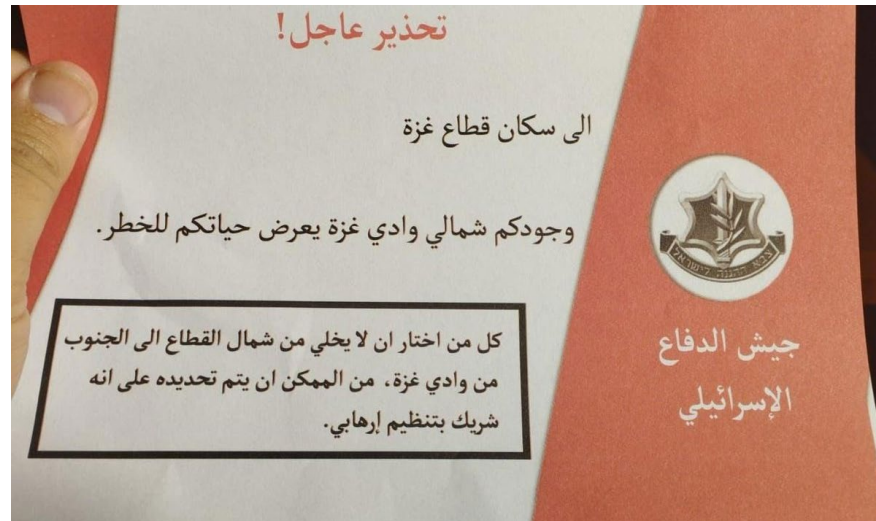
3 109. Despite Israel’s October 12 order for Palestinians in Gaza to evacuate to southern Gaza,
4 Israeli Air Forces continued striking Khan Yunis and other southern areas. According to one resident
5 in Khan Yunis: “We were inside the house when we found bodies scattering, flying in the air - bodies
6 of children who have nothing to do with the war.”

8 110. On October 17, Al-Ahli Baptist Hospital was struck, killing 471 Palestinians.

9 111. On October 19, Israeli Defense Minister Gallant maintained Israel’s plans to advance
10 hostilities and conduct a ground incursion, telling Israeli soldiers: “You see Gaza now from a
11 distance, you will soon see it from the inside. The command will come.”

12 112. On October 19, an Israeli airstrike damaged the Church of Saint Porphyrius, where at
13 least 500 Palestinians were seeking shelter, killing at least 18 people. The Church was built in 1150
14 and is believed to be the oldest remaining active church in Gaza and the third oldest church in the
15 world.

17 113. On October 21, Israeli forces dropped “urgent warning” leaflets into Gaza, warning
18 Palestinians that “anyone who chooses not to leave from the north of the [Gaza] Strip to south of
19 Wadi Gaza may be determined an accomplice in a terrorist organization,” affirming prior statements
20 made by Israeli officials announcing indiscriminately “eliminat[ing]” Palestinians.
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10 *Israel/OPT: Israeli army threats ordering residents of northern Gaza to leave may amount to war*
11 *crimes*, Amnesty Int’l (Oct. 25, 2023), [https://www.amnesty.org/en/latest/news/2023/10/](https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israeli-army-threats-ordering-residents-of-northern-gaza-to-leave-may-amount-to-war-crimes/)
12 [israel-opt-israeli-army-threats-ordering-residents-of-northern-gaza-to-leave-may-amount-to-war-](https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israeli-army-threats-ordering-residents-of-northern-gaza-to-leave-may-amount-to-war-crimes/)
13 [crimes/](https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israeli-army-threats-ordering-residents-of-northern-gaza-to-leave-may-amount-to-war-crimes/) (image via Twitter/X).

14
15 **D. Israel’s Deliberate Targeting of Hospitals and Disruption of Life-Saving Services,**
16 **Despite Warnings of Fatalities to Newborns in Incubators, ICU Patients, Thousands**
17 **of Pregnant People, and Others.**

18 114. On or around October 21, Israeli Minister of Economy Nir Barkat issued a threat to
19 neighboring nations: “Israel has a very clear message to our enemies. We are saying to them, look
20 what’s happening in Gaza—you are going to get the same treatment if you attack us. *We are going*
21 *to wipe you off the face of the Earth.*”

22 115. These threats were made as hospitals in Gaza faced near collapse due to shortages of
23 electricity, medical treatment and equipment, and damage and destruction from continued
24 bombardment.

25 116. According to the Director General of the Gaza Health Ministry Dr. Medhat Abbas,
26 doctors have been forced to “operat[e] on some patients in the corridors of the hospitals,” without
27
28

1 anesthesia, and using “the light of the mobile phones.” Vinegar has been used to treat infected
2 wounds.

3 117. On October 23, the Health Ministry of Gaza announced that 12 hospitals and 32 health
4 centers in Gaza were put out of service, including the Indonesian Hospital, which faced disruption
5 of vital facilities due to the power outage.

6 118. On October 24, the Health Ministry warned: “We have less than 48 hours before all
7 electric generators in hospitals run out of fuel.”

8 119. According to the World Health Organization, the lack of fuel caused the partial closing
9 of Gaza’s only oncology hospital – the Turkish Friendship Hospital – placing about 2,000 cancer
10 patients at risk.

11 120. One day later, on October 25, Al-Shifa Hospital – the largest hospital in Gaza –
12 announced that it would run out of fuel that same day, or, at the latest, the next day. The Director of
13 Gaza’s Health Ministry warned: “We have 130 premature (newborns) [in] incubators. If we lose
14 electricity, all will die” within 5 minutes, along with the 120 patients in the Intensive Care Unit.

15 121. On October 26, electricity to Al-Shifa Hospital – which was housing 60,000
16 Palestinians – was entirely cut off.

17 122. The closure of hospitals presents grave risks and consequences impacting births. At
18 least 50,000 pregnant people in Gaza are deprived of essential health services, 5,000 of whom are
19 expected to give birth within the next month. There have already been cases of pregnant people
20 forced to give birth in UN-run schools operating as a shelter for tens of thousands of displaced
21 Palestinians, while others have been killed or suffered miscarriages, including because of exposure
22 to white phosphorus.

23 123. The UN Population Fund (UNFPA) prepared emergency delivery kits for parents who
24 are unable to reach a healthcare facility: “Each resealable plastic bag holds one bar of soap, a plastic
25

1 sheet measuring about 40 inches by 40 inches, a pair of scissors for cutting the umbilical cord, three
2 pieces of umbilical tape, two cotton cloths for cleaning and covering the mother and child, a pair of
3 latex exam gloves and an instruction pamphlet to guide women through their deliveries.”

4 124. The emergency kits were at a standstill for days, with hundreds of other life-saving aid
5 awaiting permission to enter Gaza.
6

7 125. As of October 26, 7,028 people were killed, 2,913 of whom were children.

8 **E. Israel Imposes Near-Total Blackout on Palestinians in Gaza and Advances Ground**
9 **Incursion, Increasing Death Toll to 8,000.**

10 126. On October 27, Israel’s complete siege disrupted services of internet providers and cell
11 towers and airstrikes continuously damaged telecommunication infrastructures, leaving the entire
12 population of Gaza – some 2.2 million Palestinians – cut off from almost all landline, cellular, and
13 internet communications.

14 127. At about 6 p.m. that day, OCHA indicated that “contact with the Gaza Strip has been
15 cut off, following the shutdown of landlines, cellular and internet services.”
16

17 128. Health and rescue teams, such as the Palestine Red Crescent Society “completely lost
18 contact with the operations room[s] in Gaza and all [their] teams operating there.”

19 129. The blackout undoubtedly disrupted, if not made impossible, emergency medical
20 services, including access to the emergency ‘101’ number, which dispatches ambulance vehicles to
21 wounded Palestinians. Ambulances could not rescue people from underneath the rubble, and people
22 could not receive information on where to access humanitarian aid, or where they would be in less
23 danger of Israeli bombardment.
24

25 130. It was also on October 27 that Israel released statements that “ Hamas terrorists operate
6 inside and under . . . hospitals in Gaza,” and in particular, Al-Shifa Hospital, signaling what could
27 be a systemic campaign targeting hospitals where tens of thousands were seeking refuge.
28

1 131. Israeli military spokesman Rear Adm. Daniel Hagari announced Israel’s ground
2 incursion in Gaza, stating the military was “expanding [its] activity” in Gaza and “acting with great
3 force . . . to achieve the objectives of the war.”

4 132. On the evening of October 27, as the latest reports placed the death toll at 7,300, with
5 17,439 injured, and as the entire besieged enclave lost connectivity with one another, Israel
6 proceeded with its ground incursion of Gaza.

7 133. On this same day, violence in the occupied West Bank by Israeli forces and Israeli
8 settlers increased significantly. Anonymous leaflets threatening Palestinians of a massacre
9 comparable to the Nakba were distributed: “You wanted a Nakba like in 1948 and we will bring
10 down on you a great catastrophe soon. . . . [This is your] last chance to flee to Jordan in an orderly
11 fashion before we forcefully expel you from our holy lands bequeathed to us by God.”

12 134. According to a spokesperson for the Gaza Health Ministry, Ashraf al-Qidra, after
13 communication services were reinstated, ambulance and civil defense teams discovered hundreds of
14 bodies of those killed and wounded – lying on the ground or trapped under rubble.”

15 135. On October 28, the total death toll by Israeli airstrikes since October 7 reached more
16 than 7,700, including at least 3,195 children, with 19,740 injured.

17 136. On October 29, as the number of people killed by Israel in Gaza rose to 8,000, Prime
18 Minister Netanyahu invoked the story of Amalek in the Bible to justify Israel’s assault on Gaza,
19 stating, “You must remember what Amalek has done to you, says our Holy Bible, and we do
20 remember, and we are fighting.” In the Bible, God commands the extermination of Amalekite men,
21 women, children, and animals, and this commandment has been described by one scholar as
22 “divinely mandated genocide.”
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1 143. By this date, the Euro-Med Human Rights Monitor reported that “Israel has dropped
2 more than 25,000 tons of explosives on the Gaza Strip” since October 7, “equivalent to two nuclear
3 bombs.”

4 144. Between October 7 and November 2, the death toll rose to 9,376, including 3,912
5 children and 2,213 women. At least 2,176 were reportedly under rubble. An estimated 1.5 million
6 Palestinians had been displaced.

7 145. On November 3, Prime Minister Netanyahu invoked, once again, the Biblical story of
8 Amalek, *see supra* ¶ 136, and reiterated the “war” between light and darkness he first referenced on
9 October 16, *see supra* ¶ 107: “This is the war between the sons of light and the sons of darkness. We
10 will not let up on our mission until the light overcomes the darkness – the good will defeat the
11 extreme evil that threatens us and the entire world.”

12 146. Hours later that same day, Israeli forces coordinated attacks on or near three hospitals
13 in Gaza, bombing the Al-Shifa, Al-Quds, and the Indonesian Hospital, including a convoy of
14 ambulances outside Al-Shifa Hospital transporting wounded Palestinians, killing 15 and injuring at
15 least 60 others.

16 147. On November 4, Israeli forces targeted Al-Nasr Children’s Hospital, striking the
17 entrance, and struck the power generator of Al-Wafa Hospital.

18 148. On November 5, Israeli Minister of Heritage Eliyahu, after asserting in a radio
19 interview that “there are no non-combatants in Gaza,” stated that providing humanitarian aid to Gaza
20 would constitute “a failure,” and that a nuclear attack on the Gaza Strip would be an option.

21 149. The Municipality of Beit Lahia, which is in northern Gaza, reported Israeli forces
22 striking critical infrastructure, including a water well and reservoir which provides for 70,000
23 Palestinians. According to Euro-Med Human Rights Monitor, Israeli forces also attacked electrical
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1 generators and solar energy units which restaurants and other commercial facilities are dependent
2 on, as well as flour stores, bakeries, and fishermen's boats.

3 150. That same day, Israeli military chief spokesman Rear Adm. Hagari, in an evening
4 briefing, announced "a large attack on terrorist infrastructure both below and above ground," as
5 Israel imposed the entire besieged territory to its third widespread blackout which lasted
6 approximately 15 hours and once again cut off civilians from contacting emergency medical services
7 including hospitals and ambulances.

8
9 151. By November 5, OCHA reported that at least 9,770 Palestinians had been killed,
10 including 4,008 children and 2,550 women; 2,260 others were reportedly missing, including 1,270
11 children, the majority of whom "were presumed to be trapped under rubble."

12
13 152. Overnight between November 5 and 6, Israeli airstrikes targeted the killing of
14 Palestinian journalist Mohammad Abu Hasira in his home, killing him and 42 of his family members.

15 153. On November 6, The Guardian detailed the consequences of unsanitary medical
16 conditions as revealed by Dr. Tayseer Hassan, a surgeon at the Indonesian Hospital in Gaza:
17 "Nothing is clean, nothing is sterile. The whole hospital is full of blood and insects." Palestinians
18 who survived airstrikes or were retrieved from under the rubble arrived "scratched and bleeding"
19 and surgeries were done while "injuries [were] covered with flies." Dr. Marwan Abusada, head of
20 surgery at Al-Shifa Hospital, reaffirmed this, stating that a "type of worm" was seen to emerge after
21 a day and "cover[] the wounds after the surgery."

22
23 154. On November 8, 50,000 Palestinians "evacuat[ed]" from the north to the south of Gaza
24 through a "corridor" opened by the Israeli military. While the majority of Palestinians were traveling
25 by foot, those who used vehicles were forced to abandon them. Ultimately, evacuees traveled
26 between 4 to 20 kilometers.



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10 Emanuel Fabian, *Thousands of Gazans use humanitarian corridor to move south as IDF presses*
11 *offensive*, Times of Isr. (Nov. 8, 2023), [https://www.timesofisrael.com/thousands-of-gazans-use-](https://www.timesofisrael.com/thousands-of-gazans-use-humanitarian-corridor-to-move-south-as-idf-presses-offensive/)
12 [humanitarian-corridor-to-move-south-as-idf-presses-offensive/](https://www.timesofisrael.com/thousands-of-gazans-use-humanitarian-corridor-to-move-south-as-idf-presses-offensive/) (photo by Mohammed Abed, AFP).

13 155. One Palestinian informed OCHA observers:

14 I've come from Gaza city. I've come with tens of my family members,
15 sisters, brothers, children, aunts, and cousins. My aunt is old and in a
16 wheelchair. We managed to find transportation to drop us at the Kuwaiti
17 roundabout and had to walk for about two hours. I saw a lot of damage
18 on my way, I saw Israeli tanks and soldiers positioned at the eastern side
19 of the road, near Netzarim, and they did not approach us. I saw a few
20 dead bodies and body parts on the road. We had already been displaced
21 inside one of the schools [in the north] and had to evacuate again due to
22 the intensity of the bombardments. We couldn't stay any longer.

23 156. As of November 8, one month from the start of Israel's most recent military campaign,
24 siege, and multi-pronged attack against Palestinians in Gaza, 10,569 Palestinians had been killed,
25 including 4,324 children and 2,823 women. At least 26,475 Palestinians had been injured.

26 157. On November 9, the day after OCHA reported 32 Palestinian journalists from Gaza
27 had been killed since October 7, former Israeli Defense Minister and War Cabinet Minister Benny
28 Gantz stated, "Journalists found to have known about the massacre, and still chose to stand as idle

1 bystanders while children were slaughtered - are no different from terrorists and should be treated
2 as such.”

3 158. OCHA reported that the vicinity around Al Shifa Hospital was hit five times, damaging
4 the maternity ward, and buildings surrounding the Indonesian Hospital were repeatedly struck,
5 resulting in fatalities and injuries at both locations. The Nasser Rantisi Pediatric Cancer Hospital,
6 which was directly hit, was reportedly set on fire and damaged.

7
8 159. On November 10, the vicinity around Al Awda Hospital in Jabalia and Al Quds
9 Hospital in Gaza City was bombarded. The Intensive Care Unit Al Quds was damaged. As of this
10 date, 20 of 36 hospitals in Gaza were no longer functioning.

11 160. As concerns of malnutrition and starvation increase, the World Food Programme
12 (“WFP”) reported: “Out of 23 bakeries supported by WFP, only one survives. Together they served
13 200,000 people. Now there is only enough bread for 20,000 people.”
14

15 **G. As Israel Continues Its Campaign of Genocidal Acts Against Palestinians, the**
16 **Palestinian Death Toll Rises to 11,078.**

17 161. As of November 10, from the start of Israel’s most recent military campaign, siege, and
18 multi-pronged attack against Palestinians in Gaza, 11,078 Palestinians have been killed, including
19 4,506 children and 3,027 women.

20 162. One Palestinian child is killed every ten minutes.

21 163. At least 35 Palestinian journalists from Gaza have been killed.

22 164. At least 27,490 Palestinians have been injured and about 1.6 million have been
23 displaced.
24

25 165. In addition to the deliberate targeting and killing of civilians, Israel’s wholesale and
26 indiscriminate bombing of Gaza has:
27
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- 1 a. completely destroyed over 41,000 housing units and partially destroyed over 222,000
- 2 - the New York Times reported on November 7 that one-third of all buildings in
- 3 northern Gaza had been destroyed;
- 4
- 5 b. attacked 135 health facilities and at least 21 hospitals and 47 health care centers are
- 6 reportedly out of service; and
- 7
- 8 c. damaged 279 education facilities, 67 mosques, and at least 3 churches.

8 **III. UNITED STATES' FAILURE TO EXERCISE ITS INFLUENCE OVER ISRAEL TO**
9 **PREVENT GENOCIDE AND ITS COMPLICITY IN GENOCIDE**

10 166. Under international law, the United States has a duty to take all measures available to
11 it to prevent a genocide. Yet, Defendants have repeatedly refused to use their obvious and
12 considerable influence to set conditions or place limits on Israel's massive bombing and total siege
13 of Gaza. They have done so despite escalating evidence of Israeli policies directed at inflicting mass
14 harm to the Palestinian population in Gaza, including the creation of conditions of life calculated to
15 bring about their physical destruction through a total siege, and even in the face of mounting deaths
16 including of thousands of children. U.S. officials did not even call for a life-saving ceasefire and
17 lifting of the siege, even vetoing United Nations measures calling for a ceasefire, in the face of
18 overwhelming international support for one. Instead, their actions to fund, arm, and endorse Israel's
19 devastating bombing campaign and total siege of the Palestinians in Gaza constitutes a failure to
20 prevent an unfolding genocide and complicity in its development.

22 **A. The United States' Historically Close Relationship with and Influence over Israel.**

23 167. The United States exercises significant influence over Israel, in no small part due to
24 their historically close relationship and unparalleled U.S. support for Israel's military,⁷ which the
25 United States has maintained despite Israel's persistent violations of international law.
6

27 _____
28 ⁷ Jeremy M. Sharp, Cong. Rsch. Serv., U.S. Foreign Aid to Israel (Mar. 1, 2023),
<https://sgp.fas.org/crs/mideast/RL33222.pdf>.

1 168. As of 2022, U.S. foreign assistance represents about 16% of Israel’s military budget.
2 Since 1946, the United States has sent \$260 billion (inflation-adjusted) dollars in military and
3 economic assistance to Israel, intended to maintain Israel’s “qualitative military edge” over others
4 in the region. *See* 22 U.S.C. § 2776(h). In 2016, the United States pledged \$38 billion in military
5 assistance to Israel over the 10-year period between 2019-2028.
6

7 169. Israel enjoys special access to U.S. weapons. For example, Israel can request access in
8 emergency situations to a U.S. weapon stockpile located in Israel, including missiles, of precision-
9 guided munitions, armored vehicles, and artillery ammunition, which as of March 2023, was valued
10 at up to \$4.4 billion. Israel also receives U.S. military equipment that is outdated or excess at
11 discounted rates or no charge.
12

13 170. Israeli warplanes are entirely US-sourced. For example, Israel has purchased fifty F-35
14 jets produced by Lockheed Martin under the Joint Strike Fighter Program, and Israel and Singapore
15 are the only countries that participate in the program outside of the seven U.S. allies that contribute
16 funding for it. Similarly, Israel is the only country other than Japan to have been approved by the
17 United States to purchase KC-46A Pegasus aerial tankers developed by Boeing.
18

19 171. The United States further provides political and diplomatic cover to Israel. It has
20 consistently used its veto power to block or threaten to block United Nations Security Council
21 resolutions critical of Israeli human rights and international law violations, and it has also
22 undermined accountability for Israel’s violations of international law in other international fora, as
23 well as in United States courts, even when sought by United States citizens killed by Israel.⁸
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⁸ *See* Brief of the United States as Amici Curiae in Support of Affirmance, *Corrie v. Caterpillar, Inc.*, 503 F.3d 974 (9th Cir. 2007) (No. 05-36210); Brief of the United States as Amici Curiae in Support of Affirmance, *Dögan v. Barak*, 932 F.3d 888 (9th Cir. 2019) (No. 16-56704).

1 **B. Israel Announces Genocidal Assault on and Siege of Gaza; Defendants Express their**
2 **Unconditional Support and Begin Close Coordination with Israeli Officials.**

3 172. The United States’ support of Israel has continued, unequivocally and unconditionally,
4 since October 7. In the immediate aftermath of Israel declaring its assault on Gaza, Defendants
5 Biden, Blinken and Austin began meeting regularly and coordinating with Israeli officials and
6 expressing their unrestrained support. This coordination and support has persisted and intensified
7 throughout Israel’s unrestrained bombardment of and siege on Gaza.

8 173. On October 7, the day that Netanyahu ordered more than two million Palestinians in
9 Gaza to “get out now” and Israel’s Energy Minister Katz announced the complete cut off of
10 electricity to all Palestinians in Gaza, Defendant Biden affirmed that the United States “stand[s]
11 ready to offer all appropriate means of support to the Government and people of Israel,” and
12 declared, “[m]y Administration’s support for Israel’s security is rock solid and unwavering.”

13 174. On October 8, the White House released a readout of Vice President Kamala Harris’s
14 call with President Herzog, reporting: “The Vice President underscored that the United States’
15 commitment to Israel’s security is unwavering. The Vice President reiterated our commitment to
16 provide Israel all appropriate means of support.”

17 175. On October 9, Defendant Biden, along with other leaders of Western allies – France,
18 Germany, Italy, and the United Kingdom – released a statement of support and encouragement to
19 Israel declaring their commitment to remain “united and coordinated . . . to ensure Israel is able to
20 defend itself, and to ultimately set the conditions for a peaceful and integrated Middle East region.”
21 This statement came on the same day that Israeli Defense Minister Gallant declared, in a widely
22 reported statement, that “[t]here will be no electricity, no food, no fuel, everything is closed. We are
23 fighting human animals and we are acting accordingly.”
24 6

25 176. On October 10, with the knowledge of Israeli Defense Minister Gallant and other Israeli
26 officials’ dehumanization of Palestinians in Gaza and declaration that all residents of Gaza would
27 28

1 be deprived of basic necessities of life, and the killing of 830 people, including at least 140 children
2 by Israeli airstrikes, Defendant Biden reasserted that the United States “will make sure Israel has
3 what it needs to take care of its citizens, defend itself, and respond to this attack.”

4
5 177. On that same day, when Department of State spokesperson Matthew Miller was asked
6 about the large number of Palestinians killed and whether the United States will “call on Israel to
7 cease its . . . effort now in cutting off medicine, water, humanitarian aid [and electricity]” to Gaza,
8 he spoke approvingly of Israel’s response: “Israel has a right to conduct an aggressive response to
9 respond to the terrorism that’s been committed against its citizens. We expect them to follow
10 international law, we believe that they will, and we will remain in close contact with them about it.”

11
12 178. On the morning of October 11, the White House reported that Defendant Biden and
13 “Vice President Harris spoke with Prime Minister Netanyahu to discuss ongoing U.S. support for
14 Israel as Israel defends itself and protects its people.”

15
16 179. By October 12, it was widely reported that Israeli airstrikes in Gaza had killed 1,537
17 Palestinians, including 500 children. UN experts issued a press release warning that Israel’s attacks
18 on Gaza constituted “collective punishment,” condemning the “appalling language” of the Israeli
19 Defense Minister “that dehumanizes the Palestinian people,” and urging a ceasefire. That same day,
20 on a trip to Israel where Defendant Blinken held public and private meetings with Israeli officials
21 about the ongoing assault on Gaza, he reaffirmed U.S. assistance, stating that the United States “will
22 always be there, by your side.” Reflecting the close coordination and planning regarding Israel’s
23 operation, Defendant Blinken added that this message was delivered by Defendant Biden to Prime
24 Minister Netanyahu “from the moment this crisis began,” and communicated to Israeli counterparts
25 “on a daily—even an hourly—basis.”

6
7 180. By the next day, Israel had ordered the evacuation of 1.1 million Palestinian residents
8 of Northern Gaza.

1 181. Defendants have continued to express their unequivocal support for Israel’s siege of
2 and attack on Gaza, blocking efforts to stop it, while coordinating with Israel closely on military
3 strategy and providing it with unconditional military and diplomatic support.

4 **C. Defendants Pledge and Provide Military Financial Assistance and Equipment for Israel’s**
5 **Assault on Gaza.**

6 182. Since October 7, Defendants have provided Israel with unconditional military financial
7 assistance, equipment, and personnel to support and further its assault on Gaza. Such assistance is
8 additional to the significant military assistance, equipment and munitions set forth in Section III(A).
9 The munitions killing Palestinians in the Gaza Strip are overwhelmingly American-made.

10
11 183. On October 8, Defendant Austin announced that the United States “will be rapidly
12 providing the Israel Defense Forces with additional equipment and resources, including munitions,”
13 that will “begin moving today and arriving in the coming days.” He further reaffirmed that
14 “[s]trengthening our joint force posture, in addition to the materiel support that we will rapidly
15 provide to Israel, underscores the United States’ ironclad support for the Israel Defense Forces and
16 the Israeli people.”

17
18 184. Defendants Biden, Blinken and Austin quickly made good on this promise, despite IDF
19 spokesperson Daniel Hagari’s revelation on October 10 that the Israeli military’s “emphasis [was]
20 on damage and not on accuracy.” That same day, Boeing accelerated delivery of 1,000 small
21 diameter bombs which were reported to have been flown from a U.S. Air Force base to Israel.

22
23 185. By at least October 9, if not earlier, white phosphorus artillery shells with U.S.
24 Department of Defense identification codes had been positioned in Sderot, outside Gaza. On October
25 11, Israel dropped white phosphorus bombs in densely-populated areas across Gaza, on the same
26 day that the first planes carrying ammunition from the United States for use in Gaza were reported
27 to have landed in Israel.

1 186. On October 12, the Israeli Air Force announced it had already dropped an estimated
2 6,000 bombs on Gaza since October 7. Still that day, the Pentagon confirmed that it had shipped
3 munitions and interceptors to Israel, and that it was “consulting with Israelis” on providing them
4 Joint Direct Attack Munitions (JDAMs) and small diameter bombs.
5

6 187. That same day, Defendant Biden also confirmed reports of arms transfers for use in the
7 assault on Gaza, stating that the United States’ material support to Israel includes “supplying
8 ammunition, interceptors to replenish Israel’s Iron Dome, alongside other defense material,” with
9 the first shipment of support having already arrived. Defendant Austin also affirmed continued
10 assistance and encouragement: “[o]ur support for Israel is rock solid. We’re working urgently to get
11 Israel what it needs . . . including munitions and Iron Dome interceptors.”
12

13 188. In response to a question from a reporter about whether the United States would
14 withhold military aid to Israel—which by this point had cut off food, water, electricity, and fuel to
15 Gaza—until it created a humanitarian corridor, White House National Security Council Coordinator
16 John Kirby responded: “We are providing [Israel] military aid as we speak. So, no, there’s no plans
17 of — of holding back military assistance. We wouldn’t do that. The President has been talking now
18 for three days about how we’re going to keep giving them the capabilities that they need.” Later,
19 Kirby stated that the U.S. is “actively having conversations with the Israelis and the Egyptians about
20 a safe passage corridor so that people who want to leave can leave,” and having “conversations”
21 about humanitarian goods.
22

23 189. By October 13, Israeli airstrikes had killed at least 1,900 people in Gaza. That day,
24 Defendant Austin traveled to Israel, where he held meetings with Prime Minister Benjamin
25 Netanyahu, Israeli Minister of Defense Gallant, and the Israeli War Cabinet. In a joint press
6 conference with Gallant, and with knowledge of his widely reported comments that Palestinians in
27 Gaza were “human animals” having all basic necessities withheld by Israel, Defendant Austin stated
28

1 that the United States was prepared to deploy additional military assistance to Israel, further
2 explaining that “munitions, air defense capabilities and other equipment and resources” were already
3 “rapidly flowing.” At that press conference with Defendant Austin, Gallant confirmed:

4 I briefed the secretary on strategic developments in our region, and the
5 chief of staff together with the IDF leadership shared our operations.
6 Defense cooperation and U.S. support in the Pentagon, in the White
7 House, in the Congress ensure freedom of operation and enforce our
8 capabilities. In fact, today we will receive the second aircraft carrying
9 essential munition to the IDF. U.S. deployment of assets on land, in air
and at sea sends a strong message to both partners and enemies in the
region. On behalf of Israel’s defense establishment and on behalf of our
citizens, Mr. Secretary, thank you very much.

10 190. On October 14, the day that Israeli Minister Gideon Sa’ar revealed in a public news
11 broadcast Israel’s intent to ensure that the Gaza strip “must be smaller at the end of the war,”
12 Defendant Biden “spoke with Prime Minister Netanyahu to reiterate unwavering U.S. support for
13 Israel.”

14 191. This was also the day that UN experts issued another press release warning that “[t]here
15 is a grave danger that what we are witnessing may be a repeat of the 1948 Nakba, and the 1967
16 Naksa, yet on a larger scale Again, in the name of self-defence, Israel is seeking to justify what
17 would amount to ethnic cleansing.” The experts alerted UN member states of their “responsibility
18 to prevent and protect populations from atrocity crimes,” and called on them to “urgently mediate a
19 ceasefire.”

20 192. The same day, the Pentagon announced the deployment of a second carrier strike group,
21 the USS Dwight D. Eisenhower Strike Group, which includes a guided-missile cruiser and two
22 guided-missile destroyers, and U.S. Air Forces Central announced deploying fighter jets and ground-
23 attack jets to the region.

24 193. On October 15, Defendant Blinken announced “We will stand with [Israel] today,
25 tomorrow, and every day, and we’re doing that in word and also in deed.” He added, “we’ve backed
26

1 that up not only with the words that we're saying, but with what we're actually doing, including the
2 deployment of [U.S.] aircraft carrier battle groups.”

3 194. On October 16, the day that Prime Minister Netanyahu described Israel's genocidal
4 attack on Gaza as “a struggle between the children of light and the children of darkness, between
5 humanity and the law of the jungle[,]” reports indicate that Defendant Austin had ordered 2,000 U.S.
6 military troops to prepare to deploy in support of Israel. According to Department of Defense Deputy
7 Press Secretary Sabrina Singh: “Since leaving Israel, [Defendant Austin] has held calls with
8 [Minister of Defense] Gallant . . . on a near daily basis and will likely have another call today,”
9 declaring that “[w]e are working to meet Israel's needs, which include air defense, precision guided
10 munitions, artillery and medical supplies.” The same day, Defendant Blinken held a seven-hour
11 meeting with the Israeli war cabinet.
12

13
14 195. By October 17, 3,000 Palestinians, 1,030 of whom were children, had been killed by
15 Israeli bombardment in Gaza.

16 **D. Calls for a Ceasefire Grow and Officials Within Administration Urge Defendants to**
17 **Reconsider Military Assistance to Israel.**

18 196. On October 18, Defendant Biden traveled to Israel. By then, calls for a ceasefire had
19 become widespread, and officials within the Biden Administration had begun raising serious
20 concerns about Defendants' continued, unconditional provision of military support to Israel.

21 197. By October 18, fifteen House Democrats had co-sponsored a resolution calling on
22 Defendant Biden to call for a ceasefire. That same day, hundreds of demonstrators from Jewish
23 advocacy groups gathered in the rotunda of the Cannon House Office Building demanding a call for
24 a ceasefire.
25

26 198. Also that day, Josh Paul, a former director in the State Department's Bureau of
27 Political-Military Affairs, resigned after more than a decade in the Department. He stated that his
28

1 resignation was “due to a policy disagreement concerning [the United States’] continued lethal
2 assistance to Israel.”

3 199. Paul later wrote in an op-ed in the Washington Post that after the October 7 attack,
4 “Israeli requests for munitions started arriving immediately, including for a variety of weapons that
5 have no applicability to the current conflict.” He had urged caution because “[t]he risk is obvious
6 that American weapons provided to Israel, especially air-to-ground munitions, will inflict civilian
7 harm and violate human rights.” Yet Defendants were “so adamant to avoid any debate on this risk,”
8 which in Paul’s experience was “an unprecedented unwillingness to consider the humanitarian
9 consequences of our policy decisions.” He continued, “[t]he absence of a willingness to hold that
10 debate when it comes to Israel is not proof of our commitment to Israel’s security. Rather, it is proof
11 of our commitment to a policy that, the record shows, is a dead end — and proof of our willingness
12 to abandon our values and turn a blind eye to the suffering of millions in Gaza when it is politically
13 expedient.”

14 200. On October 19, United Nations experts issued a statement “sounding the alarm” on the
15 crimes against humanity in Gaza. They noted, “[c]onsidering statements made by Israeli political
16 leaders and their allies, accompanied by military action in Gaza and escalation of arrests and killing
17 in the West Bank, there is also a risk of genocide against the Palestinian People.” They called for a
18 ceasefire, humanitarian aid, and a guarantee of physical safety for civilians.

19 201. Also on October 19, the Center for Constitutional Rights sent Defendants Biden,
20 Blinken, and Austin an emergency briefing paper putting them on notice that there was powerful
21 factual evidence that Israel was attempting, if not actively committing, genocide against the
22 Palestinian people in Gaza, and that the United States was not only failing to uphold its obligation
23 to prevent genocide, but that there was plausible and credible case that its actions to further the
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1 Israeli military operation, closure, and campaign against the Palestinian population in Gaza, rise to
2 the level of complicity in the crime under international law.

3 202. That same day, there were reports of a “mutiny brewing” inside the State Department,
4 with officials expressing frustration over Defendants’ unconditional support for Israel.
5

6 **E. Defendants Refuse to Call for a Ceasefire, Veto UN Resolutions Calling for**
7 **“Humanitarian Pauses” to Israel’s Bombardment, and Intensify their Coordination with,**
8 **and Unconditional Military Support for, Israel’s Assault on Gaza.**

9 203. Despite widespread calls for a ceasefire and calls for limitations on military assistance
10 to Israel in the face of Israel’s total siege and large death toll including of Palestinian children,
11 Defendants continued providing unconditional support to Israel for its assault on Gaza.

12 204. On October 18, during Defendant Biden’s visit to Israel, he did not urge a ceasefire.
13 Instead, he said to Netanyahu, “[m]y administration has been in close touch with your leadership
14 from the first moments of [the October 7 attack], and we are going to make sure we have — you
15 have what you need to protect your people, to defend your nation.” He reaffirmed that, “[f]or
16 decades, we’ve ensured Israel’s qualitative military edge. And later this week, I’m going to ask the
17 United States Congress for an unprecedented support package for Israel’s defense.” Defendant Biden
18 assured Prime Minister Netanyahu, “[t]he United States isn’t going anywhere . . . We’re going to
19 stand with you.”
20

21 205. At a joint press conference during the visit, Netanyahu again confirmed the ongoing
22 coordination on the Gaza assault between Defendants and Israel: “I’ve seen your support every day
23 in the depth and breadth of cooperation that we have had since the beginning of this war, a level of
24 cooperation that is truly unprecedented in the history of the great alliance between our two nations.
25 We see that support in your steadfast commitment to provide Israel with the tools we need to defend
26 ourselves.”
27
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1 206. That same day, the United States exercised its veto power in the UN Security Council
2 to block international calls for a ceasefire. The U.S. Ambassador to the United Nations, Linda
3 Thomas-Greenfield, vetoed a Security Council resolution condemning all violence against civilians
4 and urging “humanitarian pauses” to deliver aid to Palestinians in Gaza. Ambassador Thomas-
5 Greenfield used this veto power against a similar Security Council resolution on October 25, and
6 voted against a UN General Assembly resolution calling for a ceasefire, which nonetheless passed
7 with an overwhelming majority on October 27, because the United States does not have veto power
8 in the General Assembly.
9

10 207. While international and domestic calls for a ceasefire continued to grow, Defendants
11 continued providing unconditional military backing to support Israel’s attacks on Gaza.
12

13 208. By October 19, an Israeli airstrike had bombed the Church of Saint Porphyrius, where
14 at least 500 Palestinians were seeking shelter, killing 18 people. That day, Boeing Co., under
15 guidance of Defendant Austin’s Pentagon,⁹ delivered 1,800 JDAM kits from the United States to
16 Israel. JDAMs are used by the Israeli Air Force to drop bombs on Gaza.

17 209. That same day, reports indicated, and a senior Department of Defense official later
18 confirmed, that tens of thousands of 155mm artillery shells that had been set aside for Ukraine had
19 been withdrawn and redirected to Israel. Reports also indicated that a million rounds of 7.62mm
20 ammunition and tens of thousands of 30mm rounds had been delivered by the United States to Israel
21 earlier that week.
22

23 210. On October 20, Defendant Biden requested \$14.1 billion from Congress in additional
24 military assistance to Israel.
25

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28 ⁹ While the Pentagon provided guidance on the shipment, it did not ship the kits on US military aircraft because it is part of a direct sale approved in 2021.

1 211. That day, Israeli Defense Minister Gallant indicated how crucial, and influential,
2 military support by the United States is to Israel and its assault on Gaza: as reported by Israel’s
3 Channel 12, when asked by a Knesset committee about the provision of humanitarian aid to Gaza
4 before the hostages had been released, Gallant stated that “[t]he Americans insisted and we are not
5 in a place where we can refuse them. We rely on them for planes and military equipment. What are
6 we supposed to do? Tell them no?”

7
8 212. On October 21, Defendant Austin announced a number of steps to “increase force
9 protection for U.S. forces in the region, and assist in the defense of Israel[,]” including: redirecting
10 the Dwight D. Eisenhower Carrier Strike Group to Central Command, which includes the Middle
11 East, instead of the Eastern Mediterranean; “the deployment of a Terminal High Altitude Area
12 Defense (THAAD) battery as well as additional Patriot battalions to locations throughout the region
13 to increase force protection for U.S. forces[;]” the placement of “an additional number of forces on
14 prepare to deploy orders as part of prudent contingency planning, to increase their readiness and
15 ability to quickly respond as required.”

16
17 213. By October 23, Israeli airstrikes had killed over 5,000 people in Gaza, including at least
18 2,055 children. When asked about a ceasefire, Defendant Biden stated that he would refuse to discuss
19 it until hostages held in Gaza were released.

20
21 214. Meanwhile, news reports revealed that Lt. Gen. James Glynn, a three-star Marine
22 general, and other officers had been sent by the United States to Israel to advise Israeli officials on
23 its plans for the attacks on Gaza.

24 215. White House National Security Council Spokesperson John Kirby confirmed these
25 reports, and also confirmed that the United States had continued to be in close communication with
26 Israel about its military strategy. He stated:

27
28 I can tell you, we have, since the beginning of the conflict, in the early
 hours, maintained a level of communication with our Israeli

1 counterparts to ascertain their intentions, their strategy, their aims to —
2 to see what their answers are to the kinds of tough questions that any
3 military ought to be asking before you launch any kind of a major
4 operation. Have you thought through the branches? Have you thought
through the sequels? Have you thought through the unintended
consequences?

5 216. A senior defense official confirmed that “Small Diameter Bombs, ammunition and
6 JDAM Tail Kits” had been provided to Israel through Direct Commercial Sales Contracts.

7 217. On October 24, the U.S. Office for Palestinian Affairs in Jerusalem reportedly sent a
8 diplomatic cable to the White House warning it of the need to take immediate action in order to
9 “save the lives of tens of thousands of people.”
10

11 218. That same day, when asked whether in discussions with Israeli counterparts the United
12 States had “set or discussed any possible red lines,” Kirby answered “no.” This is despite the fact
13 that the Conventional Arms Transfer policy issued by the Biden Administration in 2023 prohibits
14 transfer of weapons when “it is more likely than not” that those weapons will be used by the recipient
15 to commit genocide or other serious violations of international humanitarian or human rights law.
16

17 219. By at least October 25, reports revealed that the United States had successfully
18 convinced Israel to delay a ground invasion into Gaza, while, according to U.S. officials, the United
19 States worked to get close to a dozen air-defense systems to the Middle East.

20 220. On October 26, Kirby stated that President Biden “continues to be routinely updated
21 by the national security team on the situation there. Obviously continuing to support . . . Israel’s
22 military. Security assistance continues to flow to them as needed, almost on a daily basis.”
23

24 221. By October 27, Israeli airstrikes had killed 7,028 Palestinians in Gaza, including at least
25 2,913 children. That day, Israel cut off all internet and phone communications in Gaza, began its
6 ground invasion, and carried out its massacres in Gaza in total darkness.
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1 222. That same day, Kirby again reiterated that the United States “is not drawing red lines
2 for Israel,” confirming once again that the United States was not placing any limits on Israel’s attacks
3 against Palestinians in Gaza, as it continued to provide military equipment and other support.

4 223. The next day, on October 28, the United Nations High Commissioner on Human
5 Rights, Volker Türk, called “on all parties as well as third States, in particular those with influence
6 over the parties to the conflict, to do all in their power to de-escalate this conflict.”
7

8 **F. Despite Staggering Civilian Casualties and Unlivable Conditions Imposed in Gaza, Defendants Reject Calls for Ceasefire or Limits on Israeli Use of U.S. Military Assistance, Admit to Influencing and “Guiding” Israeli Military Strategy, and Refuse to Even Monitor U.S. Weapon Use and the Unfolding Genocide in Gaza.**
9
10

11 224. Far from de-escalation, on October 30, despite acknowledging that Israel’s assault had
12 resulted in “thousands” of “civilian casualties,” Kirby stated in a press conference unequivocally
13 that the administration does “not support a ceasefire at this time.”

14 225. Several statements by Defendants and their spokespeople also confirmed their
15 influence over Israel’s strategy and choices in its assault on Gaza. When asked by a reporter whether
16 the United States had “convinced Israel to reverse” its shutdown of phone and internet
17 communication in Gaza, Kirby did not deny the United States’ influence over Israel and stated, “yes,
18 we were part of the conversations that — that led to that restoration.”
19

20 226. Likewise, at a separate press conference that same day, Deputy Pentagon Press
21 Secretary Sabrina Singh admitted that “conversations both [at the Department of Defense] and across
22 other agencies and all the way up to the president have certainly informed and at least guided some
23 of what the Israelis are doing on the ground in their ground operation,” but concluded “we’re not
24 directing them.”
25

6 227. She reiterated that the United States was continuing to provide “air defense, artillery,
27 precision-guided munitions,” and reiterated Defendants’ position on whether there should be any
28 limits imposed on Israel’s use of U.S. weapons: “We are not putting any limits on how Israel uses

1 weapons that is provided [sic]. That is really up to the Israel Defense Force to use in how they are
2 going to conduct their operations. But we're not putting any constraints on that.”

3 228. By October 31, Israel had bombed Jabalia refugee camp in Gaza using JDAMs and
4 GBU-31 bombs, killing dozens of Palestinian refugees, and the director of the New York office of
5 the United Nations High Commissioner of Human Rights had resigned over the UN's response to
6 Israel's assault on Palestinians in Gaza, which he described as a “textbook case of genocide.” That
7 day, in response to a reporter who alerted Kirby to Netanyahu's unequivocal reference to the
8 genocidal biblical story of Amalek, Kirby responded “I think we've been clear . . . on our concerns
9 about genocidal behavior by – by any leader. And that is not what we're seeing Israel desire to do.”
10

11 229. That same reporter revealed that 160 of his relatives had been killed in Gaza, and Kirby
12 stated, “right now is not the time for a ceasefire.”

13 230. Also that day, Defendants Blinken and Austin testified to the U.S. Senate
14 Appropriations Committee on the importance of Defendant Biden's request for military assistance
15 to “help Israel defend itself.”
16

17 231. The same day, the Department of State submitted a formal notification to Congress of
18 an approval of a \$320 million transfer of defense articles to an Israeli company to manufacture
19 precision bomb kits.
20

21 232. On November 1, Defendant Biden acknowledged his substantial influence over Israel,
22 saying “I'm the guy that convinced Bibi to call for a cease-fire to let the prisoners out.” National
23 security officials later clarified that he was referring to a pause in the Israeli bombardment while two
24 American-Israeli hostages were released, not a ceasefire.

25 233. On November 2, United Nations experts issued a statement warning that “the
26 Palestinian people are at grave risk of genocide,” and that time was running out to prevent it.
27
28

1 234. But as Defendant Blinken boarded a plane to Israel that day, he said “[a]s we’ve said
2 from the start, Israel has not only the right but the obligation to defend itself” Vice President
3 Kamala Harris stated at a press briefing in the United Kingdom: “we are not going to create any
4 conditions on the support that we are giving to Israel to defend itself.”
5

6 235. That same day, there were reports that Defendant Biden had requested to be able to
7 make arms transfers with Israel exempt from congressional notification procedures. Josh Paul, the
8 former State Department official who resigned on October 18, stated that “[a] proposal in a
9 legislative request to waive Congressional notification entirely for [Foreign Military Financing]-
10 funded Foreign Military Sales or Direct Commercial Contracts is unprecedented in my experience.
11 Frankly, [it’s] an insult to Congressional oversight prerogatives.”
12

13 236. Also on November 2, there were reports of U.S. military flying surveillance drones
14 over Gaza, leading the New York Times to conclude that the “U.S. is more involved than previously
15 known [in Israel’s bombardment of Gaza].” Additionally, the United States has reportedly been
16 using its military satellites and other aircraft to collect additional intelligence, and has been
17 increasingly sharing intelligence with Israel.
18

19 237. Finally, reports that day revealed that a State Department taskforce on preventing
20 atrocities, which in the context of other global crises meets frequently, did not hold its first meeting
21 on Israel’s siege on Gaza until October 20, almost two weeks after the siege began, and that the
22 taskforce was being sidelined.

23 238. On November 3, reports of Israel’s attacks on or near the Al-Shifa, Al-Quds, and the
24 Indonesian Hospital had been widely publicized. Yet, on November 5, Defendant Austin once again
25 reaffirmed in a phone call with Israeli Defense Minister Gallant the United States’ “ironclad
26 commitment to Israel’s right to defend itself.”
27
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1 239. Also on November 5, Josh Paul stated in an interview with Democracy Now! that he
2 believed that U.S.-provided arms were being used to “massacre civilians in Gaza,” that the State
3 Department’s normal procedures for assessing the human rights implications of weapons transfers
4 had “not happened in this context for Israel,” and that the decision to not place any conditions on
5 these arms transfers was “unlike any arms transfer decision I’ve ever been a part of.” He said he
6 believed that these decisions were “coming from the very top of the U.S. government and from the
7 Biden White House.” He noted that he had in his career “dealt with many morally challenging,
8 controversial arms sales[,]” but unlike in “all those previous instances,” in this case, in both the State
9 Department and Congress, “there was no space for debate.”
10

11 240. On November 6, the UN Secretary General stated in a press conference that “Gaza is
12 becoming a graveyard for children. Hundreds of girls and boys are reportedly being killed or injured
13 every day. More journalists have reportedly been killed over a four-week period than in any conflict
14 in at least three decades. More United Nations aid workers have been killed than in any comparable
15 period in the history of our organization The parties to the conflict -- and, indeed, the
16 international community -- face an immediate and fundamental responsibility: to stop the inhuman
17 collective suffering and dramatically expand humanitarian aid to Gaza.”
18

19 241. By that day, Israel’s assault on Gaza had killed over 10,000 Palestinian people,
20 including over 4,000 children.
21

22 242. On November 7, at a press briefing, a reporter asked Department of State Deputy Press
23 Spokesperson Patel what metric Defendants were using to assess whether a genocide was occurring
24 in Gaza. Patel explained that there is generally “a rigorous process in place for evaluating whether
25 something constitute as genocide or not,” but admitted that there was no such “active, ongoing
26 process” for Israel’s actions in Gaza.
27
28

1 243. The same day, Department of Defense Deputy Press Secretary Singh once again
2 admitted that “we don’t put conditions on weapons that . . . we’re sending or that Israel is using.”
3 When asked whether there was any sort of end-use monitoring in place for weapons transferred to
4 Israel, as is required under U.S. law by 22 U.S.C. § 2785, she admitted, “I wouldn’t say it’s
5 necessarily an end use monitoring,” but stated only “we expect them to be used in accordance with
6 [humanitarian] laws.
7

8 244. Also that day, at a White House press briefing, NSC Coordinator John Kirby was asked
9 by a reporter whether the Administration was still not drawing any “red lines” for Israel, in light of
10 the death toll of Palestinian civilians that keeps rising, Kirby responded “that is still the case.”
11

12 245. On November 8, Deputy Assistant Defense Secretary for the Middle East Dana Stroul
13 testified on U.S. support for Israel before the House Foreign Affairs Committee, stating, “We are
14 working around-the-clock to determine which munitions and equipment from U.S. inventory can
15 quickly be made available . . . Air defense is a high priority, as are medical supplies, artillery,
16 ammunition and precision-guided munitions. Deliveries are taking place on a near daily basis.”
17

18 246. On November 9, Patel, speaking on behalf of Defendant Blinken, once again confirmed
19 that the “rigorous process” that exists to evaluate whether there is an unfolding genocide had not yet
20 been initiated for the assault on Gaza.

21 247. Also on November 9, when Defendant Biden was asked at a press briefing about the
22 chances of a ceasefire, he responded “None. No possibility.” Kirby confirmed that the position of
23 the Biden Administration is that it “still [doesn’t] believe a ceasefire is appropriate at this time.”
24

25 248. As of November 10, 11,078 Palestinians have been killed, including 4,506 children and
26 3,027 women. Defendants have not called for a ceasefire or placed any conditions on their military
27 and other assistance to Israel. Defendants are instead currently attempting to send at least \$14.1
28

1 billion in additional military assistance, as well as at least \$320 million worth of military equipment
2 transfers to Israel.

3 **IV. THERE EXISTS AN ABSOLUTE PROHIBITION ON GENOCIDE AND A**
4 **CORRESPONDING DUTY TO PREVENT GENOCIDE UNDER CUSTOMARY**
5 **INTERNATIONAL LAW, WHICH IS PART OF FEDERAL COMMON LAW.**

6 249. Customary international law prohibits the commission, attempted commission,
7 incitement of, conspiracy to commit, and complicity in genocide. Because of the gravity of genocide,
8 customary international law also places a duty on all States to prevent genocide, and specifically, for
9 those States with the ability to influence the actions of people likely to commit or already committing
10 genocide, to take all measures reasonably available to them to prevent the risk of genocide. This
11 duty starts from the moment the States learn of, or should have learned of, the serious risk that
12 genocide will be committed. The United States recognizes the duty to prevent and punish genocide
13 as part of customary international law.

14 250. In the aftermath of World War II and the evil of the Holocaust, the Genocide
15 Convention was adopted to deter and prevent such horrors in the future, and, failing that, to hold
16 those responsible accountable. In its first opinion examining the scope, purpose and obligations
17 under the Genocide Convention, the International Court of Justice (“ICJ”) found “its object on the
18 one hand is to safeguard the very existence of certain human groups and on the other to confirm and
19 endorse the most elementary principles of morality.” *Reservations to Convention on Prevention and*
20 *Punishment of Crime of Genocide*, Advisory Opinion, 1951 I.C.J. 15, at 23 (May 28). The Genocide
21 Convention recognizes responsibility at both the State level and of individuals, and calls for
22 accountability at both levels. See Genocide Convention arts. I and IV.

23 251. The Genocide Convention defines genocide as committing specified acts “with intent
24 to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” Genocide
25 Convention art. II, chapeau. The “group” is what must be targeted, on grounds including nationality
26
27
28

1 or ethnicity; and it is the “group” that is protected. The “part” targeted for destruction can be
2 represented by a subgroup, for example, in a specific geographic area. *See, e.g., Prosecutor v.*
3 *Blagojević & Jokić*, Case No. IT-02-60-T, Trial Judgement (Int’l Crim. Trib. for the Former
4 Yugoslavia Jan. 17, 2005). Palestinians living in Gaza, as part of the Palestinian population, can
5 constitute the targeted group for the purposes of the Genocide Convention.
6

7 252. Genocide, like the crime against humanity of persecution, is a crime distinguished by
8 the specific intent to target a group on recognized grounds through a series of acts often reflected in
9 and achieved through State policies. In the case of genocide, the protected group itself is targeted
10 for destruction. As the General Assembly underscored in 1946, the “denial of the right of existence
11 shocks the conscience of [hu]mankind, results in great losses to humanity in the form of cultural and
12 other contributions represented by these human groups, and is contrary to moral law and to the spirit
13 and aims of the United Nations.” *Application of Convention on Prevention and Punishment of Crime*
14 *of Genocide (Gam. v. Myan.)*, Order on Request for Indication of Provisional Measures, 2020 I.C.J.
15 3, ¶ 69 (Jan. 23) (quoting G.A. Res. 96(I) (Dec. 11, 1946)).
16

17 253. The specific intent to destroy a group, which can be inferred from the general context,
18 is incompatible with the argument of self-defense. International criminal law scholars agree that the
19 gravity and specificity of the crime of genocide – where the perpetrator must intend to destroy a
20 group – makes inconceivable the justification of defensive force. A group’s very existence (in this
21 case Palestinians in Gaza) would thus need to be characterized as an imminent unlawful threat, which
22 is an untenable proposition here. Further, the right of self-defense is bound by the principles of
23 international law, *see Legality of Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J.
24 226, ¶ 42 (July 8), as well as the rule of proportionality. It is black-letter law that “self-defence
25 cannot operate as a defence to justify violating a prohibition that is recognised in international law
26 as being absolute.” *Prosecutor v. Taçi et al.*, Case No. KSC-BC-2020-06/F01536, Decision on
27
28

1 Defence Motion for Judicial Notice of Adjudicated Facts with Annex I, ¶ 24 (Kosovo Specialist
2 Chambers May 18, 2023); *see also Application of Convention on Prevention and Punishment of*
3 *Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, Judgment, 2007 I.C.J. 43, ¶ 430 (Feb.
4 26) (“every State may only act within the limits permitted by international law”). For this reason,
5 “no State or individual can ever be permitted to justify genocide in the name of self-defence.” *See*
6 William A. Schabas, *Genocide in International Law: The Crime of Crimes* 395 (Cambridge Univ.
7 Press 2009).

9 254. In addition to prohibiting the commission of genocide, the Genocide Convention
10 prohibits conspiring to commit, inciting, attempting to commit, and complicity in genocide.
11 Genocide Convention art. III. The International Criminal Tribunal for Rwanda (“ICTR”) and the
12 International Criminal Tribunal for the Former Yugoslavia (“ICTY”) have addressed different forms
13 of complicity in the crime of genocide, including aiding and abetting genocide, as well as conspiracy
14 and joint criminal enterprise, and affirmed that each constitutes a violation of customary
15 international law.
16

17 255. Mass killings are one means by which genocide is committed, but that is not the only
18 method by which a group is “destroyed” or exterminated (in whole or in part). Raphael Lemkin, the
19 Polish-Jewish lawyer credited with coining the term, said that genocide often includes “a coordinated
20 plan aimed at destruction of the essential foundations of the life of national groups so that these
21 groups wither and die like plants that have suffered a blight It may be accomplished by wiping
22 out all basis of personal security, liberty, health and dignity.” Raphael Lemkin, *Genocide – A Modern*
23 *Crime*, 4 *Free World* 39-43 (Apr. 1945). More than fifty years after Lemkin’s foundational
24 observation, the ICTR rendered the first genocide conviction by an international court and held that,
25 in addition to killings, “subjecting a group of people to a subsistence diet, systematic expulsion from
26 homes and the reduction of essential medical services below the minimum requirement” constituted
27
28

1 the crime of genocide as “methods of destruction by which the perpetrator does not immediately kill
2 the members of the group, but which, ultimately, seek their physical destruction.” *Prosecutor v.*
3 *Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, ¶¶ 505-06 (Sept. 2, 1998).

4
5 256. Recently the United States again acknowledged and affirmed its understanding of, as
6 well as agreement with, the obligations to prevent and punish genocide. *See generally* Declaration
7 of Intervention Under Article 63 of Statute Submitted by the United States of America, *Allegations*
8 *of Genocide under Convention on Prevention and Punishment of Crimes of Genocide (Ukr. v. Russ.)*,
9 I.C.J. (Sept. 7, 2022). When it intervened in Ukraine’s case against Russia at the International Court
10 of Justice, the United States explicitly acknowledged, as that court had previously held, that a State’s
11 “obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of,
12 or should normally have learned of, the existence of a *serious risk* that genocide will be committed.”
13 (emphasis in original). *Id.* at ¶ 22 (citing *Bosn. & Herz. v. Serb. & Montenegro*, 2007 I.C.J. at 222,
14 ¶ 431 (Feb. 26)).

15
16 **A. Elements of Genocide**

17 257. Customary international law, as codified in Article II of the Genocide Convention,
18 defines the crime of genocide by two main elements: (1) specific underlying acts, and (2) intent. The
19 same elements define the crime of genocide in the statute of the ICC, as well as the ICTY and ICTR.
20 *See* Rome Statute of the International Criminal Court (“Rome Statute”) art. 6, July 17, 1998, 2187
21 U.N.T.S. 90; Statute of the International Tribunal for the Former Yugoslavia (“ICTY Statute”) art.
22 4 (adopted by S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993)); Statute of the International
23 Criminal Tribunal for Rwanda (“ICTR Statute”) art. 2 (adopted by S.C. Res. 955, U.N. Doc.
24 S/RES/955 (Nov. 8, 1994)).

25
26 258. The United States codified the punishment of genocide in 18 U.S.C. § 1091. President
27 Obama reaffirmed in Executive Order No. 13,729 that “preventing mass atrocities and genocide is a
28

1 core national security interest and a core moral responsibility of the United States.” 81 Fed. Reg.
2 32,611 (May 18, 2016).

3 259. Genocide is a crime whether committed in time of peace or war. Genocide Convention
4 art. I. That genocide takes place while a party is in an armed conflict with another group “can in no
5 way be considered as an extenuating circumstance for it.” *Akayesu* Trial Judgement, ¶ 128. *See* Rome
6 Statute art. 31(1)(c).

7
8 260. The first element, specific underlying acts, includes any of the following: (a) killing
9 members of the group; (b) causing serious bodily or mental harm to members of the group; (c)
10 deliberately inflicting on the group conditions of life calculated to bring about its physical
11 destruction in whole or in part; (d) imposing measures intended to prevent births within the group;
12 and (e) forcibly transferring children of the group to another group. *See* Genocide Convention art.
13 II; ICTR Statute art. 2(2); ICTY Statute art. 4(2). *See also* 18 U.S.C. § 1091(a).

14
15 261. As is particularly relevant to Gaza, *deliberately inflicting on the group conditions of*
16 *life calculated to bring about its physical destruction in whole or in part* is an act of genocide. The
17 International Criminal Court (“ICC”) Elements of Crimes, drawing from customary international
18 law, defines the term “conditions of life” as including but not limited to “deliberate deprivation of
19 resources indispensable for survival, such as food or medical services, or systematic expulsion from
20 homes.” *See* ICC, Elements of Crimes, art. 6(c) n.4 (2011). Courts have found that “generally
21 creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter,
22 clothing, sanitation” are among the conditions calculated to bring about a group’s destruction. *See*
23 *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, Trial Judgement, ¶ 740 (Int’l Crim. Trib. for the
24 Former Yugoslavia Dec. 12, 2012). “The actual nature of the conditions of life, the length of time
25 that members of the group were subjected to them, and the characteristics of the group such as its
26 vulnerability are illustrative factors to be considered in evaluating the criterion of probability.” *See*
27
28

1 *Prosecutor v. Karadžić*, Case No. IT-95-5/18, Trial Judgement Vol. I, ¶ 548 (Int’l Crim. Trib. for
2 the Former Yugoslavia Mar. 24, 2016). Notably, this underlying act of genocide “does not require
3 proof of a result such as the ultimate physical destruction of the group in whole or in part.” *Tolimir*
4 Trial Judgement, ¶ 741.

5
6 262. For the purposes of genocide, *killing* is equated with murder, meaning causing the death
7 by an act or omission, with the intent to either kill or cause serious bodily harm that would likely
8 lead to death. Under customary international law, there is no minimum number of people killed
9 necessary to establish that genocide has been committed. Because of the obligation on states to take
10 all measures to prevent genocide, as well as the prohibition on the “attempt” to commit genocide,
11 state obligations are triggered when killings are done in a manner that reveals an intention to destroy
12 a targeted population, in whole or in part.

13
14 263. Under customary international law, *causing serious bodily or mental harm* as an act of
15 genocide includes torture, inhumane or degrading treatment, interrogations combined with beatings,
16 and harm that damages health or causes disfigurement or serious injury to the external or internal
17 organs of members of the group, although the harm does not need to be permanent and irremediable.
18 Threats of death and knowledge of impending death can constitute serious mental harm with war
19 crimes tribunals specifically recognizing the serious mental harm caused by the threat of
20 indiscriminate killings. Torture, as an underlying act of genocide, means causing serious physical or
21 mental harm, which can be done through physical injuries or by threats to harm or kill a person (or
22 relative or loved one) in order to coerce or punish, with the intention of producing mental suffering
23 such as fear. Deportation has also long been recognized as causing serious bodily or mental harm.
24

25 264. The second element – intent – requires that these acts be committed “with the intent to
26 destroy, in whole or in part, a national, ethnical, racial or religious group.” Genocide Convention
27 art. II. Genocidal or specific intent means that the result of destroying the group (in whole or in part)
28

1 is clearly intended; it is the group *qua* group (and not only certain individual members of the group)
2 that must be targeted to be destroyed, in whole or in part. *See e.g., Application of Convention on*
3 *Prevention and Punishment of Crime of Genocide (Croat. v. Serb.)*, Judgment, 2015 I.C.J. 3, ¶ 139
4 (Feb. 3). “In part” is understood as a substantial part of a particular group, which can be part of the
5 larger group “within a geographically limited area.” *Bosn. & Herz. v. Serb. & Montenegro*, 2007
6 I.C.J. at 126, ¶ 199. *See also* 18 U.S.C. § 1093(8). This specific intent may be established or inferred
7 from the facts and circumstances of a case. *See Prosecutor v. Popović et al.*, Case No. IT-05-88-T,
8 Trial Judgement, ¶ 823 (Int’l Crim. Tribunal for the Former Yugoslavia, June 10, 2010) (“By its
9 nature, intent is not usually susceptible to direct proof’ because ‘[o]nly the accused himself has first-
10 hand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent”).
11

12 265. Evidence of specific intent can include, but is not limited to: the general context, the
13 scale of atrocities, the systematic targeting of victims on account of their membership in a particular
14 group, the perpetration of other culpable acts systematically directed against the same group, or the
15 repetition of destructive and discriminatory acts. *See Prosecutor v. Popović et al.*, Case No. IT-05-
16 88-A, Appeal Judgement, ¶ 468 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 30, 2015) (citation
17 omitted). While forcible transfer is not deemed a stand-alone indicia of the intent to destroy, it is a
18 relevant consideration when assessing genocidal intent. *Popović* Trial Judgment at ¶ 824. The
19 existence of a plan or policy can also be a factor used to establish specific intent, but it is not required.
20 *Id.* at ¶ 828.
21

22 266. Genocidal intent may also be inferred from public speeches and statements by officials.
23 *See generally Prosecutor v. Nahimana et al.* (“Media Trial”), Case No. ICTR-99-52-A, Appeal
24 Judgement (Nov. 28, 2007). The International Court of Justice has found evidence of genocidal
25 intent through “the systematic stripping of human rights, the dehumanizing narratives and rhetoric,
26 the methodical planning, mass killing, mass displacement, mass fear, overwhelming levels of
27
28

1 brutality, combined with the physical destruction of the home of the targeted population, in every
2 sense and on every level.” *Gam. v. Myan.*, 2020 I.C.J. at 23-24, ¶¶ 55-56 (citation omitted).

3
4 **B. The Duty to Prevent Genocide**

5 267. Article I of the Convention creates a legal duty to prevent genocide: “The Contracting
6 Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under
7 international law which they undertake to prevent and to punish.” This obligation to prevent reflects
8 the international community’s collective commitment to ensure that groups are not targeted for
9 destruction because of their identity, and is part of customary international law.

10 268. The undertaking to prevent genocide is not a passive obligation but “is one of conduct
11 and not one of result” where States are obligated “to employ all means reasonably available to them
12 . . . to prevent genocide.” *Bosn. & Herz. v. Serb. & Montenegro*, 2007 I.C.J. at 221, ¶ 430. The
13 International Court of Justice explained that “the notion of ‘due diligence’, which calls for an
14 assessment *in concreto*, is of critical importance.” *Id.* As the Genocide Convention prohibits attempts
15 as well as the commission of genocide, the International Court of Justice held with regard to States’
16 obligations:
17

18 This obviously does not mean that the obligation to prevent genocide
19 only comes into being when perpetration of genocide commences: that
20 would be absurd, since the whole point of the obligation is to prevent,
21 or attempt to prevent, the occurrence of the act. . . . [A] State’s obligation
22 to prevent, and the corresponding duty to act, arise at the instant that the
23 State learns of, or should normally have learned of, the existence of a
24 serious risk that genocide will be committed. From that moment
25 onwards, if the State has available to it means likely to have a deterrent
26 effect on those suspected of preparing genocide, or reasonably
27 suspected of harbouring specific intent (*dolus specialis*), it is under a
28 duty to make such use of these means as the circumstances permit.

1 *Id.* at 222, ¶ 431. Notably, “certainty” that “genocide was about to be committed or was under way”
2 is not required for a State that should have acted but failed to do so; that the State was aware or should
3 have been aware is sufficient. *Id.* at 223, ¶ 432.¹⁰

4
5 269. Recognizing that the duty “varies greatly from one State to another” in regards to a
6 particular risk of genocide, a primary consideration is “the capacity to influence effectively the action
7 of persons likely to commit, or already committing, genocide.” *Id.* at 221, ¶ 430. To find a breach of
8 the obligation to prevent, “it does not need to be proven that the State concerned definitely had the
9 power to prevent the genocide; it is sufficient that it had the means to do so and that it manifestly
10 refrained from using them.” *Id.* at 225, ¶ 438. Among the factors to consider in determining whether
11 a State, and its officials, have breached the duty to prevent genocide include strong “political,
12 military and financial links,” as well as links of all other kinds, between the authorities of that State
13 and the main actors in the events. *Id.* at 221-23, ¶¶ 430-31, 434.

14
15 270. States will be held responsible for failing to prevent “if the State manifestly failed to
16 take all measures to prevent genocide which were within its power, and which might have
17 contributed to preventing the genocide.” *Id.* at 221, ¶ 430. To the extent they exercise influence,
18 States are required to prevent outside of their territory as well.¹¹

19
20
21 ¹⁰ In the case finding Serbia breached its obligation to prevent in relation to the genocide in Srebrenica
22 by the Army of the Republika Srpska against Bosnia and Herzegovina, the ICJ found that the
23 occupation of the Srebrenica enclave and warnings by governmental and intergovernmental bodies
24 voicing serious concern of atrocities (even if not genocide specifically) made the State and its officials
25 “aware” of “dangers [that] seemed to be of an order that could suggest intent to commit genocide,
26 unless brought under control,” making clear “that there was a serious risk of genocide.” *Id.* at 225, ¶
27 438.

28 ¹¹ The United States has recognized the extraterritorial obligations to prevent genocide, as it “is one
6 of the only parties to the Genocide Convention to have publicly invoked Article VIII [of the Genocide
7 Convention] in calling on the United Nations to address genocide in the territory of another
8 Contracting Party.” Declaration of Intervention Under Article 63 of Statute Submitted by the United
9 States of America, *Ukr. v. Russ.*, ¶ 10. Article VIII “expressly addresses the prevention of genocide.”
10 *Id.* at ¶ 27.

1 **C. Complicity in Genocide**

2 271. Complicity to commit genocide is a standalone crime, triggering both State
3 responsibility and individual criminal responsibility, regardless of position, under the Genocide
4 Convention. *See Bosn. & Herz. v. Serb. & Montenegro*, 2007 I.C.J. at 114, 200, ¶¶ 167, 381;
5 Genocide Convention art. III(e), art. 4 (“Persons committing genocide . . . shall be punished, whether
6 they are constitutionally responsible rulers, public officials or private individuals”). It is also a crime
7 in the U.S. Code. *See* 18 U.S.C. 1091 §§ (a), (b). Complicity can only exist when there is a punishable
8 act of genocide by another State or persons, with which the accomplice associates itself. Complicity
9 in genocide requires that some positive action has been taken to furnish aid or assistance to the
10 perpetrators of the genocide, including provision of means to enable or facilitate the commission of
11 the crime. The State or individual complicit in genocide need not share the specific intent to commit
12 genocide but must act with knowledge of the perpetrators’ specific intent when it provides aid or
13 support.
14

15 272. For individual criminal responsibility, complicity is accomplished by instigation,
16 aiding and abetting, or procuring the means for the commission of the genocide. *Prosecutor v.*
17 *Musema*, Case No. ICTR-96-13-T, Trial Judgement and Sentence, ¶ 176 (Jan. 27, 2000); *Akayesu*
18 Trial Judgement, ¶¶ 533-35, 537 (detailing complicity by procuring, aiding and abetting and
19 instigation). Providing weapons or other instruments and means used in the commission of genocide,
20 knowing that they would be used for that purpose, constitutes a form of complicity. *Musema* Trial
21 Judgement and Sentence, ¶ 178; *Akayesu* Trial Judgement, ¶ 536. Knowingly aiding in the planning
22 of or enabling acts of genocide constitutes a form of complicity. *Akayesu* Trial Judgement, ¶ 537.
23 For aiding and abetting genocide, the aider and abettor “commit[] acts specifically aimed at assisting
24 . . . or lending moral support” for the perpetration of the crime, and “this support ha[s] a substantial
25 effect on the perpetration of the crime.” *Prosecutor v. Seromba*, Case No. ICTR-2001-66-A, Appeal
26
27
28

1 Judgement, ¶ 44 (Mar. 12, 2008). The accomplice does not have to share with the perpetrator the
2 genocidal intent – the specific intent to destroy a group in whole or in part based on its identity.
3 *Musema* Trial Judgement and Sentence, ¶ 181.

4
5 273. The *mens rea* for complicity, including aiding and abetting genocide, is knowledge of
6 the principal perpetrator’s genocidal intent; the aider and abettor — convicted for complicity in
7 genocide — does not have to share the intent to destroy in whole or in part the group. *See Prosecutor*
8 *v. E. Ntakirutimana & G. Ntakirutimana*, Cases Nos. ICTR-96-10-A & ICTR-96-17-A, Appeal
9 Judgement, ¶¶ 364, 501 (Dec. 13, 2004).

10 **D. Early Warnings: United Nations’ Framework for Analysis for the Prevention of**
11 **Genocide and Other Atrocity Crimes**

12 274. Because genocide and other “[a]trocity crimes take place on a large scale, and are not
13 spontaneous or isolated events,” but rather “processes, with histories, precursors and triggering
14 factors which, combined, enable their commission,”¹² in 2014, the United Nations Office on
15 Genocide Prevention and the Responsibility to Protect adopted the Framework of Analysis for
16 Atrocity Crimes: A Tool for Prevention (“the Framework”). The Framework was the product of
17 decades of research and study by experts of previous genocides to assess common features and
18 recurring patterns to enable the international community to identify genocidal processes and
19 intervene to prevent them.
20

21 275. The Framework identifies fourteen risk factors for “atrocity crimes” — which include
22 genocide as well as crimes against humanity and war crimes / grave breaches. The Framework
23 stresses that “not all risk factors need to be present for there to be an assessment that there is a
24

25
26
27 ¹² United Nations Office of Genocide Prevention and the Responsibility to Protect, Framework of
28 Analysis for Atrocity Crimes: A Tool for Prevention iii (2014),
<https://www.ohchr.org/sites/default/files/2021-11/Genocide-Framework-of-Analysis-English.pdf>.

1 significant risk” of genocide or other atrocity crimes occurring, but the more “that are present, the
2 greater the risk that an atrocity crime may be committed.” *Id.* at 6-7.

3 276. The risk factors include, but are not limited to: Situations of armed conflict or other
4 forms of instability; Record of serious violations of international human rights and humanitarian
5 law; Capacity to commit genocide and other atrocity crimes; Intergroup tensions or patterns of
6 discrimination against protected groups; Signs of an intent to destroy in whole or in part a protected
7 group; Signs of a widespread or systematic attack against any civilian population; Serious threats to
8 those protected under international humanitarian law; and Serious threats to humanitarian and or
9 peacekeeping operations.
10

11 277. As set forth in detail herein, most, if not all, of the risk factors identified in the
12 Framework are present in Israel’s unfolding genocide against Palestinian people in Gaza.
13

14 CLAIMS FOR RELIEF

15 GENOCIDE: ALLEGATIONS COMMON TO ALL CLAIMS

16 Customary International law and Jus Cogens Prohibitions

17 278. Plaintiffs incorporate by reference the allegations set forth in the Complaint as if the
18 same were fully set forth herein.

19 279. Genocide is considered the “crime of crimes” and the prohibition against it is a *jus*
20 *cogens* norm in international law, binding on all states at all times, and creates obligations *erga*
21 *omnes on all States, through their officials, to prevent and punish it.*

22 280. As a *jus cogens* norm, the prohibition permits no derogation and prevails over and
23 invalidates international agreements in conflict therewith.
24

25 281. The universal prohibition against genocide was also codified in a treaty when the
26 Convention on the Prevention and Punishment of the Crime of Genocide was unanimously adopted
27 by the United Nations General Assembly in 1948.
28

1 282. Underscoring the gravity of this crime, the very first article of the Convention codified
2 a legal duty to prevent genocide, providing that: “The Contracting Parties confirm that genocide,
3 whether committed in time of peace or in time of war, is a crime under international law which they
4 undertake to prevent and to punish.” Genocide Convention art. I.
5

6 283. Article II of the Genocide Convention defines genocide as certain acts “committed with
7 intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such,” including:

- 8 a) Killing members of the group;
- 9 b) Causing serious bodily or mental harm to members of the group;
- 10 c) Deliberately inflicting on the group conditions of life calculated to bring about its
11 physical destruction in whole or in part;
- 12 d) Imposing measures intended to prevent births within the group;
- 13 e) [...]

14 284. Article III of Convention identifies the crimes that can be punished under the
15 Convention as:
16

- 17 a) Genocide;
- 18 b) Conspiracy to commit genocide;
- 19 c) Direct and public incitement to commit genocide;
- 20 d) Attempt to commit genocide;
- 21 e) Complicity in genocide.

22 285. The United States ratified the Convention in 1988 through legislation that then-Senator
23 Joseph R. Biden co-sponsored, and Congress added 18 U.S.C. § 1091 to the federal criminal code,
24 to provide for punishment for those found guilty of committing, conspiring to commit, directly and
25 publicly inciting to commit, attempting, and complicity in genocide, in accordance with Article I of
26 the Convention.
27
28

1 286. As the Senate Report on the implementation of the Genocide Convention affirms,
2 “genocide is among the most depraved acts that can be committed.” S. Rep. No. 100-333, at 4 (1988).
3 Implementation of the Genocide Convention was understood as a “reaffirm[ation of] the values upon
4 which our society was founded and which have been woven into the Convention: respect for the
5 dignity and freedom of each individual and the preservation of human rights for all.” *Id.*

7 **Specific Intent to Destroy in Whole or in Part a National, Ethnical, Racial or Religious Group**

8 287. Genocide must be committed with a specific intent to destroy, in whole or in part, a
9 national or ethnic group.

10 288. Israeli officials have both voiced and demonstrated by their actions an explicit and
11 specific intent to destroy, in whole or in substantial part, the Palestinian population of Gaza.

12 289. As set forth in detail above, Israeli officials have repeatedly made statements
13 evidencing an intent to destroy the Palestinian people in Gaza, including using dehumanizing
14 descriptions, which is frequently associated with genocidal and persecutory campaigns, by among
15 other things, referring to the Palestinian people as “human animals” and “bloodthirsty monsters” and
16 promising that “there will only be destruction” and a “Nakba that will overshadow the Nakba of
17 [19]48” to “deal a blow that hasn’t been seen in 50 years and take down Gaza” and voicing an intent
18 to wipe the people of Gaza “off the face of the Earth.”

19 290. The actions taken by Israel, including a mass bombing campaign against the entirety of
20 the Gaza Strip, imposing a siege on the Gaza Strip denying the population food, water, fuel and
21 electricity, and ordering a mass “evacuation” while denying freedom of movement to Palestinians
22 in Gaza, evinces the specific intent to destroy, in whole or in part, the Palestinian population in Gaza.

23 **Killing Members of the Group**

24 291. The Israeli government’s campaign of genocide against the Palestinian people in Gaza
25 has so far resulted in the killing of at least 11,078 people, the majority of which have been children
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1 and women, in just five weeks. Palestinians have been killed when schools, medical facilities,
2 shelters, homes and residential areas, places of worship and “evacuation” routes have been bombed,
3 frequently with precision guided bombs and missiles, including JDAMs, with inherently
4 indiscriminate weapons, or chemical weapons.
5

6 292. These killings have been carried out with a specific intent to destroy, in whole or in
7 part, the Palestinian people of Gaza, and achieved in large part through intentionally indiscriminate
8 bombings with an emphasis on “damage and not on accuracy.”

9 293. Plaintiffs Abu Artema, Abu Rokbeh, Al-Najjar, Elbhassi, Herzallah, Elhaddad, and
10 Elkarra have family members who are among those killed during this genocidal campaign.

11 294. Plaintiff Al-Haq has two Palestinian staff members who each have family members
12 who are among those killed during this genocidal campaign - six members for one staff and three
13 for another, including a four year old child who succumbed to his critical injuries.
14

15 295. Plaintiffs Abu Artema, Al-Najjar, and Abu Rokbeh are Palestinians from and currently
16 in Gaza whose lives are in jeopardy in this campaign of genocide.

17 296. All individual Plaintiffs have family members, and Organizational Plaintiffs have staff
18 members, in Gaza and whose lives are in jeopardy in this campaign of genocide.
19

20 **Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical
Destruction in Whole or in Part**

21 297. The Israeli government has also inflicted upon the Palestinian people of Gaza
22 conditions of life calculated to bring about their physical destruction in whole or in part.

23 298. The Israeli government has escalated and intensified a pre-existing blockade and
24 closure of Gaza, cutting off access to all basic necessities, including food, water, electricity, fuel,
25 and medical supplies, threatening humanitarian efforts to get aid to the population.
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1 299. Israeli airstrikes targeted civilian infrastructure, including water and sewage facilities,
2 attacked health care facilities and medical staff, bombed bakeries, further inflicting conditions on
3 the besieged and displaced population calculated to inflict fatal conditions on Palestinians.

4 300. The Israeli government has also forced the “evacuation” of over one million
5 Palestinians out of northern Gaza, including at least 23 hospitals providing life-saving treatment for
6 thousands of patients, and where tens of thousands of internally displaced Palestinians sought refuge,
7 and cutting off all access to telecommunications. Hundreds of thousands, if not more than a million
8 people, are displaced from their homes.

9 301. These coordinated actions by the Israeli political and military leadership to deprive
10 Palestinians in Gaza of basic necessities and trap them under these destructive conditions
11 demonstrate that the total closure and siege is calculated to bring about their physical destruction.
12

13 302. Plaintiffs Abu Artema, Al-Najjar, and Abu Rokbeh, as well as staff members of
14 Organizational Plaintiffs, are themselves experiencing the impacts of this total siege, are displaced,
15 and are being deprived of the basic necessities that they need for their survival such as food, water,
16 fuel, and electricity.

17 303. All individual Plaintiffs have family members who are similarly experiencing the grave
18 impacts of this total siege.
19

20
21 **Causing Serious Bodily or Mental Harm to Members of the Group**

22 304. The Israeli government has caused serious bodily or mental harm to the Palestinian
23 population in Gaza, with the intention to destroy the Palestinian population in whole or in part,
24 through its unceasing military assault and total siege.

25 305. Between October 7 and November 10, the Israeli government’s indiscriminate
26 bombardment in Gaza has injured at least 27,490 Palestinians. Another 2,700, including 1,500
27
28

1 children, are reported missing and may remain trapped under the rubble of collapsed buildings and
2 infrastructures.

3 306. Injuries have been sustained through Israel's indiscriminate bombardment of densely-
4 populated civilian centers and shelters including refugee camps, hospitals, schools, and religious
5 centers; the targeting of ambulance and evacuation convoys despite coordination with Israeli forces
6 to permit the transfer of civilians, including the wounded; and the use of white phosphorus have
7 injured civilians in mass numbers and created conditions of threat to, or knowledge of, impending
8 death.

9
10 307. Additionally, Israel has deliberately coordinated and maintained the deterioration,
11 damage, and collapse of the entire health system in Gaza, depriving injured and vulnerable
12 Palestinians in need of life-saving medical attention and treatment from obtaining adequate care, if
13 at all, resulting in serious bodily or mental harm to members of the group.

14
15 308. Specifically, Israel's forced "evacuation" orders, targeting of hospitals and health
16 facilities, complete siege on electricity, fuel, food, and water, and weeks-long blockade on
17 humanitarian aid from entering the besieged territory, including urgently needed medical supplies
18 and equipment, has exacerbated the already imminent threat to life, causing substantial bodily or
19 mental harm to Palestinians in Gaza.

20
21 309. The repeated blackouts on all telecommunications during periods of heavy
22 bombardment have also prevented life-saving care or treatment to civilians who are injured or buried
23 under the rubble as hospitals, ambulances, and rescue teams cannot be contacted. Such
24 communication and literal electric blackouts have also caused profound mental suffering, terror and
25 trauma, including to the more than one million Palestinian children subjected to these conditions in
26 Gaza.

1 310. The continual bombardment across the entirety of the closed Gaza strip, even after and
2 despite Israel’s “evacuation” order of 1.1 million to the south for purported safety and particularly
3 against the threats and pronouncements of Israeli officials to “eliminate everything” in Gaza, has
4 spread terror across the Palestinian population in Gaza, of which half the population is children, with
5 the widespread understanding that there is no safe place in Gaza, causing serious mental harm to
6 members of the group.

8 311. Plaintiffs Abu Artema, Al-Najjar, and Abu Rokbeh, as well as staff members of
9 Organizational Plaintiffs, are Palestinians from and currently in Gaza who are being subjected to
10 serious bodily or mental harm in this campaign of genocide.

11 312. All individual Plaintiffs have family members in Gaza and who are being subjected to
12 serious bodily and mental harm in this campaign of genocide.

13
14 **CLAIM I: VIOLATION OF THE DUTY TO PREVENT GENOCIDE**

15 313. Article I of the Genocide Convention imposes and codifies a legal duty under
16 customary international law to prevent genocide.

17 314. Where a State, acting through its officials, has the capacity to prevent a genocide, it can
18 be held responsible for failing to do so if it fails to take all measure within its power to prevent it, or
19 that might contribute to preventing it.

20 315. This obligation to prevent and duty to act to prevent a genocide arise at the instant that
21 the State and its senior officials learn of, or should normally have learned of, the existence of a
22 serious risk that genocide will be committed.

23 316. This duty exists particularly when a “State has available to it means likely to have a
24 deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring
25 specific intent.” *Bosn. & Herz. v. Serb. & Montenegro*, 2007 I.C.J. at 222, ¶ 431.

1 317. As Israel’s closest ally and strongest supporter, being its biggest provider of military
2 assistance by a large margin and with Israel being the largest cumulative recipient of U.S. foreign
3 assistance since World War II, the United States has the means available to have a deterrent effect
4 on Israeli officials now pursuing genocidal acts against the Palestinian people in Gaza. *See supra*
5 Section III(A).

6
7 318. Israeli officials have acknowledged as much when the Israeli Defense Minister
8 admitted that the Israeli government was not in a position to refuse “the Americans” because “[w]e
9 rely on them for planes and military equipment.” Defendants themselves have admitted to guiding,
10 convincing, and influencing Israel on certain military decisions and strategy.

11 319. Defendants have been, or should have been, aware that genocide by Israel against the
12 Palestinians in Gaza was about to be committed or is underway since at least October 7, 2023. On
13 that day, Prime Minister Netanyahu declared that “the enemy will pay an unprecedented price” and
14 ordered the more than two million Palestinians in Gaza to “get out now” despite the fact that they
15 have nowhere to go due to Israel-imposed closure, threatening that “[Israel] will be everywhere and
16 with all our might.” This was soon followed by the Minister of Energy announcing the cutting off
17 of all electricity and announcing “what was will not be,” and the Minister of Defense’s dehumanizing
18 reference to the entire Palestinian population in Gaza as “human animals” when announcing “there
19 will be no electricity, no food, no fuel, everything is closed. We are fighting human animals and we
20 are acting accordingly.” The actions by Israel pursuant to these statements, including an
21 indiscriminate bombing campaign against the entirety of Gaza, the total closure and siege of Gaza,
22 and the “evacuation” order issued to 1.1 million people in a closed Gaza Strip further put Defendants
23 on notice. The United Nations and other inter-governmental agencies explicitly, and now repeatedly,
24 warned of mass atrocities, including genocide, within days of the Israeli assault commencing.
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1 324. Complicity includes the provision of means to aid, abet, enable or facilitate the
2 commission of the crime.

3 325. Aiding and abetting consists of knowingly providing assistance to the principal which
4 has a substantial effect on the perpetration of the violation.

5 326. Defendants knowingly provided assistance with a substantial effect on the commission
6 of Israel's violations of international law, and specifically on the underlying acts of genocide of
7 killing, causing serious bodily or mental harm, and inflicting conditions of life on the Palestinian
8 population calculated to bring about its destruction. Defendants provided assistance knowing that
9 their actions would assist these violations of international law, or with awareness of a substantial
10 likelihood that their acts would assist such violations.

11 327. Complicity requires that some positive action be taken to furnish aid or assistance to
12 the perpetrators of the genocide.

13 328. An individual is complicit where they act with knowledge of the violation when they
14 provide aid or support; they need not also share the specific intent to destroy a group in whole or in
15 part.

16 329. An individual, acting in their official capacity, is complicit in genocide if they use the
17 organs under their control with the knowledge that genocide was about to be committed or was under
18 way, and if the aid and assistance supplied, from the moment they became so aware onwards, to the
19 perpetrators of the underlying acts or to those who were on the point of committing them, enabled
20 or facilitated the commission of the acts.

21 330. Individuals can be held responsible for complicity if they instigated, aided or abetted,
22 or procured the means for the commission of the genocide.

23 331. Providing weapons or other instruments and means used in the commission of a
24 genocide, knowing that they would be used for that purpose, constitutes complicity.
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1 332. As set forth above, Defendants, acting in their official capacity as President, Secretary
2 of State and Secretary of Defense of the United States, have provided and continue to provide
3 massive and unparalleled amounts of military assistance, equipment, weapons, and support to the
4 Israeli government, without conditions and with promises of more, in full awareness of its plans to
5 target and destroy in whole or in part the Palestinian population in Gaza.
6

7 333. Defendants have also provided encouragement and moral support that has a substantial
8 effect on Israel’s violations, including by coordinating with Third States to remain collectively
9 united in supporting Israel’s assault on Gaza, continuously assuring Israel and Prime Minister
10 Netanyahu that the United States will “stand” with Israel during its assault on Gaza, and repeatedly
11 declaring that the United States will not create conditions on its support to Israel, and “no red lines,”
12 while rejecting calls for a ceasefire in domestic and international fora.
13

14 334. As set forth in detail above, the United States government, through Defendants, has
15 provided significant assistance to the Israeli government that has had a substantial effect on the
16 perpetration of the genocide in progress.

17 335. The United States government’s provision of military assistance, weapons, military
18 advisors and other forms of support has enabled the Israeli government’s bombardment and attacks
19 on, and siege against, the Palestinian people of Gaza.
20

21 336. Defendants have provided all assistance, support, and encouragement knowing of the
22 genocidal intent of senior Israeli officials, including the President, Prime Minister, Minister of
23 Defense and Minister of Energy, through these officials’ well-publicized statements regarding the
24 assault on Gaza and the Palestinian people there, as well as their actions.

25 337. Israeli officials have acknowledged repeatedly the substantial effect of the aid and
26 assistance provided by the United States on their ability to carry out their plans.
27
28

1 338. Prime Minister Netanyahu revealed that the United States’ daily support, along with its
2 “depth and breadth of cooperation” since the beginning of Israel’s most recent military campaign,
3 siege, and multi-pronged attack against Palestinians, has been “unprecedented” in the history of the
4 two nations’ alliance.

5
6 339. This cooperation and coordination has been affirmed by Defendants, who have
7 acknowledged remaining “in close touch” with Israeli officials and leadership since the “first
8 moments” after the October 7 attacks and everyday thereafter.

9 340. As such, Defendants are complicit in the Israeli government’s genocidal campaign
10 against the Palestinian people of Gaza.

11 **PRAYER FOR RELIEF**

12 For the foregoing reasons, Plaintiffs request that the Court:

- 13
14 a. Declare that Defendants have violated their duty under customary international law, as part of
15 federal common law, to take all measures within their power to prevent Israel from committing
16 genocide against the Palestinian people of Gaza;
- 17 b. Declare that Defendants have violated their duty under customary international law, as part of
18 federal common law, that prohibits their complicity in genocide by knowingly continuing to
19 provide assistance that enables and facilitates Israel’s commission of genocidal acts against the
20 Palestinian people of Gaza.
- 21 c. Issue injunctive relief ordering Defendants to take all measures within their power to prevent
22 Israel’s commission of genocidal acts against the Palestinian people of Gaza, including but not
23 limited to:
- 24
25 i. Order Defendants to take all measures within their power to exert influence over Israel
26 to end its bombing of the Palestinian people of Gaza, resulting in mass killing and
27 serious injury;
28

- 1 ii. Order Defendants to take all measures within their power to exert influence over Israel
2 to lift the siege on Gaza, including allowing all electricity, fuel, food, water, and
3 humanitarian aid into Gaza;
4
5 iii. Order Defendants to take all measures within their power to exert influence over Israel
6 to prevent the “evacuation” or forcible transfer and expulsion of Palestinians from Gaza
7 and ensure freedom of movement.
8
9 d. Issue injunctive relief enjoining Defendants from aiding, abetting, enabling or facilitating
10 Israel’s commission of genocidal acts against the Palestinian people of Gaza, including but not
11 limited to:
12 i. Enjoin Defendants from providing, facilitating, or coordinating military assistance or
13 financing to Israel; from initiating, acting upon, continuing, expediting, or completing
14 sales, transfers, or delivery of weapons and arms to Israel; and from providing military
15 equipment and personnel, advancing Israel’s commission of genocidal acts;
16 ii. Enjoin Defendants from obstructing attempts by the international community,
17 including at the United Nations, to implement a ceasefire in Gaza and lift the siege on
18 Gaza.
19
20 e. Grant any other and further relief as the Court deems appropriate and necessary.

21 Dated: November 13, 2023

Respectfully submitted,

/s/ Johnny Sinodis

22 Sadaf M. Doost, Cal. Bar No. 346104
23 Baher A. Azmy, *pro hac vice* motion pending
24 Katherine Gallagher, *pro hac vice* motion pending
25 Maria C. LaHood, *pro hac vice* motion pending
26 Astha Sharma Pokharel, *pro hac vice* motion pending
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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF Northern District of California

**Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court**

U.S. District Court case number: 23-cv-5829-JSW

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: 11/13/2023

Date of judgment or order you are appealing: 1/31/2024

Docket entry number of judgment or order you are appealing: 91, 92

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

Yes No IFP was granted by U.S. District Court

List all Appellants (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

Defense for Children International–Palestine, Al-Haq, Ahmed Abu Artema, Omar El-Najjar, Mohammed Ahmed Abu Rokbeh, Mohammad Herzallah, Laila Elhaddad, Waeil Elbhassi, Basim Elkarra, and Ayman Nijim

Is this a cross-appeal? Yes No

If yes, what is the first appeal case number?

Was there a previous appeal in this case? Yes No

If yes, what is the prior appeal case number?

Your mailing address (if pro se):

City: State: Zip Code:

Prisoner Inmate or A Number (if applicable):

Signature /s/ Maria LaHood

Date 2/8/2024

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

3-ER-508

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List *each* party filing the appeal, do not use "et al." or other abbreviations.)

Name(s) of party/parties:

Defense for Children International–Palestine, Al-Haq, Ahmed Abu Artema, Omar El-Najjar, Mohammed Ahmed Abu Rokbeh, Mohammad Herzallah, Laila Elhaddad, Waeil Elbhassi, Basim Elkarra, and Ayman Nijim

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Appellee(s) (List *only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.*)

Name(s) of party/parties:

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

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To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

3-ER-509

Continued list of parties and counsel: *(attach additional pages as necessary)*

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ADRMOP,APPEAL,CLOSED

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:23-cv-05829-JSW**

Defense for Children International–Palestine et al v. Biden et al
Assigned to: Judge Jeffrey S. White
Case in other court: 24–00704
Cause: 28:1331 Fed. Question

Date Filed: 11/13/2023
Date Terminated: 01/31/2024
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Pamela Carol Spees
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sadaf Doost
(See above for address)
ATTORNEY TO BE NOTICED

Samah Mcgona Sisay
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Waeil Elbhassi

represented by **John Nicholas Sinodis**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Astha Sharma Pokharel
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Baher Azmy
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Diala Shamas
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Katherine Gallagher
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Marc Van Der Hout
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ATTORNEY TO BE NOTICED

Maria Couri Lahood
(See above for address)
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Pamela Carol Spees
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Sadaf Doost
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ATTORNEY TO BE NOTICED

Samah Mcgona Sisay
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PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Basim Elkarra

represented by **John Nicholas Sinodis**
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LEAD ATTORNEY
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Astha Sharma Pokharel
(See above for address)
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ATTORNEY TO BE NOTICED

Baher Azmy
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PRO HAC VICE
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Diala Shamas
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Katherine Gallagher
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Marc Van Der Hout
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ATTORNEY TO BE NOTICED

Maria Couri Lahood
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PRO HAC VICE
ATTORNEY TO BE NOTICED

Pamela Carol Spees
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PRO HAC VICE
ATTORNEY TO BE NOTICED

Sadaf Doost
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ATTORNEY TO BE NOTICED

Samah Mcgona Sisay
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Dr. Omar Al-Najjar

represented by **John Nicholas Sinodis**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Astha Sharma Pokharel
(See above for address)
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Baher Azmy
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Diala Shamas
(See above for address)
PRO HAC VICE
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Katherine Gallagher
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Marc Van Der Hout
(See above for address)
ATTORNEY TO BE NOTICED

Maria Couri Lahood
(See above for address)
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ATTORNEY TO BE NOTICED

Pamela Carol Spees
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ATTORNEY TO BE NOTICED

Sadaf Doost
(See above for address)
ATTORNEY TO BE NOTICED

Samah Mcgona Sisay
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

Joseph R. Biden, Jr.
President of the United States

represented by **Jean Lin**
US Department of Justice
Civil Division
Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
[REDACTED]
Fax: [REDACTED]
Email: [REDACTED]
ATTORNEY TO BE NOTICED

Jonathan Kossak
U.S. Department of Justice
Civil
1100 L Street NW
Washington, DC 20005

Email: [REDACTED]
ATTORNEY TO BE NOTICED

Defendant

Antony J. Blinken
Secretary of State

represented by **Jean Lin**
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Kossak
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Lloyd James Austin, III
Secretary of Defense, in their official capacities

represented by **Jean Lin**
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan Kossak
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

A Jewish Voice For Peace, Inc.

represented by **Eleanor I. Morton**
Leonard Carder, LLP
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Oakland, CA 94612
[REDACTED]
Fax: [REDACTED]
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Amicus

Council on American–Islamic Relations, California (CAIR–CA)

represented by **Brittney Rezaei**
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Suite 110
Santa Clara, CA 95054
[REDACTED]
Email: [REDACTED]
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

American–Arab Anti–Discrimination Committee

represented by **Brittney Rezaei**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Arqb Resource & Organizing Center

represented by **Brittney Rezaei**
(See above for address)
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Amicus

Arab–American Civil Rights League

represented by **Brittney Rezaei**
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LEAD ATTORNEY
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Amicus

International HRO

Siegel, Yee, Brunner & Mehta
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Oakland, CA 94612

represented by **Dan Siegel**
(See above for address)
ATTORNEY TO BE NOTICED

Jeena Shah
CUNY School of Law
New York
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Long Island City, NY 11101

Email: [REDACTED]
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ATTORNEY TO BE NOTICED

Meena Jagannath
Community Justice Project, Inc.
3000 Biscayne Blvd
Ste 106
Miami, FL 33137

Email: [REDACTED]
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amicus

Palestinian Journalists' Syndicate

represented by **Mohammad Ali**
8252 E. Norfolk Ave.
Orange, CA 92867
[REDACTED]
Email: [REDACTED]
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Amicus

Medical Professionals

represented by **Mark Allen Kleiman**
Kleiman / Rajaram
12121 Wilshire Blvd.
Suite 810
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Collin Poirot
[REDACTED]
Dallas, TX 75219
[REDACTED]
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Amicus

ACLU of Northern California

represented by **Emilou MacLean**
 ACLU of Northern California
 39 Drumm Street
 San Francisco, CA 94111
 [REDACTED]
 Email: [REDACTED]
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/13/2023	<u>1</u>	COMPLAINT against All Defendants, (Filing Fee: \$402.00, receipt number ACANDC-18829273). Filed by A. N., Ahmed Abu Artema, Laila Elhaddad, Basim Elkarra, Al-Haq, Waeil Elbhassi, Mohammed Ahmed Abu Rokbeh, Defense for Children International-Palestine, Omar Al-Najjar, Mohammad Herzallah. (Attachments: #(1) Civil Cover Sheet)(Sinodis, John) (Filed on 11/13/2023) Modified on 11/16/2023 (tn, COURT STAFF). (Entered: 11/13/2023)
11/13/2023	<u>2</u>	MOTION for leave to file under pseudonym filed by A. N.. Responses due by 11/27/2023. Replies due by 12/4/2023. (Attachments: # <u>1</u> Proposed Order)(Sinodis, John) (Filed on 11/13/2023) (Entered: 11/13/2023)
11/13/2023	<u>3</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18830534.) filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Lahood, Maria) (Filed on 11/13/2023) (Entered: 11/13/2023)
11/13/2023		NOTICE TO COUNSEL: Marc Van Der Hout The docket shows a different address from what is appearing on the document. Please update your personal profile on ECF. (kmg, COURT STAFF) (Filed on 11/13/2023) (Entered: 11/14/2023)
11/14/2023	<u>4</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18834099.) filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Sisay, Samah) (Filed on 11/14/2023) (Entered: 11/14/2023)
11/14/2023	<u>5</u>	Case assigned to Magistrate Judge Donna M. Ryu. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 11/28/2023. (as, COURT STAFF) (Filed on 11/14/2023) (Entered: 11/14/2023)
11/14/2023	<u>6</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18834325.) filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Sharma Pokharel, Astha) (Filed on 11/14/2023) (Entered: 11/14/2023)
11/14/2023	<u>7</u>	MOTION for leave to appear in Pro Hac Vice <i>Pamela Spees</i> (Filing fee \$ 317, receipt number ACANDC-18835788.) filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Spees, Pamela) (Filed on 11/14/2023) (Entered: 11/14/2023)
11/14/2023	<u>8</u>	Proposed Summons. (Sinodis, John) (Filed on 11/14/2023) (Entered: 11/14/2023)
11/15/2023	<u>9</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18838738.) filed by Ahmed Abu Artema, Mohammed Ahmed Abu

		Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Gallagher, Katherine) (Filed on 11/15/2023) (Entered: 11/15/2023)
11/15/2023	<u>10</u>	First MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18840701.) filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Azmy, Baher) (Filed on 11/15/2023) (Entered: 11/15/2023)
11/15/2023	<u>11</u>	ORDER by Chief Magistrate Judge Donna M. Ryu granting <u>4</u> Samah Mcgona Sisay's Motion for Admission Pro Hac Vice. (ig, COURT STAFF) (Filed on 11/15/2023) (Entered: 11/15/2023)
11/15/2023	<u>12</u>	ORDER by Chief Magistrate Judge Donna M. Ryu granting <u>6</u> Astha Sharma Pokharel's Motion for admission Pro Hac Vice. (ig, COURT STAFF) (Filed on 11/15/2023) (Entered: 11/15/2023)
11/15/2023	<u>13</u>	ORDER by Chief Magistrate Judge Donna M. Ryu granting <u>7</u> Pamela Spees' Motion for admission Pro Hac Vice. (ig, COURT STAFF) (Filed on 11/15/2023) (Entered: 11/15/2023)
11/15/2023	<u>14</u>	ORDER by Chief Magistrate Judge Donna M. Ryu granting <u>9</u> Katherine Gallagher's Motion for admission Pro Hac Vice. (ig, COURT STAFF) (Filed on 11/15/2023) (Entered: 11/15/2023)
11/15/2023	<u>15</u>	ORDER by Chief Magistrate Judge Donna M. Ryu granting <u>10</u> Baher Azmy's Motion for admission Pro Hac Vice. (ig, COURT STAFF) (Filed on 11/15/2023) (Entered: 11/15/2023)
11/15/2023	<u>16</u>	ORDER by Chief Magistrate Judge Donna M. Ryu granting <u>3</u> Maria Lahood's Motion for admission Pro Hac Vice. (ig, COURT STAFF) (Filed on 11/15/2023) (Entered: 11/16/2023)
11/16/2023	<u>17</u>	Initial Case Management Scheduling Order with ADR Deadlines: Joint Case Management Statement due by 2/14/2024. Initial Case Management Conference set for 2/21/2024 at 1:30 PM in Oakland, Courtroom 4, 3rd Floor. (tn, COURT STAFF) (Filed on 11/16/2023) (Entered: 11/16/2023)
11/16/2023	<u>18</u>	Summons Issued as to Lloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken. (tn, COURT STAFF) (Filed on 11/16/2023) (Entered: 11/16/2023)
11/16/2023	<u>19</u>	MOTION for Preliminary Injunction filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. Motion Hearing set for 1/11/2024 01:00 PM in Oakland, Courtroom 4, 3rd Floor before Magistrate Judge Donna M. Ryu. Responses due by 11/30/2023. Replies due by 12/7/2023. (Attachments: # <u>1</u> Declaration Plaintiff Abu Artema, # <u>2</u> Declaration Plaintiff Abu Rokbeh, # <u>3</u> Declaration Plaintiff Al-Haq, # <u>4</u> Declaration Plaintiff Al-Najjar, # <u>5</u> Declaration Expert William Schabas, # <u>6</u> Declaration Expert Historians, # <u>7</u> Declaration Attorney Pam Spees, # <u>8</u> Exhibit A packet, # <u>9</u> Exhibit B packet, # <u>10</u> Exhibit C packet, # <u>11</u> Exhibit D packet, # <u>12</u> Exhibit E packet, # <u>13</u> Proposed Order)(Lahood, Maria) (Filed on 11/16/2023) (Entered: 11/16/2023)
11/16/2023	<u>20</u>	SUMMONS Returned Executed by A. N., Ahmed Abu Artema, Laila Elhaddad, Basim Elkarra, Al-Haq, Waeil Elbhassi, Mohammed Ahmed Abu Rokbeh, Defense for Children International-Palestine, Omar Al-Najjar, Mohammad Herzallah. Lloyd James Austin, III served on 11/16/2023, answer due 1/16/2024; Joseph R. Biden, Jr served on 11/16/2023, answer due 1/16/2024; Antony J. Blinken served on 11/16/2023, answer due 1/16/2024. (Sinodis, John) (Filed on 11/16/2023) (Entered: 11/16/2023)
11/16/2023	21	CLERK'S NOTICE Re: Consent or Declination: Plaintiffs have filed a motion for a preliminary injunction <u>19</u> . A magistrate judge cannot decide a dispositive motion (including motions for a preliminary injunction) without the consent of all parties, served and unserved. See Williams v. King, 875 F.3d 500, 503 (9th Cir. 2017). Given the time sensitivity of the motion, the court will allow two business days for all parties to file either a consent or declination form. Note that any party is free to withhold

		consent to proceed before a magistrate judge without adverse substantive consequences. The forms are available at: http://cand.uscourts.gov/civilforms . If all parties do not consent by 11/20/2023, the case will be randomly assigned to a District Judge of this court. (<i>This is a text-only entry generated by the court. There is no document associated with this entry.</i>) (ig, COURT STAFF) (Filed on 11/16/2023) (Entered: 11/16/2023)
11/17/2023	<u>22</u>	NOTICE of Appearance by Jonathan Kossak <i>as counsel for Defendants</i> (Kossak, Jonathan) (Filed on 11/17/2023) (Entered: 11/17/2023)
11/17/2023	<u>23</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Lloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken.. (Kossak, Jonathan) (Filed on 11/17/2023) (Entered: 11/17/2023)
11/17/2023	24	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. <i>This is a text only docket entry; there is no document associated with this notice.</i> (ig, COURT STAFF) (Filed on 11/17/2023) (Entered: 11/17/2023)
11/17/2023	<u>25</u>	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Charles R. Breyer for all further proceedings. Chief Magistrate Judge Donna M. Ryu no longer assigned to case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras. Signed by The Clerk on 11/17/2023. (Attachments: # <u>1</u> Notice of Eligibility for Video Recording)(bar, COURT STAFF) (Filed on 11/17/2023) (Entered: 11/17/2023)
11/17/2023	<u>26</u>	NOTICE of Appearance by Jean Lin (Lin, Jean) (Filed on 11/17/2023) (Entered: 11/17/2023)
11/17/2023	<u>27</u>	ORDER OF RECUSAL. Signed by Judge Charles R. Breyer on 11/17/2023. (ls, COURT STAFF) (Filed on 11/17/2023) (Entered: 11/17/2023)
11/17/2023	<u>28</u>	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Jeffrey S. White for all further proceedings. Judge Charles R. Breyer no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras. Signed by Clerk on 11/17/2023. (Attachments: # <u>1</u> Notice of Eligibility for Video Recording)(mbc, COURT STAFF) (Filed on 11/17/2023) (Entered: 11/17/2023)
11/19/2023	<u>29</u>	CORRECTED VERSION AT <u>30</u> CERTIFICATE OF SERVICE by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elhasssi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N. re <u>15</u> Order on Motion for Pro Hac Vice, <u>19</u> MOTION for Preliminary Injunction , <u>14</u> Order on Motion for Pro Hac Vice, <u>2</u> MOTION for leave to file under pseudonym , <u>17</u> Initial Case Management Scheduling Order with ADR Deadlines, <u>13</u> Order on Motion for Pro Hac Vice, <u>16</u> Order on Motion for Pro Hac Vice, <u>1</u> Complaint, <u>11</u> Order on Motion for Pro Hac Vice, <u>12</u> Order on Motion for Pro Hac Vice, <u>18</u> Summons Issued (Sinodis, John) (Filed on 11/19/2023) Modified on 11/20/2023 (wsn, COURT STAFF). (Entered: 11/19/2023)
11/19/2023	<u>30</u>	CERTIFICATE OF SERVICE by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine,

		Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N. re <u>15</u> Order on Motion for Pro Hac Vice, <u>19</u> MOTION for Preliminary Injunction , <u>14</u> Order on Motion for Pro Hac Vice, <u>2</u> MOTION for leave to file under pseudonym , <u>17</u> Initial Case Management Scheduling Order with ADR Deadlines, <u>13</u> Order on Motion for Pro Hac Vice, <u>16</u> Order on Motion for Pro Hac Vice, <u>1</u> Complaint, <u>11</u> Order on Motion for Pro Hac Vice, <u>12</u> Order on Motion for Pro Hac Vice, <u>18</u> Summons Issued <i>CORRECTION OF DOCKET # 29</i> (Sinodis, John) (Filed on 11/19/2023) (Entered: 11/19/2023)
11/21/2023	<u>31</u>	Certificate of Interested Entities by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N. (Lahood, Maria) (Filed on 11/21/2023) (Entered: 11/21/2023)
11/21/2023	<u>32</u>	Renotice motion hearing re <u>19</u> MOTION for Preliminary Injunction <i>for 1/12/24 at 9:00 am</i> filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N. (Lahood, Maria) (Filed on 11/21/2023) Modified on 11/22/2023 (slh, COURT STAFF). (Entered: 11/21/2023)
11/21/2023	<u>33</u>	STIPULATION WITH PROPOSED ORDER re <u>19</u> MOTION for Preliminary Injunction <i>to file in excess of 15 pages</i> filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Lahood, Maria) (Filed on 11/21/2023) (Entered: 11/21/2023)
11/22/2023		Electronic filing error re: <u>32</u> Notice (Other) filed by Mohammad Herzallah, Ahmed Abu Artema, Omar Al-Najjar, A. N., Defense for Children International-Palestine, Basim Elkarra, Waeil Elbhassi, Laila Elhaddad, Al-Haq, Mohammed Ahmed Abu Rokbeh. Incorrect event used. [err101] Corrected by Clerk's Office. No further action is necessary. (slh, COURT STAFF) (Filed on 11/22/2023) (Entered: 11/22/2023)
11/24/2023	<u>34</u>	STIPULATION WITH PROPOSED ORDER <i>to Set Briefing Schedule and Hearing Date and to Stay Case Management Deadlines</i> filed by Lloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken. (Attachments: # <u>1</u> Proposed Order)(Kossak, Jonathan) (Filed on 11/24/2023) (Entered: 11/24/2023)
11/28/2023	<u>35</u>	STIPULATION AND ORDER FOR ADMINISTRATIVE RELIEF TO FILE PRELIMINARY INJUNCTION MOTION, AND ANY OPPOSITION THERETO, IN EXCESS OF FIFTEEN PAGES by Judge Jeffrey S. White granting <u>33</u> Stipulation. (kkp, COURT STAFF) (Filed on 11/28/2023) (Entered: 11/28/2023)
11/28/2023	<u>36</u>	ORDER GRANTING STIPULATED REQUEST TO SET BRIEFING SCHEDULE AND HEARING DATE AND TO STAY CASE MANAGEMENT DEADLINES AS MODIFIED by Judge Jeffrey S. White granting <u>34</u> Stipulation. Defendant's Response to Preliminary Injunction and to file Motion to Dismiss due by 12/8/2023. Plaintiff's Reply in support of Preliminary Injunction and Response to Motion to Dismiss due by 12/22/2023. Defendant's Reply in support of Motion to Dismiss due by 1/12/2024. Motion Hearing set for 1/26/2024 09:00 AM before Judge Jeffrey S. White – Videoconference Only. (kkp, COURT STAFF) (Filed on 11/28/2023) Modified on 11/28/2023 (kkp, COURT STAFF). (Entered: 11/28/2023)
11/28/2023		Reset Deadlines as to <u>19</u> MOTION for Preliminary Injunction. Response due by 12/8/2023. Reply due by 12/22/2023. Motion Hearing set for 1/26/2024 09:00 AM before Judge Jeffrey S. White – Videoconference Only. (kkp, COURT STAFF) (Filed on 11/28/2023) (Entered: 11/28/2023)
11/29/2023	<u>37</u>	ORDER GRANTING UNOPPOSED PLAINTIFF'S MOTION FOR LEAVE TO FILE UNDER PSEUDONYM by Judge Jeffrey S. White granting <u>2</u> Motion. (kkp, COURT STAFF) (Filed on 11/29/2023) (Entered: 11/29/2023)
12/08/2023	<u>38</u>	MOTION to Dismiss (<i>Notice of Motion, Motion to Dismiss, and Memorandum of Points and Authorities in Support Thereof and in Opposition to Plaintiffs' Motion for Preliminary Injunction</i>) filed by Lloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken. Motion to Dismiss Hearing set for 1/26/2024 09:00 AM in Oakland, –

		Videoconference Only. Responses due by 12/22/2023. Replies due by 1/12/2024. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Proposed Order)(Kossak, Jonathan) (Filed on 12/8/2023) (Entered: 12/08/2023)
12/11/2023	<u>39</u>	ADMINISTRATIVE MOTION for In–Person and Zoom Hearing re <u>19</u> MOTION for Preliminary Injunction <i>and Motion to Dismiss</i> filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al–Haq, Omar Al–Najjar, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. Responses due by 12/15/2023. (Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order)(Lahood, Maria) (Filed on 12/11/2023) Modified on 12/12/2023 (mcl, COURT STAFF). (Entered: 12/11/2023)
12/12/2023	<u>40</u>	OPPOSITION/RESPONSE (re <u>39</u> ADMINISTRATIVE MOTION for In–Person and Zoom Hearing re <u>19</u> MOTION for Preliminary Injunction <i>and Motion to Dismiss</i>) filed byLloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken. (Attachments: # <u>1</u> Proposed Order)(Kossak, Jonathan) (Filed on 12/12/2023) (Entered: 12/12/2023)
12/12/2023	<u>41</u>	REPLY (re <u>39</u> ADMINISTRATIVE MOTION for In–Person and Zoom Hearing re <u>19</u> MOTION for Preliminary Injunction <i>and Motion to Dismiss</i>) filed byAhmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al–Haq, Omar Al–Najjar, Defense for Children International–Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Lahood, Maria) (Filed on 12/12/2023) (Entered: 12/12/2023)
12/13/2023	<u>42</u>	STIPULATION WITH PROPOSED ORDER re <u>19</u> MOTION for Preliminary Injunction , <u>38</u> MOTION to Dismiss (<i>Notice of Motion, Motion to Dismiss, and Memorandum of Points and Authorities in Support Thereof and in Opposition to Plaintiffs' Motion for Preliminary Injunction</i>) to File Memoranda in Excess of 15 Pages filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al–Haq, Omar Al–Najjar, Defense for Children International–Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Lahood, Maria) (Filed on 12/13/2023) (Entered: 12/13/2023)
12/13/2023	<u>43</u>	STIPULATION AND ORDER FOR ADMINISTRATIVE RELIEF TO FILE MEMORANDA IN EXCESS OF FIFTEEN PAGES by Judge Jeffrey S. White granting <u>42</u> Stipulation. (kkp, COURT STAFF) (Filed on 12/13/2023) (Entered: 12/13/2023)
12/22/2023	<u>44</u>	OPPOSITION/RESPONSE (re <u>38</u> MOTION to Dismiss (<i>Notice of Motion, Motion to Dismiss, and Memorandum of Points and Authorities in Support Thereof and in Opposition to Plaintiffs' Motion for Preliminary Injunction</i>), <u>19</u> MOTION for Preliminary Injunction) <i>Reply</i> filed byAhmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al–Haq, Omar Al–Najjar, Defense for Children International–Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Attachments: # <u>1</u> Declaration Plaintiff Al–Haq, # <u>2</u> Declaration Plaintiff A.N., # <u>3</u> Declaration Plaintiff Elkarra, # <u>4</u> Declaration Plaintiff Elbhassi, # <u>5</u> Declaration Plaintiff Elhaddad, # <u>6</u> Declaration Plaintiff Al–Najjar, # <u>7</u> Declaration Josh Paul, # <u>8</u> Declaration Sadaf Doost, # <u>9</u> Exhibit to Doost Declaration, # <u>10</u> Proposed Order)(Lahood, Maria) (Filed on 12/22/2023) (Entered: 12/22/2023)
12/29/2023	<u>45</u>	MOTION for leave to appear in Pro Hac Vice by <i>Meena Jagannath</i> (Filing fee \$ 328, receipt number ACANDC–18979002.) filed by Defense for Children International–Palestine. (Siegel, Dan) (Filed on 12/29/2023) (Entered: 12/29/2023)
12/29/2023	<u>46</u>	MOTION to File Amicus Curiae Brief <i>in Support of Plaintiffs' Motion for Preliminary Injunction and in Opposition to Defendants' Motion to Dismiss</i> filed by A Jewish Voice For Peace, Inc.. Motion Hearing set for 1/26/2024 09:00 AM in Oakland, Courtroom 5, 2nd Floor before Judge Jeffrey S. White. Responses due by 1/12/2024. Replies due by 1/19/2024. (Attachments: # <u>1</u> Proposed Amicus Brief)(Morton, Eleanor) (Filed on 12/29/2023) (Entered: 12/29/2023)
12/29/2023	<u>47</u>	[PROPOSED] Amicus Curiae Brief in support of <u>19</u> Plaintiffs' MOTION for Preliminary Injunction filed by International HRO. (Siegel, Dan) (Filed on 12/29/2023) Modified on 1/2/2024 (mcl, COURT STAFF). (Entered: 12/29/2023)
12/29/2023	<u>48</u>	MOTION to File Amicus Curiae Brief <i>in Support of Plaintiffs' Motion for Preliminary Injunction and in Opposition to Defendants' Motion to Dismiss</i> filed by Council on American–Islamic Relations, California (CAIR–CA), American–Arab

		Anti-Discrimination Committee, ARAB RESOURCE & ORGANIZING CENTER, ARAB-AMERICAN CIVIL RIGHTS LEAGUE. Motion Hearing set for 1/26/2024 09:00 AM in Oakland, Courtroom 5, 2nd Floor before Judge Jeffrey S. White. Responses due by 1/12/2024. Replies due by 1/19/2024. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Proposed Amicus Brief)(Rezaei, Brittney) (Filed on 12/29/2023) (Entered: 12/29/2023)
12/29/2023	<u>49</u>	MOTION to File Amicus Curiae Brief <i>in support of plaintiffs</i> filed by International HRO. Motion Hearing set for 1/26/2023 09:00 AM in Oakland, Courtroom 5, 2nd Floor before Judge Jeffrey S. White. Responses due by 1/12/2024. Replies due by 1/19/2024. (Siegel, Dan) (Filed on 12/29/2023) (Entered: 12/29/2023)
12/29/2023	<u>50</u>	MOTION to File Amicus Curiae Brief filed by Palestinian Journalists' Syndicate. Responses due by 1/12/2024. Replies due by 1/19/2024. (Attachments: # <u>1</u> Amicus Brief)(Ali, Mohammad) (Filed on 12/29/2023) (Entered: 12/29/2023)
12/30/2023	<u>51</u>	* ERRONEOUS ENTRY. SEE 52 * Amicus Curiae APPEARANCE entered by Mark Allen Kleiman on behalf of Medical Professionals. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Proposed Amicus Brief on Behalf of Medical Professionals)(Kleiman, Mark) (Filed on 12/30/2023) Modified on 1/2/2024 (mcl, COURT STAFF). (Entered: 12/30/2023)
12/30/2023	<u>52</u>	MOTION to File Amicus Curiae Brief <i>in Support of Plaintiffs Motion for Preliminary Injunction and In Opposition to Defendants Motion to Dismiss</i> filed by Medical Professionals. Motion Hearing set for 1/26/2024 09:00 AM in Oakland, Courtroom 5, 2nd Floor before Judge Jeffrey S. White. Responses due by 1/12/2024. Replies due by 1/19/2024. (Attachments: # <u>1</u> Proposed Amicus Brief of Medical Professionals, # <u>2</u> Proposed Order)(Kleiman, Mark) (Filed on 12/30/2023) (Entered: 12/30/2023)
01/02/2024		<u>Electronic filing error</u> . Incorrect event used. [err101] Filer is reminded NOT to use the MOTION category if it's not a motion. Filer should also select the correct filer's name. The text noted the filer as Defense for Children International-Palestine but on the document the filer is International HRO. Corrected by Clerk's Office. Re: <u>47</u> MOTION to File Amicus Curiae Brief <i>in support of Plaintiffs</i> filed by Defense for Children International-Palestine.(mcl, COURT STAFF) (Filed on 1/2/2024) (Entered: 01/02/2024)
01/02/2024		<u>Electronic filing error</u> . Incorrect event used. Filer should have filed this under the MOTION category as this is a motion. [err101] Re: <u>51</u> Amicus Curiae Appearance, filed by Medical Professionals. (mcl, COURT STAFF) (Filed on 1/2/2024) (Entered: 01/02/2024)
01/02/2024	<u>53</u>	MOTION for leave to appear in Pro Hac Vice <i>by Jeena Shah</i> (Filing fee \$ 328, receipt number ACANDC-18982259.) filed by International HRO. (Siegel, Dan) (Filed on 1/2/2024) (Entered: 01/02/2024)
01/02/2024	<u>54</u>	MOTION for leave to appear in Pro Hac Vice <i>by Collin Poirot</i> (Filing fee \$ 328, receipt number ACANDC-18982357.) filed by Medical Professionals. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Poirot, Collin) (Filed on 1/2/2024) Modified on 1/5/2024 (kkp, COURT STAFF). (Entered: 01/02/2024)
01/02/2024	<u>55</u>	MOTION For Administrative Notice filed by Medical Professionals. Motion Hearing set for 1/26/2024 09:00 AM in Oakland, Courtroom 5, 2nd Floor before Judge Jeffrey S. White. Responses due by 1/12/2024. Replies due by 1/19/2024. (Attachments: # <u>1</u> Proposed Order)(Kleiman, Mark) (Filed on 1/2/2024) Modified on 1/3/2024 (mcl, COURT STAFF). (Entered: 01/02/2024)
01/04/2024	<u>56</u>	***DISREGARD, FILED IN ERROR. PLEASE SEE DOCKET <u>57</u> .*** Clerk's Notice of Video Recording Request. Video Camera hearing set for 1/26/2023 09:00 AM. Objections to Video Recording due 1/11/2024. (kkp, COURT STAFF) (Filed on 1/4/2024) Modified on 1/4/2024 (kkp, COURT STAFF). (Entered: 01/04/2024)
01/04/2024		<u>Electronic filing error</u> . Notice to Counsel: This filing will not be processed by the Clerks Office. Re: <u>45</u> MOTION for leave to appear in Pro Hac Vice (Meena Jagannath); <u>53</u> MOTION for leave to appear in Pro Hac Vice (Jeena Shah). ***Applications were not filed using the ECF Login and password for the attorney who seeks to be admitted as required by Court procedures. Please refile

		in its entirety.*** (kkp, COURT STAFF) (Filed on 1/4/2024) Modified on 1/4/2024 (kkp, COURT STAFF). (Entered: 01/04/2024)
01/04/2024	<u>57</u>	Clerk's Notice of Video Recording Request. Video Camera hearing set for 1/26/2024 09:00 AM. Objections to Video Recording due 1/11/2024. (kkp, COURT STAFF) (Filed on 1/4/2024) (Entered: 01/04/2024)
01/05/2024	<u>58</u>	ORDER by Judge Jeffrey S. White granting <u>54</u> Motion for Pro Hac Vice as to Collin Poirot. (kkp, COURT STAFF) (Filed on 1/5/2024) (Entered: 01/05/2024)
01/08/2024	<u>59</u>	MOTION for leave to appear in Pro Hac Vice (<i>Jeena Shah</i>) (Filing fee \$ 328, receipt number ACANDC-18982259.) Filing fee previously paid on 01/02/2024 filed by International HRO. (Shah, Jeena) (Filed on 1/8/2024) (Entered: 01/08/2024)
01/08/2024	<u>60</u>	ADMINISTRATIVE MOTION to Present Live Testimony During Hearing on Plaintiffs' Preliminary Injunction Motion filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N. Responses due by 1/12/2024. (Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order)(Sharma Pokharel, Astha) (Filed on 1/8/2024) Modified on 1/9/2024 (mcl, COURT STAFF). (Entered: 01/08/2024)
01/09/2024	<u>61</u>	ORDER by Judge Jeffrey S. White granting <u>59</u> Motion for Pro Hac Vice as to Jeena Shah. (kkp, COURT STAFF) (Filed on 1/9/2024) (Entered: 01/09/2024)
01/09/2024	<u>62</u>	MOTION for leave to appear in Pro Hac Vice <i>Meena Jagannath</i> (Filing fee \$ 328, receipt number ACANDC-18979002.) Filing fee previously paid on 12/29/2023 filed by International HRO. (Jagannath, Meena) (Filed on 1/9/2024) (Entered: 01/09/2024)
01/10/2024	<u>63</u>	ORDER by Judge Jeffrey S. White granting <u>62</u> Motion for Pro Hac Vice as to Meena Jagannath. (kkp, COURT STAFF) (Filed on 1/10/2024) (Entered: 01/10/2024)
01/12/2024	<u>64</u>	REPLY (re <u>38</u> MOTION to Dismiss (<i>Notice of Motion, Motion to Dismiss, and Memorandum of Points and Authorities in Support Thereof and in Opposition to Plaintiffs' Motion for Preliminary Injunction</i>)) filed byLloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken. (Kossak, Jonathan) (Filed on 1/12/2024) (Entered: 01/12/2024)
01/12/2024	<u>65</u>	OPPOSITION/RESPONSE (re <u>60</u> ADMINISTRATIVE MOTION to Present Live Testimony During Hearing on Plaintiffs' Preliminary Injunction Motion) filed byLloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken. (Attachments: # <u>1</u> Proposed Order)(Kossak, Jonathan) (Filed on 1/12/2024) (Entered: 01/12/2024)
01/16/2024	<u>66</u>	ADMINISTRATIVE MOTION Leave to File Sur-Reply to Defendants' Motion to Dismiss Reply filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. Responses due by 1/22/2024. (Attachments: # <u>1</u> Proposed Sur-Reply, # <u>2</u> Proposed Order)(Sharma Pokharel, Astha) (Filed on 1/16/2024) (Entered: 01/16/2024)
01/16/2024	<u>67</u>	ORDER REGARDING MOTION FOR ADMINISTRATIVE RELIEF FOR IN-PERSON AND ZOOM HEARING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND DEFENDANTS' MOTION TO DISMISS by Judge Jeffrey S. White granting <u>39</u> Administrative Motion. (kkp, COURT STAFF) (Filed on 1/16/2024) (Entered: 01/16/2024)
01/16/2024	<u>68</u>	ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, ARAB RESOURCE & ORGANIZING CENTER, COUNCIL ON AMERICAN-ISLAMIC RELATIONS, CALIFORNIA, AND ARAB-AMERICAN CIVIL RIGHTS LEAGUE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS by Judge Jeffrey S. White granting <u>48</u> Motion to File Amicus Curiae Brief. (kkp, COURT STAFF) (Filed on 1/16/2024) (Entered: 01/16/2024)

01/16/2024	<u>69</u>	ORDER GRANTING UNOPPOSED MOTION FOR ADMINISTRATIVE NOTICE by Judge Jeffrey S. White granting <u>55</u> Motion. (kkp, COURT STAFF) (Filed on 1/16/2024) (Entered: 01/16/2024)
01/16/2024	<u>70</u>	ORDER REGARDING MOTION FOR ADMINISTRATIVE RELIEF TO PRESENT LIVE TESTIMONY DURING HEARING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION by Judge Jeffrey S. White granting <u>60</u> Administrative Motion. (kkp, COURT STAFF) (Filed on 1/16/2024) (Entered: 01/16/2024)
01/16/2024	<u>71</u>	Clerk's Notice CONSENTING TO Video Recording re: <u>57</u> Clerk's Notice of Video Recording Request. (Related documents(s) <u>57</u>) (kkp, COURT STAFF) (Filed on 1/16/2024) (Entered: 01/16/2024)
01/17/2024	<u>72</u>	Proposed Order re <u>50</u> MOTION to File Amicus Curiae Brief by Palestinian Journalists' Syndicate. (Ali, Mohammad) (Filed on 1/17/2024) (Entered: 01/17/2024)
01/17/2024	<u>73</u>	Proposed Order re <u>46</u> MOTION to File Amicus Curiae Brief <i>in Support of Plaintiffs' Motion for Preliminary Injunction and in Opposition to Defendants' Motion to Dismiss</i> by A Jewish Voice For Peace, Inc.. (Morton, Eleanor) (Filed on 1/17/2024) (Entered: 01/17/2024)
01/17/2024	<u>74</u>	ORDER GRANTING UNOPPOSED MOTION OF PALESTINIAN JOURNALISTS' SYNDICATE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS by Judge Jeffrey S. White granting <u>50</u> Motion to File Amicus Curiae Brief. (kkp, COURT STAFF) (Filed on 1/17/2024) (Entered: 01/17/2024)
01/17/2024	<u>75</u>	ORDER GRANTING UNOPPOSED MOTION OF A JEWISH VOICE FOR PEACE, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS by Judge Jeffrey S. White granting <u>46</u> Motion to File Amicus Curiae Brief. (kkp, COURT STAFF) (Filed on 1/17/2024) (Entered: 01/17/2024)
01/17/2024	<u>76</u>	Proposed Order re <u>47</u> MOTION to File Amicus Curiae Brief <i>in support of Plaintiffs</i> by International HRO. (Siegel, Dan) (Filed on 1/17/2024) (Entered: 01/17/2024)
01/18/2024	<u>77</u>	ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS IN SUPPORT OF PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS by Judge Jeffrey S. White granting <u>47</u> Motion to File Amicus Curiae Brief. (kkp, COURT STAFF) (Filed on 1/18/2024) (Entered: 01/18/2024)
01/19/2024	<u>78</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-19042066.) filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. (Attachments: # <u>1</u> Certificate/Proof of Service Certificate of Good Standing)(Shamas, Diala) (Filed on 1/19/2024) (Entered: 01/19/2024)
01/22/2024	<u>79</u>	ORDER by Judge Jeffrey S. White granting <u>78</u> Motion for Pro Hac Vice as to Diala Shamas. (kkp, COURT STAFF) (Filed on 1/22/2024) (Entered: 01/22/2024)
01/22/2024	<u>80</u>	REQUEST by Gloria Trevino. (mcl, COURT STAFF) (Filed on 1/22/2024) (Entered: 01/23/2024)
01/24/2024	<u>81</u>	ORDER RE QUESTIONS. Signed by Judge Jeffrey S. White on 1/24/2024. (kkp, COURT STAFF) (Filed on 1/24/2024) (Entered: 01/24/2024)
01/25/2024	<u>82</u>	ORDER REGARDING PLAINTIFFS' UNOPPOSED MOTION FOR ADMINISTRATIVE RELIEF FOR LEAVE TO FILE SUR-REPLY TO DEFENDANTS MOTION TO DISMISS REPLY by Judge Jeffrey S. White granting <u>66</u> Administrative Motion. (kkp, COURT STAFF) (Filed on 1/25/2024) (Entered: 01/25/2024)

01/25/2024	<u>83</u>	NOTICE by Lloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken <i>of additional authority pursuant to the Court's Order, ECF No. 81</i> (Kossak, Jonathan) (Filed on 1/25/2024) (Entered: 01/25/2024)
01/25/2024	<u>84</u>	ADMINISTRATIVE MOTION for Leave to File Supplementary Exhibits re <u>44</u> Opposition/Response to Motion,,, <u>19</u> MOTION for Preliminary Injunction filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. Responses due by 1/29/2024. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Proposed Order)(Sinodis, John) (Filed on 1/25/2024) (Entered: 01/25/2024)
01/25/2024	<u>85</u>	NOTICE by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N. <i>of additional authority pursuant to the Courts Order Re Questions, ECF No. 81</i> (Sinodis, John) (Filed on 1/25/2024) (Entered: 01/25/2024)
01/25/2024	<u>86</u>	ADMINISTRATIVE MOTION for Leave to File a Supplementary Exhibit re <u>44</u> Opposition/Response to Motion,,, <u>19</u> MOTION for Preliminary Injunction filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. Responses due by 1/29/2024. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Proposed Order)(Sinodis, John) (Filed on 1/25/2024) (Entered: 01/25/2024)
01/26/2024	<u>87</u>	NOTICE by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N. re <u>19</u> MOTION for Preliminary Injunction , <u>38</u> MOTION to Dismiss (<i>Notice of Motion, Motion to Dismiss, and Memorandum of Points and Authorities in Support Thereof and in Opposition to Plaintiffs' Motion for Preliminary Injunction</i>) of <i>Statement of Recent Decision</i> (Lahood, Maria) (Filed on 1/26/2024) (Entered: 01/26/2024)
01/26/2024	<u>88</u>	MOTION to File Amicus Curiae Brief <i>in Support of Plaintiffs Oral Request to Permit the Public to Attend the Hearing on Plaintiffs Motion for Preliminary Injunction and Defendants Motion to Dismiss</i> filed by ACLU of Northern California. Responses due by 2/9/2024. Replies due by 2/16/2024. (Attachments: # <u>1</u> Proposed Order Proposed Order)(MacLean, Emilou) (Filed on 1/26/2024) (Entered: 01/26/2024)
01/26/2024	<u>89</u>	Minute Entry for proceedings held before Judge Jeffrey S. White: Motion Hearing held on 1/26/2024. Total Time in Court: 3:54. Court Reporter: Raynee Mercado. (kkp, COURT STAFF) (Date Filed: 1/26/2024) (Entered: 01/29/2024)
01/26/2024	<u>90</u>	AMENDED Minute Entry for proceedings held before Judge Jeffrey S. White: Motion Hearing held on 1/26/2024. Total Time in Court: 3:54. Court Reporter: Raynee Mercado. (kkp, COURT STAFF) (Date Filed: 1/26/2024) (Entered: 01/31/2024)
01/31/2024	<u>91</u>	ORDER GRANTING MOTION TO DISMISS AND DENYING MOTION FOR PRELIMINARY INJUNCTION by Judge Jeffrey S. White denying <u>19</u> Motion for Preliminary Injunction; granting <u>38</u> Motion to Dismiss. (kkp, COURT STAFF) (Filed on 1/31/2024) (Entered: 01/31/2024)
01/31/2024	<u>92</u>	JUDGMENT. Signed by Judge Jeffrey S. White on 1/31/2024. (kkp, COURT STAFF) (Filed on 1/31/2024) (Entered: 01/31/2024)
01/31/2024	<u>93</u>	ADMINISTRATIVE MOTION FOR LEAVE TO LIFT PSEUDONYM ORDER AND TO AMEND CASE CAPTION filed by A. N.. Responses due by 2/5/2024. (Attachments: # <u>1</u> Proposed Order)(Sisay, Samah) (Filed on 1/31/2024) (Entered: 01/31/2024)
02/06/2024	<u>94</u>	TRANSCRIPT ORDER for proceedings held on 1/26/24 before Judge Jeffrey S. White by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N., for Court Reporter Raynee Mercado. (Lahood, Maria) (Filed on 2/6/2024) (Entered: 02/06/2024)

02/07/2024	<u>95</u>	ORDER GRANTING PLAINTIFF'S MOTION FOR ADMINISTRATIVE RELIEF FOR LEAVE TO LIFT PSEUDONYM ORDER AND TO AMEND CASE CAPTION by Judge Jeffrey S. White granting <u>93</u> Administrative Motion. (kpk, COURT STAFF) (Filed on 2/7/2024) (Entered: 02/07/2024)
02/07/2024	<u>96</u>	TRANSCRIPT ORDER for proceedings held on 01/26/2024 before Judge Jeffrey S. White by Lloyd James Austin, III, Joseph R. Biden, Jr, Antony J. Blinken, for Court Reporter Raynee Mercado. (Kossak, Jonathan) (Filed on 2/7/2024) (Entered: 02/07/2024)
02/08/2024	<u>97</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, A. N.. Appeal of Judgment <u>92</u> , Order on Motion for Preliminary Injunction, Order on Motion to Dismiss <u>91</u> (Appeal fee of \$605 receipt number ACANDC-19106028 paid.) (Lahood, Maria) (Filed on 2/8/2024) (Entered: 02/08/2024)
02/09/2024	<u>98</u>	NOTICE by A. N. <i>OF PLAINTIFFS FULL NAME TO AMEND CASE CAPTION</i> (Attachments: # <u>1</u> Proposed Amended Case Caption)(Sisay, Samah) (Filed on 2/9/2024) (Entered: 02/09/2024)
02/09/2024	<u>99</u>	USCA Case Number 24-704 for <u>97</u> Notice of Appeal to the Ninth Circuit, filed by Mohammad Herzallah, Ahmed Abu Artema, Omar Al-Najjar, A. N., Defense for Children International-Palestine, Basim Elkarra, Waeil Elbhassi, Laila Elhaddad, Al-Haq, Mohammed Ahmed Abu Rokbeh. (mcl, COURT STAFF) (Filed on 2/9/2024) (Entered: 02/09/2024)
02/27/2024	<u>100</u>	Transcript of Proceedings held on January 26, 2024, before Judge Jeffrey S. White. Court Reporter Raynee H. Mercado, CSR, telephone number 510-565-7228, cacs8258@gmail.com. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re <u>94</u> Transcript Order,) Release of Transcript Restriction set for 5/28/2024. (Related document(s) <u>94</u>) (Mercado, Raynee) (Filed on 2/27/2024) (Entered: 02/27/2024)
03/06/2024	<u>101</u>	ERRATA re <u>100</u> Transcript,, by Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh, Al-Haq, Omar Al-Najjar, Defense for Children International-Palestine, Waeil Elbhassi, Laila Elhaddad, Basim Elkarra, Mohammad Herzallah, Ayman Nijim. (Lahood, Maria) (Filed on 3/6/2024) (Entered: 03/06/2024)