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URGENT

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Sent via Email

Re: Request to Investigate and Prosecute Former Israeli Defense Minister Yoav Gallant, and to Surrender Him to the International Criminal Court

Dear Ms. Olds:

The Center for Constitutional Rights, along with the Palestinian human rights organization Al-Haq, as well as directly impacted U.S. citizens from or with family in Gaza, writes to urge the Department of Justice Human Rights and Special Prosecutions Section (“HRSP”) to open a criminal investigation into and prosecute **Yoav Gallant** who committed or authorized genocide, war crimes, and torture against Palestinians in Gaza between October 8, 2023 and at least November 5, 2024, in violation of 18 U.S.C. §§ 1091, 2340–2340A, and 2441.¹ We understand that Gallant is currently present in the United States, in Illinois. **There is overwhelming evidence that, as Defense Minister, Gallant and Israeli forces and authorities under his control committed genocide, war crimes, and torture against Palestinians in Gaza**, crimes that fall within the prosecutorial mandate of the HRSP.

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 Gallant’s surrender to the Court in The Hague for further proceedings.**²

¹ This communication is further to our July 19, 2024 and our February 4, 2025 communication regarding Netanyahu, who is also in the United States this week. Those communications are available at https://ccrjustice.org/sites/default/files/attach/2025/02/Feb%202025_HRSP%20Netanyahu%20with%20Exs.pdf.

² 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

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.

Since October 8, 2023, Israel has imposed a total siege on Gaza, and Israeli forces have killed at least 47,500 Palestinians—including an estimated 13,319 children—and injured more than 111,000 people.³ Gallant announced and directed this onslaught, promising that there would be “no electricity, no food, no fuel” for more than 2.2 million Palestinians in Gaza, whom he referred to as “human animals.”⁴ Nearly two million people—90% of Gaza—have been forcibly displaced and roughly 20,000 Palestinian children in Gaza are estimated to be lost, disappeared, detained, buried under the rubble, or in mass graves.⁵ With the intentional starvation of the entire population leading to famine across the strip, 345,000 people are facing catastrophic levels of food insecurity.⁶ As Minister of Defense, Gallant was one of the primary architects of Israel’s siege and military assault on Gaza, and directed Israel’s armed forces; in his role, he committed, ordered, incited, encouraged, commanded, aided and abetted and/or otherwise furthered genocide and war crimes. Gallant also ordered, commanded, furthered, or approved campaigns of mass arrests, detention, and torture of Palestinians, including their continued imprisonment and abuse in the infamous Sde Teiman military detention facility.⁷

Before assuming his role as Minister of Defense on December 29, 2022, Gallant had spent 35 years serving in the Israel Defense Forces (IDF), including as a senior general leading the IDF’s southern command, which oversees Gaza. Until he was dismissed by Israel’s Prime Minister Benjamin

Punishment of the Crime of Genocide, arts. I, IV, V, VII, Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277; Geneva Convention Relative to the Treatment of Civilian Persons in Time of War, art. 147, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 2, 4-8, Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85.

³ *Reported Impact Snapshot: Gaza Strip*, U.N. Off. for Coordination of Humanitarian Affs. (OCHA) (Feb. 4, 2025), <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-4-february-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., Gaza death toll has been significantly underreported, study finds*, CNN (Jan. 9, 2025), <https://www.cnn.com/2025/01/09/middleeast/gaza-death-toll-underreported-study-intl/index.html>.

⁴ Emanuel Fabian, *Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel*, Times of Isr. (Oct. 9, 2023), https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/ (quoting Israeli Defense Minister Yoav Gallant saying “I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed” and “We are fighting human animals and we are acting accordingly.”).

⁵ *Gaza’s Missing Children: Over 20,000 Children Estimated to Be Lost, Disappeared, Detained, Buried Under the Rubble or in Mass Graves*, Save the Children (June 24, 2024), <https://www.savethechildren.net/news/gazas-missing-children-over-20000-children-estimated-be-lost-disappeared-detained-buried-under>.

⁶ *Reported Impact Snapshot: Gaza Strip*, OCHA, *supra* note 3.

⁷ *See Israel Must End Mass Incommunicado Detention and Torture of Palestinians from Gaza*, Amnesty Int’l (July 18, 2024), <https://www.amnesty.org/en/latest/news/2024/07/israel-must-end-mass-incommunicado-detention-and-torture-of-palestinians-from-gaza/>.

Netanyahu on November 5, 2024, as Minister of Defense, Gallant was responsible for directing all branches of Israel’s armed forces, including air, naval, and ground forces. Gallant was subordinate to the Prime Minister and oversaw the Israeli military’s Chief of the General Staff, the highest ranking Israeli military officer. Gallant was a member of the now-dissolved war cabinet—the key decision-making body responsible for strategizing and directing the military assault on Gaza between October 11, 2023 and June 17, 2024, when it was dissolved. Given his central role in shaping and executing the military assault on Gaza since October 7, 2023, Gallant bears criminal responsibility for the serious international crimes committed against the Palestinian population during his tenure, which lasted at least until his dismissal on November 5, 2024.⁸

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 Gallant as well as Prime Minister Netanyahu for war crimes and crimes against humanity already in May

⁸ Gallant does not enjoy immunity from criminal investigation or prosecution. There is no common law or statutory immunity for defense ministers, let alone *former* defense ministers, for serious violations of international law, including the crimes outlined here – namely, torture, war crimes, and genocide. *See Regina v. Bow St. Metro. Stipendiary Magistrate, Ex parte Pinochet (No. 3)* [1999] 2 All ER 97, [2000] 1 AC 147 (HL) (“Pinochet (3)”; *Prosecutor v. Blaškić*, Case No. IT-95-14-AR, Judgment on Request of Republic of Croatia for Review of Decision of Trial Chamber II of 18 July 1997 (Issue of subpoena duces tecum), ¶¶ 41 (Int’l Crim. Trib. for the Former Yugoslavia 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)*; *Prosecutor v. Milošević*, Case No. IT-02-54-PT, Decision on Preliminary Matters, ¶32 (Int’l Crim. Trib. for the Former Yugoslavia 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 (Isr. Sup. Ct. 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.”). This was affirmed recently by the Paris Court of Appeals decision, which found 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). *See also Yousuf v. Samantar*, 699 F.3d 763, 776 (4th Cir. 2012) (holding “*jus cogens* violations are not legitimate official acts” and therefore defendant “is not entitled to conduct-based official immunity under the common law” for his *jus cogens* violations); *In re Estate of Ferdinand E. Marcos Hum. Rts. Litig.*, 987 F.2d 493, 497-98 (9th Cir. 1992) (torture and extrajudicial killing arose from acts falling “beyond the scope of [the official’s] authority” because “the sovereign has not empowered the official” to do such acts); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992) (“[i]nternational law does not recognize an act that violates *jus cogens* as a sovereign act”); *Lewis v. Mutond*, 918 F.3d 142, 146-47 (D.C. Cir. 2019) (current foreign officials do not enjoy common law conduct-based immunity for torture); *Enahoro v. Abubakar*, 408 F.3d 877, 893 (7th Cir. 2005) (Cudahy, J., dissenting) (“[O]fficials receive no immunity for acts that violate international *jus cogens* human rights norms (which by definition are not legally authorized acts)”).

2024.⁹ An arrest warrant for Gallant was issued by Pre-Trial Chamber I of the ICC on November 21, 2024 for crimes against humanity and war crimes committed against Palestinian civilians in Gaza from at least October 8, 2023 until at least May 20, 2024.¹⁰ In so doing, the Pre-Trial Chamber found that there are reasonable grounds to believe that Gallant 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 Gallant’s arrest is necessary to ensure his attendance at trial, to ensure Gallant does not obstruct or endanger the ongoing investigation and ICC proceedings; and to prevent the continuing commission of these crimes, having found Gallant’s criminal conduct is “ongoing.”

This request augments our two previous submissions to your office concerning accountability for atrocity crimes in Gaza: our July 19, 2024 submission addressing Israeli officials and others’ actions, and our submission earlier this week regarding Mr. Netanyahu, specifically. It is supported by evidence submitted to, and conclusions reached by, the federal court in *Defense for Children International-Palestine v. Biden*. It is further supported by significant rulings from the International Court of Justice (“ICJ”), arrest warrants issued at the ICC, and other publicly available evidence. In January 2024, 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 was plausible in the post-October 7th context and issued a first set of provisional measures of protection.¹¹ In light of Israel’s failure to comply with these protective measures, additional provisional measures were issued against Israel on March 28, 2024 and May 24, 2024.¹²

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. **In light of Gallant’s presence in the United States we request that your office immediately open an**

⁹ Press Release, Off. of the ICC 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-situation-state>.

¹⁰ Press Release, 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.

¹¹ *Application of Convention on Prevention and Punishment of Crime of Genocide (S. Afr. v. Isr.)*, 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.* at ¶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.*

¹² *S. Afr. v. Isr.*, Request for Modification of 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>; Request for Modification of 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>.

investigation into each of these crimes committed under Gallant’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, to prosecute.¹³

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

An investigation into Gallant for committing, inciting and conspiring to commit genocide pursuant to 18 U.S.C. § 1091 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, 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,¹⁴ on grounds including nationality or ethnicity; and it is the “group” that is protected.¹⁵ The “part” targeted for destruction can be represented by a subgroup, for example, in a specific geographic area.¹⁶

¹³ 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.

¹⁴ *See, e.g., Prosecutor v. Musema*, Case No. ICTR-96-13-T, Trial Judgment, ¶ 165 (Jan. 27, 2000).

¹⁵ *See Prosecutor v. Krstić*, Case No. IT-98-33, Appellate Chamber Judgment, Partial Dissenting Opinion of Judge Shahabuddin, ¶ 50 (Int’l Crim. Trib. for the Former Yugoslavia 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”).

¹⁶ 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.

Since October 7, 2023, in his capacity as the former Israeli Minister of Defense, Yoav Gallant has made multiple statements demonstrating his specific intent to destroy the Palestinian population of Gaza, in whole or in part:¹⁷

- On October 9, 2023, Gallant ordered a complete siege on the Gaza Strip. He referred to Palestinians as “**human animals,**” and called for collective punishment through conditions that would cause serious physical harm, if not death, to Palestinians in Gaza. He stated, “I have ordered a **complete siege** on the Gaza Strip. There will be **no electricity, no food, no fuel, everything is closed . . . We are fighting human animals and we are acting accordingly.**”¹⁸ Gallant also threatened “**to bomb those attempting to provide humanitarian aid to the Gaza Strip.**”¹⁹
- On October 10, 2023, speaking to Israeli soldiers, Gallant again referred to Gaza as “human animals”, and said, “**We will eliminate everything.** If it doesn't take one day, it will take a week, it will take weeks, or even months, **we will reach all places.**”²⁰
- On October 10, 2023, Gallant said to troops on the Gaza border, “**I have released all the restraints,** we have [regained] control of the area, and we are moving to a full offense,” and “You will have the ability to change the reality here.”²¹ He also said, “**Gaza won't return to what it was before. We will eliminate everything.**”²²

¹⁷ 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, ¶ 523 (Sept. 2, 1998).

¹⁸ *Statement by Yoav Gallant*, Knesset TV (Oct. 9, 2023), <https://www.youtube.com/watch?v=InxvS9VY-t0>.

¹⁹ Press Release, U.N. Off. of High Comm’r for Hum. Rts., Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence (Oct. 12, 2023), <https://www.ohchr.org/en/press-releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians>.

²⁰ *See* Mathu Joyini, Letter dated 29 May 2024 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council (“Joyini U.N. Security Council Letter”), at p. 23, U.N. Doc. S/2024/419 (May 29, 2024), <https://documents.un.org/doc/undoc/gen/n24/151/97/pdf/n2415197.pdf> (citing *Filmography: Ariel Harmoni, Ministry of Defense*, Kipa News (Oct. 10, 2023), <https://www.youtube.com/watch?v=I9wx7e4u-xM>. Translation in *S. Afr. v. Isr.*, Order of Provisional Measures (Jan. 26, 2024), p. 17, ¶52, *supra* note 11. See also *S. Afr. v. Isr.*, Application and Request for Provisional Measures of 29 December 2023 (Dec. 29, 2023), p. 60-61, ¶101, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>).

²¹ Emmanuel Fabian, *Gallant: Israel moving to full offense, Gaza will never return to what it was*, Times of Isr. (Oct. 10, 2023), https://www.timesofisrael.com/liveblog_entry/gallant-israel-moving-to-full-offense-gaza-will-never-return-to-what-it-was/?fbclid=IwAR0i8_Kw54MwTzBPuO3kt4ps8oxP0G8TrU-j1YzBAvqzfCSwmpzHpK1VgnE.

²² Paul Cunningham, *Death toll rises, chaos reigns as invasion of Gaza inevitable*, RTE News (Oct. 14, 2023), <https://www.rte.ie/news/analysis-and-comment/2023/1014/1410895-israel-gaza-analysis/>.

- On November 11, 2023, during a visit to a military base on the northern border with Lebanon, Gallant said, “I am saying here to the citizens of Lebanon, I already see the citizens in Gaza walking with white flags along the coast and moving south . . . Hezbollah is dragging Lebanon into a war that may happen, and it is making mistakes. If it makes mistakes of this kind, **the ones who will pay the price are first of all the citizens of Lebanon.** What we are doing in Gaza we know how to do in Beirut.”²³
- On December 14, 2023, after the north of Gaza Strip was made completely uninhabitable by Israel, Gallant said, “The campaign will last for months to come and include the southern area of the strip.”²⁴
- On February 1, 2024, speaking to Israeli soldiers in Khan Younis, Gallant urged them to “**reach all the places.**”²⁵ He repeated this sentiment on March 13, 2024, when he told Israeli soldiers, “**we will reach every location.**”²⁶
- On February 1, 2024, despite international outcry warning against the harm to 1.2 displaced Palestinians in Rafah, Gallant tweeted that “we will complete the mission and from there keep going to Rafah . . . **We will keep going till the end,** there is no other way.”²⁷
- On March 3, 2024, during a visit to the Gaza border, Gallant said to Israeli soldiers, “we are **taking apart neighbourhood after neighbourhood.**”²⁸

²³ Emmanuel Fabian, *Touring north, Gallant warns Hezbollah ‘close to making a grave mistake,’* Times of Isr. (Nov. 11, 2023), https://www.timesofisrael.com/liveblog_entry/touring-north-gallant-warns-hezbollah-close-to-making-a-grave-mistake.

²⁴ Roy Rubenstein, *Gallant: The maneuver will last for many months and will also include the southern Gaza Strip,* YNet (Nov. 14, 2023), <https://www.ynet.co.il/news/article/sljs0nw4a>.

²⁵ See Joyini U.N. Security Council Letter at p. 24, *supra* note 20 (citing Emanuel Fabian, *Gallant says army will push south to Rafah as Khan Younis offensive wraps up,* Times of Isr. (Feb. 1, 2024), https://www.timesofisrael.com/liveblog_entry/gallant-says-army-will-push-south-to-rafah-as-khan-younis-offensive-wraps-up/).

²⁶ See Joyini U.N. Security Council Letter at p. 24, *supra* note 20 (citing *Action in Rafah soon? Galant in Gaza: ‘We reach everywhere’*, Now 14 (Mar. 13, 2024), <https://www.now14.co.il/פעולה-ברפייה-בקרוב/> (informal translation provided)).

²⁷ See Joyini U.N. Security Council Letter at p. 24, *supra* note 20 (citing Yoav Gallant (@yoavgallant), Twitter/X (Feb. 1, 2024, 8:11 PM), <https://twitter.com/yoavgallant/status/1753118924390973502> (informal translation provided)).

²⁸ See Joyini U.N. Security Council Letter at p. 24, *supra* note 20 (citing Yanki Golden, *Gallant: ‘We Will Not End This War Without Eliminating Hamas’*, Hamechadesh News (Mar. 3, 2024), <https://hm-news.co.il/451577/> (informal translation provided)).

Since at least October 8, 2023 to at least November 5, 2024, Gallant acted on his genocidal intent, overseeing and justifying the killing of over 43,300 Palestinians in Gaza²⁹—including more than 13,000 children³⁰—the injuring of nearly 102,000 Palestinians, the forced displacement of nearly two million, and the catastrophic spread of famine throughout the region.³¹ Tens of thousands more are estimated to have been killed, injured, starved, displaced, or otherwise severely impacted as a result of the total siege Gallant has imposed on Gaza. These atrocities are perpetrated with the intention to destroy the Palestinian population, in whole or in part.³²

In October 2023, Gallant ordered the evacuation of over a million people from northern Gaza, giving them only 24 hours; the directive resulted in mass displacement and camps filled with makeshift tents.³³ Just a few months later, in February 2024, Gallant ordered the military invasion of Rafah where over 1.3 million Palestinian civilians were sheltering at the earlier orders of the Israeli military.³⁴ The U.S. Secretary of Defense and Secretary of State warned Gallant against a ground invasion in Rafah, citing their concerns for the welfare and safety of the Palestinians sheltered there.³⁵ Despite these warnings, international condemnation, and urgent alerts about the catastrophic impact an invasion of Rafah would have on the humanitarian situation in Gaza, Gallant and other Israeli officials defied warnings and proceeded with the invasion.³⁶

Israeli airstrikes that Gallant commanded 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. Gallant also supervised the three military offensives that razed the Jabaliya refugee

²⁹ *Reported Impact Snapshot: Gaza Strip*, OCHA (Nov. 5, 2024), https://www.ochaopt.org/sites/default/files/Gaza_Reported_Impact_Snapshot_05_November_2024.pdf.

³⁰ *Id.*

³¹ *Id.* (reporting 345,000 “people facing catastrophic levels of food insecurity (IPC Phase 5)”).

³² Zeina Jamaluddine et al., *Traumatic injury mortality in the Gaza Strip from Oct 7, 2023 to June 30, 2024: a capture-recapture analysis*, *The Lancet* (Jan. 9, 2025), [https://www.thelancet.com/journals/lancet/article/piiS0140-6736\(24\)02678-3/fulltext](https://www.thelancet.com/journals/lancet/article/piiS0140-6736(24)02678-3/fulltext); 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>.

³³ Barak Ravid, *Israel tells UN to evacuate the northern Gaza Strip within 24 hours*, *Axios* (Oct. 13, 2023), <https://www.axios.com/2023/10/13/israel-gaza-amas-evacuate-un-ground-operation>.

³⁴ *Galant Warns of upcoming Rafah operation in visit to soldiers in central Gaza*, *i24 News* (May 5, 2024), <https://www.i24news.tv/en/news/israel-at-war/artc-galant-warns-of-upcoming-rafah-invasion-in-visit-to-central-gaza>; *World leaders fail to act as Israeli invasion of Rafah worsens humanitarian catastrophe*, *Amnesty Int’l* (May 15, 2023), <https://www.amnesty.org/en/latest/news/2024/05/world-leaders-fail-to-act-as-israeli-invasion-of-rafah-worsens-humanitarian-catastrophe/>.

³⁵ Patsy Widakurswara, *Top US Officials Warn Israel’s Gallant Against Invading Rafah*, *VOA News* (Mar. 26, 2024), <https://www.voanews.com/a/top-us-officials-warn-israel-s-gallant-against-invading-rafah/7544133.html>.

³⁶ *Israel strikes Gaza’s Rafah despite US warning on arms transfer*, *France24* (May 9, 2024), <https://www.france24.com/en/live-news/20240509-israel-shells-rafah-as-biden-vows-arms-suspension>; *‘Fight with our fingernails’: Israel’s Netanyahu defies US weapons warning*, *Al Jazeera* (May 9, 2024), <https://www.aljazeera.com/news/2024/5/9/israeli-officials-defiant-after-biden-weapons-warning-on-rafah-assault> (quoting Gallant’s response to U.S. pressures against the Rafah invasion, “I turn to Israel’s enemies as well as to our best of friends and say – the State of Israel cannot be subdued”).

camp, the second taking place only five days after the invasion of Rafah.³⁷ By the third offensive, footage showed whole blocks of buildings being deliberately brought down by demolition charges and bulldozers leveling entire structures.³⁸ These coordinated actions by the Israeli political and military leadership to deprive Palestinians in Gaza 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.

Given 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, derived 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.”³⁹ 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.⁴⁰ In the cases of the Srebrenica and Rwandan genocides, international tribunals have recognized certain actions as constituting “conditions of life” calculated to bring about a group’s physical destruction, in whole or in part. These include: denying medical services,⁴¹ systematically expelling members of the group from their homes,⁴² and creating circumstances that would “lead to a slow death”—such as the deprivation of adequate housing, water, shelter, clothing, hygiene, or sanitation. The restriction of food, by subjecting people to a subsistence diet, or to excessive work or physical exertion, likewise constitutes recognized methods leading to a “slow death.”⁴³ “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.”⁴⁴

³⁷ Peter Beaumont et al., ‘Everything is gone’: how Israeli forces destroyed Jabaliya refugee camp, *The Guardian* (Dec. 18, 2024) <https://www.theguardian.com/global-development/2024/dec/18/jabaliya-refugee-camp-gaza-destruction-idf>.

³⁸ *Id.*

³⁹ See ICC, Elements of Crimes, art. 6(c), n.4 (2013).

⁴⁰ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, [Trial Judgment](#), ¶814 (Int’l Crim. Trib. for the Former Yugoslavia Jun. 10, 2010).

⁴¹ *Id.* at ¶ 815; *Musema Trial Judgment* at ¶ 157.

⁴² See, e.g., *Prosecutor v. Brđanin*, Case No. IT-99-36, [Trial Judgment](#), ¶691 (Int’l Crim. Trib. for the Former Yugoslavia Sept. 1, 2004); *Prosecutor v. Stakić*, Case No. IT-97-24-T, [Trial Judgment](#), ¶517 (Int’l Crim. Trib. for the Former Yugoslavia July 31, 2003); *Akayesu Trial Judgment*, ¶ 506.

⁴³ See, e.g., *Akayesu Trial Judgment*, ¶523; *Stakić Trial Judgment*, ¶517; *Prosecutor v Karadžić*, Case No. IT-95-5/18-T, [Trial Judgment](#), ¶547 (Int’l Crim. Trib. for the Former Yugoslavia 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 Convention on Prevention and Punishment of Crime of Genocide (The Gambia v. Myanmar)*, [Provisional Measures](#), 2020 I.C.J. 3, 27, ¶ 71 (Jan. 23).

⁴⁴ *Karadžić Trial Judgment*, ¶ 548.

The Center for Constitutional Rights represents Palestinians and Palestinian-Americans who have suffered immense loss due to the ongoing genocide against the Palestinian people in Gaza. Collectively, they have lost hundreds of family members, while others have been subjected to repeated forcible transfer and displacement, and starvation amid a mass famine. These conditions are a direct consequence of Israel’s “total siege” on the entire population of Gaza, denying millions of people the bare necessities for human survival.⁴⁵ Our clients sued President Biden, Secretary of State Blinken, and Secretary of Defense Austin, alleging they violated customary international law—a part of federal common law—for their failure to prevent, and their complicity, in Israel’s genocide of Palestinians in Gaza. These violations are codified both in the Genocide Convention and in 18 U.S.C. § 1091. We submitted extensive documentation of Israel’s genocide and these U.S. officials’ complicity to the United States District Court for the Northern District of California,⁴⁶ in an 85-page complaint, and in declarations in support of a motion for a preliminary injunction.⁴⁷

The evidence submitted in the case included declarations by the Plaintiffs regarding the serious injuries they have suffered due to Israel’s genocide,⁴⁸ 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,”

⁴⁵ Brief for Amicus Curiae Global Rights Compliance, Lina Baddour & Tom Dannenbaum in Supp. 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. No. 36.1, https://ccrjustice.org/sites/default/files/attach/2024/03/36.1_3-14-24_Global-Rights-Compliance_w.pdf.

⁴⁶ Complaint, *Def. for Child. Int’l-Palestine v. Biden*, 2024 WL 390061, Dkt. No. 1, https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_ww.pdf.

⁴⁷ See, e.g., Decl. of Pamela Spees, Esq., in Supp. of Pls.’ Mot. for Prelim. Inj., *Def. for Child. Int’l-Palestine v. Biden*, 2024 WL 390061, Dkt. No. 19-7, https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Attorney%20Pam%20Spees_w.pdf; Decl. of Sadaf M. Doost, Esq., in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 44-8, https://ccrjustice.org/sites/default/files/attach/2023/12/44-8_12-22-23_Doost-Decl_w.pdf.

⁴⁸ Decl. of Basim Elkarra in Supp. of Pls.’ Mot. for Prelim. Inj., *Def. for Child. Int’l-Palestine v. Biden*, 2024 WL 390061, Dkt. No. 44-3, https://ccrjustice.org/sites/default/files/attach/2023/12/44-3_12-22-23_Elkarra-Decl_w.pdf; Decl. of Waeil Elbhassi in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 44-4, https://ccrjustice.org/sites/default/files/attach/2023/12/44-4_12-22-23_Elbhassi-Decl_w.pdf; Decl. of Laila Elhaddad in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 44-5, https://ccrjustice.org/sites/default/files/attach/2023/12/44-5_12-22-23_Elhaddad-Decl_w.pdf; Decl. of A.N. in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 44-2, https://ccrjustice.org/sites/default/files/attach/2023/12/44-2_12-22-23_AN-Decl_w.pdf; Decl. of Ahmed abu Artema in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 19-1, https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Abu%20Artema_w.pdf; Decl. of Susan Power for Al-Haq in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 19-3, https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Al-Haq_w.pdf; Decl. of Dr. Omar Al-Najjar in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 19-4, https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Al-Najjar_w.pdf; Decl. of Mohammad Abu Rokbeh in Supp. of Pls.’ Mot. for Prelim. Inj., Dkt. No. 19-2, https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Plaintiff%20Abu%20Rokbeh_w.pdf. See also Jan. 26, 2024 Hr’g Recording, <https://www.uscourts.gov/cameras-courts/defense-children-international-palestine-v-biden>; Hr’g Tr., Dkt. No. 100, https://ccrjustice.org/sites/default/files/attach/2024/05/100_2-27-24_Transcript_w.pdf.

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.”⁴⁹

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:

“[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.”⁵⁰

This request for investigation pursuant to 18 U.S.C. § 1091 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.⁵¹ 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.⁵² The ICJ ordered Israel to, *inter alia*, stop its genocidal acts against the Palestinian people in Gaza.⁵³

An investigation pursuant to 18 U.S.C. § 1091 is also supported by the ICC Prosecutor’s request for arrest warrants against Gallant and Netanyahu and the Pre-Trial Chamber’s issuance of those warrants alleging 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

⁴⁹ Decl. of William A. Schabas in Supp. of Pls.’ Mot. for Prelim. Inj., *Def. for Child. Int’l-Palestine v. Biden*, 2024 WL 390061, Dkt. No. 19-5, https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Expert%20William%20Schabas_w.pdf.

⁵⁰ *Def. for Children Int’l-Palestine v. Biden*, 2024 WL 390061, at *5 (dismissing for lack of jurisdiction on political question grounds).

⁵¹ *S. Afr. v. Isr.*, Application and Request for Provisional Measures, *supra* note 20.

⁵² *S. Afr. v. Isr.*, Order of Provisional Measures, ¶¶ 36, 54, *supra* note 11.

⁵³ *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 9. 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.*

of murder, persecution, and other inhumane acts from at least October 8, 2023 until at least May 20, 2024.⁵⁴ 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. The war crimes are alleged to have been committed in the context of both 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. 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.⁵⁵

⁵⁴ *Id.* See Rome Statute of the International Criminal Court art. 58, July 17, 1998, 2187 U.N.T.S. 90.

⁵⁵ See ICC Arrest Warrant Press Release, *supra* note 10.

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 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

⁵⁶ Under international humanitarian law, “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army.” 1907 Hague Regulations, Convention Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (Hague, Annex IV) art. 42, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539.

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.” ICRC, Commentary of 2016 to Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 2 (“Common Article 2”), ¶288. 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.* at ¶¶ 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* S.C. Res. 2334 (Dec. 23, 2016), U.N. 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 1504-06 (2012); G.A. Res. 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 (Dec. 18, 2018), U.N. Doc. A/Res/73/97; G.A. Res. 77/247, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (Jan. 9, 2023), U.N. Doc. A/Res/77/247; U.N. Hum. Rts. Comm., *Concluding Observations on Israel*, U.N. Doc. CCPR/C/ISR/CO/5 (May 5, 2022); Richard Falk (Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, *Rep. of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, U.N. Doc. A/HRC/25/67 (Jan. 13, 2014).

Israel’s 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 *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Trial Judgment, ¶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)*, 2005 I.C.J. 168, ¶¶ 172, 175-176 (Dec. 19).

⁵⁸ *See, e.g.*, 1907 Hague Regulations art. 42; *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06-803, Decision on the Confirmation of Charges, ¶209 (Jan. 29, 2007); ICC, Elements of Crimes, art. 8(2)(a)(i)(4), n.34 (2013) (“The term ‘international armed conflict’ includes military occupation”).

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 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 Gallant’s direction, Israeli forces have committed widespread and egregious war crimes against the Palestinian people of Gaza, prompting investigations and condemnation from various

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.

⁶⁰ Convention (IV) Relative to the Protection of Civilian Persons in Time of War (“Fourth Geneva Convention”) art. 4, Aug. 12, 1949, 6 U.S.T. 3516, 73 U.N.T.S. 287 (“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 & Vinko Martinović*, Case No. 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 to Fourth Geneva Convention art. IV, at p. 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.”

international human rights groups, alongside the ICC’s issuance of arrest warrants. 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 Gallant’s responsibility for engaging in wilful killing and wilfully causing great suffering or serious injury through directing attacks against civilians, including: the 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 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 at least 47,500 Palestinians in Gaza, including more than 13,000 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 accounts of disproportionate and unabated killing of civilians, including airstrikes on tents in designated “safe zones.”⁷⁰

Israel has also attacked hospitals and medical infrastructure, schools, and places of worship. Seventeen out of thirty-five hospitals have been rendered out of service, and eighteen are only partly functional, due to the military assault.⁷¹ It is estimated that 92% of housing units are destroyed or severely or partially damaged,⁷² that 69% of all structures are destroyed or damaged, including 68% of the total road network.⁷³ 88% of all school buildings have been damaged or destroyed.⁷⁴

⁶⁷ *Reported Impact Snapshot: Gaza Strip*, OCHA, *supra* note 3.

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

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

⁷⁰ *See, e.g., 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>.

⁷¹ *Reported impact snapshot: Gaza Strip*, *supra* note 3.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Humanitarian Situation Update #247, Gaza Strip*, OCHA (Dec. 17, 2024), <https://www.ochaopt.org/content/humanitarian-situation-update-247-gaza-strip>.

As of September 2024, 885 Palestinian health workers from Gaza who were reported killed.⁷⁵ As early as November 2023, Human Rights Watch recommended that 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, 2023 until February 4, 2025, the Committee to Protect Journalists has reported in a preliminary investigation that at least 167 journalists have been killed.⁸⁰ Not included in these numbers are the family members of journalists, who have also been targeted and killed en masse.⁸¹ 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.⁸² He was injured in another strike that killed Al Jazeera cameraperson Samer Abudaqa.⁸³ Dahdouh's son was also killed in an airstrike that targeted his car.⁸⁴ 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 journalists on October 13 "was an apparently deliberate attack on

⁷⁵ Press Release, U.N. Off. of High Comm'r for Hum. Rts., UN expert shocked by death of another Palestinian doctor in Israeli detention (Sept. 24, 2024), <https://www.ohchr.org/en/press-releases/2024/09/un-expert-shocked-death-another-palestinian-doctor-israeli-detention>.

⁷⁶ *Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis*, Hum. Rts. Watch (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 *Israel/OPT: 'Nowhere safe in Gaza': Unlawful Israeli strikes illustrate callous disregard for Palestinian lives*, Amnesty Int'l (Nov. 20, 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 *Journalist casualties in the Israel-Gaza war*, Comm. to Protect Journalists (Feb. 4, 2025), <https://cpj.org/2025/02/journalist-casualties-in-the-israel-gaza-conflict/>.

⁸¹ *Id.*

⁸² 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>.

⁸³ *Al Jazeera's Gaza Bureau Chief Wael Dahdouh in Qatar for medical treatment*, Al Jazeera (Jan. 17, 2024), <https://www.aljazeera.com/news/2024/1/17/al-jazeeras-gaza-bureau-chief-wael-dahdouh-in-qatar-for-medical-treatment>.

⁸⁴ 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/>.

civilians and thus a war crime.”⁸⁵ Investigations into the tens of examples of similar incidents are warranted.

While this systematic practice of targeted killings and executions at a minimum constitutes wilful killing, importantly, Gallant has been charged by the ICC for the crimes against humanity of murder, persecution, and other inhumane acts. Mass graves have been uncovered containing hundreds of bodies, many found with blindfolds, their legs and hands tied, and stripped of clothing—clear indications that the executions occurred while in custody.⁸⁶ At Nasser Hospital in Khan Younis, 283 bodies were recovered from a mass grave, while 30 more were found at Al-Shifa. The bodies were “buried deep in the ground and covered with waste.”⁸⁷ Among those murdered were older people, women, and the wounded.

At Shadia Abu Ghazala School, a civilian shelter in northern Gaza, witnesses recounted that Israeli soldiers had rounded up Palestinian men residing at the school and opened fire on other innocent civilians, including women and children.⁸⁸ At another school sheltering thousands of displaced Palestinians in Gaza, the Khalifa Bin Zayed school, another 30 Palestinian bodies were discovered in zip-tied body bags.⁸⁹ Testimonies reveal that Israeli soldiers murdered dozens of elderly Palestinians in field executions, either after forcing them to leave their homes or following their release from detention without charges.⁹⁰

Gallant’s conduct in overseeing mass killings of civilians and mass destruction of civilian infrastructure contravenes the War Crimes Act, 18 U.S.C. § 2441(c)(1) and (2), prohibition of wilful killing, inhuman treatment, wilfully causing great suffering or serious injury to body or

⁸⁵ *Israel: Strikes on Journalists in Lebanon Apparently Deliberate Intentionally Targeting Civilians a War Crime*, Hum. Rts. Watch (Dec. 7, 2023), <https://www.hrw.org/news/2023/12/07/israel-strikes-journalists-lebanon-apparently-deliberate>.

⁸⁶ *Palestinians demand international inquiry after mass grave found in Gaza*, Al Jazeera (Feb. 1, 2024), <https://www.aljazeera.com/news/2024/2/1/palestinians-demand-international-inquiry-after-mass-grave-found-in-gaza>; see also *Mass graves in Gaza show victims’ hands were tied, says UN rights office*, UN News (Apr. 23, 2024), <https://news.un.org/en/story/2024/04/1148876>.

⁸⁷ *Mass graves in Gaza show victims’ hands were tied, says UN rights office*, UN News (Apr. 23, 2024), <https://news.un.org/en/story/2024/04/1148876>.

⁸⁸ *Footage shows bodies piled up after Israeli attack on Gaza school*, Al Jazeera English (Dec. 13, 2023), <https://www.youtube.com/watch?v=FveRpSsCfOU>.

⁸⁹ Sharon Zhang, *Palestinians Uncover Dozens Killed Execution-Style in Schoolyard in Gaza*, Truthout (Feb. 2, 2024), <https://truthout.org/articles/palestinians-uncover-dozens-killed-execution-style-in-schoolyard-in-gaza/>; see also *30 Bodies found bound, buried after Israeli withdrawal*, The New Arab (Jan. 31, 2024), <https://www.newarab.com/news/gaza-30-bodies-found-bound-buried-after-israeli-withdrawal>.

⁹⁰ Zhang, *supra* note 89; see also *Shocking testimonies reveal the execution of dozens of elderly people by Israeli army in the Gaza Strip*, Euro-Med Hum. Rts. Monitor (Dec. 22, 2023), <https://euromedmonitor.org/en/article/6049/Shocking-testimonies-reveal-the-execution-of-dozens-of-elderly-people-by-Israeli-army-in-the-Gaza-Strip>.

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.⁹¹ In July 2024, U.N. Special Rapporteur on the right to food Michael Fakhri released a study and concluded that “[n]ever in post-war history had a population been made to go hungry so quickly and so completely as was the case for the 2.3 million Palestinians living in Gaza.”⁹² 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.”⁹³ 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.⁹⁴ 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 Gallant for war crimes is also supported by the application of an arrest warrant for him and Prime Minister Netanyahu by the Office of the Prosecutor of the International Criminal Court for war crimes and crimes against humanity committed since at least October 7, 2023.⁹⁵ Specifically, one of the ICC charges against Gallant is the war crime of starvation as a method of warfare. 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.⁹⁶ The Office of the Prosecutor 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.”⁹⁷

⁹¹ *Gaza: Israel’s Imposed Starvation Deadly for Children*, Hum. Rts. Watch (Apr. 9, 2024), <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>.

⁹² Michael Fakhri (Special Rapporteur on Right to Food), *Starvation and the right to food, with an emphasis on the Palestinian people’s food sovereignty*, U.N. Doc. [A/79/171](https://www.unhcr.org/refugees/doc/4a79171) (July 17, 2024).

⁹³ Stephanie Nolen, *Looming Starvation in Gaza Shows Resurgence of Civilian Sieges in Warfare*, N.Y. Times (Jan. 11, 2024), <https://www.nytimes.com/2024/01/11/health/gaza-israel-hunger-starvation.html>.

⁹⁴ Press Release, U.N. Off. of High Comm’r for Hum. Rts., UN experts condemn ‘flour massacre,’ urge Israel to end campaign of starvation in Gaza (March 5, 2024), <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

⁹⁵ Statement of ICC Prosecutor, *supra* note 9.

⁹⁶ *Id.*

⁹⁷ *Id.*

Forcible transfer and deportation

Since the beginning of the Israeli military assault on Gaza, the United Nations estimates that 1.9 million Palestinians – or 90% of the entire population of Gaza – have been displaced.⁹⁸ 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 children⁹⁹ – a number even higher now as children account for slightly less than half the total population in Gaza.

By October 12, 2023, 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.¹⁰⁰ 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.¹⁰¹ 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. The evacuation orders are often issued for the same area on multiple occasions; many Gazans have been ordered to “evacuate” dozens of times.¹⁰² In August 2024, the UN estimated that 84% of the Gaza strip had been subject to an evacuation order.¹⁰³

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 Gaza followed by bombardment of civilian areas,¹⁰⁴ demonstrate criminal intent. Both the

⁹⁸ *Occupied Palestinian Territory*, OCHA, <https://www.unocha.org/occupied-palestinian-territory> (last visited Feb. 6, 2025).

⁹⁹ Press Release, U.N. Off. of High Comm’r for Hum. Rts., 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>.

¹⁰⁰ *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/>.

¹⁰¹ Press Release, World Health Org., Evacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured (Oct. 14, 2023), <https://www.who.int/news/item/14-10-2023-evacuation-orders-by-israel-to-hospitals-in-northern-gaza-are-a-death-sentence-for-the-sick-and-injured>.

¹⁰² Nidal Al-Mughrabi, *Israeli forces order new evacuation of besieged northern Gaza town*, Reuters (Dec. 29, 2024), <https://www.reuters.com/world/middle-east/israeli-forces-order-new-evacuation-besieged-northern-gaza-town-residents-say-2024-12-29/>.

¹⁰³ Daniel Johnson & Ziad Taleb, *Gaza: Latest evacuation orders leave civilians dangerously close to frontline*, UN News (Aug. 21, 2024), <https://news.un.org/en/story/2024/08/1153406>.

¹⁰⁴ *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/>.

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 Gallant 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 detailing 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. 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.

The Israeli military runs at least three military detention camps: Sde Teiman, Anatot, and Ofer. As the former Defense Minister, Gallant bears criminal responsibility for systematic torture and inhuman treatment occurring in these detention camps, and during the rounding up and arrest of the detainees between October 7, 2023 and November 5, 2024. As of December 2024, there were around 3,435 Palestinians from Gaza being held in military detention facilities, according to Israeli authorities, and an unknown number of others who were held and released during Gallant’s tenure as Minister of Defense. Reports from Palestinian detainees released back into Gaza after their detention in these military camps recount harrowing details of torture. These include being held and interrogated in a “disco room” with bright lights and loud music resulting in sleep deprivation, being prevented from lying down, being handcuffed or blindfolded for weeks, allowing dogs to enter prison cells, beatings, among other abuses.¹⁰⁵ Reports from Palestinians released from the detention facilities under Gallant’s authority show clear signs of torture and abuse.¹⁰⁶ Members of the Israeli armed forces themselves circulated images of these round-ups, which included being stripped, handcuffed, blindfolded, put in diapers, and forced to sit outside in the cold.¹⁰⁷

In February 2024, two brothers from the Chicago area—Borak Alagha, 18, and Hashem Alagha, 20—both U.S. citizens, were violently abducted by Israeli forces in the home they were sheltering

¹⁰⁵ *Strapped down, blindfolded, held in diapers: Israeli whistleblowers detail abuse of Palestinians in shadowy detention center*, CNN (May 11, 2024), <https://www.cnn.com/2024/05/10/middleeast/israel-sde-teiman-detention-whistleblowers-intl-cmd/index.html>; Jackie Northam, Ahmed Abuhamda & Itay Stern, *Palestinian detainees from Gaza say they are facing abuse in Israeli prisons*, NPR (July 23, 2024), <https://www.npr.org/2024/07/23/g-s1-11048/israel-palestinian-prisoners-abuse-gaza>; Hagar Shezaf & Bar Peleg, *Constant Handcuffs and No Showers: Gazans Detail Abuse in Israeli Detention*, Haaretz (Jan. 16, 2025), <https://www.haaretz.com/israel-news/2025-01-16/ty-article-magazine/.premium/constant-handcuffs-and-no-showers-gazans-detail-abuse-in-israeli-detention/00000194-6edf-d876-affe-7eff8f7f0000>.

¹⁰⁶ Aaron Boxerman, *What We Know About Palestinians Detained in Israel*, N.Y. Times (Mar. 28, 2024), <https://www.nytimes.com/2024/03/28/world/middleeast/palestinians-detained-in-israel.html>.

¹⁰⁷ Abeer Salman, *Images from Gaza show Israeli soldiers detaining dozens of men stripped to underwear*, CNN (Dec. 9, 2023), <https://www.cnn.com/2023/12/07/middleeast/gaza-israeli-soldiers-detained-men-intl/index.html>.

in in Al-Mawasi area of Gaza.¹⁰⁸ They remain detained by Israel without charge at Ofer prison in the occupied West Bank.¹⁰⁹

Since October 7, 2023, the number of deaths resulting from torture at the hands of Israeli forces has spiked. At least 53 Palestinian detainees from Gaza died in Israeli military custody or at Israeli military-run detention centers, including at least 36 Palestinians at the Sde Teiman military detention center.¹¹⁰ In one prominent example, the head of the orthopedic department at Al-Shifa hospital Dr. Adnan Al-Bursh died while in Israeli military detention at Ofer prison in the West Bank. He died on April 19, 2024, almost four months after his detention in Gaza. Prisoners who witnessed his last moments report that he was tortured to death, including likely raped to death.¹¹¹ His body has yet to be released by Israeli authorities.¹¹² Dr. Abu Safiyya is another prominent doctor, a pediatrician and the head of Kamal Adwan Hospital who was detained by the Israeli military and is thought to be held in Ofer Prison, in unknown condition.¹¹³ The Israeli military originally denied holding him.¹¹⁴

These deaths in detention 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.¹¹⁵ On July 15, Khaled Mhajne, a lawyer with the Palestinian

¹⁰⁸ 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>; 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>.

¹⁰⁹ Based on information obtained from Maria Kari, a lawyer representing the Alagha brothers.

¹¹⁰ Daniel Johnson, *Israeli military in spotlight over 'incommunicado' detention of Palestinians*, UN News (July 31, 2024), <https://news.un.org/en/story/2024/07/1152681>; Yaniv Kubovich & 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>.

¹¹¹ Simon Speakman Cordall, *Dying in 'Hell': The fate of Palestinian medics jailed by Israel*, Al Jazeera (Nov. 24, 2024), <https://www.aljazeera.com/news/2024/11/24/dying-in-hell-palestinian-medics-jailed-by-israel>.

¹¹² Press Release, U.N. Off. of High Comm'r for Hum. Rts., UN expert horrified by death of Gazan orthopedic surgeon in Israeli detention (May 1, 2024), <https://www.ohchr.org/en/press-releases/2024/05/un-expert-horrified-death-gazan-orthopedic-surgeon-israeli-detention>.

¹¹³ Press Release, Al Mezan Ctr. for Hum. Rts., Israeli Court Extends Dr. Hossam Abu Safiyya's Detention: Al Mezan Calls for Immediate Release and Safeguards for Detained Healthcare Workers (Jan. 9, 2025), <https://www.mezan.org/en/post/46631>.

¹¹⁴ Emir Nader & Rachel Hagan, *Israel confirms it is holding Gaza hospital chief Abu Safiyya*, BBC (Jan. 3, 2025), <https://www.bbc.com/news/articles/cj30deeggd7o>.

¹¹⁵ 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

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.¹¹⁶ 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.¹¹⁷ Arab was 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.¹¹⁸

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.¹¹⁹ 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.”¹²⁰

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.¹²¹ 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.”¹²²

of sexual violence, and isolation and solitary confinement solely for interrogation purposes. *See Statement on the International Day in Support of Victims of Torture*, Addameer Prisoner Support & Hum. Rts. Ass'n (June 26, 2024), <https://www.addameer.org/news/5370>.

¹¹⁶ Nader Durgham, *Palestinians raped and tortured in Israeli detention, says prisoners group*, Middle East Eye (July 15, 2024), <https://www.middleeasteye.net/news/gaza-israel-detainees-abuse-torture-sde-teiman-ofer>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Press Release, U.N. Off. of High Comm'r for Hum. Rts., Israel: UN expert calls for probe of allegations of torture and mistreatment against Palestinian detainees (May 23, 2024), <https://www.ohchr.org/en/press-releases/2024/05/israel-un-expert-calls-probe-allegations-torture-and-mistreatment-against>.

¹²⁰ *Id.*

¹²¹ Aaron Boxerman, *What We Know About Palestinians Detained in Israel*, N.Y. Times (Mar. 28, 2024), <https://www.nytimes.com/2024/03/28/world/middleeast/palestinians-detained-in-israel.html>.

¹²² *Id.*

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 against Palestinian women and girls, including acts that constitute torture.¹²³ 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 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.”¹²⁴ They also noted that photos of female detainees in degrading circumstances were also reportedly taken by the Israeli army and uploaded online.¹²⁵

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.¹²⁶ Thus, given the decades of documented widespread torture against Palestinian detainees by Israeli authorities in places of detention,¹²⁷ 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 Gallant as the commander responsible for all military detention practices and facilities.

4. Conclusion

Given the abundant credible evidence that Yoav Gallant, as evidenced inter alia by the issuance of an ICC arrest warrant against him, has 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 into Gallant. 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. The Department of Justice is also called upon to cooperate with the ICC to surrender Gallant to the Court in The Hague for further proceedings.

¹²³ Press Release, U.N. Off. of High Comm’r for Hum. Rts., Israel/oPt: UN experts appalled by reported human rights violations against Palestinian women and girls (Feb. 19, 2024), <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ 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>.

¹²⁷ See *Israel/OPT: Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests*, Amnesty Int’l (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/>.

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
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