

UNITED STATES DISTRICT COURT

ORIGINAL

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable JEFFREY S. WHITE, Judge

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

Plaintiffs,)

vs.)

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

Defendants.)

**Motion for Preliminary
Injunction**

Motion to Dismiss

NO. C 23-05829 JSW

Pages 1 - 167

Oakland, California
Friday, January 26, 2024

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff

Van Der Hout, LLP
180 Sutter Street, Suite 500
San Francisco, California 94104

BY: JOHNNY SINODIS,
MARC VAN DER HOUT, ATTORNEYS AT LAW

Reported By:

Raynee H. Mercado, CSR No. 8258

Proceedings reported by electronic/mechanical stenography;
transcript produced by computer-aided transcription.

A P P E A R A N C E S (CONTINUED)

1
2
3
4 For Plaintiffs: Center for Constitutional Rights
666 Broadway, 7th Floor
5 New York, New York 10012
6 BY: BAHER A. AZMY,
7 KATHERINE GALLAGHER,
8 MARIA C. LAHOOD,
9 ASTHA SHARMA POKHAREL,
10 DIALA SHAMAS,
11 PAMELA C.SPEES, Attorneys at Law

12
13 For Defendants: United States Department of Justice
Civil Division
1100 L Street, NW
14 Washington, D.C. 20530
15 BY: JEAN LIN, SPECIAL COUNSEL,
16 FEDERAL PROGRAMS BRANCH

17
18 United States Department of Justice
Civil Division
175 N Street NE
19 Washington, D.C. 20002
20 BY: JONATHAN D. KOSSAK, TRIAL ATTORNEY
21 FEDERAL PROGRAMS BRANCH
22
23
24
25

--o0o--

I N D E XPLAINTIFFS' WITNESSESPAGEVOL.

AL-NAJJAR, OMAR

(SWORN)

59

1

DIRECT EXAMINATION BY MS. SHAMAS

60

1

ABOFOUL, AHMED

(SWORN)

69

1

DIRECT EXAMINATION BY MS. SHAMAS

70

1

ELHADDAD, LAILA

(SWORN)

81

1

DIRECT EXAMINATION BY MS. POKHAREL

81

1

ELBHASSI, WAEIL

(SWORN)

92

1

DIRECT EXAMINATION BY MR. VAN DER HOUT

92

1

HERZALLAH, MOHAMMAD MONADEL

(SWORN)

102

1

DIRECT EXAMINATION BY MR. SINODIS

103

1

I N D E XPLAINTIFFS' WITNESSESPAGEVOL.

ELKARRA, BASIM

(SWORN)

115

1

DIRECT EXAMINATION BY MS. POKHAREL

115

1

QUZMAR, KHALED

(SWORN)

126

1

DIRECT EXAMINATION BY MS. LAHOOD

127

1

TRACHTENBERG, BARRY

(SWORN)

139

1

DIRECT EXAMINATION BY MS. SPEES

139

1

CROSS-EXAMINATION BY MR. KOSSAK

154

1

E X H I B I T SPLAINTIFF'S EXHIBITSW/DRAWNIDENEVIDVOL.

1

143

143

1

--o0o--

1 Friday, January 26, 2024

8:57 a.m.

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

3 --o0o--

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

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

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

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

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

20 Thank you.

21 (Pause in the proceedings.)

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

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

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

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

5 **THE COURT:** Good morning.

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

8 **THE COURT:** All right.

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

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

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

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

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

23 **THE COURT:** Welcome.

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

25 **THE COURT:** Welcome.

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

2 **THE COURT:** Welcome.

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

4 **THE COURT:** Welcome.

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

6 **THE COURT:** Good morning.

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

8 **THE COURT:** Good morning.

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

10 **THE COURT:** Good morning.

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

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

13 And for the defendants, please?

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

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

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

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

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

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

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

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

18 The defendants, the President of the United States and his
19 Secretaries of State and Defense, have provided substantial
20 military, financial, and diplomatic support to Israel.

21 Defendants have repeatedly visited the region to reinforce the
22 United States' support there.

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

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

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

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

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

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

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

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

1 inappropriate for judicial resolution, unquote.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (Simultaneous colloquy.)

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

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

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

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

5 (Simultaneous colloquy.)

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

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

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

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

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

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

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

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

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

14 (Simultaneous colloquy.)

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

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

17 Question number 1.

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

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

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

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

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

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

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

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

1 when the law is enforced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 I will stop here, Your Honor.

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

25 I'll now hear from government counsel.

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

2 I think Your Honor had --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 towards Israel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 So how is that case distinguishable?

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

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

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

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

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

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

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

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

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

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

16 Anything further you want to say briefly?

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

1 **THE COURT:** All right.

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

5 **THE COURT:** All right.

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

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

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

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

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

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

25 **MS. LIN:** Sure.

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

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

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

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

20 So I'll let you answer.

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

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

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

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

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

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

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

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

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

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

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

10 **MS. GALLAGER:** Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Would you like to reply?

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

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

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

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

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

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

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

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

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

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

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

1 repeatedly found.

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

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

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

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

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

14 **THE COURT:** All right.

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

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

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

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

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

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

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

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

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

23 And, you know --

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

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

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

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

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

1 proceeding.

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

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

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

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

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

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

1 self-executing treaty.

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

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

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

11 Counsel?

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

13 A few -- a few comments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THE COURT:** All right.

17 Counsel?

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

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

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

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

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

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

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

5 Pam Spees for the plaintiffs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **THE COURT:** All right.

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

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

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

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

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

1 sorry.

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

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

10 **THE COURT:** All right.

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

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

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

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

23 Counsel.

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

1 Article VIII and the mechanisms in the UN system.

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

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

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

9 **THE COURT:** Yes.

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

12 **THE COURT:** Yes.

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

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

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

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

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

22 Okay.

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

24 **THE COURT:** Yes.

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

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

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

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

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

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

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

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

22 I promise I'll be very brief --

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

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

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

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

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

8 **THE COURT:** Okay. So let's take about 20 minutes.
9 Yes, counsel.

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

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

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

14 **THE COURT:** Reidentify yourself.

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

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

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

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

1 that. Or if that's --

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

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

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

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

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

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

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

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

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

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

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

1 escorted from the property. Thank you.

2 (Pause in the proceedings.)

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

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

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

8 My name is Diala Shamas.

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

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

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

14 **THE WITNESS:** Yes.

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

17

18 **OMAR AL-NAJJAR,**

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

21 **THE WITNESS:** Yes.

22 **THE CLERK:** Thank you.

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

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

1 Q. Can you spell Rafah?

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

3 Q. Thank you.

4 And what is your profession?

5 A. What?

6 Q. What is your profession?

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

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

13 **MS. SHAMAS:** Yeah.

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

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

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

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

23 **BY MS. SHAMAS:**

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

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

1 you were in Rafah, where did you live?

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

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

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

10 **Q.** Thank you.

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

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

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

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

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

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

6 **Q.** Thank you.

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

10 **A.** Yes.

11 **Q.** Okay.

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

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

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

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

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

1 not heard any new information about him.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **Q.** Thank you.

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

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

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

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

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

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

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

24 Q. Thank you for those examples.

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

1 you in touch with them now --

2 **A.** Yes.

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

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

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

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

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

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

22 **A.** Sorry. Again?

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

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

1 or any of her daughters in our emergency room.

2 **Q.** Okay.

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

7 Is there anything else you would like to share?

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

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

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

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

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

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

1 **MS. SHAMAS:** I have no further questions.

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

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

4 **THE COURT:** I'm sorry. I didn't hear you.

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

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

7 Thank you, Dr. Omar Al-Najjar. I hope you stay safe.

8 Thank you very much for helping the Court. Appreciate it.

9 **THE WITNESS:** Thank you.

10 **THE COURT:** Next witness, please.

11 **MS. SHAMAS:** Your Honor, I would like to call

12 Mr. Ahmed Abofoul to the stand.

13 **THE COURT:** Is he live or --

14 **MS. SHAMAS:** He's live. Making his way.

15 **THE COURT:** Thank you.

16 Good morning, sir.

17 **THE CLERK:** Please raise your right hand.

18

19 **AHMED ABOFOUL,**

20 called as a witness by the PLAINTIFFS, having been duly sworn,

21 testified as follows:

22 **THE WITNESS:** I do.

23 **THE CLERK:** Please be seated. I'm going to ask that

24 you speak clearly into the microphone.

25 Please state your full name and spell your last name for

1 the record.

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

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

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

6 **THE COURT:** Proceed.

7 **DIRECT EXAMINATION**

8 **BY MS. SHAMAS:**

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

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

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

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

17 Thank you, sir.

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

23 **BY MS. SHAMAS:**

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

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

1 based in Ramallah.

2 Q. Could you spell Al-Haq.

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

4 Q. Thank you.

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

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

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

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

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

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

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

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

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

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

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

24 **Q.** Thank you.

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

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

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

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

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

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

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

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

1 the situation on Gaza.

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

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

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

16 **Q.** Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **Q.** Thank you.

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

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

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

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

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

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

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

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

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

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

15 **THE WITNESS:** Thank you.

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

17 Next witness, please.

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

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

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

22 **MS. POKHAREL:** Yes.

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

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

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

3

4 **LAILA ELHADDAD,**

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

7 **THE WITNESS:** I do.

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

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

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

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

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Counsel.

17 **DIRECT EXAMINATION**

18 **BY MS. POKHAREL:**

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

20 Where do you live?

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

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

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

1 on Gaza.

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

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

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

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

16 Q. Thank you.

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

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

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

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

1 forces in Gaza who is currently sheltering with neighbors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 I would like to ask you some questions --

25 Thank you.

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

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

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

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

8 Thank you very much.

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

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

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

12 **THE WITNESS:** Thank you.

13 (Pause in the proceedings.)

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

15 **THE WITNESS:** Yeah.

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

17 **BY MS. POKHAREL:**

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

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

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

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

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

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

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

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

1 you?

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **THE COURT:** Any questions?

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

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

24 Next witness, please.

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

1 Honor. Marc Van der Hout for plaintiffs.

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

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

5

6 **WAEIL ELBHASSI,**

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

9 **THE WITNESS:** I do.

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

11 **THE WITNESS:** Thank you.

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

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

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

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

19 **DIRECT EXAMINATION**

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

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

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

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

24 What is your role in this case?

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

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

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

4 A. I was born and raised in Kuwait.

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

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

7 Q. Do you currently have family in Gaza?

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

11 Q. And I'm sorry?

12 A. Hundreds.

13 Q. In the hundreds.

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

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

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

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

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

1 **A.** Absolutely.

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

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

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

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

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

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

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

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

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

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

22 **A.** Yeah. Mohammad was a bit older than me, but he is the one
23 that I knew personally. I knew him well. My family -- our
24 parents in Kuwait, just like most Palestinians, would make --
25 would try to make that trip as much as possible to the Gaza

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

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

6 (Simultaneous colloquy.)

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

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

10 **A.** Yes.

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

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

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

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

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

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

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

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

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

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

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

21 **Q.** How are you aware of that?

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

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

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

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

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

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

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

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

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

21 **A.** Sorry.

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

23 **A.** Yes. Yes.

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

1 thinking of going to Dubai?

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

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

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

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

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

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

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

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

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

16 You know, if I may.

17 **Q.** Please do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Any questions?

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

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

24 (Simultaneous colloquy.)

25 **THE COURT:** Thank you.

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

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

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

8 **THE WITNESS:** Mohammad.

9 (Off-the-record discussion.)

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

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

12 You may proceed, counsel.

13 **DIRECT EXAMINATION**

14 **BY MR. SINODIS:**

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

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

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

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

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

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

1 that we're witnessing every day.

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

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

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

9 **A.** Yes.

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

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

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

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

1 many family members have you lost?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 survive this long, what has happened to them?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Gaza and in Palestine as a whole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **THE COURT:** Any questions?

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BASIM ELKARRA,

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

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

THE WITNESS: Basim Elkarra, B-A-S --

(Simultaneous colloquy.)

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

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

THE COURT: Welcome, sir.

Proceed.

DIRECT EXAMINATION

BY MS. POKHAREL:

Q. Mr. Elkarra, good afternoon.

Where do you live?

A. I live in Sacramento, California.

Q. And how are you connected to this case?

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

Q. And what is your role in this case?

A. I'm one of the plaintiffs.

Q. Why did you decide to file this case?

A. Decided to file this case, it was the least that I can do

1 to help stop the genocide of my family and my people.

2 **Q.** So I'd like to ask you a little bit about your family in
3 Gaza. What family do you have there?

4 **A.** Aunts, uncles, cousins, second cousins, third cousins.
5 But we -- in our culture, we don't, you know, distinguish
6 between first cousin, second cousin. They're all family,
7 they're all relatives.

8 **Q.** What is your relationship like with your family there?

9 **A.** Very close to them. Spent childhoods, spent many summers,
10 with these family members. And beautiful fond memories with
11 them. And, you know, been able to stay in touch with many of
12 them over the years.

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

15 **A.** Yes. Right after the ceasefire, according to the health
16 ministry, the names that we were able to look up was a 65 at
17 that point for my mom and dad's side. Since then it was 73.
18 And right now during the break, I just received news that my
19 mom's cousin's son was murdered and two of his siblings are
20 missing.

21 **Q.** In your declaration, you talk about your -- your other
22 cousin's son and grandson. Do you want to say more about
23 them?

24 **A.** Yeah. So Palestinian families are -- are splitting apart
25 each night. This is in the beginning of -- of the genocide.

1 Because a lot of -- entire families were being wiped out.

2 Sometimes three generations in one attack.

3 So what folks were doing was the mother would take some of
4 the children and take them to one house. And then the father
5 would take some children to another house.

6 In this particular attack, my cousin, Fareda, her son
7 and -- and his son were -- were in a house. And this is from
8 my mom's side. And then on my dad's side, one of his cousins
9 and his son happened to be in the same house, and that house
10 was -- was bombed. They were all killed.

11 **Q.** Do you want to say more about your family members that you
12 just got news about?

13 **A.** This is, you know -- you know, his father was very dear to
14 us. You know, I just -- when we were children, we'd always --
15 you know, he'd always invite us over. And he was a very close
16 cousin of my mother. And he was beloved to my grandmother.
17 He was her nephew and she loved him. And -- and so this is
18 just devastating news.

19 **Q.** You described your family members who have been killed.
20 Have any of your family members in Gaza faced any other action
21 by Israeli authorities?

22 **A.** Yes. I mean, right now, the numbers that I mentioned, I
23 think 74 and -- this is what we -- like I said, what we know
24 of. There's dozens missing. Many family members are saying,
25 you know, expect once this is -- this is over, by the time

1 they count everyone, it to be over a hundred murdered.

2 Now, every few days, we're getting word that some of our
3 elders are dying. And these are folks that are transmitters
4 of our heritage and our history, some of them over 90 years
5 old. And due to the -- you know, the famine-like conditions,
6 no water, no food, we are losing many of our elders right now.

7 **Q.** How else have the conditions in Gaza impacted your family
8 members?

9 **A.** No food, no water. Even in the beginning, you know, we
10 were getting complaints from them that they had water in the
11 southeast of Gaza and -- early on. But many of them were
12 throwing up due to the tainted water.

13 And so -- and then the health -- the health conditions.
14 My 30-year-old cousin Noor just passed away just recently
15 from -- from thyroid cancer. And she died a horrible, painful
16 death. She left behind three children under the age of seven,
17 and -- you know, three orphans.

18 And -- and so this is impacting not just, you know,
19 direct -- you know, direct military, you know, bombing and --
20 and murdering, but people -- so many others are dying due to
21 the health conditions of Gaza.

22 We're talking about there's no menstruation pads. There's
23 no diapers for children. Just imagine one of the most densely
24 populated places on earth, people crowded in schools, and in
25 these sanitary conditions.

1 Also the sites that, you know, we grew up seeing. You
2 know, the school that many generations of my family went to,
3 destroyed. Many cemeteries are said -- you know, according to
4 a CNN report, over 16 cemeteries where our ancestors are
5 buried. Imagine not knowing where your grandmother or great
6 grandfather are buried. And just bulldozed, completely
7 destroyed.

8 And so, you know, it's affecting our people in so many
9 different ways.

10 **Q.** You said you spent time with your -- with your family
11 members in Gaza. Where did you go when you visited Gaza?

12 **A.** We went all over, but we spent mostly in the southeast of
13 Gaza, in Khuza'a, Abasan, New Abasan, Bani Suheila.

14 And we have family throughout this entire region. And we
15 would spend -- you know, they'd all fight for -- for us to go
16 and stay with them for -- for a few days here and there. And
17 it was just the most warm, welcoming people, loving hearts,
18 that....

19 And Khuza'a, which in 2014 was almost pretty much
20 completely destroyed, now we're hearing is completely
21 destroyed.

22 We're seeing footage of Israeli soldiers demolishing
23 entire neighborhoods in -- in Khuza'a. And that's an area
24 where we spend a lot of time, where our family there, they
25 have farms and horses, and we would ride -- we would ride, you

1 know, horses throughout the fields. And just beautiful
2 memories of Khuza'a, which, unfortunately, is no longer there.

3 **Q.** Do you have any other memories of -- of Gaza that you
4 would like to share?

5 **A.** Yeah. You know, my grandfather's home, you know, it was
6 over a hundred years old. And, you know, these homes get
7 passed down generation. These are -- this was an -- an
8 Adobe-like home with a huge courtyard. And I remember the
9 bricks even had seashells in them.

10 They were really -- a really old house that we always
11 dreamt that we would turn into a cultural heritage site for
12 people to come visit. That's -- that's been destroyed.

13 And, you know, some of the memories of -- of going to
14 Gaza. I remember in -- in 2002, I just had fallen asleep, and
15 an explosion -- just within a split second, I was from
16 sleeping to standing up.

17 And just -- and I rushed to my cousin's house to see, you
18 know, what happened. And he had satellite, to see if there
19 was any news.

20 We found out that the next morning that a one-ton bomb was
21 dropped on a three-story building. Seventeen people were
22 killed, 150 were injured. From the 17 people who were killed,
23 4 women and 11 children.

24 And that shook me, because that's something that would
25 always play out in my head, that explosion. And that was just

1 one time. And that -- we were staying in Bani Suheila at the
2 time. This bomb was in Gaza -- was in the north in Gaza.

3 And you could imagine. Gaza is, you know, 25 miles long,
4 and it's from 3 to 7 miles wide in some areas. And so any
5 bomb that gets dropped impacts everyone. Many people can feel
6 it.

7 And so right now when we were talking to our relatives,
8 they're saying they can -- there's no sleep. There's no sleep
9 because due to the bombs.

10 And me going through that experience of just a one-ton
11 bomb. Now two-ton bombs are being dropped. In December, CNN
12 had produced a report that hundreds of two-ton bombs were
13 being dropped. And these are bombs that were used in, you
14 know, Vietnam and other wars, but they were used in open
15 areas. They were never dropped in densely populated areas
16 because they can kill up to a thousand feet. And this is --
17 and these bombs are being dropped on refugee camps. They're
18 being dropped close to hospitals.

19 And so just, you know -- just thinking about that moment
20 in 2002 and what young children are going through right now
21 when some -- for some of them, this is their fifth war and
22 these constant bombs being dropped.

23 And for me, these bombs are manufactured right here.
24 They're -- they're sent from -- from our government with our
25 taxpayer dollars to -- to fund this genocide against our

1 people.

2 **Q.** Have you found yourself thinking about the memory of that
3 bomb over the past 16 weeks?

4 **A.** Absolutely. Absolutely. And I just -- I can't, in my
5 mind, fathom how these children, you know, or any human being
6 for that matter, can -- can deal with a constant relentless
7 bombing that shakes you to your core.

8 And -- and if this bomb was -- was -- you know, anyone
9 that knows the geography of Gaza, this happened in the north.
10 I can't even imagine when these 2,000-pound bombs -- and --
11 and more -- more tonnage of bombs has been dropped on Gaza
12 than Hiroshima and Nagasaki.

13 And just -- for that to sit -- sit in, that's how much
14 bombs, U.S. bombs, being dropped on my people. And it just --
15 it's very unsettling.

16 And you live with this guilt every day, the survivor's
17 guilty, that knowing your taxpayer dollars -- and these bombs
18 are being sent by an administration -- and I even feel more
19 guilty because our community mobilized to help put Biden in
20 power to defeat Trump who had the Muslim ban and all the
21 rhetoric against our community, and it just -- it's -- it
22 hurts. It hurts deeply.

23 **Q.** You've described your family members who have been killed
24 and these -- these areas that you remember being destroyed.
25 How has this impacted your daily life?

1 **A.** You know, you -- you know, at first it's like a dream.
2 Like, you know, is this -- is this really happening? Because
3 look, it's not our first rodeo. We've lost family members in
4 many of the attacks over the years. But, you know, and this
5 is what Israelis call mowing the lawn or putting the Gazans on
6 a diet. So this has been happening, but not at this level.

7 And the utter destruction of an entire -- you know, the
8 majority of Gaza, and there's not a family that hasn't lost a
9 loved one.

10 And so for me to explain it to my children about why this
11 is happening and, you know, who -- and we're asking -- and one
12 of the saddest things, and I'm sure this happens to many
13 families from Gaza, is that we're asking our parents for
14 family trees. We're trying to piece the puzzles together
15 because entire wings of the family have been wiped out. And
16 it's, like, okay, whose son was this? And whose daughter was
17 this?

18 And so it just -- it makes you numb at times that, you
19 know, every few days you're hearing more people killed. And
20 it's just -- you become angry, you become numb.

21 You know, we wake up every morning calling -- calling our
22 family to see who's made it. But especially what's intense is
23 nights for us here. Because at night, it's morning time
24 there.

25 So we're -- we split up, our -- my siblings and I. We

1 say, okay, I'll call these cousins, you call this branch of
2 the family, you call this branch, to see who survived.

3 And calling from America, you feel just -- you feel
4 tremendous guilt because it's my government, and the bombs
5 that are being dropped on them are -- are being sent from
6 here.

7 **Q.** So, finally, I'd like to ask you some questions about why
8 you decided to sue these defendants. So why did you decide to
9 sue the President and Secretaries Blinken and Austin?

10 **A.** Because for them knowing that Israel has genocidal
11 intent -- because they've said it, they've said it publicly
12 on -- in Israeli media. Quoting biblical verses, calling for
13 a slaughter of men, women, children, and even animals. You
14 know, putting -- you know, saying that no food, no water, no
15 electricity will be -- you know, will be allowed into Gaza.
16 Calling the Gazans animals.

17 And these are things that reminiscent of previous
18 genocides that happened in the world. And we're seeing it
19 play out before our eyes. They're saying it. Their intention
20 is clear.

21 And despite that, President Biden, his spokespeople, State
22 Department, their spokespeople, Defense -- and the Defense
23 Secretary and his spokespeople justifying, almost at every
24 press conference going out of the way to justify what's
25 happening in Gaza. And for me, just -- this is the least that

1 we can do. And just the utter dehumanization of our people.

2 Just on the hundredth day of this conflict,
3 Secretary Blinken -- sorry -- the White House put out a
4 statement, did not mention the over 20,000 Palestinians at the
5 time that were killed, mentioned only the hostages.

6 So valuing certain lives more than other lives, it just --
7 it's very dehumanizing. The way that they look at
8 Palestinians, the way they look at Arabs, the way they look at
9 Palestinian Muslims, the way they look at Palestinian
10 Christians, because if you look at what's happening there, you
11 know, some reports are saying over a thousand -- over a -- a
12 thousand out of 1200 mosques have been destroyed. Three
13 churches have been -- and these are ancient churches and
14 mosques.

15 And one memory I have was the Al Omari Mosque, which is
16 one of the oldest mosques in the Muslim world, and destroyed.
17 Our heritage sites, our antiquities, looted, not only
18 destroyed. 200 out of the 325 heritage sites have been
19 destroyed and looted. And some of this loot was -- the
20 antiquities were taken and displayed at the Knesset.

21 And so for our President to know all this?

22 And also the United States is flying drones over Gaza.
23 They made a -- they were flying drones. So they know what's
24 happening on the ground. They know that what these
25 2,000-pound bombs being dropped on refugee camps are doing.

1 And despite that, they just keep sending more money, they keep
2 sending more weaponry. And now there's a report of them
3 sending more fighter planes, more helicopter attacks.

4 So they are failing -- not only failing to prevent a
5 genocide, they are completely complicit.

6 **MS. POKHAREL:** Thank you, Mr. Elkarra. That's all I
7 have for this witness, Your Honor.

8 **THE COURT:** Thank you.

9 Any questions?

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

11 **THE COURT:** Thank you very much, sir. Appreciate it.

12 Next witness, please.

13 **MS. LAHOOD:** Marie LaHood for the plaintiffs.

14 The last plaintiff who will be testifying is Mr. Khaled
15 Quzmar, who's on Zoom.

16 **THE COURT:** I'm sorry?

17 **MS. LAHOOD:** On Zoom.

18 **THE COURT:** He's on Zoom. Very well.

19 **THE CLERK:** Hello, sir. Can you hear me?

20 **THE WITNESS:** Yes.

21 **THE CLERK:** Please raise your right hand.

22

23 **KHALED QUZMAR,**

24 called as a witness by the plaintiffs, having been duly sworn,
25 testified via Zoom as follows:

1 Centre for Human Rights.

2 **Q.** Can you tell you also about DCIP and its mission?

3 **A.** DCI Palestine established to -- to provide legal services
4 to the Palestinian children and the Israeli military court
5 system in 1991.

6 And also to document the violation against the Palestinian
7 children inside the Israeli military system and to advocate
8 for their rights.

9 But after that, after establishing the Palestinian
10 Authority, we also expand our way to include the Palestinian
11 children under the Palestinian Authority, to provide them, the
12 children who are in conflict with the Palestinian law or are
13 victim of -- violence, to support them with psychosocial
14 support and of course legal support.

15 And also we participated in building a child juvenile
16 justice system in -- under the Palestinian Authority. And we
17 build the capacity of the juvenile judges, juvenile
18 prosecutors, and juvenile police.

19 **Q.** And does DCIP also monitor and document human rights
20 violations against children?

21 **A.** Yes. We take it as a package. We document the violation
22 against all the Palestinian children -- to visit in our
23 advocacy to hold the perpetrators accountable regardless who
24 is the perpetrator.

25 **Q.** How is DCIP connected to this case against Biden, Blinken,

1 and Austin?

2 **A.** Yeah, DCIP is a plaintiff in this case because we believe
3 that we have a mandate to protect and to create a protective
4 environment -- environment for the Palestinian children in the
5 Occupied Palestinian Territory. So we decided to file this --
6 this case in order to try to offer any kind of protection or
7 to stop the genocide that are committed against the
8 Palestinians in Gaza.

9 **Q.** And where is DCIP based?

10 **A.** We work in all the Occupied Palestinian Territories, but
11 we have offices in Ramallah, and we have in the north, the
12 West Bank in Nablus, and we have in Hebron in the south. And
13 of course we have a presence in East Jerusalem and in Gaza
14 Strip.

15 **Q.** Who on your staff is currently in Gaza?

16 **A.** We have a permanent staff since 20 years, Ahmad Abu
17 Rokbeh.

18 **Q.** And Mr. Abu Rokbeh also connected to this case?

19 **A.** Of course.

20 **Q.** How is he connected?

21 **A.** He is also a plaintiff.

22 **Q.** Okay. And are you in contact with Mr. Abu Rokbeh?

23 **A.** Usually, yes. Before the 7th of October, yeah, we used to
24 be in daily basis. But after the Israeli assault against Gaza
25 and the genocide, so in the best scenario, we are in touch

1 every five days or even more sometimes.

2 **Q.** Okay. How has DCIP's work in Gaza been impacted over the
3 past 16 weeks?

4 **A.** Completely impacted. And even the -- the colleague there
5 is unable to do his work. And so now usually in such
6 circumstances, we contracted other field workers in order to
7 manage -- to document all the violation against the children
8 during the assaults and the war.

9 But this time is different than any time before. So we --
10 since more than 16 -- 16th week, we only manage to work in the
11 week of the two -- maybe the third or fourth week of the
12 genocide. So that work only done by visiting the shelters and
13 interviewing children to know more about their -- their
14 situation and the way of life of the children. And after
15 that, there is no work.

16 **Q.** Okay. Do you know how Mr. Abu Rokbeh has been personally
17 impacted in the last 16 weeks?

18 **A.** Of course. I believe that every family in Gaza are
19 impacted and affected by the Israeli genocide -- ongoing
20 genocide. And the Mohammed family, like the other families,
21 are also impacted.

22 I know that he was displaced there for several days and
23 displaced from the north to the middle and from the middle to
24 the south. So I -- I think he -- four or five times, he was
25 forced to move from place to place with his family in order

1 seeking for any kind of protection and for safer place.

2 **Q.** And do you know how Mr. Abu Rokbeh's family has been
3 impacted in the last 16 weeks?

4 **A.** Yes. I know that, I think from his close family, like
5 brothers and nephews he lost.

6 And the recent attack, I believe it was a few days ago,
7 few weeks ago, that his mother was shot by Israeli sniper,
8 Israeli soldier, and her leg was even cut off as a result of
9 the shot.

10 **Q.** And was he able to get medical care for her?

11 **A.** Yeah, he was starting to find a way to help her and to
12 manage to -- to let her get out of Gaza to travel outside.
13 And even he contacted me in order to use my communication, my
14 colleagues to support him to -- to let her get out.

15 But unfortunately, I tried with all the international
16 organization that I work with, the UN agencies, even the Red
17 Cross. The answer was usually always is we have tens of
18 thousands of cases like this and it's impossible.

19 At the end, he failed to find a place even she was -- they
20 cut off her leg then.

21 **Q.** Do you know where Mr. Abu Rokbeh is now?

22 **A.** The last few days, I believe that he was in -- in Rafah in
23 a net -- a tent. I don't know if he's still there or moved
24 because since that time, I have no communication with him, no
25 access to Internet or communication.

1 Q. You mentioned during the -- the pause that DCIP was able
2 to do some work in Gaza interviewing children. Can you tell
3 us about that?

4 A. Yes. During the truce, we -- Mohammed, he managed to
5 visit some schools, shelters. And he interviewed some of the
6 children to know about their feelings about the -- the way of
7 the life that they are living.

8 So, yeah, it was -- we managed to share it and to -- to
9 reflect part of the suffer of the Palestinian children in
10 Gaza.

11 So the cases are really short. In few -- in one minute,
12 they manage to -- to share with us which kind of atrocities
13 that -- that they are live in.

14 Just I would like to say -- to say that one of the cases,
15 which is Noonia [phonetic]. Noonia was with her family at
16 home. And during the night, the Israeli war plane bombed the
17 house and they killed her mother, her father, and brother and
18 sister.

19 And her, she was lucky that only her leg was cut off. So
20 she was -- she went to the hospital, and she found that all
21 the family are gone. And she was not much -- think only, she
22 was -- her dream is to get to travel outside the country to --
23 to have the new leg. And also to -- to continue her study to
24 become a doctor to -- to treat and to help the children.

25 Unfortunately, while she was in the hospital after two

1 weeks of the accident, she was hospitalized in the hospital,
2 Israel, again they bombed the hospital, and then she was
3 killed. And by killing her, they killed all her dreams and
4 her -- her life.

5 **Q.** Has DCIP been monitoring the general situation of children
6 in Gaza over the last 16 weeks?

7 **A.** As I said, the situation in Gaza, it's unpleasant even
8 before. We witnessed the many Israeli assaults against Gaza
9 since 1995.

10 But what is happening this time is different than anytime
11 in the past. And they completely put us in a place that we
12 are not able to do the work that we are doing.

13 Usually, we document the -- each case in a detailed
14 documentation with evidence, testimonies from the
15 eyewitnesses, visiting the hospitals, provide medical reports.
16 So this time it's impossible to do that.

17 We are now not able even to control the number of the
18 killing. So all the time we are expanding our network to --
19 to also to work with the international human rights
20 organizations, with the UN agencies, in order at least to
21 collect the numbers.

22 So no one can provide you with the -- with the exact
23 number of the killing, because already now we are talking
24 about almost 50,000 civilians killed, among them more than
25 10,000 children. But also still under the rubble around

1 10,000. So nobody knows what happened to those 10,000.

2 Mostly they are kin.

3 **Q.** What can you tell us about injuries that children in Gaza
4 are sustaining?

5 **A.** I believe the problem with the injuries is more worse than
6 those who are killed. Those who are killed, already they
7 left. But those who stayed with their pain, with their sick,
8 with their -- with injuries, injured. But with -- not lack --
9 with no medical treatment. Hospitals are attacked. All the
10 hospitals in Gaza are being attacked and bombed by the
11 Israeli.

12 There is no medical treatment for the -- for those who are
13 injured. So they are dying. And even those who are dying
14 from the injury -- from their injuries, from the no food, no
15 water, so that -- this kind of situation put them in suffer --
16 in ongoing suffer. And, of course, for their families or the
17 rest of their families who's still alive. So it's an ongoing
18 and very complicated problem for them.

19 **Q.** What can you tell us about the impact of the lack of food
20 and water on children in Gaza?

21 **A.** Of course, as a human being, they have food going through
22 the system three times a day, and their food, water, every --
23 all the -- the time, around hour.

24 But the Israeli policy was clear from the beginning, the
25 intention to do the side [sic] -- the genocide. So we hear

1 the Israeli defense minister from the second day -- the first
2 day of the aggression, the 7th of October, he, in a press
3 conference, he declared that from the moment, no food -- even
4 he used his fingers -- no food, no water, no electricity, no
5 fuel, and to open a war against the -- no civilians there --
6 open the war against those who are in Gaza, they are human
7 animals.

8 Unfortunately, this message was taken seriously direct
9 from the Israeli army. And the result is now we are seeing --
10 following that the number of the killing.

11 We -- I never witnessed to see that every five minutes a
12 child killed in any place in the world. But in Gaza, that's
13 happened in every seven minutes.

14 So this is why I believe we feel that all the time that
15 our hands are cuffed.

16 So this is why we start to search for any place to obtain
17 justice or to stop the genocide.

18 We witnessed and we try, we experienced the Israeli
19 military system, legal system, even the Israeli civil legal
20 system. We never, during my work with more than 30 years in
21 this field, we never manage to obtain any kind of justice for
22 the Palestinians in the Israeli military system nor in the
23 Israeli civil system. Because the system are designed in
24 order to banish the Palestinian and to legitimate [sic] the
25 Israeli crimes against the Palestinian.

1 This is why we -- we felt that we are seeing the killing,
2 we are seeing the genocide, why we are not able to do anything
3 to stop the crime.

4 **Q.** What can you tell us about the impact on children whose
5 parents or families are killed?

6 **A.** The case of the children is something -- it's a unique
7 situation. Never happened. When you talk about those who
8 lost their life, it's a bigger problem. Those who are injured
9 and they live with their suffer is a bigger problem.

10 Also, those children who are left alone, just to -- recall
11 the short video with one of them, I think the name of the
12 little girl, she is 13 years old, Sarah.

13 She woked [phonetic] up in the -- she found that she is in
14 the hospital while the -- the house was bombed. And she was
15 talking that she lost her father, she lost her brothers, her
16 sisters. But only she -- she was left with her mother and
17 she -- her mother was asking her to come to her, while in fact
18 her mother was also killed in the same accident.

19 So this kind of cases, it will become the suffer with --
20 will be with the little girl, 13 years old, for all of her
21 life.

22 And of course the case of Sarah is the case of hundreds of
23 children left behind without any family to take care. So
24 it's -- it becomes responsibility on our shoulders and the
25 government in order to see how we can solve this problem in

1 the future.

2 **Q.** Is there anything else you can tell us about the
3 conditions of life for children in Gaza?

4 **A.** Gaza, I can use what the Secretary General of United
5 Nations said. Gaza become the graveyard for the children.
6 And I can say also, I can add that Gaza is become, according
7 to what Unicef said, is that the -- the high risk place, the
8 highest risk place in the world for children is Gaza.

9 Unicef published reports about the situation in Gaza
10 saying that all of the children around the world who killed
11 during -- in the armed conflict areas since 2019 until now is
12 less than half of the children who were killed in Gaza in
13 three weeks.

14 So Gaza is -- the common issue in Gaza is the killing.
15 The killing. So everyone is expect -- expect to be killed
16 every minute. And those who are still alive, not because they
17 are smart, not because they did something, only by the chance,
18 so everyone in Gaza now all in his mind is not to dream what
19 to be in the future, just to keep alive, to keep survive.
20 This is the situation in Gaza.

21 **MS. LAHOOD:** Thank you, Mr. Quzmar. I have no
22 further questions.

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

24 Any questions?

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

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

2 Thank you, sir. We appreciate your testimony.

3 Next witness.

4 **MS. SPEES:** Thank you, Your Honor. Pam Spees with
5 the plaintiffs.

6 We call Dr. Barry Trachtenberg.

7 **MR. KOSSAK:** Your Honor, may I have one moment?

8 **THE COURT:** Yes.

9 **MR. KOSSAK:** We recognize -- sorry. Jonathan Kossak
10 on behalf of the defendants.

11 We recognize that we previously objected to the proposed
12 testimony of Dr. Trachtenberg and in -- in opposition to the
13 plaintiffs' motion for live testimony.

14 We also understand that you already allowed it, but for
15 the record, we want to renew our objection to
16 Dr. Trachtenberg's proposed testimony on the public interest,
17 given that it touches on a question of law and is
18 inappropriate subject of expert testimony, given that it's the
19 Court's role to weigh the public interest.

20 **THE COURT:** All right. The objection is overruled.

21 It's important, I think, for the Court to hear all that
22 the plaintiff has to propose to the Court, including expert
23 testimony, so that the Court can make a fair decision on a
24 full and complete record.

25 So the government's objection is noted and overruled.

1 Please call your next witness.

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

3 Dr. Trachtenberg.

4 **THE CLERK:** Good afternoon.

5 If you could please step on the stand. Please raise your
6 right hand.

7

8 **BARRY TRACHTENBERG,**

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

11 **THE WITNESS:** Yes.

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

13 Please speak clearly into the microphone. Please state
14 your full name and spell your first and last name for the
15 record.

16 **THE WITNESS:** My name is Barry Trachtenberg,
17 B-A-R-R-Y, T-R-A-C-H-T-E-N-B-E-R-G.

18 **THE COURT:** Welcome, Doctor.

19 **THE WITNESS:** Thank you.

20 **DIRECT EXAMINATION**

21 **BY MS. SPEES:**

22 **Q.** Dr. Trachtenberg, can you state where you currently work?

23 **A.** I work at Wake Forest University in Winston-Salem,
24 North Carolina.

25 **Q.** And what is your position there?

1 **A.** I hold the Ruben Presidential Chair in Jewish history.

2 **Q.** And can you share with the Court your educational history
3 and background?

4 **A.** Sure.

5 I was in school for a while. But I did an undergraduate
6 degree in English at what was then Glassboro State College in
7 New Jersey which is now Rowan University.

8 I went from there to the University of Vermont to do a
9 master's in ultimately what became Holocaust Studies U.S.
10 History.

11 From there I went to Oxford University for a postgraduate
12 diploma in Hebrew and Jewish studies where I began studying
13 Yiddish.

14 And from there, I went to UCLA for my Ph.D. in European
15 history with a specialization in Jewish studies and Holocaust
16 studies. And while I was there, spent, I think, approximately
17 14, 15 months living in Jerusalem as part of my research.

18 **Q.** Um-hmm. And did you ever go to Gaza while you were in --

19 **A.** I spent time --

20 **Q.** -- doing research in Jerusalem?

21 **A.** Yep. When I was living in Jerusalem, I was -- visited
22 Gaza in June of 1998.

23 **Q.** And have your studies -- or has your work required you to
24 study other genocides in history?

25 You mentioned the Holocaust. Have you studied others?

1 **A.** I have. As -- as part of being a historian of the
2 Holocaust, much of the work that we do is talk about the
3 precedence, you know, that happened -- that allowed the
4 Holocaust to take place and, of course, the genocides that
5 have happened since.

6 I've taught several classes of comparative genocide, to
7 graduate students, to upper-level undergraduate students.

8 And every academic year since coming to Wake Forest in
9 2016, I teach a class on Modern European History, which has a
10 whole unit that examines genocide.

11 **Q.** And have you published any works on -- on these issues?

12 **A.** I have. I've published two books related to the Nazi
13 Holocaust. The first was *The United States and the Nazi*
14 *Holocaust: Race, Refuge and Remembrance*, which came out in
15 2018, which is about the United States' relationship to the
16 Holocaust.

17 And then more recently in 2022, I published a book called
18 *The Holocaust & the Exile of Yiddish*, which looked at the
19 impact of the Holocaust on the Yiddish language and the
20 political and cultural ideologies associated with it.

21 **Q.** Have you ever testified previously as an expert on these
22 issues?

23 **A.** In 2017, I testified to Congress regarding the question of
24 antisemitism on college campuses.

25 **Q.** I see.

1 **MS. SPEES:** Your Honor, may I approach?

2 **THE COURT:** Yes, sure.

3 (Pause in the proceedings.)

4 **MS. SPEES:** (Handing document.)

5 **THE WITNESS:** Thank you.

6 **BY MS. SPEES:**

7 **Q.** I've just handed you a document. Can you say what -- what
8 that is?

9 **A.** This is my CV. It's a record of my academic work.

10 **Q.** And can you just look at it and make sure that it's a true
11 and complete copy of your CV.

12 **A.** Yes. This is up-to-date.

13 **Q.** Thank you.

14 **MS. SPEES:** Your Honor, at this point, I'd like to
15 introduce Dr. Trachtenberg's CV into the record.

16 **THE COURT:** Any objection other than what you've
17 stated before, counsel?

18 **MR. KOSSAK:** We object --

19 **THE COURT:** Please stand.

20 **MR. KOSSAK:** Sorry, Your Honor.

21 We object to the extent that this was just given to us
22 last night and we haven't really had a chance to review it
23 thoroughly.

24 **THE COURT:** Well, I'll overrule the objection. And
25 if you wish to cross-examine -- do you want -- if he's offered

1 and you wish to voir dire him on his credentials, I'll allow
2 you to do that as the federal rules allow.

3 So for the moment I will overrule the objection, and I
4 will admit the document.

5 Can we mark that, Madam Clerk, as Plaintiffs' Exhibit
6 No. 1 for this hearing?

7 **THE CLERK:** Yes, Your Honor.

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

9 (Plaintiffs' Exhibit 1 marked for identification)

10 (Plaintiffs' Exhibit 1 received in evidence.)

11 **MS. SPEES:** And at this time, Your Honor, I would
12 tender Dr. Trachtenberg as an expert.

13 **THE COURT:** In what area?

14 **MS. SPEES:** In -- apologies.

15 In the area of Jewish history, Holocaust studies, and
16 genocide studies.

17 **THE COURT:** Do you wish to voir dire?

18 **MR. KOSSAK:** No, Your Honor. But the plaintiffs had
19 originally proposed eliciting this testimony --

20 **THE COURT:** Would you speak closer to the microphone.
21 Or come up to the lectern, please.

22 Thank you.

23 **MR. KOSSAK:** I'm sorry, Your Honor.

24 **THE COURT:** Yes.

25 **MR. KOSSAK:** The plaintiffs proposed that their --

1 Dr. Trachtenberg's testimony would be about the public
2 interest, not about Jewish history and the Holocaust.

3 **THE COURT:** What's your response?

4 Is there -- so you're claiming there's a notice issue?

5 **MR. KOSSAK:** That's correct, Your Honor.

6 **THE COURT:** Counsel?

7 **MS. SPEES:** So, Your Honor, first of all,
8 Dr. Trachtenberg has already submitted a declaration with two
9 other experts in this case where he's set out his -- his
10 opinions. And the public interest factor in this case
11 necessarily has to address the public interest in preventing
12 genocide.

13 If the -- if one of the factors is the public interest in
14 the injunction weighed against the irreparable harms,
15 Dr. Trachtenberg is uniquely placed to offer -- offer the
16 Court expert testimony on those issues.

17 **THE COURT:** Your response?

18 **MR. KOSSAK:** Your Honor, Dr. Trachtenberg's
19 declaration -- he was asked to opine on the unfolding attack
20 on the Palestinian population in Gaza and whether it has the
21 indicia of genocide.

22 It is not regarding the public interest, and we object to
23 his testimony on public interest in that regard.

24 **THE COURT:** All right. Objection is overruled.

25 I will accept him as an expert in the field that he's

1 offered and allow him to give his opinion under the rules.

2 **MS. SPEES:** Thank you, Your Honor.

3 **Q.** So, Dr. Trachtenberg, you've just heard us refer to your
4 declaration that you submitted on November 13th in connection
5 with the motion that we're here to deal with today.

6 Could you just briefly summarize your opinion that you
7 shared in that declaration.

8 **A.** Sure. Along with my colleagues, Victoria Sanford and John
9 Cox, we looked at the unfolding situation that was happening
10 in Gaza and asserted our understanding that we were watching a
11 genocide that was unfolding, and then compared it to more
12 recent genocides from the second half of the 20th century and
13 the early part of the 21st century.

14 **Q.** Can you share with the Court what you reviewed to arrive
15 at your -- at that opinion?

16 **A.** We looked at a range of materials including histories of
17 genocide. We looked at more recent reports from organizations
18 like the United Nations and Humans Rights Watch, organizations
19 that were reporting from the ground, as well as a wide range
20 of media sources, including journalists who are reporting
21 directly from Gaza.

22 **Q.** And are these the kinds of resources that, as a scholar,
23 you would normally review in the course of your studies on
24 genocides?

25 **A.** Yeah, these are absolutely among them. And, you know, one

1 of the challenges is -- of studying genocide is that genocides
2 themselves destroy their own evidence. You know, as we heard
3 from so many of the -- the people who gave testimony today,
4 that archives are being destroyed, memorial sites are being
5 destroyed, and human beings who hold that history is
6 destroyed.

7 Unfortunately this is all too common for genocides. And
8 so as scholars, we have to develop techniques to try to
9 understand those absences, to account for those absences, and
10 to try to tell a story as best as we can of those genocides.
11 And those absences, those voids are part of the story we have
12 to tell.

13 **Q.** What was it that you reviewed -- what was it about what
14 you reviewed that made you and your -- or let me just ask
15 you --

16 **A.** Sure.

17 **Q.** -- for your response to this -- that made you believe what
18 was happening was a genocide?

19 **A.** What made me -- and I can speak for my -- I think my
20 colleagues as well, believe that what was going on and what is
21 at this very moment as we're sitting here is a genocide, is
22 the correspondence between the actions that we're seeing on
23 the ground and the statements and actions of intent. Right?
24 We're very well familiar that to have an event sort of fall
25 under the 1948 Convention of Genocide requires both action and

1 intent. And here, we see that very, very clearly in a way
2 that seems really quite unique in history.

3 Very often the statements of intent are not declared
4 publicly, they're not declared openly by the people who are
5 responsible for carrying out the violence. But they use code
6 words or they use euphemisms or they speak to simply the will
7 of various leaders.

8 But here the statements of intent were made from the very,
9 very beginning. And the actions correspond so very clearly to
10 them that there was no reason for me and my colleagues to not
11 take the Israeli leaders at their word.

12 **Q.** Can you describe some of those statements that struck you?

13 **A.** Yeah. Absolutely.

14 Some of the -- the early statements were, for example, the
15 President of Israel declaring that all Gazans were responsible
16 for this, that there are no innocent people in Gaza.

17 Hearing the Minister of Defense, as we've heard from other
18 witnesses, talk about there being no food, no water, no
19 electricity will be allowed to Gaza.

20 The Israeli Minister of Energy who declared that there'll
21 be no water, not a single battery will be given until Gazans
22 disappear entirely.

23 And the one that was most alarming to me was hearing the
24 Prime Minister of Israel, Netanyahu, declare many, many times
25 that they're -- Israel is fighting a war against Amalek,

1 right, this biblical image that is seen as the eternal enemy
2 of the Jewish people and who, in Hebrew scripture, you know,
3 the Israel -- Israelite people were commanded to destroy them
4 utterly, men, women, children, even their cattle.

5 And this is an image that resonates with every Jewish
6 person who knows scripture, with every Israeli.

7 And, again, we see that the military is not just taking
8 this as sort of symbolic rhetoric, but this is what they're
9 doing.

10 **Q.** So you submitted this declaration with your colleagues on
11 November 13th.

12 And as we sit here today, has there been anything that has
13 happened since then that has changed your mind or impacted
14 your opinion that you shared?

15 **A.** When I read the declaration now that we submitted then,
16 I'm struck by how much worse the situation has become and how
17 everything that we feared and more is unfolding.

18 Then, if I remember correctly, we were talking about
19 11,000 people known to be dead. Now the number as of this
20 morning is over 26,000 people who are dead. There's some
21 63,000 people who are injured.

22 What we're also seeing are clear efforts by Israeli
23 authorities to destroy the conditions of life, which again, is
24 forces of violation of the 1948 Convention. And for this, I
25 would point to Israel's decision to not allow food aid into

1 Gaza, to not allow medical supplies either for Gazans or for
2 the people who are still being held hostage.

3 We see Israel going so far as to make decisions to flood
4 the tunnels that, to my mind, are not illegal -- maybe what
5 you do with the tunnels may be a violation -- but to flood the
6 tunnels with millions of gallons of seawater which are
7 threatening to destroy the aquifer and to not allow --

8 **MR. KOSSAK:** Objection, Your Honor.

9 **THE COURT:** Stand, please.

10 **MR. KOSSAK:** Your Honor, I object to
11 Dr. Trachtenberg's characterization of what's going on with
12 the tunnels. He's not an expert in the field of military
13 affairs or what's going on in that regard.

14 **THE COURT:** Overruled.

15 Continue, please.

16 **THE WITNESS:** In effect, what we're starting to see
17 is them salting the earth, right, which will prevent food from
18 growing and from Gazans to be able to survive.

19 And so to my understanding, this seems to be a --

20 **MR. KOSSAK:** Your Honor, objection. There's been no
21 question --

22 **THE COURT:** Overruled.

23 **MR. KOSSAK:** -- posed.

24 **MS. SPEES:** He was finishing his response --

25 **THE COURT:** Overruled.

1 (Simultaneous colloquy.)

2 **THE COURT:** Let me just say -- let me ask you, why
3 don't you ask the next question so just so we're on sort of
4 the same page and same framework.

5 Thank you.

6 **MS. SPEES:** Sure.

7 **Q.** So having studied the Holocaust and other genocides in
8 history, can you describe the international responses to these
9 atrocities and efforts --

10 (Simultaneous colloquy.)

11 **THE WITNESS:** Are you referring to what's happened
12 since October 7th? Or do you mean --

13 **BY MS. SPEES:**

14 **Q.** No, in -- in general. The -- the frameworks --

15 **A.** Um-hmm.

16 **Q.** -- in the international community --

17 **A.** Yeah.

18 **Q.** -- to --

19 **A.** Yeah. Absolutely.

20 **MR. KOSSAK:** Objection. Vague.

21 **BY MS. SPEES:**

22 **Q.** -- to attempt to prevent genocide.

23 **THE COURT:** Overruled.

24 You may answer, Doctor.

25 **THE WITNESS:** Thank you, Your Honor.

1 Since 1948, with the Convention on the Prevention of
2 Genocides passed by the United Nations, we now have a
3 framework under international law both to prevent and punish
4 the crime of genocide.

5 As we've seen in nearly every genocidal effort since, the
6 legal actions always seem to come afterwards. They come late
7 after those who have been killed in the genocide are dead, and
8 then there's an attempt to try to bring justice for the
9 victims against the persecutors of it.

10 What makes this situation so unique is we're watching the
11 genocide unfold as we speak. And we're in this incredibly
12 unique position where we can actually intervene to stop it
13 using the mechanisms of international law that are available
14 to us.

15 **BY MS. SPEES:**

16 **Q.** What, in your view, do those mechanisms entail or include?

17 **A.** Those mechanisms include punishing the -- the people who
18 are prosecuting, you know, these -- these genocides. And in
19 this particular case, I think we have an opportunity here in
20 the United States to stop the transmittal of weapons that are
21 being used. You know, as we've heard from plaintiffs after --
22 plaintiff after plaintiff, the bombs that are dropping are
23 bombs from the United States. And we have this unique
24 opportunity to intervene with that.

25 **Q.** And in the course of your review of the materials that you

1 reviewed to put together the declaration, did you yourself
2 review reports about U.S. weapons and what was being used?

3 **A.** I did.

4 **Q.** Aside from what you heard today?

5 **A.** Yeah, I did. Some of it repeats what we've heard today,
6 such as the use of Hellfire missiles, such as the use of these
7 2,000-pound bombs that are being sent.

8 You know, there's been billions of dollars that have been
9 sent since October 7th to Israel by the United States in
10 circumvention of Congress.

11 And it seems that we have this opportunity now through --

12 **THE COURT:** Let me interrupt. I'm just interested.

13 When you say contrary to the intent of Congress --

14 **THE WITNESS:** Yeah.

15 **THE COURT:** -- can you explain what you mean?

16 **THE WITNESS:** Sure. I've just seen objections by
17 members of Congress who feel they've not been consulted and
18 that there's been an end-run that's being done around them
19 where President Biden seems to be supporting a war without
20 Congressional approval.

21 **THE COURT:** Thank you.

22 **MR. KOSSAK:** Your Honor, I would object to that
23 testimony.

24 **THE COURT:** On what ground?

25 **MR. KOSSAK:** On the ground that he's not an expert in

1 national security or Congressional affairs or -- and there's
2 nothing in his declaration about this. It's -- he's a scholar
3 of Jewish history and genocide, not about Congress's internal
4 or -- Congress's public negotiations about the U.S. support
5 for Israel.

6 **THE COURT:** My view, counsel, is that we don't have a
7 jury here. We have this Court. I am -- I'd like to think
8 that I am savvy enough to be able to consider only the
9 evidence that is appropriate under the law and the
10 Constitution.

11 And I will weigh that and -- and if, as, and when you
12 would wish to present cross-examination or the government
13 wants to prevent -- present countervailing evidence, they have
14 the right to do so.

15 So the objection is overruled.

16 **THE WITNESS:** May I -- may I continue?

17 **THE COURT:** Yes, please continue.

18 I overruled the objection. You can continue.

19 **THE WITNESS:** You know, what we study is how
20 genocides happen, right? Scholars of genocide get into this
21 because we want to learn how genocides occur, right? And it's
22 out of this concern for stopping genocide that we do this
23 work.

24 And we look at the various mechanisms that allow for
25 genocides to happen. And so the reason why I'm weighing in on

1 the issue is because we're seeing it happen before our eyes.

2 And history teaches us, and American history teaches us,
3 that there's moments of intervention that can happen such as
4 with the United States and the Nazi Holocaust that are
5 overlooked that, that they're ignored, they're not paid
6 attention to. And it's only afterwards that we then have to
7 have this reckoning, right?

8 And so my own field of Holocaust studies, and in
9 particular, we've seen since the end of World War II that we
10 have a whole culture of memory and guilt around the Holocaust
11 in the United States to the point where we have a museum on
12 the National Mall of the United States.

13 And those of us who engage in this research do it because
14 we don't want that to happen again.

15 **THE COURT:** Understood.

16 **THE WITNESS:** Yeah.

17 **THE COURT:** Continue.

18 **MS. SPEES:** I have no further questions, Your Honor.

19 **THE COURT:** All right. Cross-examination?

20 **CROSS-EXAMINATION**

21 **BY MR. KOSSAK:**

22 **Q.** Good afternoon, Dr. Trachtenberg.

23 **THE COURT:** Would you reintroduce yourself, please.

24 **MR. KOSSAK:** Yes. My name is Jonathan Kossak. I'm
25 counsel, along my colleague Jean Lin, for the defendants.

1 **THE COURT:** Okay. Continue.

2 **BY MR. KOSSAK:**

3 **Q.** Dr. Trachtenberg, you do not have a law degree, correct?

4 **A.** Correct.

5 **Q.** You do not have a degree in international relations,
6 correct?

7 **A.** Correct.

8 **Q.** You're not an expert on the constitutional principle of
9 separation of powers, correct?

10 **A.** Correct.

11 **Q.** You are not an expert on U.S. national security interests,
12 correct?

13 **A.** Correct.

14 **Q.** You are not an expert on U.S. foreign diplomacy, correct?

15 **A.** I've studied quite a bit of U.S. diplomacy, especially as
16 it relates to genocide and during World War II.

17 **Q.** You do not have a degree in foreign policy, correct?

18 **A.** No. I wasn't aware that's a degree.

19 **Q.** You've not written on -- strike that.

20 **MR. KOSSAK:** If I can have one moment, Your Honor.

21 **THE COURT:** Sure.

22 **MR. KOSSAK:** No further questions, Your Honor.

23 **THE COURT:** Thank you, counsel.

24 Any further questions?

25 **MS. SPEES:** No, Your Honor.

1 **THE COURT:** Thank you, Doctor. I appreciate it.

2 **THE WITNESS:** Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 Does the plaintiff have any more witnesses?

5 **MS. SPEES:** We do not, Your Honor.

6 **THE COURT:** You do not, okay.

7 Does the government have any witnesses?

8 **MS. LIN:** No, we don't, Your Honor.

9 **THE COURT:** All right. So plaintiff rests?

10 **MS. SPEES:** (Nods head.)

11 **THE COURT:** Yes?

12 **MS. SPEES:** Yes, Your Honor.

13 **THE COURT:** And the government -- the defendant
14 rests?

15 **MS. LIN:** Yes, subject to --

16 **THE COURT:** Subject to argument, yes.

17 Okay. So let me have counsel -- lead counsel come up, and
18 I'd like to hear -- and I will give you the opportunity, I
19 promise.

20 But I'll start from plaintiffs' counsel. And without
21 necessarily repeating, I'd like you to sort of wrap it up and
22 reflect on what we've heard, and in light of what we heard,
23 you know, what you think the Court can do and should do.

24 **MS. SPEES:** Yes. Thank you, Your Honor.

25 Pam Spees, again, for the plaintiffs.

1 Well, after what we've heard, it's -- there's been some
2 harrowing, horrific testimony from the plaintiffs. And I
3 guess it's -- it's my job to speak now about the factors and
4 the frameworks for preliminary injunctions in the Ninth
5 Circuit and to talk about things like sliding scales and the
6 balance of equities.

7 But hearing what we've heard and knowing that just since
8 we've been here today, one of the plaintiffs had lost
9 additional family members. And that when we filed this case
10 in mid-November, the death count was at 11,000. And as the
11 Court acknowledged today, it's well over 25,000.

12 2.2 million people are at risk of starvation. I would say
13 that this -- that what's happening breaks the scales. The
14 U.N. Secretary General has said the same thing. He said just
15 this week that the entire population of Gaza is enduring
16 destruction at a scale and speed without parallel in recent
17 history.

18 All of these horrific records are being broken. There've
19 been more journalists killed in just the first four-week
20 period than in any conflict in the last three decades. And
21 those are the storytellers, the people who are making the
22 record of what's going on.

23 UN aid workers, more killed in the first month than in any
24 comparable period in the history of the United Nations.

25 I will just say that the numbers are staggering for an

1 enclave like Gaza, and yet if proportionate to what that would
2 feel like in the United States proportionally, it's all of
3 Oakland, it's all of San Francisco, it's all of Berkeley,
4 Sacramento, and San Jose with room left to spare, gone. And
5 many, many, many scores more people facing the threat of
6 starvation and famine, catastrophic famine.

7 And so when we talk about the sliding scale for
8 preliminary injunctions and how one factor slides that scale,
9 it's difficult to even analogize the cases that we have to
10 cite to because they don't comprehend harm -- irreparable harm
11 of this magnitude and scale.

12 But even so, when we talk about the balance of equities,
13 and when they -- when they do point so sharply in the
14 movants' -- movants' favor, the plaintiffs only need to show
15 that there are serious questions going to the merits, the
16 merits being that a genocide is unfolding and that there's a
17 duty to prevent and the U.S. is failing in that, and in fact
18 is enabling that genocide.

19 We would submit that we've shown that there are far more
20 than serious questions, that there's a likelihood of
21 prevailing on these merits ultimately.

22 As to the defendants, again when we filed, the numbers
23 were in the -- were around 11,000. And there were already
24 warnings, as Dr. Trachtenberg testified and as they submitted
25 in their declaration and as is noted in the filings,

1 800 scholars joined them in raising the alarm, sounding the
2 alarm that what was happening was a genocide. U.N. experts
3 sounded that alarm.

4 And then today, the International Court of Justice just
5 came in with its ruling which is almost unprecedented in terms
6 of what it's recognizing as the harm that's happening now and
7 the need to require preventative measures.

8 So that's their version of a preliminary injunction, Your
9 Honor.

10 And it shows that there are judicially manageable
11 standards that judges and courts have roles to play in
12 enforcing and making real this duty that all of us in this
13 world have to preventing a genocide.

14 And the government's only response is to say to this Court
15 that it can't even engage with the question, that it should be
16 allowed to continue because this touches on matters of foreign
17 policy.

18 We're talking about clear allegations of illegality here
19 of the most serious kind. That is not what the political
20 question doctrine was for. That is not what separation of
21 powers is for. Mr. Herzallah reminds us of what -- how
22 important that is. And what separation of powers is not, is
23 not unequal branches of government. They are coequal branches
24 of government. The gov -- the administration wants to turn
25 that on its head and have a free pass to keep going even in

1 the face of all of this recognition that what's happening is a
2 genocide.

3 The government has said that these defendants can't be
4 held responsible because Israel is an independent actor making
5 unfettered decisions. Even Israeli officials acknowledge that
6 that is not true. We have a quote from Minister of Defense
7 Yoav Gallant where he is saying that it was the U.S. pressure
8 that made them relent and let in a trickle of aid at a certain
9 point. Not enough to address, by any measure, the
10 humanitarian situation.

11 And what that says is that, A, the Israeli officials were
12 intending to starve that population; and, B, the U.S. has a
13 role to play and is playing a role in influencing these
14 officials, in addition to the enormous, enormous amount of
15 weapons and munitions that we are funneling. Because there
16 were warnings all along the way, and the U.S. responses have
17 been, and to this point still are, that they are not placing
18 any conditions on the use of those weapons.

19 They are not drawing any red lines, and as
20 Dr. Trachtenberg said, rushing still more, bypassing Congress,
21 to make those weapons available to a military that they know
22 is using them. And even -- even President Biden has said it,
23 they are using them indiscriminately. And I would suggest
24 that that's a generous term.

25 Your Honor, the plaintiffs have come to you under these

1 stark daunting circumstances. They've come to this Court to
2 ask it to do what courts do, which is to apply the law to
3 these facts and make a determination.

4 We ask that the Court consider a declaratory judgment as
5 set out in the briefing. And we think it is completely within
6 the Court's authority to enjoin the government from continuing
7 to send the weapons that have already been used repeatedly
8 over and over again. We -- just last -- it was a month ago we
9 heard that there were 20,000 bombs dropped on the small
10 enclave of Gaza and that all of them had come from the
11 United States.

12 And the government can confirm that. The government can
13 share information about what is going, what is defensive, what
14 is being used. And the Court can fashion a remedy that is --
15 that will indeed have an impact on the behavior of Israeli
16 military officials and civilian officials.

17 And with that, Your Honor, we -- yeah, we request the
18 Court do so. Thank you.

19 **THE COURT:** All right. Counsel?

20 **MS. LIN:** Your Honor, I just want to first reiterate
21 what the Secretary of State has said, which is that we are in
22 the midst of a human tragedy in the Middle East for
23 Palestinians and Israelis alike. And we are seeing every day
24 in Gaza the gut-wrenching events that are unfolding.

25 And we all want to see that the suffering of people who

1 are caught in the middle to end as quickly as possible. And
2 that is why the executive branch is engaging in diplomacy
3 relentlessly every single day.

4 But this Court is not the proper forum to provide redress
5 for the plaintiffs' grievances. This Court is asked to sit in
6 judgment of a foreign government, the State of Israel, to
7 determine whether Israel has transgressed international
8 limits, limits imposed by international law, with the
9 assistance of the United States.

10 This case, as Your Honor noted earlier, is a -- falls
11 within the quintessential political question doctrine. And so
12 the Court is -- doesn't need to even engage in the preliminary
13 injunction factors because if the Court grants the
14 government's motion to dismiss because this case is simply not
15 justiciable under the political question doctrine, then
16 there's no need to determine the PI factors.

17 But even if the Court were to go further, the standard is
18 quite clear that if a plaintiff fails to show a likelihood of
19 success in this case whether the case is justiciable under the
20 political question doctrine and other defenses we raise, then
21 the Court need not consider the remaining factors. And that
22 is *Garcia vs. Google* from the Ninth Circuit en banc.

23 So again that leads to the same place that this case
24 simply cannot proceed under their well-established doctrines.

25 **THE COURT:** All right. Would you like to rebut

1 counsel, or do you have anything further to say?

2 **MS. SPEES:** Your Honor, if the Court accepts this
3 position, all of this framework, the Genocide Convention,
4 everything that's been put into place to prevent genocides
5 means nothing when it's U.S. officials who are enabling it, if
6 it can't be stopped by a court in the United States.

7 **THE COURT:** Thank you.

8 So the Court is going to take this matter under advisement
9 and -- and make a decision in its -- on a timely basis.

10 I want to say as we close that --

11 **MS. LIN:** I'm so sorry, Your Honor.

12 Would I be allowed an opportunity to address the points
13 that I intended to raise earlier?

14 **THE COURT:** All right. I thought you were doing
15 that, but go ahead.

16 **MS. LIN:** No. I was doing the concluding statement.
17 I'm sorry, Your Honor --

18 **THE COURT:** Go ahead. Briefly, please.

19 **MS. LIN:** -- if I misunderstood you.

20 So just try to be very brief. There are three points that
21 we didn't have an opportunity to address in -- because they
22 were raised in the plaintiffs' surreply.

23 And the first one is we submitted a case yesterday to this
24 Court, the United States versus Jewel case, which is *Jewel vs.*
25 *NSA*, which is actually Your Honor's decision.

1 And we did that because we had talked about relying on the
2 Supreme Court's *Patchett* framework to determine whether the
3 FTCA bars relief here. And the plaintiffs came back and said
4 no, if the *Patchett* case is a quiet title case, it didn't talk
5 about the FTCA so it's not relevant.

6 So we submitted the *Jewel vs. NSA* case to show that this
7 Court itself applied the *Patchett* framework to determine that
8 even outside of the quiet title case context, the *Patchett*
9 framework still applies.

10 And Your Honor may remember the case was about a suit for
11 injunctive relief concerning the federal government's alleged
12 warrantless communications surveillance of U.S. citizens.
13 And -- and this Court held that the APA's waiver of sovereign
14 immunity for injunctive relief didn't apply. And that was
15 because Congress had waived sovereign immunity in -- for money
16 damages in the Patriots Act.

17 And so that act provided money damages for violations of
18 certain provisions of the Foreign Intelligence Surveillance
19 Act. So the limited waiver in the Patriots Act limited the
20 relief under the APA.

21 So we think the same concept applies here.

22 **THE COURT:** Would you like to respond to that?

23 **MS. SPEES:** Just that it's not applicable at all,
24 Your Honor.

25 **THE COURT:** All right. All right. So as I said

1 before, before we close, a couple of things.

2 Number 1, because of the justifiable public concern in
3 this case, we have live-streamed this. And as soon as it's
4 technologically possible, given we're dealing with the United
5 States government, we will get this up on the website.

6 And by the way, the website is on the uscourts.gov website
7 under "Cameras in Court," and it will be up unredacted,
8 uncensored except for the beginning when there's -- before
9 there was any discussion before the proceedings started. So
10 that's going to be available to everybody.

11 And in fact, I wanted to mention, because there's been
12 some concern expressed even while we're here in court from
13 outside that -- about the number of licenses available. We
14 had 500 licenses. We got another 500. We had a thousand
15 licenses. And that's all we had.

16 So we have actually exhausted. So to those people outside
17 who justifiably wanted to listen to these proceedings in real
18 time, we tried. And that was the extent of our -- our
19 technological ability to do it. So but that's going to be
20 remedied as soon as this is posted.

21 So the last thing I want to say is the testimony that the
22 Court heard was truly horrific, gut-wrenching. There really
23 isn't any -- there aren't any words to describe what's been
24 testified to, what's going on.

25 And there really isn't -- the government doesn't

1 dispute -- seriously dispute factually what's going on in Gaza
2 to the -- to the people, to the population, people of Gaza,
3 Palestinians.

4 And on this record, there is -- although there were
5 objections on certain grounds to the testimony of
6 Dr. Trachtenberg, there is now on the record uncontradicted
7 evidence that at least in the opinion of scholars, one very
8 highly regarded scholar, not from a legal standpoint, from a
9 sociological and historical construct, they believe that there
10 is a genocide in progress.

11 And I have to say that in 20-some-odd years on the bench,
12 this is probably the most difficult case factually that this
13 Court has ever had, and one of the most difficult cases
14 legally that this Court has ever had. Because the Court needs
15 to decide, as I said at the beginning and as counsel has
16 argued, what are the limits of the Court's power within our
17 constitutional framework.

18 And so I -- I have listened to, and I want to say to those
19 witnesses who testified both directly in person and by Zoom,
20 that you have been seen, you have been heard by this Court as
21 a representative of the -- of the coequal branch of
22 government. I'm going to consider your testimony, I'm going
23 to consider the law, and apply the facts to the law and make
24 the best decision I can consistent with my constitutional
25 obligations.

1 And I want to thank counsel on both sides for really
2 helping the Court, giving me the information and the arguments
3 to help the Court make a very, very difficult decision. One
4 of the most difficult -- the most difficult judicial decisions
5 that I have ever made. And I'm going to take it extremely
6 seriously.

7 So thank you very much, everybody, for your attention and
8 for this -- presenting these very important facts in this
9 extremely tragic case. Thank you.

10 **MS. SPEES:** Thank you, Your Honor.

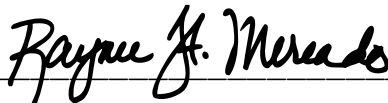
11 **MR. KOSSAK:** Thank you, Your Honor.

12 (Proceedings were concluded at 1:41 P.M.)

13 --o0o--

14 **CERTIFICATE OF REPORTER**

15
16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.
18 I further certify that I am neither counsel for, related to,
19 nor employed by any of the parties to the action in which this
20 hearing was taken, and further that I am not financially nor
21 otherwise interested in the outcome of the action.

22
23 

24 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

25 Tuesday, February 20, 2024