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FOIA Request: DOS, DOJ, & DOD

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Office of Information Programs & Services
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Department of Justice
FOIA/PA Mail Referral Unit
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Washington, D.C. 20301-1155
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Re: Freedom of Information Act Request

To Whom It May Concern:

The Center for Constitutional Rights (“CCR”) (“Requester”) makes this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* and U.S. Department of State (“DOS” or State Department”) FOIA Regulations, 22 C.F.R. Part 171.11, Department of Justice (“DOJ”) implementing regulations, 32 C.F.R. Part 16, and Department of Defense (“DOD”) implementing regulations, 32 C.F.R. Part 286, for records related to the response by, and any actions of, the United States in regards to the International Criminal Court (“ICC”) Prosecutor’s investigation of Israel’s actions in Palestine since October 7, 2023;¹ the ICC Prosecutor’s application for the issuance of arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant;² the United Kingdom’s June 10, 2024 request to the ICC to

¹ International Criminal Court, *State of Palestine*, <https://www.icc-cpi.int/palestine>

² International Criminal Court, *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>.

provide written *amicus curiae* observations on the matter;³ the ICC Pre-Trial Chamber's June 27, 2024 Order regarding this request;⁴ the United Kingdom's July 2, 2024 request for extension of time limit;⁵ and the ICC Pre-Trial Chamber's July 4, 2024 decision on the United Kingdom's request for extension of time limit.⁶

CCR seeks expedited processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and that it be granted a fee waiver. Please direct this request to all appropriate offices, field offices, departments, bureaus, missions, and officials within each agency, including but not limited to **DO**S's Office of the Under Secretary for Political Affairs, Bureau of Near Eastern Affairs, Bureau of European and Eurasian Affairs, Office of Global Criminal Justice, United States Mission to the United Nations, Bureau of International Organizations Affairs, Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of the Under Secretary for Civilian Security, Democracy, and Human Rights, Bureau of Democracy, Human Rights, and Labor, U.S. Embassy in Israel, and U.S. Embassy in the United Kingdom; **DO**J's Office of International Affairs, Human Rights and Special Prosecutions Section, Office of Policy and Legislation, War Crimes Accountability Team; **DO**D's Office of the Secretary of Defense and Joint Staff (OSD/JS), Office of the Under Secretary of Defense for Policy, Department of the Army, and U.S. Central Command.

I. Background

A. *ICC Investigation into the Situation in Palestine and ICC Prosecutor's Application for Arrest Warrants Against Israeli Officials for Crimes Since October 8, 2023*

On December 20, 2019, the ICC Prosecutor announced that the criteria under the Rome Statute for opening an investigation into war crimes and crimes against humanity committed by Israel and others in the State of Palestine had been met and sought clarification from the ICC's Pre-Trial Chamber on the territorial scope of the ICC's jurisdiction in the Palestine Situation.⁷ On February 5, 2021, the Pre-Trial Chamber ruled that it had criminal jurisdiction over Gaza and

³ *Situation in the State of Palestine*, ICC-01/18, Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103 (June 10, 2024), <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180892e1f.pdf>

⁴ *Situation in the State of Palestine*, ICC-01/18, Public redacted version of 'Order deciding on the United Kingdom's request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file *amicus curiae* observations' (June 27, 2024), <https://www.icc-cpi.int/court-record/icc-01/18-173-red>

⁵ *Situation in the State of Palestine*, ICC-01/18, Request by the United Kingdom for Extension of Time Limit (July 2, 2024), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1808c7ca2.pdf>

⁶ *Situation in the State of Palestine*, ICC-01/18, Decision on the 'Request by the United Kingdom for Extension of Time Limit' (July 4, 2024), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1808cb1c5.pdf>

⁷ International Criminal Court, *State of Palestine*, <https://www.icc-cpi.int/palestine>.

the West Bank, including East Jerusalem.⁸ And on March 3, 2021, the ICC Prosecutor formally announced the opening of an investigation into the Situation in the State of Palestine.⁹

Since October 7, 2023, Israeli officials, with the material assistance, support, and encouragement of the United States, have waged an unprecedented military assault and siege on Gaza, killing 38,664 Palestinians, including 14,000 children¹⁰ (with an additional 20,000 Palestinian children in Gaza estimated to be lost, disappeared, detained, buried under the rubble, or in mass graves¹¹), and injuring over 89,000 others.¹² Israeli officials, and in particular Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, have made clear their genocidal intent behind this campaign—their intent to destroy the Palestinian people of Gaza.¹³ Despite international condemnation, including the International Court of Justice finding that it was plausible that Israel is committing a genocide in Gaza and issuing provisional measures ordering Israel to take all measures within its power to prevent genocide,¹⁴ Israel has continued its assault on Gaza for over nine months. And the United States has continued, in the words of one U.S. District Court, to provide Israel with “unflagging support” of its military siege in Gaza,¹⁵ including through the direct provision of munitions—including 2,000-pound bombs—that Israel has used to kill Palestinians in Gaza.¹⁶

⁸ *Id.*

⁹ *Id.*

¹⁰ UNICEF, Statement by UNICEF Executive Director Catherine Russell on military operations and border closures in Rafah, Gaza (May 9, 2024), <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-military-operations-and-border>.

¹¹ Save the Children, Gaza's Missing Children: Over 20,000 Children Estimated to Be Lost, Disappeared, Detained, Buried Under the Rubble or in Mass Graves (June 24, 2024), <https://www.savethechildren.net/news/gazas-missing-children-over-20000-children-estimated-be-lost-disappeared-detained-buried-under>.

¹² United Nations Office for the Coordination of Humanitarian Affairs, Humanitarian Situation Update #191 | Gaza Strip (July 13, 2024), <https://www.ochaopt.org/content/humanitarian-situation-update-191-gaza-strip>.

¹³ Center for Constitutional Rights, *Israel's Unfolding Crime of Genocide of the Palestinian People & U.S. Failure to Prevent and Complicity in Genocide* 18-28 (2023), https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime_ww.pdf.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of genocide in the Gaza Strip (South Africa v. Israel)*, Order on the Request for Provisional Measures 2024 I.C.J. 192 (Jan. 26), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>; *Application of the Convention on the Prevention and Punishment of the Crime of genocide in the Gaza Strip (South Africa v. Israel)*, Order on the Request for Modification of the Order of 26 January 2024 Indicating Provisional Measures, 2024 I.C.J. 192 (March 28), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>; *Application of the Convention on the Prevention and Punishment of the Crime of genocide in the Gaza Strip (South Africa v. Israel)*, Order on the Request for Modification of the Order of 28 March 2024, 2024 I.C.J. 192 (May 24), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>.

¹⁵ *Defense for Children International v. Biden*, No. 23-cv-05829, 2024 WL 390061, at *5 (N.D. Cal. Jan. 31, 2024).

¹⁶ Center for Constitutional Rights, *Israel's Unfolding Crime of Genocide of the Palestinian People & U.S. Failure to Prevent and Complicity in Genocide* 18-38 (2023), <https://ccrjustice.org/israel-s-unfolding-crime-genocide-palestinian-people-us-failure-prevent-and-complicity-genocide>; Humeyra Pamuk and Mike Stone, *Exclusive: US has sent Israel thousands of 2,000-pound bombs since Oct. 7*, Reuters (June 29, 2024), [https://www.reuters.com/world/us-has-sent-israel-thousands-2000-pound-bombs-since-oct-7-2024-06-28/#:~:text=WASHINGTON%2C%20June%2028%20\(Reuters\),updated%20list%20of%20weapons%20shipments](https://www.reuters.com/world/us-has-sent-israel-thousands-2000-pound-bombs-since-oct-7-2024-06-28/#:~:text=WASHINGTON%2C%20June%2028%20(Reuters),updated%20list%20of%20weapons%20shipments).

In this context, on May 20, 2024, ICC Prosecutor Karim Khan submitted to the ICC an application for arrest warrants for Prime Minister Netanyahu and Defense Minister Yoav Gallant for war crimes and crimes against humanity from at least October 8, 2023.¹⁷ The ICC Prosecutor stated that his office 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,” and that

This occurred through the imposition of a total siege over Gaza that involved completely closing the three border crossing points, Rafah, Kerem Shalom and Erez, from 8 October 2023 for extended periods and then by arbitrarily restricting the transfer of essential supplies – including food and medicine – through the border crossings after they were reopened. The siege also included cutting off cross-border water pipelines from Israel to Gaza – Gazans’ principal source of clean water – for a prolonged period beginning 9 October 2023, and cutting off and hindering electricity supplies from at least 8 October 2023 until today. This took place alongside other attacks on civilians, including those queuing for food; obstruction of aid delivery by humanitarian agencies; and attacks on and killing of aid workers, which forced many agencies to cease or limit their operations in Gaza.¹⁸

That same day, the ICC Prosecutor also submitted to the ICC applications for arrest warrants for three leaders of Hamas: Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri, and Ismail Haniyeh for war crimes and crimes against humanity.¹⁹

B. U.S. Response to Arrest Warrant Application

In response to the ICC Prosecutor’s arrest warrant applications, U.S. officials and elected representatives have denounced and attempted to interfere with these proceedings. On May 20, the same day that the Prosecutor submitted the applications, President Joe Biden described it as “outrageous,” stating that “whatever this prosecutor might imply, there is no equivalence – none – between Israel and Hamas,” and that “we will always stand with Israel against threats to its security.”²⁰ Also that day, Secretary of State Antony Blinken stated that the United States

¹⁷ International Criminal Court, *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>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ White House, Statement from President Joe Biden on the Warrant Applications by the International Criminal Court (May 20, 2024), <https://www.whitehouse.gov/briefing-room/statements->

“fundamentally rejects” the application, describing it as “shameful.”²¹ And Department of State spokesperson Matthew Miller, when asked whether the “administration is considering taking action against the ICC because of [the application for arrest warrants],” responded “you should not read into my statement . . . that we are either considering anything or not considering anything.”²² The next day, when asked by US lawmakers whether Antony Blinken would work with them to find an “appropriate response” to the arrest warrants, including potential sanctions against the ICC, Blinken responded “I welcome working with you on that.”²³ The Secretary of Defense Lloyd Austin likewise lodged “strong U.S. objections” to the ICC’s applications for arrest warrants against Israeli officials, describing the application as “outrageous.”²⁴

Emboldened by these statements, on June 4, the United States House of Representatives passed a bill that would sanction any non-U.S. citizen—as well as their immediate family members—involved in ICC prosecutions of U.S. citizens or citizens of U.S. allies, and it would block ICC officials’ entry to the United States.²⁵ The bill described the ICC’s actions as “illegitimate and baseless.”²⁶

On June 27, 2024, despite the fact that the ICC Pre-Trial Chamber I had already ruled on its jurisdiction in Gaza and the West Bank, including East Jerusalem, in 2021,²⁷ it granted the United Kingdom’s June 10 request for time to file *amicus curiae* observations on the question of whether the Court can exercise jurisdiction over the two Israeli nationals that the ICC Prosecutor

[releases/2024/05/20/statement-from-president-joe-biden-on-the-warrant-applications-by-the-international-criminal-court/](https://www.state.gov/releases/2024/05/20/statement-from-president-joe-biden-on-the-warrant-applications-by-the-international-criminal-court/).

²¹ Press Statement, Antony J. Blinken, Secretary of State, Warrant Applications by the International Criminal Court (July 9, 2024), <https://www.state.gov/warrant-applications-by-the-international-criminal-court/>.

The Secretary of State’s statement stands in stark contrast to the U.S. position on ICC investigations and arrest warrants in other situations, including those involving nationals of another non-State party. *See, e.g.*, Remarks for “Restoring Justice for Ukraine” Conference, Ambassador-at-Large for Global Criminal Justice Beth Van Schaack, The Hague (Apr. 2, 2024), <https://www.state.gov/remarks-for-restoring-justice-for-ukraine-conference/> (affirming U.S. support for the ICC investigation of international crimes committed by Russian nationals in the Situation of Ukraine). *See also* Department of Justice, Speech, Acting Assistant Attorney General Nicole M. Argentieri Delivers Remarks at the German Federal Ministry of Justice’s International Conference on International Criminal Law (Feb. 23, 2024) <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-german-federal> (highlighting work to advance accountability for Ukraine crimes includes cooperation with the ICC).

²² Department of State, Department Press Briefing (May 20, 2024), <https://www.state.gov/briefings/department-press-briefing-may-20-2024/>.

²³ Simon Lewis, Humeyra Pamuk, and Patricia Zengerle, *Blinken Says he’ll work with US Congress on potential ICC Sanctions*, Reuters (May 21, 2024), <https://www.reuters.com/world/us/blinken-says-hell-work-with-us-congress-respond-icc-move-gaza-2024-05-21/>.

²⁴ Department of Defense, Release, Secretary of Defense Lloyd J. Austin III’s Call with Israeli Minister of Defense Yoav Gallant (May 22, 2024) <https://www.defense.gov/News/Releases/Release/Article/3784909/secretary-of-defense-lloyd-j-austin-iiis-call-with-israeli-minister-of-defense/>.

²⁵ H.R. 8282, 118th Cong. (2024) § 3.

²⁶ H.R. 8282, 118th Cong. (2024) § 2(4).

²⁷ *Situation in the State of Palestine*, ICC-01/18, Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’ (Feb. 5, 2021), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF.

sought arrest warrants for – Prime Minister Netanyahu and Defense Minister Gallant.²⁸ It granted any party wishing to submit such observations until July 12 to make such request, potentially delaying its decision over whether to issue the arrest warrants sought by the ICC Prosecutor.²⁹ On July 2, the United Kingdom sought an extension of this time limit because of the general election, and on July 4,³⁰ the ICC Pre-Trial Chamber I granted this request, giving the United Kingdom until July 26, 2024.³¹

C. History of U.S. Interference with the ICC

U.S. officials' attempts to undermine the application of these arrest warrants are part of a pattern of U.S. interference with the ICC investigations into international crimes committed by the United States and its allies, in particular Israel, in Palestine and in Afghanistan, where the investigation included crimes allegedly committed by U.S. citizens. This history of interference has at times successfully obstructed, and at the very least delayed, efforts towards accountability for war crimes and crimes against humanity.³²

When in 2016 the ICC Prosecutor announced that there was a “reasonable basis” for her to open investigations into U.S. actions in Afghanistan, the Obama Administration stated that it did not believe that an ICC investigation was “warranted or appropriate.”³³ Since then, U.S. attacks and threats against, and interference with, the ICC investigation in Afghanistan continued,³⁴ including through a policy of denying visas to ICC officials involved in investigating U.S. personnel or U.S. allies, including Israel.³⁵ In the face of these threats, in April 2019, the ICC Pre-Trial Chamber refused to authorize the Prosecutor’s request to open an

²⁸ *Situation in the State of Palestine*, ICC-01/18, Public redacted version of ‘Order deciding on the United Kingdom’s request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file amicus curiae observations’ (June 27, 2024), <https://www.icc-cpi.int/court-record/icc-01/18-173-red>

²⁹ *Id.* at 5.

³⁰ *Situation in the State of Palestine*, ICC-01/18, Request by the United Kingdom for Extension of Time Limit (July 2, 2024), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1808c7ca2.pdf>.

³¹ *Situation in the State of Palestine*, ICC-01/18, Decision on the ‘Request by the United Kingdom for Extension of Time Limit’ (July 4, 2024), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1808cb1c5.pdf>.

³² See, e.g., Center for Constitutional Rights, *Complaint Against the United States of America: Interference with Judicial Proceedings at the International Criminal Court* (2019), https://ccrjustice.org/sites/default/files/attach/2019/06/5%20June%202019_Special%20Rapp%20letter%20ICC_fina1.pdf.

³³ Daily Press Briefing, U.S. Department of State (Nov. 15, 2016), <https://2009-2017.state.gov/r/pa/prs/dpb/2016/11/264350.htm>.

³⁴ Al Jazeera, *Full text of John Bolton’s speech to the Federalist Society* (Sept. 10, 2018), <https://www.aljazeera.com/news/2018/9/10/full-text-of-john-boltons-speech-to-the-federalist-society> (U.S. National Security Advisory John Bolton describing the ICC as “fundamentally illegitimate”).

³⁵ Remarks to the Press, Michael R. Pompeo, Secretary of State (March 15, 2019), <https://2017-2021.state.gov/remarks-to-the-press-6/>; BBC, *US revokes visa of International Criminal Court prosecutor* (April 4, 2019), <https://www.bbc.com/news/world-us-canada-47822839>.

investigation in Afghanistan.³⁶ President Trump declared this a “major international victory,” and threatened that “any attempt to target American, Israeli, or allied personnel for prosecution will be met with a swift and vigorous response.”³⁷ But a year later, the Appeals Chamber reversed the Pre-Trial Chamber’s decision, authorizing the investigation of U.S. war crimes and crimes against humanity in Afghanistan.³⁸

Similarly, in May 2020, in response to the ICC Prosecutor’s ongoing examination into the Situation in the State of Palestine, Secretary of State Mike Pompeo stated that “we do not believe the Palestinians qualify as a sovereign state” and that a “court that attempts to exercise its power outside its jurisdiction is a political tool that makes a mockery of the law and due process The United States reiterates its longstanding objection to any illegitimate ICC investigations. If the ICC continues down its current course, we will exact consequences.”³⁹ A month later, in June 2020, then-president Donald Trump issued an executive order declaring a national emergency and imposing sanctions against ICC officials.⁴⁰

In September 2020, in response to the ICC’s opening of an investigation in Afghanistan and ongoing examination of Israeli crimes in Palestine, the United States imposed sanctions on the ICC Prosecutor and another senior ICC official.⁴¹ Notably, even in his announcement that the U.S. was ending sanctions and visa restrictions against ICC personnel, Secretary of State Blinken reiterated the U.S.’s strong disagreement with ICC actions with regards to Afghanistan and Palestine/Israel.⁴²

It has been reported that the United States has been in contact with the government of the United Kingdom before and after its request to file an *amicus curiae* brief with the ICC.⁴³

³⁶ *The Situation in the Islamic Republic of Afghanistan*, ICC-02/17, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan (April 12, 2019), <https://www.icc-cpi.int/news/icc-judges-reject-opening-investigation-regarding-afghanistan-situation>.

³⁷ White House, Statement from the President (April 12, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-from-the-president-8/>.

³⁸ *Situation in the Islamic Republic of Afghanistan*, ICC-02/17, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan (March 5, 2020), <https://www.icc-cpi.int/court-record/icc-02/17-138>.

³⁹ Press Statement, Michael R. Pompeo, Secretary of State, The International Criminal Court’s Illegitimate Prosecutions (May 15, 2020), <https://2017-2021.state.gov/the-international-criminal-courts-illegitimate-prosecutions>.

⁴⁰ Exec. Order No. 13928, 85 Fed. Reg. 36139 (June 11, 2020).

⁴¹ Center for Constitutional Rights, *Factsheet: U.S. Sanctions on the International Criminal Court* (April 2, 2021), <https://ccrjustice.org/factsheet-us-sanctions-international-criminal-court>.

⁴² Department of State, Press Release, Ending Sanctions and Visa Restrictions against Personnel of the International Criminal Court, Antony J. Blinken (Apr. 2, 2021), <https://www.state.gov/ending-sanctions-and-visa-restrictions-against-personnel-of-the-international-criminal-court/>.

⁴³ See, e.g., Patrick Wintour, *US ‘pressuring UK to block ICC’s Netanyahu arrest warrant’*, The Guardian (July 10, 2024), <https://www.theguardian.com/law/article/2024/jul/10/america-is-pressuring-uk-to-block-iccs-netanyahu-arrest-warrant>.

It is against this context—of U.S. officials using a range of tactics to undermine the work of the ICC that would hold it or its allies, in particular Israel, accountable for international crimes—that CCR seeks the records below.

II. Request for Information

CCR requests any and all RECORDS created from October 7, 2023 continuing through to at least the date at which agencies commence their searches for records responsive to this FOIA request that were prepared, received, transmitted, collected and/or maintained by the DOS, DOJ, and DOD regardless of the identity of the correspondence party/ies, relating or referring to the following:

- (1) All communications since October 7, 2023 that relate to the ICC Prosecutor (Karim Khan), or his Office’s investigation into the Situation in the State of Palestine between ICC officials, officials and/or representatives of foreign governments including but not limited to Government of Israel and the United Kingdom, and the following individuals:
 - a. Antony J. Blinken, Secretary of State
 - b. Llyod J. Austin III, Secretary of Defense
 - c. Barbara Leaf, Assistant Secretary of State for Near Eastern Affairs
 - d. Linda Thomas-Greenfield, United States Ambassador to the United Nations
 - e. Matthew Miller, Spokesperson, Department of State
 - f. Beth van Schaack, Ambassador-at-Large for Global Criminal Justice, Office of Global Criminal Justice, Department of State
 - g. Andrew P. Miller, former Deputy Assistant Secretary of State for Israeli-Palestinian Affairs, Department of State
 - h. Hady Amr, Special Representative for Palestinian Affairs, Department of State
 - i. Christian Levesque, Director, DOJ War Crimes Accountability Team
 - j. Jane Hartley, U.S. Ambassador to the United Kingdom of Great Britain and Northern Ireland
 - k. Jacob J. Lew, U.S. Ambassador to Israel

- (2) All communications since October 7, 2023 that relate to the ICC Prosecutor (Karim Khan), or his Office’s investigation into the Situation in the State of Palestine between DOS, DOJ, and/or DOD and:
 - a. Jeff Zients, Chief of Staff, White House
 - b. Brett McGurk, National Security Council Coordinator for the Middle East and North Africa
 - c. Jake Sullivan, United States National Security Advisor of the United States

d. Jonathan Finan, Deputy United States National Security Advisor of the United States

- (3) All RECORDS since October 7, 2023 that relate to and reflect any plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that mention the ICC, the ICC Prosecutor (Karim Khan), or his Office's investigation into the Situation in the State of Palestine.⁴⁴ This request includes but is not limited to records reflecting agency communications with: ICC officials; officials or representatives of foreign governments including but not limited to Government of Israel and the United Kingdom; and any communications with other agencies, departments or divisions of the United States.
- (4) All RECORDS since October 7, 2023 that relate to and reflect any plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that mention the ICC, the ICC Prosecutor (Karim Khan), or his Office's application for the issuance of arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant. This request includes but is not limited to records reflecting agency communications with: ICC officials; officials or representatives of foreign governments including but not limited to Government of Israel and the United Kingdom as well as the governments of the Czech Republic, Hungary and Germany;⁴⁵ and any communications with other agencies, departments or divisions of the United States.
- (5) All RECORDS since October 7, 2023 that relate to and reflect any plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that relate to, refer or mention the United Kingdom's June 10, 2024 request to the ICC to provide written *amicus curiae* observations related to the ICC Prosecutor's application for arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant. This request includes but is not limited to records reflecting communications with: ICC officials; officials or representatives of foreign governments including but not limited to Government of Israel and the United Kingdom; and any communications with other agencies, departments or divisions of the United States,

⁴⁴ The ICC Prosecutor opened this investigation into the Situation in the State of Palestine on March 3, 2021.

⁴⁵ Knesset News (Israel), Knesset delegation visits Prague; Speaker MK Ohana tells Czech PM Fiala "ICC's intent to issue arrest warrants for Israeli leaders a moral disgrace" (July 12, 2024), <https://main.knesset.gov.il/en/news/pressreleases/pages/press12724q.aspx> (identifying Czech Republic, Hungary, Germany and Britain as countries objecting to ICC arrest warrants against Netanyahu and Gallant).

including but not limited to the decision taken by the United Kingdom to make such an application.

- (6) All RECORDS since October 7, 2023 that relate to and reflect any plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that relate to, refer or mention the ICC Pre-Trial Chamber's June 27, 2024 Order regarding the United Kingdom's request. This request includes but is not limited to records reflecting communications with: ICC officials; officials or representatives of foreign governments including but not limited to Government of Israel and the United Kingdom, as well as the governments of the Czech Republic, Hungary and Germany;⁴⁶ and any communications with other agencies, departments or divisions of the United States.
- (7) All RECORDS since October 7, 2023 that relate to and reflect any plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that relate to, refer or mention the United Kingdom's July 2, 2024 request for extension of time limit to file its amicus brief.
- (8) All RECORDS since October 7, 2023 that relate to and reflect any plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that relate to, refer or mention the United Kingdom's the ICC Pre-Trial Chamber's July 4, 2024 decision on the United Kingdom's request for extension of time limit.

III. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records, *see* 5 U.S.C. § 522(a)(3)(B). We request that the records be provided in the following format:

- In PDF format wherever possible;
- Electronically searchable text wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the requestor must be able to identify the attachments with emails;
- Emails should include BCC and any other hidden fields;
- Any data records in native format (i.e. Excel spreadsheets in Excel); and
- With any and all other metadata preserved.

⁴⁶ Knesset News (Israel), *Knesset delegation visits Prague; Speaker MK Ohana tells Czech PM Fiala "ICC's intent to issue arrest warrants for Israeli leaders a moral disgrace"* (July 12, 2024), <https://main.knesset.gov.il/en/news/pressreleases/pages/press12724q.aspx>.

IV. The Requester

The Requester, CCR, is a non-profit, public interest legal and advocacy organization that engages in the fields of civil and international human rights. CCR's diverse issue areas include litigation and advocacy around militarism, mass incarceration and prisoners' rights, Palestinian solidarity, and the protection of human rights defenders and the right to dissent.

One of CCR's primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current human rights issues, and other similar materials for public dissemination. Records received through FOIA requests have served as the basis for many of these materials. CCR operates a website, <http://ccrjustice.org>, which addresses the issues on which the Center works, as well as through its various social media channels, which have tens of thousands of followers. CCR staff members often serve as sources for journalists and media outlets, including on issues related to international human rights, war crimes, international justice and accountability, detention practices, and abusive practices against refugees, asylum seekers, and others. In addition, CCR regularly issues press releases, and regular email updates sent to over 50,000 supporters about developments and news pertaining to CCR's work.

V. Application for Waiver of Fees

The Requester, CCR, is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 22 C.F.R. § 171.16(j), 32 C.F.R. § 16.10(k), and 32 C.F.R. § 286.12(l) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The Requester meets the requirements for a fee waiver because the subject of the request concerns the operations or activities of the government, the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities, the Requester's primary interest is in disclosure; and the Requester has no commercial interest in the information. CCR has a track-record of publicizing and explaining government records received through FOIA.⁴⁷

The primary purpose of this FOIA request is to obtain information to further the public's understanding of the government's record and position on international human rights and policy matters, and in particular its position and actions regarding the ICC and the ongoing investigation of war crimes and crimes against humanity alleged to be committed by Israeli officials in Palestine. The public has an interest in knowing about how the United States has communicated with the ICC as well as foreign governments in the context of Israel's assault on Gaza, and what measures it has taken to ensure – or block – justice and accountability for the genocide in Gaza; there has been public reporting on this matter, including possible U.S. interference in the investigation and influence on the United Kingdom with regard to its position regarding the arrest warrants.⁴⁸ As such, the subject of this request concerns the operations of the

⁴⁷ See CCR, Open Records Project: FOIA for the Movement, <https://ccrjustice.org/home/what-we-do/projects/open-records-foia>.

⁴⁸ See, e.g., Patrick Wintour, *US 'pressuring UK to block ICC's Netanyahu arrest warrant'*, The Guardian (July 10, 2024), https://www.theguardian.com/law/article/2024/jul/10/america-is-pressure-uk-to-block-iccs-netanyahu-arrest-warrant?CMP=Share_iOSApp_Other.

federal government and expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by CCR and the general public in a significant way.

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters’”).

In the alternative, if no fee waiver is granted and the fees exceed \$50.00, please contact the Requester's undersigned representative to obtain consent to incur additional fees. Processing fees should be limited pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media”).

VI. Application for Expedited Processing

CCR's requests and is entitled to expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 32 C.F.R. § 286.8(e)(1)(i)(B), (e)(1)(ii)(B), and (e)(3); 32 C.F.R. § 16.5(e)(1)(ii) and (e)(1)(iv); and 22 C.F.R. § 171.12(d)(1)(ii), (d)(1)(iii) on the ground that CCR has a compelling need for the information based on an urgency to inform the public about federal government activity, on a “matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.” 32 C.F.R. § 16.5(e)(1)(iv).

CCR's primary professional activity and occupation is information dissemination, and CCR has an urgent need to inform the public on recent developments regarding: Israel's genocidal assault on Gaza, which over the course of nine months has killed over 38,000 Palestinian people; DOS and DOD support for this assault;⁴⁹ and U.S. actions, including actions by DOS, DOD, and DOJ pertaining to ICC proceedings intended to ensure accountability for this assault. 32 C.F.R. § 286.8(e)(1)(i)(b); 32 C.F.R. § 16.5(e)(1)(ii) and (e)(1)(iv); and 22 C.F.R. § 171.12(d)(1)(ii). Furthermore, the United States' involvement—including the involvement of DOS and DOD—in relation to ongoing genocide by Israel, and the United States' response - including through DOS, DOJ, and DOD - to ICC proceedings continues to be front-page news and a matter of concern to the general public and non-governmental organizations, including those representing victims before the ICC.⁵⁰

⁴⁹ *See, e.g.*, Letter from Center for Constitutional Rights to Karim Khan regarding Israel's Unfolding Genocide and U.S. Complicity Against the Palestinian People (Oct. 20, 2023), <https://ccrjustice.org/sites/default/files/attach/2023/10/CCR%20Letter%20to%20Khan%20Emergency%20Brief%20on%202023%20Genocide.pdf> (identifying President Joseph Biden, Secretary of State Antony Blinken, and Secretary of Defense Lloyd Austin for investigation for complicity in genocide).

⁵⁰ *See, e.g.*, Joint NGO Letter to President Biden on Threats to the International Criminal Court (May 22, 2024), https://www.coalitionfortheicc.org/sites/default/files/cicc_documents/Joint%20NGO%20Letter%20to%20President%20Biden%20on%20the%20International%20Criminal%20Court.pdf; Patrick Wintour, *US 'pressuring UK to block ICC's Netanyahu arrest warrant'*, *The Guardian* (July 10, 2024), https://www.theguardian.com/law/article/2024/jul/10/america-is-pressuring-uk-to-block-iccs-netanyahu-arrest-warrant?CMP=Share_iOSApp_Other; Molly Bohannon, *Biden Slams ICC Arrest Warrant Request For Netanyahu As 'Outrageous'*, *Forbes* (May 21, 2024), <https://www.forbes.com/sites/mollybohannon/2024/05/20/biden-slams->

As a result, CCR urgently needs access to the requested records. This is entirely consistent with, and central to, CCR's core mission as a national non-profit legal and advocacy organization. CCR engages in litigation, public advocacy, and educational programming to defend constitutional and human rights law, including on issues pertaining to the impact on civilians of countries the U.S. has waged or supported war or violence in, and issues of access to justice. Dissemination of information to the public is a crucial component of CCR's mission and work. CCR disseminates information about government misconduct through the work of its staff, Board, and volunteer, cooperating, and co-counsel attorneys. Specifically, it publishes reports and newsletters, maintains a public website, issues press releases, and offers educational materials, and programming to the public within the U.S. and internationally. Additionally, CCR's staff, Board, and volunteer, cooperating and co-counsel attorneys further disseminate information through press releases, interviews, reports, educational programming and other means.

There is an urgent need to inform the public of the policies, procedures, guidelines, action, responses or instructions given by the federal government to agencies, departments or divisions, about accountability for the crimes committed by Israel in Gaza. This request is urgent in that if the records are not obtained, this could reasonably be expected to harm substantial humanitarian interests (32 C.F.R. §286.8(e)(1)(ii)(B) and 22 C.F.R. § 171.12(d)(iii)), and there exist possible questions about the government's integrity that affect public confidence (32 C.F.R. § 16.5(e)(1)(iv)) Namely, individuals, including U.S. citizens and their family members, are facing a genocide as well as other war crimes and crimes against humanity in Gaza. It is of utmost importance to them to know what the United States is or is not doing to ensure an end to these crimes, and not impeding accountability and an end to impunity.

Accordingly, CCR requests an expedited processing determination within 10 days of the receipt of this FOIA request, pursuant to 32 C.F.R. § 286.8(e)(1), 32 C.F.R. § 16.5(e)(4), and 22 C.F.R. § 171.12(d)(4).

VII. Response

CCR expects each agency to make a determination of this request within 20 days, as provided by statute. *See* 5 U.S.C. § 552(a)(6)(A)(i).

If CCR's request is denied, in whole or in part, we ask that each agency justify all deletions by reference to specific exemptions to FOIA. We also expect each agency to release all segregable portions of otherwise exempt material. CCR reserves the right to appeal each agency's decision to withhold any information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to: **Katherine Gallagher, Center for Constitutional Rights, at kgallagher@ccrjustice.org (preferred)** or by mail at **666 Broadway, 7th Fl., New York, NY 10012; (212) 614-6464.**

[icc-arrest-warrant-request-for-netanyahu-as-outrageous/](https://www.nbcnews.com/news/world/biden-us-israel-attack-icc-arrest-warrants-netanyahu-hamas-rcna153211); Chantal Da Silva, *Biden at odds with allies as U.S. and Israel attack ICC over arrest warrants*, NBC News (May 21, 2024), <https://www.nbcnews.com/news/world/biden-us-israel-attack-icc-arrest-warrants-netanyahu-hamas-rcna153211>.

I certify that the above information is true and correct to the best of my knowledge.

/s/ Katherine Gallagher

Katherine Gallagher, Senior Staff Attorney
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