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May 23, 2024

Hon. Joseph Robinette Biden, Jr.
President of the United States of America
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Re: *Requesting firm U.S. action against ICC Prosecutor's application for warrants against Israeli leaders*

Mr. President:

The ACLJ and its millions of supporters come to you yet again with serious concerns about the International Criminal Court's (ICC) attempt to unlawfully exercise jurisdiction over Israeli officials.

As you know, on May 20, 2024, ICC Prosecutor, Karim A.A. Khan KC, filed applications before the ICC Pre-Trial Chamber, seeking arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Minister of Defense, Yoav Gallant, for a host of war crimes charges under the Rome Statute.

We welcome your initial response to such outrageous and absurd action against a democratic state that is not a party to the Rome Statute and thus not subject to ICC jurisdiction and, furthermore, not even guilty of the alleged crimes. Given our highly partisan political climate, however, we want to ensure that our government stands firm on its historically non-partisan commitment to support Israel, our biggest and most important ally in the Middle East.¹

The United States has repeatedly rejected and condemned attempts by the ICC to exercise jurisdiction over non-member states, such as the United States and Israel.² Such response is not only appropriate given the customary international law principle that a treaty does not bind non-party states,³ but also because both the United States and Israel have robust legal systems. The ICC

¹ Michael B. Oren, *The Ultimate Ally*, THE EMBASSY OF ISRAEL TO THE U.S., <https://embassies.gov.il/washington/Relations/Pages/The-Ultimate-Ally.aspx> (last visited May 22, 2024).

² *The U.S. Does Not Recognize the Jurisdiction of the International Criminal Court*, NPR (Apr. 16, 2022), <https://www.npr.org/2022/04/16/1093212495/the-u-s-does-not-recognize-the-jurisdiction-of-the-international-criminal-court>.

³ DOUG TEDESCHI ET AL., *A GUIDE TO THE BASICS OF INTERNATIONAL LAW 2* (2019), <https://www.law.georgetown.edu/wp-content/uploads/2019/08/A-Guide-to-the-Basics-of-Intl-Law.pdf>.

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was created for nations that do not have the ability or willingness to hold their nationals accountable for serious war crimes.⁴ The United States and Israel are not such nations. Not only do both nations have the best military justice systems in the world and the ability and willingness to enforce their laws, but both nations consistently do so.

In fact, Israel's military justice system is a well-established, functioning system for obtaining information regarding the possible commission of war crimes by its armed forces, investigating that information, and prosecuting war crimes and other serious offences when the evidence so warrants.⁵ "Israel [also] subjects the IDF's military justice system to civilian oversight."⁶ Moreover, "the IDF Chief of the General Staff ordered the establishment of a new FFA [Fact-Finding and Assessment] Mechanism, to examine exceptional incidents that allegedly occurred during the [2014 Gaza] conflict."⁷ That mechanism is still in place.⁸ By 2015, Israel had opened nineteen criminal investigations against its soldiers.⁹ Even in the current conflict, Israel has already investigated allegations of war crimes and taken action against its soldiers where evidence so warrants.¹⁰ The point here is clear. The State of Israel goes well beyond what is required of it to ensure its compliance with the laws of war. There is no doubt that Israel will continue to hold its armed forces accountable if war crimes occur. For now, it must focus on eliminating the barbaric aggressor that intentionally and brutally murdered hundreds of civilians.

To curb the ICC's attempt to go outside the bounds of its limited jurisdiction, our government should take prompt and concrete action in support of Israel. Israel's commitment to uphold the law in defending its civilian population, and, at the same time, taking every precaution to mitigate harm to civilians in Gaza, and its commitment to hold its military officials and political leaders responsible when the law is violated is unquestionable. A concrete action evidences our support to

⁴ *Rome Statute of the International Crime Court*, UN LEGAL, <https://legal.un.org/icc/general/overview.htm> (last visited May 22, 2024).

⁵ The Israeli military justice system, for example, consists of three main bodies: the Military Advocate General's (MAG) Corps, the Military Police Criminal Investigation Division (MPCID), and the Military Courts. *The IDF Military Justice System*, MIL. ADVOC. GEN.'S CORPS (Sept. 12, 2018), <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/the-idf-military-justice-system/>. "The MAG Corps is responsible for implementing the rule of law within the IDF." *About the MAG Corps*, MIL. ADVOC. GEN.'S CORPS (Dec. 30, 2021), <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/about-the-mag-corps/>. The MPCID is "the IDF's primary entity for investigating allegations of criminal offences [and] enjoys complete professional independence . . ." *The IDF Military Justice System*, *supra* note 5. The Military Courts "are independent of both the MAG and the IDF chain of command [and] adjudicate charges against IDF soldiers for military and other criminal offenses." *Id.*

⁶ *The IDF Military Justice System*, *supra* note 5.

⁷ *Addressing Alleged Misconduct in the Context of the War in Gaza*, MIL. ADVOC. GEN.'S CORPS (Feb. 24, 2024), <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/addressing-alleged-misconduct-in-the-context-of-the-war-in-gaza/>.

⁸ *Id.*

⁹ STATE OF ISRAEL, *THE 2014 GAZA CONFLICT (7 JULY-26 AUGUST 2014): FACTUAL AND LEGAL ASPECTS* 235 (2015), https://www.gov.il/BlobFolder/generalpage/operation-protective-edge-full-report/en/English_Terrorism_DOCS_2014GazaConflictFullReport.pdf.

¹⁰ Rob Picheta, *Israeli Military Fires Two Senior Officers as Report Finds Strike on Aid Workers Was in 'Serious Violation of Commands'*, CNN (Apr. 5, 2024), <https://www.cnn.com/2024/04/05/middleeast/israel-idf-world-central-kitchen-strike-report-intl/index.html>; Merlyn Thomas & Jamie Ryan, *Israel to Act on Soldier Misconduct After BBC Investigation*, BBC (Feb. 12, 2024), <https://www.bbc.com/news/world-middle-east-68277124>.

our ally, Israel, against the politically motivated lawfare at the ICC and the International Court of Justice.

When the ICC attempted to assert jurisdiction over U.S. personnel for alleged war crimes in Afghanistan, President Trump issued an executive order imposing sanctions on ICC officials.¹¹ A similar response is required by our government to support Israel, a state that has no equal in taking every possible measure to protect civilian lives when defending its people from unprovoked acts of aggression. After President Trump issued the executive order, then-Secretary of State, Mike Pompeo, also urged other states to join the U.S. efforts to curb the ICC's attempts to expand its limited jurisdiction.¹² The United States should again take the same course of action.

U.S. sanctions are vitally important in this situation due to the equivalency ICC Prosecutor's applications for warrants create between Hamas's barbaric actions of October 7, 2023, and Israel's lawful response to protect its territorial integrity and civilian population from willful and indiscriminate acts of terror and aggression. Mr. President, you have acknowledged that "there is no equivalence—none—between Israel and Hamas."¹³

There is no question regarding the illegality of Hamas's butchering hundreds of men, women, children, and the elderly. There is no question regarding the illegality of Hamas's raping, mutilating, and burning innocent civilians alive. There is no question about the illegality of Hamas's firing rockets indiscriminately toward Israeli civilian population centers. There is no question regarding the illegality of Hamas's taking hostages. No legal analysis is required to determine whether Hamas's actions constitute war crimes. Every one of these acts is a war crime. To place Israeli defensive actions on an equal footing with such heinous crimes is outrageous.

Further, to say that Israel has a *policy* of using starvation of civilians as a method of warfare is beyond absurd.¹⁴ This is especially so because Israel has made every effort to allow humanitarian aid to Gazans. Israel has allowed thousands of aid trucks with food supplies, shelter supplies, medical equipment, and mobile water desalination filters into Gaza since October 7.¹⁵ "Israel has

¹¹ Exec. Order No. 13928, 85 Fed. Reg. 36,139 (June 11, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-06-15/pdf/2020-12953.pdf>; Julian Borger, *US Imposes Sanctions on Top International Criminal Court Officials*, THE GUARDIAN (Sept. 2, 2020), <https://www.theguardian.com/law/2020/sep/02/us-sanctions-international-criminal-court-fatou-bensouda>.

¹² Julian Borger, *Trump Targets ICC with Sanctions After Court Opens War Crimes Investigation*, THE GUARDIAN (June 11, 2020), <https://www.theguardian.com/us-news/2020/jun/11/trump-icc-us-war-crimes-investigation-sanctions>.

¹³ Sarah Fortinsky, *Republicans Renew Call for Sanctions on ICC Following Netanyahu Arrest Warrant*, THE HILL (May 20, 2024), <https://thehill.com/homenews/house/4675075-republicans-renew-call-sanctions-netanyahu-israel-arrest-warrant/>.

¹⁴ *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine*, INT'L CRIM. CT. (May 20, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

¹⁵ Rachel O'Donoghue, *Israel Is Not 'Deliberately Starving' Palestinians*, HONEST REPORTING (Mar. 7, 2024), <https://honestreporting.com/israel-is-not-deliberately-starving-palestinians/>; COGAT (@cogatonline), X (Mar. 7, 2024, 1:58 AM), <https://x.com/cogatonline/status/1765270746010460537>.

denied entry to only 1.6% of trucks seeking to enter Gaza.”¹⁶ In April 2024, Israel began to open the door to more aid in Gaza as it opened the Ashdod port and worked on building a new land crossing into northern Gaza, where humanitarian aid is most needed.¹⁷ This came after Prime Minister Netanyahu’s Security Cabinet approved “‘immediate steps’ to increase the flow of humanitarian aid into Gaza.”¹⁸ Defense Minister Gallant also spoke up about the situation and discussed “gradually increasing Gaza aid deliveries to pre-war levels of 500 trucks a day.”¹⁹ On May 21, 2024, “463 aid trucks were inspected and transferred to the Gaza Strip These trucks entered from the various aid routes [that were] developed: Ashdod port, Erez crossing, Judea and Samaria, and JLOTS (maritime route).”²⁰

Israel’s allowing humanitarian aid into Gaza has been met with strong resistance by Hamas. On May 8, 2024, Israel had to reopen the Kerem Shalom crossing into Gaza after it was closed for days due to a Hamas rocket attack that killed four Israeli soldiers.²¹ The crossing was one of two essential terminals between Gaza and Israel for entry of aid into Gaza.²² On May 12, 2024, Israel opened a third route, the Western Erez crossing in Zikim, for humanitarian aid into Gaza as part of Israel’s efforts to increase aid routes into Gaza.²³

Also in May, Israeli forces had to fight off Hamas militants while aid was being delivered through the new floating pier created to increase aid to Gaza.²⁴ Sadly, “Hamas controls energy distribution in Gaza” and prioritizes its own terrorist interests above the citizens of Gaza.²⁵ Hamas is known to steal fuel from hospitals, pilfering the much-needed materials from citizens in need.²⁶ Furthermore, Hamas has dishonestly used Israeli humanitarian medical permits to infiltrate Israel.²⁷

¹⁶ *Israel Facilitates Humanitarian Aid to Gaza as Hamas Continues to Attack*, AIPAC, <https://www.aipac.org/resources/israel-humanitarian-aid-gaza> (Mar. 30, 2024).

¹⁷ Jemma Crew & Tom Spender, *Is Israel Meeting Promise to Let More Aid into Gaza?*, BBC (Apr. 12, 2024), <https://www.bbc.com/news/world-middle-east-68551965>.

¹⁸ Aamer Madhani & Zeke Miller, *Biden Tells Israel’s Netanyahu Future US Support for War Depends on New Steps to Protect Civilians*, ASSOCIATED PRESS, <https://apnews.com/article/biden-netanyahu-3591fb5f82b22cf8e5d1060fccaef115> (Apr. 4, 2024).

¹⁹ Crew & Spender, *supra* note 17.

²⁰ *Swords of Iron Humanitarian Efforts*, GOV EXTRA, <https://govextra.gov.il/cogat/humanitarian-efforts/home/> (May 22, 2024).

²¹ Joseph Krauss et al., *Israel Says It Reopened a Key Gaza Crossing After a Rocket Attack but the UN Says No Aid Has Entered*, ASSOCIATED PRESS, <https://apnews.com/article/israel-hamas-war-news-05-08-2024-495e6dabfdddc5587bd20e71b6ad421d> (May 9, 2024).

²² *Id.*

²³ *Israel Opens Third Humanitarian Aid Crossing into Northern Gaza*, FOUND. FOR DEF. OF DEMOCRACIES (May 13, 2024), <https://www.fdd.org/analysis/2024/05/13/israel-opens-third-humanitarian-aid-crossing-into-northern-gaza/>.

²⁴ *Humanitarian Aid Rolls into Gaza Through Newly Assembled Floating Pier*, VOICE OF AM., <https://www.voanews.com/a/humanitarian-aid-rolls-into-gaza-through-newly-assembled-floating-pier/7616508.html> (May 17, 2024).

²⁵ *How Hamas Steals Fuel from Hospitals at the Expense of Gazan Civilians*, IDF (Nov. 1, 2023), <https://www.idf.il/en/mini-sites/hamas-israel-war-24/war-on-hamas-2023-resources/how-hamas-steals-fuel-from-hospitals-at-the-expense-of-gazan-civilians/>.

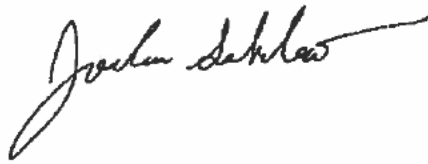
²⁶ *Id.*

²⁷ *Near East Report: Hamas’ Abuse of Humanitarian Aid Hurts Ordinary Gazans*, AIPAC, <https://www.aipac.org/resources/hamas-abuse-of-humanitarian-aid-hurts-gazans-xly2w-3pzjg-xld3h> (last visited May 22, 2024).

As such, to counter equivalencies between Israel and Hamas, in addition to your statement condemning ICC Prosecutor's application for arrest warrants against Israeli leaders, we request that your administration take more concrete steps by issuing an executive order imposing sanctions and supporting the bill introduced by House Republican Conference Leader Elise Stefanik (N.Y.) and Rep. Chip Roy (R-Texas) that would sanction and revoke the visas of ICC officials.²⁸

Such actions are necessary to remind ICC officials of their responsibility to uphold the rule of law. Nobody is above the law—not even the ICC.

Respectfully submitted,



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²⁸ Sarah Fortinsky, *Republicans Renew Call for Sanctions on ICC Following Netanyahu Arrest Warrant*, THE HILL (May 20, 2024), <https://thehill.com/homenews/house/4675075-republicans-renew-call-sanctions-netanyahu-israel-arrest-warrant/>.