

Federal Court Hears Appeal in Case Accusing Biden of Complicity in Gaza Genocide

"Genocide can never be a legitimate foreign policy choice," argued one plaintiffs' attorney.

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Following the dismissal earlier this year of a federal lawsuit accusing senior Biden administration officials of failing to prevent Israel's U.S.-backed genocide in [Gaza](#), the 9th Circuit Court of Appeals in San Francisco on Monday began hearing an expedited appeal by Palestinian plaintiffs in the case.

Arguing that U.S. leaders "have a legal duty to prevent, and not further," genocide, the Center for Constitutional Rights (CCR) first [filed](#) a lawsuit last November in the U.S. District Court for the Northern District of California in Oakland on behalf of the rights groups Defense for Children International-Palestine (DCI-P) and al-Haq, as well as a group of individual Palestinians in Gaza and the United States.

"Genocide can never be a legitimate foreign policy choice," CCR senior staff attorney Katie Gallagher [argued](#) during Monday's proceedings.



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The suit—which names President Joe Biden, Secretary of State Antony Blinken, and Defense Secretary Lloyd Austin as defendants—seeks to force the U.S. administration to stop “providing further arms, money, and diplomatic support to [Israel](#)” as it wages a war of annihilation in which more than 132,000 Palestinians have been killed, maimed, or left missing; nearly 90% of Gaza’s population has been forcibly displaced; and at least hundreds of thousands of people are [starving](#).

Palestinian American writer Laila al-Haddad, a plaintiff in the case, lost her aunt and three of her cousins to a November Israeli airstrike on a United Nations school in the Jabalia refugee camp that [killed](#) more than 30 people.

“I promised my surviving family members in Gaza that I would do everything in my power to advocate on their behalf,” al-Haddad wrote in an [article](#) published Monday by *The Nation*.

“Although I knew the case would be an uphill battle, I testified to make a record of Israel’s horrific slaughter of my family, the displacement and dispossession and starvation of the surviving members, the deliberate destruction of my hometown and everything that sustains life there, and ethnic cleansing of my people,” she continued.

“As a Palestinian, I struggle to balance the disgust and impotence I feel knowing that my tax dollars are being used to kill my family members in Gaza with an urgency to do everything in my power to demand an end to this administration’s complicity in genocide,” al-Haddad added.

U.S. District Judge Jeffrey White [ruled](#) on January 31 that the case fell “outside the court’s limited jurisdiction” and rejected the suit on technical grounds—even as he [wrote](#) that “the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law.”

On February 27, the 9th Circuit Court [granted](#) a motion by CCR and co-counsel at Van Der Hout LLP to expedite plaintiffs’ appeal amid soaring Palestinian civilian casualties and destruction wrought by Israel’s assault on Gaza.

Last week, 9th Circuit Judge Ryan Nelson [recused himself](#) from the new case following pressure from plaintiffs who questioned his impartiality after he visited Israel in March with 13 other federal judges on a [trip](#) sponsored by the World Jewish Congress meant to convince U.S. jurists of the legality of Israel’s Gaza onslaught.

Genocide is defined under the 1948 [Genocide Convention](#) as killing or causing serious physical or psychological harm to members of a group, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group,” or “forcibly transferring children of the group to another group.”

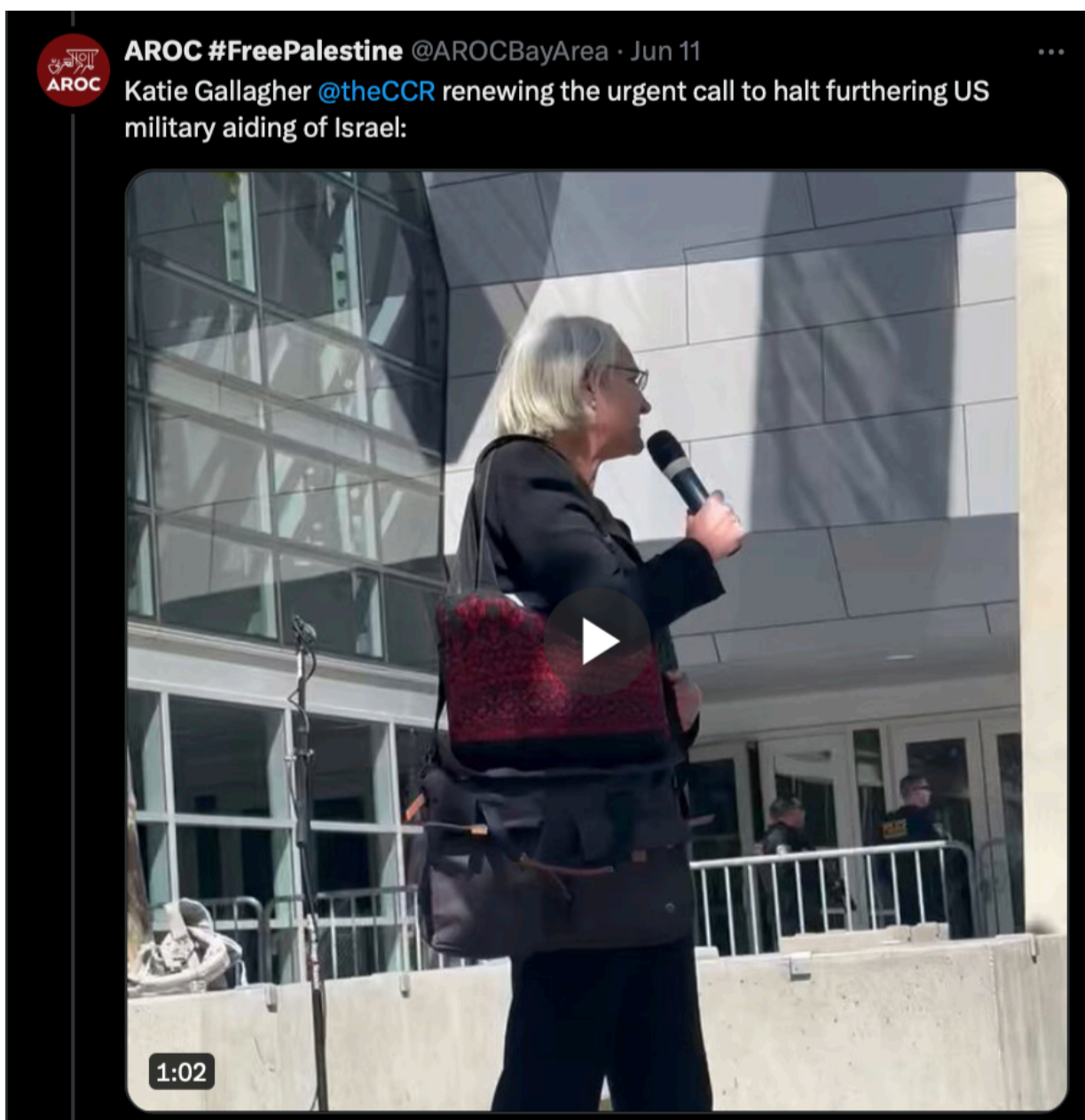
At least hundreds of jurists and genocide experts around the world [concur](#) that Israel is committing genocide in Gaza. The International Court of Justice is currently [weighing](#) a genocide case against Israel brought by South Africa and backed by more than 30 nations and regional blocs. Last month, International Criminal Court Prosecutor Karim Khan [said](#) he is seeking to arrest Israeli Prime Minister Benjamin Netanyahu, Israeli Defense Minister Yoav Gallant, and three Hamas leaders for alleged crimes including extermination.

As CCR [noted](#):

Numerous Israeli government leaders have expressed clear genocidal intentions and deployed dehumanizing characterizations of Palestinians, including “human animals.” At the same time, the Israeli military has bombed civilian areas and infrastructure, including by using chemical weapons, and deprived Palestinians of everything

necessary for human life, including water, food, electricity, fuel, and medicine. Those statements of intent—when combined with mass killing, causing serious bodily and mental harm, and the total siege and closure creating conditions of life to bring about the physical destruction of the group—reveal evidence of an unfolding crime of genocide.

The Biden administration has provided Israel with billions of dollars in [military aid](#) and arms and ammunition [sales](#), as well as diplomatic cover in the form of United Nations Security Council [vetoes](#) and [genocide denial](#), as its forces continue to obliterate Gaza 248 days after the Hamas-led attacks on October 7 that left more than 1,100 Israelis and foreign nationals dead—at least some of whom were killed by so-called “[friendly fire](#)”—and over 240 others taken hostage.



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“The U.S. courts have an opportunity in front of them: Judges can choose to take a minimal step towards allowing DCI-P and the other plaintiffs to have a chance at holding the Biden administration accountable for its role in the genocide of Palestinians, or they

can sit back and refuse to carry out checks on the executive branch,” DCI-P advocacy officer Miranda Cleland wrote in an [opinion piece](#) published Friday by *Middle East Eye*. “It is a choice, quite literally, between life and death.”

“Israeli forces, emboldened by the so-called ironclad support of the Biden administration, have killed on average more than 60 Palestinian children every day since October 7,” she continued. “That’s more than 15,000 children who won’t go back to school, or play with their friends, or hug their parents ever again. Those 15,000 children will not grow up and live in a free [Palestine](#).”

“If the U.S. courts continue to green-light Biden’s impunity, more Palestinian children and their families will pay the price,” Cleland added. “It is a price that I, alongside many other voters in the U.S., are not willing to accept.”

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