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February 4, 2025

URGENT

Hope Olds, Chief
U.S. Department of Justice
Criminal Division
Human Rights and Special Prosecution Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
hrsptips@usdoj.gov; hope.olds@usdoj.gov

Sent via Email

Re: Request to Investigate Benjamin Netanyahu for Genocide, War Crimes and Torture, or Surrender Him to the International Criminal Court

Dear Ms. Olds:

The Center for Constitutional Rights, along with directly impacted U.S. citizens from or with family in Gaza, write to follow-up on our July 19, 2024 letter calling for the Department of Justice Human Rights and Special Prosecutions Section (“HRSP”) to **open a criminal investigation of Israeli Prime Minister Benjamin Netanyahu (DOB: 21 October 1949), who is currently present in the United States, for his commission or authorization of genocide, war crimes, and torture against Palestinians in Gaza** since October 8, 2023, in violation of 18 U.S.C. §§ 1091, 2340-2340A, and 2441, as amended by the Justice for Victims of War Crimes Act (2023). In light of the seriousness of the alleged crimes and the responsibilities the United States has as a signatory of the Genocide Convention, the 1949 Geneva Conventions and the Convention Against Torture to prevent and punish these crimes, we also call upon your office to **cooperate with the International Criminal Court (“ICC”) to enforce its arrest warrant and effectuate Netanyahu’s surrender to the Court in The Hague for further proceedings.**¹

¹ Each of the cited Conventions places a requirement on States parties to prevent, punish or extradite persons suspected of these crimes to jurisdictions where they will face prosecution. *See* Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277, arts. 1, IV, V, and VII; Geneva Convention Relative to the Treatment of Civilian Persons In Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 147; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85, arts. 2, 4-8.

As set forth in detail in the July 19, 2024 letter attached hereto as Exhibit A and given Reference Number JL302135728, there is ample credible evidence to establish that serious crimes falling within U.S. criminal jurisdiction have been and continue to be perpetrated by Israeli forces in Gaza and across the occupied Palestinian territory. The crime-base evidence includes the killing of more than 46,600 Palestinians of whom an estimated 13,319 are children, the injuring of more than 110,000 people, the forcible displacement of nearly two million, and the intentional starvation of the entire population leading to famine across the strip.² The individual signatories to this letter, all plaintiffs in the case *Defense for Children International-Palestine v. Biden*, and the other plaintiffs in the case have collectively lost hundreds of family members while their family members have been subjected to repeated forcible transfer and displacement and starvation in the context of a mass famine.³ Netanyahu, the head of government and chief executive of Israel overseeing cabinet-level government ministries including the Israeli Ministry of Defense, bears individual criminal responsibility for these crimes.

Reflecting both the seriousness of the crimes he is alleged to have committed and the strength of the evidence, the Prosecutor of the ICC sought the issuance of an arrest warrant against Benjamin Netanyahu as well as former Israeli Defense Minister Yoav Gallant for war crimes and crimes against humanity already in May 2024.⁴ **An arrest warrant for Netanyahu was issued by Pre-Trial Chamber I of the ICC on November 21, 2024 for crimes against humanity and war**

² United Nations Office for the Coordination of Humanitarian Affairs, Report Impact Snapshot: Gaza Strip, Jan 14, 2025, <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-14-january-2025>. It is widely accepted that the death count in Gaza is underreported, by as much as 40%, with many persons missing and believed to be buried under the rubble. *See, e.g.,* CNN, *Gaza death toll has been significantly underreported, study finds*, Jan. 9, 2025, <https://www.cnn.com/2025/01/09/middleeast/gaza-death-toll-underreported-study-intl/index.html>.

³ *See Def. for Child. Int'l-Palestine v. Biden*, Complaint, No. 23-CV-05829-JSW, 2024 WL 390061, (N.D. Cal. Jan. 31, 2024), *aff'd*, No. 24-704, 2024 WL 3405631 (9th Cir. July 15, 2024), https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_w.pdf.

For sworn testimony provided in furtherance of plaintiffs' claims, *see* Decl. of Basim Elkarra in Support of Pls.' Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-3_12-22-23_Elkarra-Decl_w.pdf; Decl. of Waeil Elbhassi in Support of Pls.' Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-4_12-22-23_Elhbassi-Decl_w.pdf; Decl. of Laila Elhaddad in Support of Pls.' Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-5_12-22-23_Elhaddad-Decl_w.pdf; Decl. of A.N. in Support of Pls.' Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-2_12-22-23_AN-Decl_w.pdf; Decl. of Ahmed abu Artema in Support of Pls.' Mot. for Prelim. Injunction (Nov. 16, 2023) https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Abu%20Artema_w.pdf; Decl. of Susan Power for Al-Haq in Support of Pls.' Mot. for Prelim. Injunction (Nov. 16, 2023) https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Al-Haq_w.pdf; Decl. of Dr. Omar Al-Najjar in Support of Pls.' Mot. for Prelim. Injunction (Nov. 16, 2023), https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Al-Najjar_w.pdf; Decl. of Mohammad Abu Rokbeh in Support of Pls.' Mot. for Prelim. Injunction (Nov. 16, 2023) https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Abu%20Rokbeh_w.pdf. *See also* *Def. for Children Int'l-Palestine v. Biden*, No. 23-cv-05829 recording of hearing, January 26, 2024, available at <https://www.uscourts.gov/cameras-courts/defense-children-international-palestine-v-biden>, and transcript: https://ccrjustice.org/sites/default/files/attach/2024/05/100_2-27-24_Transcript_w.pdf.

⁴ ICC, Office of the Prosecutor, Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine (May 20, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situationstate>.

crimes committed against Palestinian civilians in Gaza from at least 8 October 2023 until at least 20 May 2024.⁵

In so doing, the Pre-Trial Chamber found that there are reasonable grounds to believe that Netanyahu committed and/or has superior responsibility for the war crimes of starvation as a method of warfare and of intentionally directing an attack against the civilian population and the crimes against humanity of murder, persecution, and other inhumane acts. The issuance of a warrant resulted from a finding that Netanyahu's arrest is necessary to ensure his attendance at trial, to ensure Netanyahu does not obstruct or endanger the ongoing investigation and ICC proceedings; and to prevent the continuing commission of these crimes, having found Netanyahu's criminal conduct is "ongoing."⁶

The crimes charged as crimes against humanity were committed as part of a widespread and systematic attack against the Palestinian civilian population pursuant to State policy, while the war crimes are alleged to have been committed in the context of an international armed conflict between Israel and Palestine, which is under prolonged occupation by Israel, as well as a non-international armed conflict between Israel and Hamas, together with other Palestinian armed groups. Notably, the alleged underlying acts relied upon by the Prosecutor and found to have a basis in fact by the Pre-Trial Chamber also support a finding for the underlying act for genocide of deliberately inflicting on Palestinians in Gaza conditions of life calculated to bring about their physical destruction as a group in whole or in part:

The Chamber considered that there are reasonable grounds to believe that both individuals intentionally and knowingly deprived the civilian population in Gaza of objects indispensable to their survival, including food, water, and medicine and medical supplies, as well as fuel and electricity, from at least 8 October 2023 to 20 May 2024. This finding is based on the role of Mr Netanyahu and Mr Gallant in impeding humanitarian aid in violation of international humanitarian law and their failure to facilitate relief by all means at its disposal. The Chamber found that their conduct led to the disruption of the ability of humanitarian organisations to provide food and other essential goods to the population in need in Gaza. The aforementioned restrictions together with cutting off electricity and reducing fuel supply also had a severe impact on the availability of water in Gaza and the ability of hospitals to provide medical care. [...]

Furthermore, the Chamber found reasonable grounds to believe that no clear military need or other justification under international humanitarian law could be identified for the restrictions placed on access for humanitarian relief operations.

⁵ ICC, Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant (Nov. 21, 2024), ("ICC Arrest Warrant Press Release") <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>. The Pre-Trial Chamber also issued an arrest warrant for Yoav Gallant for crimes against humanity and war crimes.

⁶ *Id.* See ICC Rome Statute, Article 58.

Despite warnings and appeals made by, *inter alia*, the UN Security Council, UN Secretary General, States, and governmental and civil society organisations about the humanitarian situation in Gaza, only minimal humanitarian assistance was authorised. In this regard, the Chamber considered the prolonged period of deprivation and Mr Netanyahu's statement connecting the halt in the essential goods and humanitarian aid with the goals of war. [...]

The Chamber found that there are reasonable grounds to believe that the lack of food, water, electricity and fuel, and specific medical supplies, created conditions of life calculated to bring about the destruction of part of the civilian population in Gaza, which resulted in the death of civilians, including children due to malnutrition and dehydration.⁷

In light of the pending ICC arrest warrant, it is incumbent upon HRSP to initiate an investigation against Benjamin Netanyahu (if one is not already underway) and where probable cause exists, prosecute him for war crimes, torture and genocide. The Department of Justice is also called upon to cooperate with the ICC to surrender Mr. Netanyahu to the Court in The Hague for further proceedings.

Sincerely,



Maria C. LaHood
Deputy Legal Director

And on behalf of:

Waeil Elbhassi
Laila Elhaddad
Basim Elkarra
Mohammad Herzallah
Ayman Nijim

Attachments:

Exhibit A, [Letter from Maria LaHood, CCR to Hope Olds, DOJ HRSP](#), July 19, 2024

Exhibit B, Letter from U.S. Dep't of Justice Crim. Division to Maria LaHood, July 25, 2024

⁷ See ICC Arrest Warrant Press Release.

EXHIBIT A



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July 19, 2024

Hope Olds, Chief
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Sent via Email

**Re: Urgent Request to Investigate Benjamin Netanyahu
for Genocide, War Crimes and Torture**

Dear Ms. Olds:

The Center for Constitutional Rights writes to urge the Department of Justice Human Rights and Special Prosecutions Section (“HRSP”) **to open a criminal investigation of Israeli officials and others who committed or authorized genocide, war crimes, and torture against Palestinians in Gaza since October 8, 2023, in violation of 18 U.S.C. §§ 1091, 2340-2340A, and 2441**, including Benjamin Netanyahu who will be present in the United States early next week. We believe ample credible evidence exists to sufficiently establish that serious crimes falling within U.S. criminal jurisdiction are systematically being perpetrated in Gaza. Given the frequent travel of Israeli officials and citizens to the United States resulting in their presence within U.S. jurisdiction, and recalling that HRSP is part of a coordinated, interagency effort to deny safe haven in the United States to human rights violators, the Department of Justice must urgently investigate and hold accountable those responsible for war crimes and other serious crimes being committed on a wide-scale basis in the occupied Gaza Strip, including potentially U.S. and U.S.-dual citizens.

Israeli Prime Minister Benjamin Netanyahu, the head of government and chief executive of Israel overseeing cabinet-level government ministries including the Israeli Ministry of Defense, is expected to be present in the United States at least from July 22, 2024 through July 24, 2024. **In light of Netanyahu’s imminent visit, HRSP should prioritize investigating him.** Since October 8, 2023, under Netanyahu’s direction, Israeli forces have killed an estimated 38,650 Palestinians

in the occupied Gaza Strip,¹ including more than 14,000 children,² injured nearly 90,000 people, forcibly displaced two million, and intentionally starved the entire population leading to famine across the strip.³ Additionally, around 20,000 Palestinian children in Gaza are estimated to be lost, disappeared, detained, buried under the rubble, or in mass graves.⁴ **There is overwhelming evidence that under Netanyahu, Israeli forces and authorities are committing genocide, war crimes, and torture against Palestinians in Gaza,** acts that are proscribed under federal criminal statutes and prosecutable by HRSP.⁵

As the most powerful political figure in Israel, Netanyahu also leads the security cabinet, as well as the recently-dissolved war cabinet - the two bodies responsible for setting the strategy for and directing the military assault on Gaza since October 7, 2023. He therefore bears criminal responsibility for the serious international crimes committed against the Palestinian population over the past nine months.⁶

¹ United Nations Office for the Coordination of Humanitarian Affairs, Humanitarian Situation Update #191 | Gaza Strip (July 13, 2024), <https://www.ochaopt.org/content/humanitarian-situation-update-191-gaza-strip>.

² UNICEF, Statement by UNICEF Executive Director Catherine Russell on military operations and border closures in Rafah, Gaza (May 9, 2024), <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-military-operations-and-border>.

³ United Nations Human Rights Office of the High Commissioner, *UN experts declare famine has spread throughout Gaza strip* (July 9, 2024), <https://www.ohchr.org/en/press-releases/2024/07/un-experts-declare-famine-has-spread-throughout-gaza-strip>

⁴ Save the Children, *Gaza's Missing Children: Over 20,000 Children Estimated to Be Lost, Disappeared, Detained, Buried Under the Rubble or in Mass Graves* (June 24, 2024), <https://www.savethechildren.net/news/gazas-missing-children-over-20000-children-estimated-be-lost-disappeared-detained-buried-under>.

⁵ Reflecting both the seriousness of the crimes he is alleged to have committed and the strength of the evidence, the Prosecutor of the International Criminal Court (“ICC”) has filed an application for an arrest warrant to be issued against Benjamin Netanyahu as well as Israeli Defense Minister Yoav Gallant for war crimes and crimes against humanity. See ICC, Office of the Prosecutor, *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine* (May 20, 2024) (“Statement of the ICC Prosecutor”), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

⁶ Netanyahu does not enjoy immunity from criminal investigation or prosecution in this context. There is no immunity for heads of state for serious violations of international law, including the crimes outlined here - namely, torture, war crimes, and genocide. *Regina v. Bow Street Metro. Stipendiary Magistrate, Ex parte Pinochet (No. 3)*, [1999] 2 All E.R. 97 [2000] 1 A.C. 147 (H.L.) (“Pinochet (3)”); *Prosecutor v. Blaškić*, IT-95-14-AR (Issue of subpoena duces tecum), para. 41 (Oct. 29, 1997) (“those responsible for [war crimes, crimes against humanity and genocide] cannot invoke immunity from national or international jurisdiction even if they perpetrated such crimes while acting in their official capacity.”) These crimes, which international law prohibits and punishes, cannot be considered official acts that fall within a sovereign’s authority under international law, and as such, they are not covered by immunity. *Pinochet (3)*; See also *Prosecutor v. Milošević*, Case No. IT-02-54-PT, Decision on Preliminary Matters, ¶32 (Nov. 8, 2001) (quoting Nuremberg Judgment, Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 (“He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State if the State in authorizing action moves outside its competence under international law.”)); *Attorney Gen. of the Gov’t of Israel v. Eichmann*, 36 I.L.R. 277, 310 (Supreme Court of Israel 1962) (“international law postulates that it is impossible for a State to sanction an act that violates its severe prohibitions, and from this follows the idea which forms the core of the concept of ‘international crime’ that a person who was a party to such crime must bear individual responsibility for it. If it were otherwise, the penal provisions would be a mockery.”).

Additionally, other senior and ministry-level Israeli officials alleged to have committed, authorized or furthered genocide, war crimes, and torture in Gaza regularly travel to the United States. For example, former Israeli War Cabinet Member Benny Gantz was last known to be present in the United States in March.⁷ Israeli Minister of Defense Yoav Gallant was present in the United States on multiple occasions subsequent to October 8, 2023, including most recently last month and previously in March.⁸

While senior Israeli officials and leaders bear the greatest responsibility for the widespread crimes and are therefore of primary concern, we note that an estimated 23,380 United States citizens currently serve in Israel’s armed forces, including in Gaza.⁹ The scope and scale of atrocities in Gaza raise specific concerns about the potential involvement of United States citizens in atrocity crimes against Palestinians in Gaza in violation of federal law, warranting a specific line of investigation by your office.¹⁰

There is also credible evidence that United States President Joseph R. Biden, Secretary of State Antony J. Blinken, and Secretary of Defense Lloyd J. Austin III have been complicit in genocide against Palestinians in Gaza, as Plaintiffs we represent alleged in a civil Complaint filed in the United States District Court for the Northern District of California. *Defense for Children*

Furthermore, because they are crimes of a *jus cogens* nature, states are justified “in taking universal jurisdiction” over them, *see* Pinochet (3) (Indeed, the Genocide Convention, the Torture Convention, and the Fourth Geneva Convention’s grave breaches provision (art. 147) mandate investigations, if not prosecutions, when an alleged offender is a national or present in U.S. territory.) This was affirmed by the recent Paris Court of Appeals decision that when a Head of State violates a clear prohibition set by international customary law as a peremptory norm, his actions are “separable from the sovereignty naturally attached to [the functions of the Head of State].” Summary of the Court of Appeal reasoning, Cour d’appel [CA] [Court of Appeal] Paris, June 26, 2024 (upholding an arrest warrant for Bashar al Assad for the use of chemical weapons).

Even if your office determines it cannot proceed to a prosecution against Netanyahu as a current head of state, it should proceed to open an investigation and be prepared to exercise jurisdiction after he is out of office.

⁷ Office of the Spokesperson, Secretary Blinken’s Meeting with Israel War Cabinet Member Benny Gantz, Department of State (Mar. 5, 2024), <https://www.state.gov/secretary-blinkens-meeting-with-israeli-war-cabinet-member-benny-gantz/>.

⁸ Karen DeYoung, *U.S. war aid of \$6.5 billion discussed during ‘productive’ Gallant visit*, Washington Post (June 26, 2024), <https://www.washingtonpost.com/national-security/2024/06/26/gallant-israel-military-assistance-us/>; Steve Holland & Nandita Bose, *US national security adviser Sullivan met Israel’s Gallant again, White House says*, Reuters (Mar. 26, 2024), <https://www.reuters.com/world/us-national-security-adviser-sullivan-met-israels-gallant-again-white-house-says-2024-03-26/>.

⁹ Steve Hendrix & Shira Rubin, *The American citizens fighting and dying for Israel in the Gaza war*, Washington Post (Feb. 22, 2024), <https://www.washingtonpost.com/world/2024/02/22/israel-gaza-war-americans-killed/>.

¹⁰ HRSP has brought charges against U.S. citizens for acts committed abroad. *See, e.g.*, U.S. Dept. of Justice, “Pennsylvania Man Sentenced to Prison for Torture and Illegally Exporting Weapons Parts and Related Services to Iraq,” Press release, <https://www.justice.gov/opa/pr/pennsylvania-man-sentenced-prison-torture-and-illegally-exporting-weapons-parts-and-related> (Apr. 15, 2024) (“Today’s sentence—following the second-ever conviction under the federal torture statute—shows that, no matter where such deplorable acts occur, the United States is committed to holding the perpetrators accountable”). *See also*, U.S. Dept. of Justice, “Man Charged for Torturing Prisoners,” Press release (Dec. 14, 2023), <https://www.justice.gov/opa/pr/man-charged-torturing-prisoners>.

International-Palestine v. Biden, No. 23-CV-05829-JSW (N.D. Cal. Nov. 13, 2023).¹¹ These U.S. officials are aiding and abetting genocide by continuing to provide Israel with unconditional military and diplomatic support, coordinating closely on military strategy, and undermining efforts by the international community to stop Israel’s unrelenting and unprecedented bombing campaign and total siege of Gaza.

As set forth below, this request for investigation and prosecution is supported by evidence submitted to, and conclusions reached by the federal court in *Def. for Child. Int’l-Palestine v. Biden*, in addition to significant rulings by the International Court of Justice (“ICJ”), and developments at the International Criminal Court (“ICC”), as well as other evidence in the public record. In January, the ICJ, considering the claim initiated by South Africa under the Genocide Convention, held that the right of Palestinians in Gaza to be protected from acts of genocide committed by Israel is plausible in the post-October 7th context and issued a first set of provisional measures of protection.¹² Additional provisional measures were issued against Israel on March 28, 2024 and May 24, 2024.¹³ On May 20, 2024, the Prosecutor of the International Criminal Court filed applications for arrest warrants for Netanyahu and Gallant declaring there is reasonable grounds to believe they bear criminal responsibility for war crimes and crimes against humanity committed against Palestinians in Gaza from at least October 8, 2023.¹⁴

The mandate of HRSP is to seek accountability for serious international crimes under federal criminal statutes proscribing genocide, war crimes, and torture, among other crimes. As atrocities in Gaza continue with no end in sight, **we respectfully request that, at a minimum, in light of Netanyahu’s upcoming travels, your office immediately open an investigation into each of these crimes committed under Benjamin Netanyahu’s direction, control and/or command at least since October 8, 2023, to deny him safe haven in the United States, and where probable cause exists and appropriate, to prosecute.**¹⁵

¹¹ See *Def. for Child. Int’l-Palestine v. Biden*, Complaint, No. 23-CV-05829-JSW, 2024 WL 390061, (N.D. Cal. Jan. 31, 2024), aff’d, No. 24-704, 2024 WL 3405631 (9th Cir. July 15, 2024), available at: https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_wv.pdf.

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel)*, Order of Provisional Measures (Jan. 26, 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>. See *id.* Para. 54. The ICJ also found that South Africa’s right to seek Israel’s compliance with its obligations under the Genocide Convention through the Court is plausible. *Id.*

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the Order of 26 January 2024 Indicating Provisional Measures (Mar. 28, 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the Order of 28 March 2024 Indicating Provisional Measures (May 24, 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>.

¹⁴ Statement of ICC Prosecutor, *supra* note 5.

¹⁵ Although Netanyahu is also responsible for other serious international crimes prior to this date, the focus of this letter is limited to those related to the current and ongoing atrocity crimes against the Palestinian population of Gaza.

1. Credible Basis for Investigation under the Genocide Statute, 18 U.S.C. § 1091

An investigation into Netanyahu for genocide is warranted. The prohibition against genocide, widely recognized as the gravest of crimes under international law, was codified in the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”), Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277, and implemented in U.S. domestic law through the Genocide Convention Implementation Act, at 18 U.S.C. § 1091.

Customary international law, which is part of U.S. federal common law, as well as 18 U.S.C. § 1091 of the U.S. federal criminal code, prohibit not just direct commission of genocide, but also complicity, incitement, attempt, and conspiracy in genocide. Your office has jurisdiction when the perpetrator is a United States citizen, permanent resident or is “present in” the United States. *See* 18 U.S.C. § 1091(e)(2). There is no statute of limitations for these criminal offenses.

Genocide constitutes certain acts “committed with the intent to destroy in whole or in part a national ethnical, racial or religious group as such” by, among other things: (i) killing members of the group, (ii) deliberately inflicting upon the group conditions of life calculated to bring about its physical destruction in whole or in part; and (iii) causing serious bodily or mental harm. Notably, genocide can be committed in times of war or in times of peace. *See* 18 U.S.C. § 1091(a).

In this case, Palestinians living in Gaza, as part of the Palestinian population, constitute the targeted group for the purposes of the Genocide Convention. The “group” is what must be targeted,¹⁶ on grounds including nationality or ethnicity; and it is the “group” that is protected.¹⁷ The “part” targeted for destruction can be represented by a subgroup, for example, in a specific geographic area.¹⁸

Since October 7, Israeli Prime Minister Benjamin Netanyahu and those under his direction and control have made multiple statements demonstrating his specific intent to destroy the Palestinian population of Gaza, in whole or in part:¹⁹

- On October 7, Netanyahu announced his genocidal intentions when he ordered 2.2 million Palestinians in Gaza to “get out now” despite their having nowhere to go due to Israeli-imposed closures of the occupied territory, adding that “[Israel] will be everywhere and

¹⁶ *See, e.g., Prosecutor v. Musema*, Case No. ICTR-96-13-T, Trial Judgment, para. 165 (Jan. 27, 2000).

¹⁷ *See Prosecutor v. Krstić*, Case No. IT-98-33, Appellate Chamber Judgment, Partial Dissenting Opinion of Judge Shahabuddin, para. 50 (Apr. 19, 2004) (explaining that in the context of the massacre of 8,000 Bosnian Muslims at Srebrenica, “A group is constituted by characteristics - often intangible - binding together a collection of people as a social unit”).

¹⁸ This was the case with regards to the Srebrenica genocide, with the “group” for genocide purposes being Bosnian Muslims, and the “part” of the group represented by the Bosnian Muslim community of Srebrenica.

¹⁹ It is recalled that specific intent can be inferred from the general context. *See, e.g., Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Judgment (Sept. 2, 1998), at para. 523.

with all our might.”²⁰ On October 9, Israel’s Minister of Defense Yoav Gallant ordered a complete siege on the Gaza Strip, referring to Palestinians as “human animals” and stating: “There will be no electricity, no food, no fuel, everything is closed. We are fighting human animals and we act accordingly.”²¹ The Minister also threatened “to bomb those attempting to provide humanitarian aid to the Gaza Strip.”²²

- On October 13, Israel’s infantry released their first official account of ground raids into Gaza, with Netanyahu declaring: “We are striking our enemies with unprecedented might . . . I emphasise that this is only the beginning.”²³ By that point, Israel had already killed at least 1,537 Palestinians, 500 of whom were children, and injured 6,612.²⁴
- On October 15, Netanyahu stated that Israeli soldiers “understand the scope of the mission” and stand ready “to defeat the bloodthirsty monsters who have risen against [Israel] to destroy us.”²⁵
- On October 16, 2023, in a formal address to the Israeli Knesset, Netanyahu described the situation as “a struggle between the children of light and the children of darkness, between humanity and the law of the jungle.”²⁶ This assertion was made as the death count of Palestinian children surpassed 1,000.²⁷
- On October 29, 2023, as the number of Palestinians killed by Israeli attacks in Gaza rose to 8,000, Netanyahu invoked the story of Amalek in the Bible to justify Israel’s assault on Palestinians in Gaza, stating, “You must remember what Amalek has done to you, says our Holy Bible, and we do remember, and we are fighting.” In the Bible, God commands the

²⁰ *Promising merciless war on Hamas, Netanyahu says Israel will ‘avenge this black day*, The Times of Israel (Oct. 8, 2023), <https://www.timesofisrael.com/promising-merciless-war-on-hamas-netanyahu-says-israel-will-avenge-this-black-day/>.

²¹ Israeli Minister of Defense Yoav Gallant, X (Oct. 9 2023), <https://twitter.com/yoavgallant/status/1711335592942875097>. See also Human Rights Watch, X (Oct. 9, 2022), <https://twitter.com/hrw/status/1711424885908791505/>.

²² *Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence*, United Nations Office of the High Commissioner (Oct. 12, 2023), <https://www.ohchr.org/en/press-releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians>.

²³ *‘Only the beginning’ says Netanyahu as Israel makes first raids into Gaza*, Reuters (Oct. 13, 2023), <https://www.reuters.com/world/middle-east/now-is-time-war-says-israels-military-chief-2023-10-12/>. See also *Israeli PM*, Youtube (Oct. 13, 2023), <https://www.youtube.com/watch?v=T4HXaZ20M6Q>.

²⁴ Reuters, *1,537 Palestinians killed and 6,612 wounded in Israeli strikes, Gaza health ministry says* (Oct. 12, 2023), <https://www.reuters.com/world/middle-east/1537-palestinians-killed-6612-wounded-israeli-strikes-gaza-health-ministry-2023-10-12/>.

²⁵ *Israel-Hamas war: Biden says Gaza occupation would be ‘big mistake’ - as it happened*, The Guardian (Oct. 15, 2023), <https://www.theguardian.com/world/2023/oct/15/hamas-and-israel-at-war-what-we-know-on-day-nine>.

²⁶ Ministry of Foreign Affairs, *Excerpt from PM Netanyahu’s remarks at the opening of the Winter Assembly of the 25th Knesset’s Second Session* (Oct. 16, 2023), <https://www.gov.il/en/pages/excerpt-from-pm-netanyahu-s-remarks-at-the-opening-of-the-knesset-s-winter-assembly-16-oct-2023>.

²⁷ *One Palestinian child in Gaza killed every 15 minutes by Israeli forces*, DCI-Palestine (Oct. 16, 2023), <https://www.dci-palestine.org/one-palestinian-child-in-gaza-killed-every-15-minutes-by-israeli-forces#:>.

extermination of Amalekite men, women, children, and animals, and this commandment has been described by one scholar as “divinely mandated genocide.”²⁸ Netanyahu referred again to Amalek in the letter sent on November 3, 2023 to Israeli soldiers and officers.²⁹

- On November 3, 2023, Netanyahu continued this dehumanizing theme in a letter to Israeli soldiers and officers where he asserted that: “[t]his is the war between the sons of light and the sons of darkness. We will not let up on our mission until the light overcomes the darkness — the good will defeat the extreme evil that threatens us and the entire world.”³⁰
- On November 4, 2023, Netanyahu stated that Israel would continue “fighting until the end,” and that that was his policy.³¹ He further tasked a Minister in the War Cabinet to present a plan to “thin[] the population of Gaza to the minimum possible.”³²
- On November 28, 2023, Netanyahu declared that “Israel will go to realizing [its] goals with full force”, including, *inter alia*, “ensuring that Gaza does not go back to being what it was.”³³
- On December 24, 2023, Netanyahu again returned to this theme in his ‘Christmas message’, stating: “we’re facing monsters, monsters who murdered children in front of their parents . . . This is a battle not only of Israel against these barbarians, it’s a battle of civilization against barbarism.”³⁴

²⁸ Morrision, Wesley, *Ethical Criticism of the Bible: The Case of Divinely Mandated Genocide*, (Apr. 2012) *Sophia*. 51: 117-135.

²⁹ Prime Minister’s Office in Hebrew, @IsraeliPM_heb, X (11:43 am, Nov. 3, 2023), https://twitter.com/IsraeliPM_heb/status/1720406463972004198.

³⁰ Prime Minister’s Office in Hebrew, @IsraeliPM_heb, X (11:44 am, Nov. 3, 2023), https://twitter.com/IsraeliPM_heb/status/1720406469055500583.

³¹ *Id.*

³² Mati Tuchfeld, *The Prime Minister’s plan for the citizens of the Gaza Strip: the direction - out*, Israel Hayom (Nov. 30, 2023), in the automated Google translation of the original Hebrew (reporting that in regards to “thinning the population of Gaza to the minimum possible” Netanyahu “tasked his confidant in the War Cabinet, Minister Ron Dermer, to formulate a staff [to] work on the matter.”)

³³ Alexander Smith & Keir Simmons, *Israel and Hamas discuss a broader hostage deal, but a renewed assault still looms*, NBC News (Nov. 28, 2023) (reporting Israeli Prime Minister Netanyahu declared Israel “will go to realizing [its] goals with full force” including, *inter alia*, “ensuring that Gaza will not go back to being what it was”).

³⁴ Israel Ministry of Foreign Affairs, Christmas message from PM Netanyahu (Dec. 24, 2023) <https://www.gov.il/en/departments/news/christmas-message-from-pm-netanyahu-24-dec-2023>

Acting on his genocidal intent with deeds since at least October 8, 2023,³⁵ Netanyahu has overseen and justified the killing of over 38,650 people in Gaza,³⁶ including over 14,000 children³⁷, the injuring of nearly 90,000 Palestinians, the forcible displacement of two million, and the spread of famine throughout Gaza. Tens of thousands more are estimated to have been killed, injured, starved, displaced, or otherwise severely impacted as a result of the total siege and other conditions of life Netanyahu has imposed on the Palestinian population of Gaza to bring about its destruction in whole or in part.³⁸ Having already ordered the evacuation of more than a million people from northern Gaza in October resulting in mass displacement and makeshift tent camps, Netanyahu then ordered in February the evacuation and military invasion of Rafah, the last remaining safe haven for 1.4 million Palestinians who had fled there based on the Israeli army's evacuation orders. Despite international condemnation and urgent warnings about the catastrophic impact an invasion of Rafah would have on the humanitarian situation in Gaza, Netanyahu defied warnings; just yesterday, Netanyahu went to Rafah and declared Israel's intention to maintain control over Rafah and the crossing into Gaza as "essential,"³⁹ even as the toll on the Palestinian population forced to flee from, or be bombarded in, Rafah has been deadly.

The pace and scale of the killing that Netanyahu has overseen over the last nine and a half months has gone unabated. Just this past week, the United Nations reported three "mass casualty incidents" by Israel, including an airstrike on the Mawasi refugee camp's tents, a food kitchen and water point, another one on a prayer site, and the third at a school sheltering refugees, resulting in the killing of hundreds of Palestinians and severe injuries to hundreds more.⁴⁰

Israeli airstrikes have also targeted civilian infrastructure, including water and sewage facilities, attacked health care facilities and medical staff, bombed bakeries, further inflicting conditions on the besieged and displaced population calculated to inflict fatal conditions on Palestinians. These coordinated actions by the Israeli political and military leadership to deprive Palestinians in Gaza

³⁵ Indeed, Netanyahu has for years been engaged in racist, dehumanizing rhetoric toward Palestinians (though he refuses to call them Palestinian, as this would give legitimacy to their claims to a homeland, and defaults to his ethnonationalist worldview in referring to them derisively as "Arabs"). In just one example, in 2016, he referred to Palestinians as "wild beasts" when announcing a plan to build a massive border wall to isolate Palestinians. Moreover, two months before the current assault, Netanyahu pronounced – in front of the United Nations – his vision that the entirety of Palestine would become exclusively Israeli. On September 22, 2023, Netanyahu held up a map before the UN General Assembly titled "Israel in 1948," which excluded any representation of Palestinians.

³⁶ United Nations Office for the Coordination of Humanitarian Affairs, Humanitarian Situation Update #191, Gaza Strip, July 15, 2024, <https://www.ochaopt.org/content/humanitarian-situation-update-191-gaza-strip> (hereinafter "July 15 Humanitarian Situation Update").

³⁷ UNICEF, Statement by UNICEF Executive Director Catherine Russell on military operations and border closures in Rafah, Gaza (May 9, 2024), <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-military-operations-and-border>.

³⁸ Rasha Khatib *et al*, *Counting the Dead in Gaza: difficult but essential*, The Lancet (July 5, 2024), <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2824%2901169-3>.

³⁹ Tovah Lazaroff, *Netanyahu in Rafah: IDF hold on Philadelphi Corridor essential*, Jerusalem Post (July 18, 2024), <https://www.jpost.com/israel-hamas-war/article-810950>.

⁴⁰ See July 15 Humanitarian Situation Update, *supra* note 36.

of basic necessities and trap them under these destructive conditions demonstrate that the total closure and siege is calculated to bring about their physical destruction.

In this context, we urge your office to give particular consideration to the underlying genocidal act of “deliberately inflicting upon the group conditions of life calculated to bring about its physical destruction in whole or in part,” 18. U.S.C. § 1091(a)(4). The ICC Elements of Crimes, drawing from customary international law, defines the term “conditions of life” as including but not limited to “deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.”⁴¹ The tribunal examining the case of Srebrenica, for example, explained that such methods of destruction “do not immediately kill the members of the group, but . . . ultimately, seek their physical destruction” – proof that the result was actually attained is not required.⁴² Denying medical services,⁴³ systematically expelling members of the group from their homes,⁴⁴ and creating circumstances that would “lead to a slow death,” such as the lack of proper housing, water, shelter, clothing, hygiene, sanitation, or proper food including by subjecting people to a subsistence diet, or subjecting members of the group to excessive work or physical exertion,⁴⁵ have all been found to be examples of “conditions of life” calculated to bring about a group’s physical destruction, in whole or in part, by international tribunals in the context of the Rwandan and Srebrenica genocides. “The actual nature of the conditions of life, the length of time that members of the group were subjected to them, and the characteristics of the group such as its vulnerability are illustrative factors to be considered in evaluating the criterion of probability.”⁴⁶

The Center for Constitutional Rights represents Palestinians and Palestinian-Americans who, as a result of the Netanyahu-led genocide against the Palestinian people in Gaza, have collectively lost hundreds of family members while others have been subjected to repeated forcible transfer and displacement, and starvation in the context of a mass famine, due to a “total siege” imposed on the entire population of Gaza denying basic necessities for human survival.⁴⁷ Our clients sued

⁴¹ See ICC Elements of Crimes, art. 6(b), n. 4.

⁴² *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, [Trial Judgment](#), para. 814 (Jun. 10, 2010).

⁴³ *Id.*, para. 815; *Musema* Trial Judgment, para. 157.

⁴⁴ See, e.g., *Prosecutor v. Brđanin*, Case No. IT-99-36, [Trial Judgment](#), para. 691 (Sept. 1, 2004); *Prosecutor v. Stakić*, Case No. IT-97-24-T, [Trial Judgment](#), para. 517 (Jul. 31, 2003); *Akayesu* Trial Judgment, para. 506.

⁴⁵ See, e.g., *Akayesu* Trial Judgment, para. 523; *Stakić* Trial Judgment, para. 517; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, [Trial Judgment](#), para. 547 (Mar. 24, 2016). The ICJ also included the destruction of villages and homes, denial of access to food, shelter and other essentials of life, as well as mass killings as acts that affect “the right of existence of a protected group” under the Genocide Convention in the context of charges of genocide against the Rohingya. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, [Provisional Measures](#), I.C.J. Reports 2020-2021 (Jan. 23, 2020), para. 71.

⁴⁶ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, [Trial Judgment](#), para. 548 (Mar. 24, 2016).

⁴⁷ Global Rights Compliance, Lina Baddour, and Tom Dannenbaum, Brief for Amicus Curiae in Support of Appellants and Reversal, *Def. for Child. Int'l-Palestine v. Biden*, No. 23-CV-05829-JSW, 2024 WL 390061, (N.D. Cal. Jan. 31, 2024), *aff'd*, No. 24-704, 2024 WL 3405631 (9th Cir. July 15, 2024), Dkt. 36.1, https://ccrjustice.org/sites/default/files/attach/2024/03/36.1_3-14-24_Global-Rights-Compliance_w.pdf.

President Biden, Secretary of State Blinken, and Secretary of Defense Austin, alleging they are complicit in Israel’s genocide of Palestinians in Gaza, and failed to prevent it, violating customary international law (which is part of federal common law), as codified by the Genocide Convention and 18 U.S.C. § 1091. We submitted extensive documentation of Israel’s genocide and the Defendants’ complicity to the United States District Court for the Northern District of California,⁴⁸ in an 85-page complaint, and in declarations in support of a motion for a preliminary injunction.⁴⁹

The evidence submitted in the case included declarations by the Plaintiffs regarding the serious injuries they have suffered due to Israel’s genocide,⁵⁰ as well as a declaration by the world’s leading genocide legal expert, Professor William Schabas, who on November 9, 2023, a month into Israel’s assault on Gaza, found that there was “much direct evidence in the form of statements by senior officials and politicians in Israel indicating an intent to destroy the people of Palestine,” and that the “avowed policy of depriving Gaza of water, food, medicine and electricity...will inexorably lead to their physical destruction,” and concluding “that there is a serious risk of genocide committed against the Palestinian population of Gaza.”⁵¹

After an evidentiary hearing where victim and expert testimony was presented in support of allegations that U.S. officials failed to prevent and were complicit in genocide, the decision by the United States District Court stated:

⁴⁸ *Def. for Child. Int’l-Palestine v. Biden*, Complaint, No. 23-CV-05829-JSW, 2024 WL 390061, (N.D. Cal. Jan. 31, 2024), *aff’d*, No. 24-704, 2024 WL 3405631 (9th Cir. July 15, 2024), https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_ww.pdf.

⁴⁹ *See, e.g.*, Decl. of Pamela Spees, Esq., in Support of Pls.’ Mot. for Prelim. Injunction (Nov. 16, 2023) https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Attorney%20Pam%20Spees_w.pdf; Decl. of Sadaf M. Doost, Esq., in Support of Pls.’ Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-8_12-22-23_Doost-Decl_w.pdf

⁵⁰ Decl. of Basim Elkarra in Support of Pls.’ Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-3_12-22-23_Elkarra-Decl_w.pdf; Decl. of Waeil Elbhassi in Support of Pls.’ Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-4_12-22-23_Elhbassi-Decl_w.pdf; Decl. of Laila Elhaddad in Support of Pls.’ Mot. for Prelim. Injunction (Dec. 22, 2023) https://ccrjustice.org/sites/default/files/attach/2023/12/44-5_12-22-23_Elhaddad-Decl_w.pdf; Decl. of A.N. in Support of Pls.’ Mot. for Prelim. Injunction (Dec. 22, 2023), https://ccrjustice.org/sites/default/files/attach/2023/12/44-2_12-22-23_AN-Decl_w.pdf; Decl. of Ahmed abu Artema in Support of Pls.’ Mot. for Prelim. Injunction (Nov. 16, 2023) https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Abu%20Artema_w.pdf; Decl. of Susan Power for Al-Haq in Support of Pls.’ Mot. for Prelim. Injunction (Nov. 16, 2023) https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Al-Haq_w.pdf; Decl. of Dr. Omar Al-Najjar in Support of Pls.’ Mot. for Prelim. Injunction (Nov. 16, 2023), https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Al-Najjar_w.pdf; Decl. of Mohammad Abu Rokbeh in Support of Pls.’ Mot. for Prelim. Injunction (Nov. 16, 2023) https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Abu%20Rokbeh_w.pdf. *See also* *Def. for Children Int’l-Palestine v. Biden*, No. 23-cv-05829 recording of hearing, January 26, 2024, available at <https://www.uscourts.gov/cameras-courts/defense-children-international-palestine-v-biden>, and transcript: https://ccrjustice.org/sites/default/files/attach/2024/05/100_2-27-24_Transcript_w.pdf.

⁵¹ Decl. of William A. Schabas in Support of Pls.’ Mot. for Prelim. Injunction, https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Expert%20William%20Schabas_w.pdf.

“[T]he undisputed evidence before this Court comports with the finding of the ICJ and indicates that the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law. Both the uncontroverted testimony of the Plaintiffs and the expert opinion proffered at the hearing on these motions as well as statements made by various officers of the Israeli government indicate that the ongoing military siege in Gaza is intended to eradicate a whole people and therefore plausibly falls within the international prohibition against genocide.”⁵²

This investigation request is also supported by the decisions of the ICJ in *South Africa v. Israel*, and by evidence submitted to that Court in support of South Africa’s claims that Israel is violating its obligations under the Genocide Convention.⁵³ After a hearing and lengthy evidentiary submissions, the ICJ found that the rights of Palestinians in Gaza to be free from genocide or the risk of genocide were plausible in light of Israel’s statements and conduct since October 7th, and that Palestinians’ protection merited the issuance of provisional measures of protection by the ICJ.⁵⁴ The ICJ ordered Israel to, *inter alia*, stop its genocidal acts against the Palestinian people in Gaza.⁵⁵

2. Credible Basis for Investigation under the War Crimes Statute, 18 U.S.C. § 2441

Under the War Crimes Act, **18 U.S.C. § 2441, as amended by the Justice for Victims of War Crimes Act (2023)**, “war crimes” include (1) any grave breach of the four Geneva Conventions of 1949; and (2) certain prohibitions of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907. 18 U.S.C. § 2441(c). We recall that the 2023 amendment grants the United States jurisdiction over non-citizens alleged to have committed war crimes “present in” the United States, in addition to the pre-existing jurisdiction

⁵² *Def. for Children Int’l-Palestine v. Biden*, No. 23-cv-05829, 2024 WL 390061, at *5 (N.D. Cal. Jan. 31, 2024) (dismissing for lack of jurisdiction on political question grounds), *aff’d*, No. 24-704, 2024 WL 3405631 (9th Cir. July 15, 2024).

⁵³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application (Dec. 29, 2023), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>.

⁵⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel)*, Order of Provisional Measures, paras 36, 54 (Jan. 26, 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

⁵⁵ *Id.*

Furthermore, although genocide was not among the charges cited in the ICC arrest warrant applications, ICC Prosecutor Karim Khan said he had collected evidence showing that “Israel has intentionally and systematically deprived the civilian population in all parts of Gaza of objects indispensable to human survival.” See Statement of ICC Prosecutor, *supra* note 5. This and other evidence gave him reasonable grounds to believe that Netanyahu has committed, among other crimes, the crime of starvation, willful killing, directing attacks against a civilian population, extermination and/ or murder, and persecution. *Id.*

over U.S. citizens. *See* 18 U.S.C. § 2441(b)(2)(B). Military occupations,⁵⁶ such as that by Israel over the occupied Palestinian Territory⁵⁷ – the Gaza Strip and the West Bank, including East Jerusalem – constitute an international armed conflict,⁵⁸ and as such, trigger the application of international humanitarian law, including the Hague Regulations of 1907 and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War of 1949 to which the United States is a party.⁵⁹

As most relevant here, grave breaches of the Fourth Geneva Convention, which are committed in the context of an international armed conflict - including a belligerent military occupation – against

⁵⁶ Under international humanitarian law, “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army.” Hague Convention (IV) Respecting the Law and Customs of War on Land and Its Annex: Regulations Concerning the Law and Customs of War on Land, (Oct. 18, 1907) Art. 42.

As the International Committee of the Red Cross (“ICRC”) 2016 Commentary to the First Geneva Convention recognized, “[m]ilitary occupation is by definition an asymmetric relationship: the existence of an occupation implies that foreign forces are imposing their authority over the local government by military or other coercive means...the foreign forces’ presence clearly results from military coercion and is to be qualified as hostile, providing evidence of the belligerent character of the occupation.” Convention (I) for the Amelioration of the Wounded and Sick in Armed Forces in the Field, Commentary of 2016, art. 2, (“Common Article 2”), ¶ 288. (“2016 ICRC Commentary”). International humanitarian law therefore applies, including “the four Geneva Conventions in their entirety,” because “[w]henver civilians and civilian property find themselves under the military and administrative control of a belligerent enemy, including during occupation with hostilities, there is a risk of arbitrariness and abuse.” *Id.* ¶¶ 291, 289.

⁵⁷ Israel’s belligerent occupation of Palestinian territory (Gaza and the West Bank, including East Jerusalem), and its status as an Occupying Power, has been recognized by the international community as articulated by the United Nations Security Council and General Assembly and affirmed by, *inter alia*, the International Court of Justice, the ICRC and United Nations human rights mechanisms. *See* UN Security Council Resolution 2334 (Dec. 23, 2016), UN Doc S/RES/2334; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, I.C.J. 136, ¶¶ 78, 101 (July 9); Peter Maurer, *Challenges to International Humanitarian Law: Israel’s Occupation Policy*, 95 *Int’l Rev. of the Red Cross* 1504-1506 (2012); UN General Assembly (UNGA) Resolution 73/97, *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories*, A/Res/73/97 (Dec. 18, 2018); UNGA Resolution 77/247, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, A/Res/77/247 (Jan. 9, 2023); UN Human Rights Committee, *Concluding Observations on Israel*, CCPR/C/ISR/CO/5 (May 5, 2022); UN HRC, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, A/HRC/25/67 (Jan. 13, 2014).

Israel’s current military assault on Gaza, including its imposition of a total siege wherein it controls all points of entry and exit, the territorial waters and airspace, and has troops on the ground in Gaza only affirms Israel’s status as the Occupying Power. For authority on the “effective control” test, see Trial Chamber, *Prosecutor v. Duško Tadić*, ICTY, IT-94-1-T, ¶ 580 (*Int’l Crim. Trib. for the Former Yugoslavia*, May 7, 1997); *Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Dec. 19, 2005, ICJ 168, ¶¶ 172, 175-176.

⁵⁸ *See, e.g.*, Hague Regulations of 1907, Art. 42; *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-803, Decision on the Confirmation of Charges, ¶ 209 (Jan. 29, 2007); International Criminal Court Elements of Crimes, War Crimes, n. 34 (“The term ‘international armed conflict’ includes military occupation”).

⁵⁹ Israel ratified the four Geneva Conventions of 1949 in 1951. The State of Palestine acceded to the four Geneva Conventions of 1949 on 2 April 2014. Palestine acceded to Additional Protocol I on 2 April 2014. The Hague Regulations of 1907, the Geneva Conventions of 1949 and Additional Protocol I are considered to largely reflect customary international law.

protected persons⁶⁰ include: wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.⁶¹ In light of the large number of civilian deaths (including children), the type of weapons being used in the densely populated Gaza Strip ranging from 2,000 pound bombs to weapons packed with shrapnel,⁶² and widespread destruction of civilian property, the most relevant applicable provisions of the Annex to the Hague Convention (IV) of 1907 relevant to the means and methods of war include Art. 23(b), (e), (g),⁶³ Art. 25;⁶⁴ Art. 27;⁶⁵ and Art. 28.⁶⁶

Under Netanyahu's direction, Israeli forces have committed widespread and egregious war crimes against the Palestinian people of Gaza, prompting investigations and condemnation from various international human rights groups, alongside the ICC Prosecutor's arrest warrant application. While it is beyond the scope of this letter to catalog the colossal extent and devastating impact of Israel's war crimes since October 7, 2023, the following incidents exemplify Netanyahu's (and his government's) responsibility for engaging in wilful killing and wilfully causing great suffering or serious injury through bombardment of undefended towns, villages and dwellings including tent encampments, mutilation and maiming including due to the weapons used and bombardment of hospitals thereby denying access to medical care, and torture or inhuman treatment as grave

⁶⁰ Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 73 U.N.T.S. 287, Art. 4 ("Fourth Geneva Convention") ("Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals") (emphasis added). *See also Prosecutor v. Mladen Naletilić and Vinko Martinović*, IT-98-34-T, Trial Judgement, ¶ 208 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 31, 2003) ("the expression 'in the hands of' a party or occupying power, as it appears in Article 4 of Geneva Convention IV, refers to persons finding themselves on the territory controlled by that party or occupying power"). Protected persons include persons who, in the course of a military occupation, find themselves "in the hands of" the Occupying Power including through "the mere fact of being ... in occupied territory." ICRC, Commentary of 1958, Convention (IV) relative to the Protection of Civilian Persons in Time of War at 47.

⁶¹ Fourth Geneva Convention, Art. 147.

⁶² *See, e.g.,* Chris McGreal, *Israeli weapons packed with shrapnel causing devastating injuries to children in Gaza, doctors say*. The Guardian (July 11, 2024), <https://www.theguardian.com/world/article/2024/jul/11/israeli-weapons-shrapnel-children-gaza-injured>.

⁶³ Regulations: Art. 23 provides, in part: (b) To kill or wound treacherously individuals belonging to the hostile nation or army; (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering; and (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

⁶⁴ Regulations: Art. 25 provides: "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited."

⁶⁵ Regulations: Art. 27 provides: "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand." (emphasis added).

⁶⁶ Regulations: Art. 28 provides: "The pillage of a town or place, even when taken by assault, is prohibited."

breaches of the Fourth Geneva Convention and violations of the Annex to the Hague Convention (IV) of 1907, as codified in 18 U.S.C. § 2441(c)(1) and (2).

Wilful killing and extensive destruction of property (Attacks on Civilians including Journalists; Civilian Infrastructure including religious buildings, schools and universities, hospitals)

Since October 8, 2023, Israel has killed nearly 40,000 Palestinians in Gaza, including more than 14,000 children.⁶⁷ Israel has systematically targeted houses, multi-story residential buildings, shelters, and refugee camps where displaced families have sought refuge.⁶⁸ The full scale of these attacks is only partially known due to the ongoing attacks and the siege that prevent investigators from comprehensively documenting crimes. For instance, a months-long investigation by Human Rights Watch concluded that an Israeli attack on a six-story apartment building on October 31, 2023 that killed at least 106 civilians, including 54 children, amounts to “an apparent war crime.”⁶⁹ There are many similar of accounts of disproportionate and unabated killing of civilians; as recently as July 14, 2024 – five days before the submission of this letter – an Israeli airstrike killed 90 people and left over 300 people injured at Al-Mawasi, a refugee camp designated as a safe zone for Palestinians.⁷⁰

Israel has also attacked hospitals and medical infrastructure, schools, and places of worship. Twenty-one of thirty-six hospitals have been rendered out of service, and fifteen only partly functional, due to military attacks.⁷¹ It is estimated that more than 60% of homes⁷² and 80% of civilian infrastructure⁷³ has been damaged or destroyed. As of May 3, 2024, 88% of all school buildings have been damaged, and 54% have been directly hit.⁷⁴ As of June 25, 2024, the UN Human Rights Office condemned the documented Israeli killings of 500 health care workers in Gaza and Israel’s total siege on medical facilities.⁷⁵ Human Rights Watch has recommended that

⁶⁷ UNICEF, Statement by UNICEF Executive Director Catherine Russell on military operations and border closures in Rafah, Gaza (May 9, 2024), <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-military-operations-and-border>.

⁶⁸ Euro-Med Human Rights Monitor, *Israel continues to deliberately bomb UN-run shelter centres, killing displaced people inside* (June 25, 2024), <https://euromedmonitor.org/en/article/6381/Israel-continues-to-deliberately-bomb-UN-run-shelter-centres,-killing-displaced-people-inside>.

⁶⁹ Human Rights Watch, *Gaza: Israeli Strike Killing 106 Civilians an Apparent War Crime* (Apr. 4 2024), <https://www.hrw.org/news/2024/04/04/gaza-israeli-strike-killing-106-civilians-apparent-war-crime>.

⁷⁰ Abeer Salman et al., *At Least 90 Palestinians Reported Killed in Israeli Strike Targeting Hamas Military Chief*, CNN (July 13, 2024) <https://www.cnn.com/2024/07/13/middleeast/mawasi-deif-israel-hamas-gaza-intl/index.html> (last visited Jul 19, 2024).

⁷¹ UN Office for the Coordination of Humanitarian Affairs. “Reported impact snapshot, Gaza Strip.” (July 17, 2024), <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-17-july-2024>.

⁷² *Id.*

⁷³ BCC, Gaza Strip in maps: How life has changed, (March 22, 2024), <https://www.bbc.com/news/world-middle-east-20415675>.

⁷⁴ *Id.*

⁷⁵ UN Human Rights Office in Occupied Palestinian Territory. "Statement on the killing and arbitrary detention of health workers in Gaza." Press release (June 25, 2024), <https://www.un.org/unispal/document/statement-gaza-ohchr-25jun24/>.

Israel's attacks on Gaza's healthcare system be investigated as war crimes.⁷⁶ For example, a November 3 Israeli airstrike killed one dozen people when it struck a "well-marked" ambulance convoy departing from al-Shifa Hospital carrying 15-20 critically injured patients.⁷⁷ A *BBC* report verified 74 cases where Israeli military forces damaged or destroyed 74 religious sites between October 7 and December 31 alone.⁷⁸ In one such example, Israeli airstrikes destroyed the nearly 1,600-year-old Saint Porphyrius Greek Orthodox Church on October 19, killing 18 people among the 450 people who were sheltering at the church.⁷⁹

From October 7 to February 1, 2024, at least 122 journalists and media workers have been killed by Israeli forces in Gaza and Lebanon, according to a UN report.⁸⁰ The Committee to Protect Journalists (CPJ), has concluded that this has been "the deadliest period for journalists since CPJ began gathering data in 1992."⁸¹ Not included in these numbers are the family members of journalists, who have also been targeted and killed en masse.⁸² For example, Wael Dahdouh, Al Jazeera's Gaza Bureau Chief and one of dozens of Al Jazeera journalists targeted by Israel, lost twelve family members, including his wife, son, daughter, and grandson, in a single Israeli airstrike.⁸³ He was injured in another strike that killed Al Jazeera cameraperson Samer Abudaqa.⁸⁴ Dahdouh's son was also killed in an airstrike that targeted his car.⁸⁵ Systematic targeting of journalists began in tandem with Israel's siege on Gaza immediately after October 7: Human Rights Watch found that Israeli airstrikes killing Reuters journalist Issam Abdallah and injuring six other

⁷⁶ Human Rights Watch, *Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis* (Nov. 14, 2023), <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>.

⁷⁷ *Id.*

⁷⁸ Reha Kansara & Ahmed Nour, *Israel-Gaza War: Counting the Destruction of Religious Sites*, *BBC* (Jan. 30, 2024), <https://www.bbc.com/news/world-middle-east-67983018>.

⁷⁹ Amnesty International, *Israel/OPT: 'Nowhere safe in Gaza': Unlawful Israeli strikes illustrate callous disregard for Palestinian lives* (Nov. 2023), <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-nowhere-safe-in-gaza-unlawful-israeli-strikes-illustrate-callous-disregard-for-palestinian-lives/>.

⁸⁰ United Nations Human Rights Office of the High Commissioner. "Gaza: UN experts condemn killing and silencing of journalists." Press release (Feb. 1, 2024), <https://www.ohchr.org/en/press-releases/2024/02/gaza-un-experts-condemn-killing-and-silencing-journalists>.

⁸¹ Committee to Protect Journalists, *Journalist casualties in the Israel-Gaza war* (Jul. 17, 2024), <https://cpj.org/2024/07/journalist-casualties-in-the-israel-gaza-conflict/>.

⁸² *Id.*

⁸³ Antoinette Radford, Sana Noor Haq & Abdel Qader Al-Sabbah, *Haunted by their colleagues' deaths: the journalists risking their lives to report on Gaza*, *CNN* (May 3, 2024), <https://www.cnn.com/2024/05/02/middleeast/palestinian-journalists-gaza-world-press-freedom-day-intl-cmd/index.html>.

⁸⁴ *Al Jazeera's Gaza Bureau Chief Wael Dahdouh in Qatar for medical treatment*, *AlJazeera* (Jan. 17, 2024), <https://www.aljazeera.com/news/2024/1/17/al-jazeeras-gaza-bureau-chief-wael-dahdouh-in-qatar-for-medical-treatment>.

⁸⁵ Anna Gordon, *Al Jazeera Journalist Whose Family was Killed in an Airstrike Loses Another Son*, *Time* (Jan. 8, 2024), <https://time.com/6553226/al-jazeera-journalist-son-killed-airstrike-al-dahdouh/>.

journalists on October 13 “was an apparently deliberate attack on civilians and thus a war crime.”⁸⁶ Investigations into the tens of examples of similar incidents are warranted.

Netanyahu’s conduct in overseeing mass killings of civilians and mass destruction of civilian infrastructure contravenes the War Crimes Act § 2441(c)(1) and (2) prohibition of wilful killing, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wounding Palestinians treacherously and using weapons that cause unnecessary suffering, and destroying civilian infrastructure including homes, schools, hospitals and places of worship.

Wilfully causing great suffering or serious injury to body or health (Mass Starvation)

Since October 7, several human rights bodies have concluded that Israel, through the imposition of a total siege for the express purposes of providing “no food,” is wielding mass starvation as an instrument of war against Palestinians in Gaza.⁸⁷ Alex de Waal, a preeminent scholar on the war crime of famine, concluded in January 2024 that the extent of Israel’s siege on infrastructure and aid necessary for human survival against the people of Gaza “surpasses any other case of man-made famine in the last 75 years.”⁸⁸ One of the most heinous instances highlighting the intersection of starvation as a weapon of war and Israel’s targeting of civilians is the February 29, 2024 “Flour Massacre,” where Israeli forces opened fire on crowds of Palestinians who had gathered to collect flour in the southwestern part of Gaza City, killing 112 people and injuring some 760 others.⁸⁹ Israel’s human-made famine against the people of Gaza should thus be construed as violating the War Crimes Act § 2441(c)(1) for causing great suffering or serious bodily injury to two million Palestinians in Gaza.

A HRSP criminal investigation into Netanyahu for war crimes is also supported by the application of an arrest warrant for him and Defense Minister Yoav Gallant by the Office of the Prosecutor of the International Criminal Court for war crimes and crimes against humanity committed since at least October 7 2023.⁹⁰ The Prosecutor’s application was supported by evidence including interviews with survivors and eyewitnesses, authenticated video, photo and audio material, satellite imagery and statements from the alleged perpetrator group.⁹¹ The Office of the Prosecutor

⁸⁶ Human Rights Watch, *Israel: Strikes on Journalists in Lebanon Apparently Deliberate Intentionally Targeting Civilians a War Crime* (Dec. 7, 2023), <https://www.hrw.org/news/2023/12/07/israel-strikes-journalists-lebanon-apparently-deliberate>.

⁸⁷ Human Rights Watch, *Gaza: Israel’s Imposed Starvation Deadly for Children* (Apr. 9, 2024), <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>.

⁸⁸ Stephanie Nolen, *Looming Starvation in Gaza Shows Resurgence of Civilian Sieges in Warfare*, *The New York Times* (Jan. 11, 2024), <https://www.nytimes.com/2024/01/11/health/gaza-israel-hunger-starvation.html>.

⁸⁹ United Nations Human Rights Office of the High Commissioner. "UN experts condemn 'flour massacre', urge Israel to end campaign of starvation in Gaza." Press release (March 5, 2024), <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

⁹⁰ Statement of ICC Prosecutor, *supra* note 5.

⁹¹ *Id.*

determined that the evidence it collected “shows that Israel has intentionally and systematically deprived the civilian population in all parts of Gaza of objects indispensable to human survival.”⁹²

Forcible transfer and deportation

Since the beginning of the assault on Gaza, the United Nations estimates that 1.9 million Palestinians – or 90% of the entire population of Gaza – have been displaced.⁹³ Many Palestinians have been displaced on multiple occasions, either fleeing Israeli bombardment, or in response to “evacuation” orders issued by Israeli officials and the military, despite there being no safe place to evacuate to. As of May 10, 2024, Israel was reported to have forcibly transferred more than 600,000 children⁹⁴ – a number even higher now.

On October 8, in a publicly televised statement, Netanyahu warned Palestinians in Gaza to “leave now,” despite their having nowhere to go.⁹⁵ By October 12, the Israeli military ordered the *entire* population of northern Gaza – over one million people – to “evacuate” to southern Gaza within 24 hours, an order that spread terror and sought to effectuate forcible transfer.⁹⁶ Evacuation orders were also directed to at least 23 hospitals providing life-saving treatment for thousands of patients, and in which tens of thousands of internally displaced Palestinians sought refuge, which human rights and humanitarian organizations warned would result in the utter collapse of Gaza’s healthcare system, describing it as a “death sentence” issued to those suffering from serious injuries or illnesses.⁹⁷ Similar orders have followed over the course of the military assault on the Palestinian population, including from Rafah – where the preferred option of Israeli officials has been deportation across the border into Egypt; most recently, on July 10, the Israeli military ordered the evacuation of Gaza City, which had already previously been ordered evacuated.⁹⁸

These orders, in conjunction with the mass-demolition of civilian infrastructure - and homes - along with statements by high-ranking Israeli officials encouraging Palestinians in Gaza to leave

⁹² *Id.*

⁹³ United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory; ochaopt.org (last accessed July 19, 2024).

⁹⁴ United Nations Human Rights Office of the High Commissioner, “Israel’s Rafah invasion must stop now, say UN experts” (May 10, 2024), <https://www.ohchr.org/en/press-releases/2024/05/israels-rafah-invasion-must-stop-now-say-un-experts>.

⁹⁵ Susannah George et al, *Israel formally declares war against Hamas as more than 1,000 killed on both sides*, Washington Post (Oct. 8, 2023) <https://www.washingtonpost.com/world/2023/10/08/israel-hamas-war-gaza/>

⁹⁶ *Israel orders expulsion of 1.1. Million Palestinians in north Gaza in 24 hours as ground invasion looms*, Mada Masr (Oct. 13, 2023), <https://www.madamasr.com/en/2023/10/13/news/u/israel-orders-expulsion-of-1-1-million-palestinians-in-north-gaza-in-24-hours-as-ground-invasion-looms-2/>.

⁹⁷ *Def. for Child. Int'l-Palestine v. Biden*, Complaint, No. 23-CV-05829-JSW, 2024 WL 390061, para. 97 (N.D. Cal. Jan. 31, 2024), *aff'd*, No. 24-704, 2024 WL 3405631 (9th Cir. July 15, 2024), available at: https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_wv.pdf.

⁹⁸ Wafaa Shurafa and Samy Magdy, *Israeli military orders the evacuation of Gaza City, an early target of its war with Hamas*, Associated Press (July 10, 2024) <https://apnews.com/article/israel-palestinians-hamas-war-news-07-10-2024-6358a61735f0e30132decce781860594>.

Gaza followed by bombardment of civilians areas,⁹⁹ demonstrate criminal intent. Both the deportation and the forcible transfer of civilians constitute grave breaches of international human rights law under Article 147 of the Fourth Geneva Convention, and accordingly, constitute prosecutable crimes under 18 U.S.C. §2441(c)(1) that your office should investigate.

3. Credible Basis for Investigation under the Torture Statute, 18 U.S.C. §§ 2340, 2340A

There exists a credible basis for supporting charges against Netanyahu and other Israeli officials under the Torture Statute, 18 U.S.C. §§ 2340, 2340A, based on reports gathered by human rights groups and United Nations independent experts after October 7, 2023 that detail widespread and institutionalized torture, including torture resulting in death, as defined by 18 U.S.C. § 2340, against Palestinian prisoners and detainees imprisoned or in the custody of Israeli armed forces and the Israel Prison Service. Your office has jurisdiction over torture when the alleged offender is a United States citizen or is “present in” the United States. *See* 18 U.S.C. § 2340A.

Over 9,000 Palestinians, including children, are currently imprisoned or detained in prisons run by the Israel Prison Service and in Israeli military-run detention camps.¹⁰⁰ This includes more than 3,500 Palestinian detainees who are currently held without charge or trial pursuant to administrative detention orders.¹⁰¹ Borak Alagha, 18, and Hashem Alagha, 20, U.S. citizen brothers born in the Chicago area, were detained in Gaza in February by Israeli forces.¹⁰² They have experienced physical violence at the hands of Israeli forces and are currently detained without charge at Ofer prison in the occupied West Bank.¹⁰³

Since October 7, 2023, deaths resulting from torture at the hands of Israeli forces has spiked. At least 18 Palestinian prisoners died as a result of torture in prisons managed by the Israel Prison Service, including at Megiddo prison, Ofer prison, Al Ramlah prison, Nafha prison, Eshel prison, and Al-Naqab prison.¹⁰⁴ Additionally, at least 48 Palestinian detainees from Gaza died in Israeli

⁹⁹ *Israeli minister repeats call for Palestinians to leave Gaza*, Reuters (Dec. 31, 2023)

<https://www.reuters.com/world/middle-east/israeli-minister-repeats-call-palestinians-leave-gaza-2023-12-31/>.

¹⁰⁰ Aaron Boxerman, *What We Know About Palestinians Detained in Israel*, *The New York Times* (Mar. 28, 2024), <https://www.nytimes.com/2024/03/28/world/middleeast/palestinians-detained-in-israel.html>.

¹⁰¹ *Id.*

¹⁰² *See* Ellen Knickmeyer & Seung Min Kim, *Family says two American brothers, 18 and 20, detained in Israeli raid in Gaza*, *Associated Press* (Feb. 8, 2024), <https://apnews.com/article/gaza-israel-us-brothers-detained-9e9d675ad4fe5812c87a57c7f0e3f05f>; and Alex Marquardt, Yahya Abou-Ghazala, & Jennifer Hansler, *Two US brothers detained in Gaza now being held in Israeli prison, US official says*, *CNN* (Feb. 23, 2024), <https://www.cnn.com/2024/02/22/politics/us-brothers-detained-gaza/index.html>.

¹⁰³ Based on information obtained from Maria Kari, a lawyer representing the Alagha brothers.

¹⁰⁴ Addameer Prisoner Support and Human Rights Association, *Statement on the International Day in Support of Victims of Torture* (June 26, 2024), <https://www.addameer.org/news/5370>.

military custody or at Israeli military-run detention centers, including 36 Palestinians at the Sde Teiman military detention center.¹⁰⁵

These deaths coincide with dramatic increases in the intensity of physical violence and acts of torture after October 7, 2023 against Palestinian prisoners and detainees imprisoned or in the custody of Israeli authorities.¹⁰⁶ On July 15, Khaled Mhajne, a lawyer with the Palestinian Commission for Detainees and Ex-Detainee Affairs, a Palestinian prisoners' organization, relayed reports from Mohammed Arab, a Palestinian journalist from Gaza detained by Israeli forces in March and held at the Israeli military-run Sde Teiman.¹⁰⁷ Arab told Mhajne that "detainees were tied up to walls, with dogs released to attack them" and that Arab witnessed a 27-year-old Palestinian detainee who was raped, forced to sleep on his stomach, attacked by police dogs and then raped with a fire extinguisher, with the extinguisher inserted in his anus and activated to release its contents.¹⁰⁸ Arab was recently transferred from Sde Teiman to the Israel Prison Service-run Ofer prison in the occupied West Bank, where Mhajne met Arab and confirmed that the conditions in Ofer are just as bad as Sde Teiman.¹⁰⁹

Additionally, after October 7, 2023, Palestinian prisoners and detainees have reported serious weight loss due to drastic reductions in food amounts and quality in the Israel Prison Service-run prisons, to the point of starvation.¹¹⁰ Israeli Minister of National Security Itamar Ben-Gvir, who oversees the Israel Prison Service and other Israeli law enforcement agencies, described the policy to drastically reduce food amounts to Palestinian prisoners and detainees as a "deterrent measure."¹¹¹ On April 17, 2024, welcoming a decision for the Israeli military to build additional

¹⁰⁵ Yaniv Kubovich and Bar Peleg, *Israeli Army Conducting Criminal Investigation into 48 Deaths of Gazans During War, Mostly Detainees*, Haaretz (June 3, 2024), <https://www.haaretz.com/israel-news/2024-06-03/ty-article/premium/idf-conducts-criminal-investigation-into-48-deaths-of-gazans-in-the-war-mostly-detainees/0000018f-dd46-db0d-a98f-dd4f27950000?gift=3c5113d3409349eb8be3c45c4755f8ef>.

¹⁰⁶ During their arrest and transfer to a prison or interrogation center, Palestinian detainees are bound and blindfolded, subject to invasive body searches, sexual violence, harsh beatings, humiliation, threats, insults and other forms of physical, verbal, and psychological abuse. During interrogations, Palestinian detainees experience widespread, systematic, and institutionalized acts intended to inflict severe physical or mental pain or suffering. Many detainees experience severe physical violence in an attempt to extract confessions and force or coerce self-incriminating statements. The methods commonly reported include harsh physical beatings, including slaps and kicks to sensitive parts of the body such as the head and genitals, severe sleep deprivation, stress positions, threats and acts of sexual violence, and isolation and solitary confinement solely for interrogation purposes. See Addameer Prisoner Support and Human Rights Association, *Statement on the International Day in Support of Victims of Torture* (June 26, 2024), <https://www.addameer.org/news/5370>.

¹⁰⁷ Nader Durgham, *Palestinians raped and tortured in Israeli detention, says prisoners group*, Middle East Eye (Jul. 15, 2024), <https://www.middleeasteye.net/news/gaza-israel-detainees-abuse-torture-sde-teiman-ofer>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Josh Breiner, *Israel reduces food for Palestinian security prisoners, conceals data, sources say*, Ha'aretz (June 26, 2024), <https://www.haaretz.com/israel-news/2024-06-26/ty-article/premium/israel-reduces-food-for-palestinian-security-prisoners-conceals-data-sources-say/00000190-542e-de5e-abd0-ff7ee9580000?gift=f8751e851eb548cd8705e48f6e29ef78>.

¹¹¹ *Id.*

space for Palestinian detainees in an attempt to relieve overcrowding, Ben-Gvir declared that “[t]he death penalty for terrorists is the right solution to the incarceration problem, until then - glad that the government approved the proposal I brought.”¹¹² On June 30, 2024, Ben-Gvir reiterated his call for executing Palestinian prisoners in relation to a proposed bill in the Israeli legislature and then reaffirmed the policy denying adequate food to prisoners, declaring “[t]hey should be killed with a shot to the head, and the bill to execute Palestinian prisoners must be passed in the third reading in the Knesset... Until then, we will give them minimal food to survive. I do not care about this.”¹¹³

On May 23, 2024, the United Nations Special Rapporteur on Torture, Alice Jill Edwards, issued a statement highlighting she had received increasing reports that Palestinians detained by Israeli authorities have been beaten, kept in cells blindfolded and handcuffed for excessive periods, deprived of sleep, and threatened with physical and sexual violence.¹¹⁴ Noting that since October 7, 2023, Israeli forces have detained thousands of Palestinians, including children, the Special Rapporteur stated, “I am particularly concerned that this emerging pattern of violations, coupled with an absence of accountability and transparency, is creating a permissive environment for further abusive and humiliating treatment of Palestinians.”¹¹⁵

An unpublished investigation by the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), the main UN agency that supports the relief and human development of Palestinian refugees, that was reviewed by The New York Times reportedly found that after October 7, 2023 Israeli forces and authorities abused hundreds of Palestinians detained in Gaza.¹¹⁶ UNRWA researchers gathered testimonies from released Palestinian detainees who said they had been beaten, stripped, robbed, blindfolded, sexually abused and denied access to lawyers and doctors. Such treatment, the report concluded, “was used to extract information or confessions, to intimidate and humiliate and to punish.”¹¹⁷

In February, United Nations experts, including the Special Rapporteur on violence against women, Reem Alsalem, expressed alarm over credible allegations of egregious human rights violations

¹¹² Itamar Ben-Gvir (@itamarbengvir), X (Apr. 17, 2024, 2:49 PM), <https://x.com/itamarbengvir/status/1780669866053177580>

¹¹³ *Ben-Gvir calls for executing Palestinian prisoners*, Middle East Monitor (July 1, 2024), <https://www.middleeastmonitor.com/20240701-ben-gvir-calls-for-executing-palestinian-prisoners/>

¹¹⁴ United Nations Human Rights Office of the High Commissioner, “Israel: UN expert calls for probe of allegations of torture and mistreatment against Palestinian detainees,” Press release (May 23, 2024), <https://www.ohchr.org/en/press-releases/2024/05/israel-un-expert-calls-probe-allegations-torture-and-mistreatment-against>.

¹¹⁵ *Id.*

¹¹⁶ Aaron Boxerman, *What We Know About Palestinians Detained in Israel*, The New York Times (Mar. 28, 2024), <https://www.nytimes.com/2024/03/28/world/middleeast/palestinians-detained-in-israel.html>.

¹¹⁷ *Id.*

against Palestinian women and girls, including acts that constitute torture.¹¹⁸ The experts noted reports of extrajudicial killings and arbitrary detention and that Palestinian women and girls in detention have reported multiple forms of sexual assault, such as strip searches by male Israeli army officers. They noted that “[a]t least two female Palestinian detainees were reportedly raped while others were reportedly threatened with rape and sexual violence.”¹¹⁹ They also noted that photos of female detainees in degrading circumstances were also reportedly taken by the Israeli army and uploaded online.¹²⁰

While torture is absolutely prohibited and cannot be justified under any circumstances, Israeli law does not define torture as an explicit crime and permits the “defense of necessity” as a justification for the crime of torture, thereby effectively providing de facto immunity to Israeli nationals under the Israeli criminal legal system.¹²¹ Thus, given the decades of documented widespread torture against Palestinian detainees by Israeli authorities in places of detention,¹²² the fact that there is no absolute prohibition against torture in Israeli law, and increasing emerging patterns of systematic violations has created a permissive environment in Israeli-run places of detention that necessitates HRSP opening an investigation into the Netanyahu as the chief executive of Israel and other officials, including Minister Itamar Ben-Gvir, and prosecutions, as appropriate.

4. Conclusion

Given the abundant credible evidence that Netanyahu and other Israeli officials who visit the United States, as well as U.S. officials and other U.S. citizens, have committed, authorized, or been complicit in genocide, war crimes, and torture against Palestinians in Gaza since October 8, 2023, we request that HRSP promptly open a criminal investigation. Investigation by your office is not only squarely in your statutory mandate, but is urgently needed to protect Palestinians from these most egregious ongoing crimes, to break the cycle of impunity that Israeli officials have heretofore enjoyed, and to ensure that the rule of law and the promise of justice have meaning.

¹¹⁸ United Nations Human Rights Office of the High Commissioner, "Israel/oPt: UN experts appalled by reported human rights violations against Palestinian women and girls," Press release (Feb. 19, 2024), <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Adalah, Physicians for Human Rights - Israel, & Al-Mezan Center for Human Rights, Joint NGO Submission: Key concerns regarding Israel’s use of torture and ill-treatment against Palestinians from the OPT (Mar. 25, 2016), <https://www.adalah.org/uploads/uploads/Key-Concerns-Torture-EU-Israel-Dialogues-March-2016.pdf>.

¹²² See Amnesty International, Israel/OPT: Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests (Nov. 8, 2023), <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrifying-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/>.

Accordingly, we urge the Human Rights and Special Prosecutions Section to take the following steps in an effort to prevent and ensure accountability for human rights abuses and war crimes and other atrocities in Gaza:

- Immediately initiate investigations under 18 U.S.C. §§ 1091, 2340–2340A, and 2441 of Prime Minister Benjamin Netanyahu, who will be present in the United States next week, as well as Minister of Defense Yoav Gallant, Benny Gantz, and Minister of National Security Itamar Ben-Gvir who committed or authorized genocide, war crimes, and torture against Palestinians in Gaza since October 8, 2023.
- Immediately initiate investigations under 18 U.S.C. §§ 1091 of President Joseph Biden, Secretary of State Antony Blinken, and Secretary of Defense Lloyd J. Austin III for acts establishing their complicity in genocide and war crimes against Palestinians in Gaza.
- Establish a War Crimes Accountability Team–Gaza or expand the scope of the existing War Crimes Accountability Team to prioritize, centralize, and strengthen efforts to identify those who have committed or otherwise bear criminal responsibility for genocide, war crimes and torture in Gaza, deny them safe haven, and hold them accountable.
- Convene and lead an interagency effort to:
 - identify the number of U.S. citizens that actively served in the Israeli armed forces since October 7, 2023, including the number of active-duty U.S. citizens currently serving the Israeli armed forces and unit-level membership information and deployment locations; and
 - assess the impact of torture, war crimes, and other atrocities in Gaza on U.S. citizens since October 7, 2023, and identify any witnesses, victims, survivors, and families of victims that are U.S. citizens or present in the United States.
- Issue a precautionary statement reaffirming the Human Rights and Special Prosecutions Section’s commitment to advancing accountability for torture, war crimes, and other atrocities in Gaza, specifically noting that federal criminal statutes proscribing torture, war crimes, and genocide apply to U.S. citizens regardless of where the crime is committed.

We appreciate your immediate attention to this matter and await your prompt response. We welcome a meeting with your office to discuss, and are available if you have any questions or need any additional information.

Sincerely,



Maria C. LaHood
Deputy Legal Director

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EXHIBIT B



U.S. Department of Justice

Criminal Division

Office of Administration

Washington, D.C. 20530

July 25, 2024

Ms. Maria C. LaHood
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Dear Ms. LaHood:

The Department of Justice (Department) has received your letter of July 19, 2024. The Department takes seriously any allegations of genocide, torture and war crimes over which the United States may have jurisdiction. To that end and consistent with the laws, policies and mission of the Department, the Human Rights and Special Prosecutions Section of the Criminal Division works with its law enforcement partners, the Federal Bureau of Investigation and Immigration and Customs Enforcement, to identify, investigate, and prosecute individuals who have violated U.S. laws prohibiting genocide, torture, war crimes, and other serious human rights violations.

The information you have provided will be carefully reviewed, and also shared with the Department's law enforcement partners.

Thank you for your concerns and your letter.

Sincerely,

Correspondence Management Staff
Office of Administration

Reference Number: JL302135728

For further correspondence please email criminal.division@usdoj.gov. Should you wish to speak to a representative please call (202) 353-4641 and provide the reference number.