

“I Have Lost Everything”: In Federal Court, Palestinians Accuse Biden of Complicity in Genocide

Bolstered by a momentous ICJ ruling, Palestinians, including Americans, gave three hours of testimony against the Biden administration.

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Global Research, January 29, 2024

[The Intercept](#) 26 January 2024

Region: [Middle East & North Africa, USA](#)

Theme: [Law and Justice](#)

In-depth Report: [PALESTINE](#)

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*In a momentous day for the quest to keep Israel and its allies accountable for its brutal war on Gaza, members of leading Palestinian human rights groups, residents of Gaza, and **Palestinian Americans argued in a U.S. District Court on Friday that the Biden administration should halt its financial and military support for Israel and uphold its obligations to prevent genocide.***

The arguments came in a [lawsuitOpens in a new tab](#) that the Center for Constitutional Rights, or CCR, filed in November against **President Joe Biden, Secretary of State Antony Blinken, and Defense Secretary Lloyd Austin**, charging them with complicity and failure to prevent the “unfolding genocide” in the occupied strip. Testifying either in person at the Oakland, California, courthouse or remotely from Palestine, the plaintiffs spoke for nearly three hours about the deliberate devastation wrought by Israel in the aftermath of the October 7 Hamas attacks.

The hearing commenced hours after the International Court of Justice in The Hague found that it’s plausible that Israel has committed acts of genocide in Gaza, in a case brought by South Africa. While the United Nations court fell short of ordering an immediate ceasefire, a panel of judges delivered a [historic set of rulings](#) and denied Israel’s request to dismiss the case. A final resolution in that case is expected to take years.

Lawyers involved with the lawsuit playing out in federal court said that the ICJ ruling bolsters their case. Their lawsuit argues that Biden, Blinken, and Austin are liable under [U.S. lawOpens in a new tab](#) for failing to uphold their obligation to prevent genocide in Gaza. In

Oakland, dozens of people lined up outside the courthouse hours before the hearing on Friday, according to organizers on the ground, while the Zoom stream reached its capacity of 1,000 people tuning in.

The Biden administration has maintained that genocide allegations against Israel are “meritless” and “unhelpful” while on Friday, U.S. government attorneys argued the court has no standing to decide on what they say is a matter of foreign policy. Plaintiffs meanwhile, including several Palestinian Americans, spoke powerfully about the need for the U.S. government to take immediate action to save lives.

In the last three months, Israel’s has killed at least 25,000 Palestinians — [one in every 100 residents](#)[Opens in a new tab](#) of Gaza.

Laila el-Haddad, a Palestinian American writer and one of the plaintiffs in the case, described her neighborhood being reduced to “a large pile of sand” and the killing of dozens of her relatives, including some who were buried in mass graves.

“My family is being killed on my dime,” she told the court. “President Biden could, with one phone call, put an end to this.”

Questions of Law

At the hearing, U.S. Judge Jeffrey S. White went to some length to state the impact of Israel’s war on Palestinian civilians and the U.S. government’s support for it but indicated the case might ultimately hinge on questions of jurisdiction.

“The Palestinian people are living in fear and without food, medical care, clean water, or sufficient humanitarian aid. Defendants — the president of the United States and his secretaries of state and defense — have provided substantial military, financial, and diplomatic support to Israel,” he said.

“However, the primary concern for this court is the limitation of its own jurisdictional reach.”

He later described the case as one of the “the most difficult” of his career. “You have been seen, you have been heard by this court,” he told the plaintiffs. “I’m going to take it extremely seriously.”

CCR and Justice Department attorneys deliberated for more than an hour about the court’s standing to hear the case. Attorneys for the plaintiffs referenced a different legal case accusing Russia of genocide in Ukraine, which the U.S. government has supported, to point to the Biden administration’s awareness of its responsibility to take steps to prevent genocide.

Katherine Gallagher, a senior attorney at CCR, stressed that the case is not a “wholesale challenge to U.S. military support to Israel.”

“This case does not present the court with a political question,” she added. “These are not questions of policy. These are questions of law.”

Justice Department attorney Jean Lin, for her part, referenced a legal concept known as the

“political question doctrine” to argue the court has no authority over foreign policy matters. “It’s a long-standing doctrine that the court has no jurisdiction to enjoin the president in his exercise of official duties,” she said.

“This court is not the proper forum,” she said in her closing remarks.

“Judges and courts have roles to play in enforcing and making real this duty that all of us in this world have to prevent a genocide,” CCR senior attorney Pamela Spees said in her closing remarks. “And the government’s only response is to say to this court that it can’t even engage with the question.”

“Everything Has Been Destroyed”

The legal argument was followed by nearly three hours of testimony by the plaintiffs, which include the human rights groups Defense for Children International – Palestine and Al-Haq, as well as Gaza residents Ahmed Abu Artema, the founder of the 2018 Great March of Return; Omar Al-Najjar, a 24-year-old doctor; and Mohammed Ahmed Abu Rokbeh, all of whom have lost many relatives since the war started. The plaintiffs also include Palestinian Americans whose families in Gaza have been subjected to a relentless bombing campaign by Israel.

Al-Najjar called into the hearing from a hospital hallway in Rafah, on the border with Egypt. Wearing scrubs, he described a medical infrastructure that is overwhelmed and on the brink of collapse, heavy shelling and gun fighting near medical facilities, and medical workers coming under attack in areas the Israeli military had declared safe.

“I have lost everything in this war ... I have nothing but my grief,” he told the court. “This is what Israel and its supporters have done to us.”

Ahmed Abofoul, a Palestinian lawyer and legal researcher at Al-Haq, testified from the courthouse that he lost 60 relatives on his father’s side of the family alone, 15 in a single airstrike, and that many of their bodies remain under the rubble. His cousin, he said, has been unable to retrieve the bodies of his five children, as the Israeli military fires at him whenever he tries to approach his destroyed home. Abofoul described not being able to get in touch with some family members after the war started and other relatives, including children, with no access to food and water.

“People are struggling to have anything to survive on,” he said. “Those who survive the bombing most likely will not survive staying in this condition.”

Abofoul also put the current onslaught in the context of the forced displacement of Palestinians since the 1948 establishment of the state of Israel. Pleading with his grandfather to evacuate to a different part of the territory after the war started, Abofoul’s relatives reassured the grandfather he would eventually return home. “That is exactly what they told me in 1948,” he responded, echoing fears by tens of thousands of displaced Palestinians that Israel is seeking to drive them out for good.

Schools, universities, churches, and even Gaza’s archives were destroyed in the ongoing war, Abofoul added. “Everything has been destroyed,” he said, “The Gaza that we know no longer exists.”

El-Haddad, the writer, told the court that she felt an obligation as an American to bring the

lawsuit against the Biden administration and that hearing “our president not only actively support this, but cast doubt on the deaths of my family members and other college students in Gaza” had made her feel “dehumanized” and “completely invisible.”

“I felt it was my duty as an American whose taxes and government have been directly responsible for the deaths of my family,” she added. “My government is complicit in this ongoing genocide against my family and the destruction of everything that I knew and I loved.”

Barry Trachtenberg, a professor of Jewish history and author of two books about the Holocaust, testified as an expert witness in the case – over repeated objections from Justice Department attorneys. When he filed his declaration in the case in November, he said, some 11,000 Palestinians had been killed. Today, that number is far greater.

“Everything that we feared and more is unfolding,” he said, noting that often, legal actions about genocide happen long after the fact. “What makes this situation so unique is that we’re watching the genocide unfold as we speak. And we’re in this incredibly unique position where we can actually intervene to stop it using the mechanisms of international law that are available to us.”

A Historic Case

CCR’s [89-page complaintOpens in a new tab](#) lays out, in painstaking detail, statements of genocidal intent by Israeli officials, paired with affirmations by U.S. officials that they would back Israel’s war effort with every tool at their disposal.

“The highest level of Israel’s senior political and military leadership made statements on October 7th, 8th, 9th, 10th, laying out that they intended, in effect, to destroy Gaza,” Gallagher, a senior staff attorney at CCR and one of the lead attorneys on the case, said on [Intercepted](#) last week. “And as the statements of intent were being made, senior levels of the United States government — including President Biden, Secretary of State Blinken, and Secretary of Defense Austin — were likewise making declarations about their intentions in the coming days, weeks, months ... And that was to give unconditional and complete support to Israel.”

Under international law, the crime of genocide is defined as the intention to destroy or partially destroy a group of people based on their ethnic, religious, racial, or national identity, either by direct killing or by the creation of conditions making life impossible. While Israel has for decades flouted international law standards and ignored rebukes, including by the ICJ, the Israeli government’s actions in the aftermath of the Hamas attacks were “qualitatively different,” Gallagher said.

Two days after the attacks, Israel’s Defense Minister Yoav Gallant [ordered mass war crimes](#) when he announced “a complete siege of the Gaza Strip,” which is home to 2.2 million Palestinians, nearly half of them children. “There will be no electricity, no food, no fuel, everything is closed,” he said then, a threat that Israel has since largely delivered on. “We are fighting human animals, and we act accordingly.”

As Israel unleashed an onslaught that quickly [outpaced any recent conflictsOpens in a new tab](#) for the number and pace of deaths, human rights groups [warned the Biden administration](#) that its unconditional support for Israel risked making it complicit in the crime

of genocide.

Josh Paul, a former senior State Department official who resigned over the Biden administration's support for the war on Gaza and filed a declaration in support of the CCR case, said on Friday morning, "Since October 7th, we've seen a sharp increase in the transfer of arms to Israel both through the speeding up of previously authorized transfers and through the ramming through Congress of so-called emergency sales of thousands of rounds of tanks, ammunition, and alternative shells."

"The U.S. has likely transferred munitions totaling in the tens of thousands since October 7 to Israel," he added, speaking at a briefing CCR hosted on Friday morning. "This also demonstrates, I think, the significant amount of leverage that we have if we wanted to push Israel to end or curtail its operations in Gaza."

"None of this could be done without the U.S. government," echoed Ata Hindi, a lawyer who helped draft an amicus brief in support of the lawsuit on behalf of the Arab American Anti-Discrimination Committee, at the event preceding the hearing. "It's for the United States to say whether or not, through its weapons in particular, whether or not this genocide continues."

The Arab American Anti-Discrimination Committee, he noted, was "drowned" in complaints by Palestinian Americans who accused the U.S. government of discriminating against them. "It's unfortunate to see how little the U.S. government in particular has paid attention to these American citizens and their families," said Hindi. "And we hope that the court will do something to change that."

The lawsuit has garnered significant international attention, with 77 legal and civil society groups from around the world [backing](#) it in a late December briefing to the court. They argued that the U.S. is violating its duties under international law to prevent and not be complicit in genocide, contributing to the erosion of "long and widely-held norms of international law," like the Genocide Convention and Universal Declaration of Human Rights.

The U.S. federal case is one of a number of legal efforts stemming from Israel's war on Gaza. In another U.S. lawsuit, Palestinian Americans have [accused the administration Opens in a new tab](#) of failing to protect U.S. citizens in Gaza and denying them equal protection, a constitutional right. That lawsuit argues that U.S. officials have not done as much to evacuate U.S. citizens trapped in Gaza as they did for Israeli Americans.

In addition to South Africa's genocide case against Israel before the ICJ, a group of South African lawyers have also [indicated their intent Opens in a new tab](#), pending the court's early rulings, to bring civil action against the U.S. and British governments over their support for Israel's actions. Other countries have also [filed separate complaints Opens in a new tab](#) against Israel before the ICJ.

The cascading cases against Israel are a remarkable development for a country that has for decades acted with impunity, largely thanks to unwavering U.S. support. In a further sign of waning support, a [poll Opens in a new tab](#) released this week issued its own verdict: One-third of Americans — and nearly half of the country's Democrats — believe Israel is committing genocide in Palestine.

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