

From [Center for Constitutional Rights](#) | Original Article

### Lower Court Declared Israeli Assault Plausible Case of Genocide Against Palestinians in Gaza; Meanwhile Mass Starvation Increases

Late yesterday, the Ninth Circuit Court of Appeals granted a motion to expedite the appeal of Palestinians and Palestinian-Americans suing U.S. officials for their failure to prevent – and complicity in – Israel’s genocide in Gaza. The Center for Constitutional Rights and co-counsel at Van Der Hout LLP sought the expedited schedule because of the lethal danger and conditions, including mass starvation, intentionally inflicted upon plaintiffs, their families, and all the residents of Gaza, as Israel continues its genocidal assault on the population and prepares a ground assault on Rafah, where more than a million people have taken refuge following their forced evacuation from northern Gaza. The appeals court will set an early June date for oral arguments in San Francisco.

After historic arguments and testimony on January 26, a federal judge dismissed the lawsuit on jurisdictional grounds but found a [plausible case of genocide](#) against the Palestinian population in Gaza and “implored” the Biden administration to examine its “unflagging support” for Israel’s assault. He wrote of the “uncontroverted” live testimony of plaintiffs, who discussed the killing and displacement of their family members since October 7 and situated Israel’s assault on Gaza within its historic subjugation of and attack on Palestinians.

The motion to expedite the appeal details the ongoing and imminent devastation and destruction enabled by U.S. continuing support for Israel’s assault, including its third veto of a United Nations Security Resolution calling for a cease-fire and reported additional delivery of weapons, including Joint Direct Attack Munitions (JDAMs) and a thousand 500-pound bombs. In the weeks since the district court’s ruling, even more of the plaintiffs’ family members have been killed.

“Israeli forces are killing Palestinian children and their families at an unprecedented rate with President Biden’s full support,” said **Khaled Quzmar**, General Director at Defense for Children International - Palestine, an organizational plaintiff in the suit. “Palestinian children that survive bombardment face death by starvation and disease as a direct result of Israeli government policies to deny humanitarian aid to Palestinians in Gaza. While we welcome the expedited

appeal, each day that passes without an end to Israel's genocidal campaign results in catastrophe for Palestinian children in Gaza."

In the [lawsuit](#) filed in November, a group of Palestinian and Palestinian-American individuals and organizations asked the court to enjoin President Biden, Secretary Blinken, and Secretary Austin from providing weapons and other forms of support to Israel that are being used to further the genocide in violation of domestic and international law. Leading genocide and Holocaust scholars submitted declarations in support of the lawsuit.

In dismissing the lawsuit, the judge largely endorsed the factual case made in the plaintiffs' complaint and in the testimony, echoing the historic ruling by the [International Court of Justice](#), which also found a plausible case of genocide by Israel and ordered a set of provisional measures. Judge White maintained, however, that the matter of U.S. support for Israel is a "political question" beyond his purview. An appeals court in The Netherlands has since [blocked](#) the Dutch government from sending military parts to Israel, citing the duty to uphold international law, an example the plaintiffs say they hope the U.S. courts will follow.

"Since the filing of this lawsuit in November, the death toll in Gaza has nearly tripled, and all the while, the United States has continued to accelerate Israel's genocidal campaign against the Palestinian people of Gaza with its unconditional material, financial, and diplomatic assistance and cover," said [Sadaf Doost](#), attorney and Bertha Justice Fellow at the Center for Constitutional Rights. "Our expedited appeal to the Ninth Circuit – seeking judicial review to make clear that no individual, not even the president of the United States, is above the law and all must comply with obligations to stop genocide – comes as the carnage and devastation in Gaza has reached unprecedented levels and requires urgent attention."

The organizational plaintiffs in the case are Defense for Children International – Palestine and Al-Haq. The individual plaintiffs are Dr. Omar Al-Najjar, Ahmed Abu Artema, and Mohammed Ahmed Abu Rokbeh in Gaza; and Mohammad Monadel Herzallah, Laila Elhaddad, Waeil Elbhassi, Basim Elkarra, and Ayman Nijim, U.S. citizens with family in Gaza.

"The Ninth Circuit's grant of our motion to expedite is important, as the dire and unlivable conditions in Gaza must be addressed urgently," said **Johnny Sinodis** of Van Der Hout LLP. "Each day that the U.S. continues its unrestrained support of Israel, more and more innocent women and children are slaughtered by Israel's assault and indiscriminate bombing campaign."

We are hopeful that the court will ultimately order the U.S. to fulfill its obligations under the 1948 Genocide Convention to prevent, and not be complicit in, the genocide that the world is witnessing taking place in Gaza.”

For more information, see the Center for Constitutional Rights’

[case page](#)

.

*The San Francisco law firm of [Van Der Hout LLP](#) is co-counsel in the case.*