



May 10, 2024

**Via Web Portal Only**

OSD/JS FOIA Requester Service Center  
Freedom of Information Division  
1155 Defense Pentagon  
Washington, DC 20301-1155  
Fax (571) 372-0500

**RE: FOIA Request Regarding Reports of the Whitehouse putting pause on aid to Israel**

To Whom It May Concern:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice (“ACLJ”)<sup>1</sup> on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to the U.S. Department of Defense’s knowledge and efforts surrounding the Whitehouse putting a pause on aid to Israel.

**Background**

Pursuant to FOIA and U.S. Department of Defense FOIA regulation 32 CFR § 286, this Background addresses the subject, timeframe, names of any individuals involved, emails, memorandum, meetings, and reasons why the requester believes the Department may have records on the subject of the request.

On April 24, 2023, President Biden signed into law a supplemental spending bill saying:

---

<sup>1</sup>The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

“My commitment to Israel, I want to make clear again, is ironclad,” Biden said “The security of Israel is critical, and we'll always make sure that Israel has what it needs to defend itself against Iran and the terrorists it supports.”

The supplemental security bill, Biden said, helps Israel replenish its air defense capabilities and also provides for additional defense needs.<sup>2</sup>

Subsequently, on May 5, 2024, CNN reported:

**Biden administration pauses one ammunition shipment to Israel, reason unclear**

The Biden administration paused a shipment of US-made ammunition to Israel, according to a source familiar with the matter, who did not disclose why the decision was made. The hold is not connected to a potential Israeli operation in Rafah and doesn't affect other shipments moving forward, the source said.

Asked about the paused shipment, a National Security Council spokesperson cited ongoing security assistance to Israel.

“The United States has surged billions of dollars in security assistance to Israel since the October 7 attacks, passed the largest ever supplemental appropriation for emergency assistance to Israel, led an unprecedented coalition to defend Israel against Iranian attacks, and will continue to do what is necessary to ensure Israel can defend itself from the threats it faces,” the spokesperson said.<sup>3</sup>

The Whitehouse has initially refused to confirm CNN's report or NBC's report or any other report about this matter. At the May 6, 2024, Whitehouse press conference the following colloquy took place between Admiral John Kirby (briefing on behalf of Press Secretary Jean-Pierre) and reporters:

Q And one more on a different topic. Why did the U.S. halt an ammunition shipment to Israel last week?

MR. KIRBY: Yeah, look, I've seen the press reporting on this. All I can tell you is that — to Jacqui's question — our support for Israel's security remains ironclad. And I'm not going to get into the specifics of — of one shipment over another.

Q It's our — NBC is reporting that it included 2,000-pound bombs that may

---

<sup>2</sup> C. Todd Lopez, *Supplemental Bill Becomes Law, Provides Billions in Aid for Ukraine, Israel, Taiwan*, U.S. DEPT. OF DEFENSE (Apr. 24, 2024), <https://www.defense.gov/News/News-Stories/Article/Article/3754718/supplemental-bill-becomes-law-provides-billions-in-aid-for-ukraine-israel-taiwan/>.

<sup>3</sup> Priscilla Alvarez, *Biden Administration Pauses One Ammunition Shipment to Israel, Reason Unclear*, CNN (May 5, 2024), [https://www.cnn.com/2024/05/05/politics/war-israel-palestine-gaza-biden-weapons/index.html?iid=cnn\\_buildContentRecirc\\_end\\_recirc](https://www.cnn.com/2024/05/05/politics/war-israel-palestine-gaza-biden-weapons/index.html?iid=cnn_buildContentRecirc_end_recirc).

have been used in Rafah. Did concerns over Rafah and what the Israelis could use this ammunition for — did that play any role in halting that shipment?

MR. KIRBY: I don't have a better answer for you other than the one I just gave you.

MS. JEAN-PIERRE: Go ahead.

Q I just want to go at that question one more time. Did the United States put a pause on an arms shipment to Israel? Is that — is that reporting correct?

MR. KIRBY: I'm not going to confirm that report.<sup>4</sup>

Then on May 8, 2024, President Biden stated that if Israel invades Rafah, he would halt aid. He said:

“I made it clear that if they go into Rafah – they haven't gone in Rafah yet – if they go into Rafah, I'm not supplying the weapons that have been used historically to deal with Rafah, to deal with the cities – that deal with that problem,” . . .<sup>5</sup>

That same day, Defense Secretary Lloyd Austin testified to Congress that a shipment of high payload munitions has been delayed and further stated: “We are currently reviewing some near-term security assistance shipments in the context of the unfolding events in Rafah ... We have not made any final decisions on this yet.”<sup>6</sup>

Israel has dropped leaflets on Rafah urging civilians to evacuate. It has also taken the Rafah crossing but not Rafah.<sup>7</sup>

This Request investigates the State Department's knowledge and implementation of the Whitehouse putting a pause on aid to Israel.

### **Records Requested**

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video,

---

<sup>4</sup> Press Briefing, Karine Jean-Pierre and John Kirby, White House Press Secretary's Office (May 6, 2024), <https://www.whitehouse.gov/briefing-room/press-briefings/2024/05/06/press-briefing-by-press-secretary-karine-jean-pierre-and-national-security-communications-advisor-john-kirby-3/>.

<sup>5</sup> Kevin Liptak, *Biden Says He Will Stop Sending Bombs and Artillery Shells to Israel if it Launches Major Invasion of Rafah*, CNN, <https://www.cnn.com/2024/05/08/politics/joe-biden-interview-cnntv/index.html> (May 9, 2024).

<sup>6</sup> Karen DeYoung, Abigail Hauslohner and John Hudson, *U.S. postpones delivery of report to Congress on Israel's war conduct*, WASHINGTON POST, <https://www.washingtonpost.com/national-security/2024/05/08/us-israel-weapons-transfer-report/> (May 8, 2024).

<sup>7</sup> *Id.*

photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “[i]f a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DoD official” includes, but is not limited to, any person who is (1) employed by or on behalf of the DoD any Mission of the United States, or any Delegation of the United States, or any office or function of these agencies, in any capacity; (2) contracted for services by or on behalf of the DoD, any Mission of the United States, or any Delegation of the United States, or any office or function of these agencies, in any capacity; (3) appointed by the President of the United States to serve in any capacity at or within the DoD, any Mission of the United States, or any Delegation of the United States, or any office or function of these agencies; or (4) any such person’s staff, agent or employee; all without regard to the component of the Department of Defense, Pentagon, or office in which that person serves.

For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

**For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2024, to the date this request is processed.**

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the DOS produce the following:

1. **All records in the custody of Kathleen H. Hicks, Deputy Secretary of Defense, and her administrative assistant(s), with the words:**
  - a. **“Rafah,” or**
  - b. **“paused shipment,” or**
  - c. **“2,000 pound bombs,” and “IDF” or “Israel” or “Netanyahu.”**
2. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DoD official at a Capstone level or**

**higher or an appointee within the Defense Security Cooperation Agency with the words:**

- a. **“Rafah,” or**
  - b. **“paused shipment,” or**
  - c. **“2,000 pound bombs,” and “IDF” or “Israel” or “Netanyahu.”**
3. **All records in the custody of Col. Michelle M. Agpalza, Commander of the Defense Logistics Agency CENTCOM & SOCOM or Kenneth Morris, Deputy Commander, of the Defense Logistics Agency CENTCOM & SOCOM and their administrative assistants containing the words:**
- a. **“Rafah,” or**
  - b. **“paused shipment,” or**
  - c. **“2,000 pound bombs,” and “IDF” or “Israel” or “Netanyahu.”**
4. **All records of in the possession of Secretary of Defense Lloyd Austin or his administrative assistant(s) containing the words:**
- a. **“Rafah,” or**
  - b. **“paused shipment,” or**
  - c. **“2,000 pound bombs,” and “IDF” or “Israel” or “Netanyahu.”**

#### **CONCLUSION**

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director  
John A. Monaghan, Senior Litigation Counsel  
American Center for Law and Justice

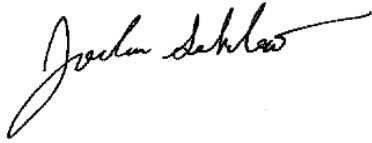
[REDACTED]

[REDACTED]

I affirm that the foregoing request and attached documentation are true and correct to the best of

my knowledge and belief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jordan Sekulow". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jordan Sekulow  
Executive Director

A handwritten signature in blue ink, appearing to read "John A. Monaghan". The signature is cursive and includes a long horizontal stroke at the end.

John A Monaghan  
Senior Litigation Counsel