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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 CITY AND COUNTY OF SAN FRANCISCO

11 PEOPLE OF THE STATE OF CALIFORNIA.

12 Plaintiff,

13 vs.

14 RAYAN ELAMINE, JERSEY NOAH
15 DEUTSCH, SAMIR SHRESTHA, LAI WA
16 WU,

17 Defendants.

CASE NO.: 23419074, 23419105, 23419178,
23419103

**DEFENDANTS' REQUEST THAT THE
COURT EXERCISE ITS POWER TO
DISMISS THE CHARGES IN THE
INTEREST OF JUSTICE**

(Pen. Code, § 1385)

Date: March 14, 2024

Time: 1:30pm

Dept: 17

18 TO: BROOKE JENKINS, SAN FRANCISCO DISTRICT ATTORNEY, AND THE
19 ABOVE-ENTITLED COURT:

20 Please take notice, that on the date and time noted above, or as soon thereafter as the
21 matter may be heard, the above-named defendants will request that this Court exercise its power
22 to dismiss the complaint filed in this action.

23 This request is made pursuant to Penal Code section 1385, in that dismissal is in the
24 interest of justice, and is based on the pleadings and papers on file in this matter, this notice of
25 motion and attached supporting memorandum of points and authorities, and any other further
26 argument as may be considered by the Court in this matter.
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1 Dated: Feb. 23, 2024

Respectfully submitted,

2 /S/ Rachel Lederman

3 Attorney for Defendants Elamine, Deutsch, Shrestha and Wu

4
5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. Statement of Facts**

7 The defendants were arrested on November 16, 2023, during a nonviolent demonstration
8 calling for a ceasefire in Gaza. The demonstration took place when President Biden, Vice
9 President Harris and other officials were in San Francisco for the APEC (Asia-Pacific Economic
10 Cooperation) meetings. Law enforcement and transportation agencies closed a number of San
11 Francisco streets and one lane in either direction on the Bay Bridge and Golden Gate Bridge
12 during APEC, and the anticipated disruption to traffic was highly publicized.¹

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14 At the time defendants were arrested in mid-November, the Israeli military had already
15 killed more than 11,000 Palestinians, including 4,500 children, since the October 7, 2023, attack
16 on Israel by Hamas' military wing². As of today, the Israeli military has killed more than 29,000
17 Palestinians, and has injured more than 69,000, with thousands more buried under the rubble and
18 presumed dead³. Media reports and rights groups say an overwhelming majority of those killed
19 are civilians – more than 70 percent of them children, women and elderly people. Two mothers
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25 ¹ E.g., ABC News, 11/13/2023, <<https://abc7news.com/apec-traffic-driving-commute-san-francisco/14053268/>>.

26 ² UN Office for the Coordination of Humanitarian Affairs (UNOCHA), *Hostilities in the Gaza Strip and Israel - reported impact | Day 40*, 11/15/2024, <<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-40>>.

27 ³ UNOCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 139*, 2/22/2024,
28 <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-139>.

1 are killed every hour according to the U.N.⁴ At least 12,400 children have now been killed, and
2 some 17,000 children have been orphaned or separated from their parents.⁵ More than ten
3 children suffer the loss of one or both of their legs in Gaza every day, with many amputations
4 performed without anesthesia due to the lack of medical supplies caused by Israel's blockade.⁶
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6 Israel's bombing is the most destructive bombardment in modern history⁷ and has
7 destroyed critical civilian infrastructure throughout Gaza – leveling hospitals, schools, places of
8 worship, universities, refugee camps, and UN safe havens, shattering almost all other essential
9 attributes of a civil society, and destroying or damaging 70 percent of all housing in Gaza. 1.7
10 million Palestinians have been displaced, with about 1.5 million forced into Rafah, a small city
11 on Gaza's southern border. And the total siege, on top of Israel's 16-year-long blockade of Gaza,
12 has deprived Palestinians in Gaza of their basic survival needs, including food, water, fuel,
13 electricity, and medicine. Palestinians in Gaza are starving and lack access to clean water for
14 drinking and sanitation.⁸
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22 ⁴ UN News, *Two Mothers Killed Each Hour in Gaza Conflict: UN Women*, 1/19/2024,
<https://news.un.org/en/story/2024/01/1145707>.

23 ⁵ UNICEF, *Stories of loss and grief: At least 17,000 children are estimated to be unaccompanied or separated from*
their parents in the Gaza Strip, 2/02/2024, <[https://www.unicef.org/press-releases/stories-loss-and-grief-least-](https://www.unicef.org/press-releases/stories-loss-and-grief-least-17000-children-are-estimated-be-unaccompanied-or)
24 [17000-children-are-estimated-be-unaccompanied-or](https://www.unicef.org/press-releases/stories-loss-and-grief-least-17000-children-are-estimated-be-unaccompanied-or)>.

25 ⁶ CNN, *More than 10 children losing legs in Gaza every day as dire health crisis grows, aid groups say*, 1/07/2024,
<<https://www.cnn.com/2024/01/08/middleeast/gaza-children-losing-legs-disease-intl-hnk/index.html>>.

26 ⁷ Wilkins, *Israeli Bombing of Gaza Ranks Among 'Most Devastating' in History*, Common Dreams, 12/23/2023,
<<https://www.commondreams.org/news/bombing-gaza>>; Frankel, *Israel's military campaign in Gaza is among the*
27 *most destructive in history, experts say*, AP, 12/21/2023, [https://www.pbs.org/newshour/world/israels-military-](https://www.pbs.org/newshour/world/israels-military-campaign-in-gaza-is-among-the-most-destructive-in-history-experts-say)
28 [campaign-in-gaza-is-among-the-most-destructive-in-history-experts-say](https://www.pbs.org/newshour/world/israels-military-campaign-in-gaza-is-among-the-most-destructive-in-history-experts-say).

⁸ UNOCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 139*, 2/22/2024,
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-139>.

1 On January 9, 2024, San Francisco passed a resolution calling for an immediate
2 ceasefire.⁹ On January 26th, the International Court of Justice (ICJ), the world’s highest court
3 and the principal judicial organ of the United Nations, found that Israel’s actions “appear to be
4 capable of falling within the provisions of the Genocide Convention.” ICJ opinion dated January
5 26, 2024, at ¶ 30. [https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-](https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf)
6 [01-00-en.pdf](https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf). The ICJ found that “the military operation being conducted by Israel following the
7 attack of 7 October 2023 has resulted in a large number of deaths and injuries, as well as the
8 massive destruction of homes, forcible displacement of the vast majority of the population, and
9 extensive damage to civilian infrastructure.” *Id.* at ¶ 46.
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12 The ICJ found that it is “plausible [that the] rights in question in these proceedings,
13 namely the right of Palestinians in the Gaza Strip to be protected from acts of genocide and
14 related prohibited acts identified in Article III of the Genocide Convention, ... are of such a
15 nature that prejudice to them is capable of causing irreparable harm.” *Id.* at ¶ 66 (citation
16 omitted). The ICJ ordered Israel to abide by its obligations under Article II of the UN Genocide
17 Convention, ensure that its military does not commit actions within the criteria, and to take
18 immediate action to enable humanitarian aid within Gaza. However, the slaughter of Palestinians
19 has continued unabated.
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21 The United States provides Israel with \$3.8 billion dollars in funding annually, almost all
22 of which goes to support Israeli military operations through the purchase of U.S. military
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27 ⁹ Board of Supervisors Resolution, 1/09/2024,
28 <https://sfgov.legistar.com/View.ashx?M=F&ID=12564830&GUID=06E799CA-0C22-49FE-992E-C2766A7C4625>.

1 equipment and munitions.¹⁰ Israel is the largest recipient of foreign military financing. Currently,
2 the Biden Administration has requested, and the Senate has approved, an additional 14 billion
3 dollars in U.S. taxpayer funds be transferred to support these operations. President Biden has
4 exercised an expedited waiver process to bypass Congressional review of weapons transfers to
5 Israel. The Pentagon has stated that it is “not putting any limits” on Israeli use of U.S. weapons
6 in the mass slaughter in Gaza.¹¹ The killing of tens of thousands of Palestinians is being carried
7 out with U.S. weapons and is funded with U.S. tax dollars.¹² In short, if U.S. government
8 officials chose to, they could end the genocide now.

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11 On January 31, 2024, the United States District Court for the Northern District of
12 California found that “the undisputed evidence before this Court comports with the finding of the
13 ICJ and indicates that the current treatment of the Palestinians in the Gaza Strip by the Israeli
14 military may plausibly constitute a genocide in violation of international law. Both the
15 uncontroverted testimony of the Plaintiffs and the expert opinion proffered at the hearing on
16 these motions as well as statements made by various officers of the Israeli government indicate
17 that the ongoing military siege in Gaza is intended to eradicate a whole people and therefore
18 plausibly falls within the international prohibition against genocide. *Defense for Children*
19 *International-Palestine, et al., v. Joseph R. Biden, et al.*, U.S. District Court (N.D. Cal.) No.
20 4:23- cv-05829-JSW, Order (Dkt. No. 91), filed 01/31/2024, 2024 WL 390061, Slip Opn. at 2.

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25 ¹⁰ Council on Foreign Relations, *U.S. Aid to Israel in Four Charts*, 1/23/2024, <https://www.cfr.org/article/us-aid-israel-four-charts>.

26 ¹¹ U.S. Department of Defense Press Briefing, 10/30/2023, <https://www.defense.gov/News/Transcripts/Transcript/Article/3573518/deputy-pentagon-press-secretary-sabrina-singh-holds-an-off-camera-on-the-record/>.

27 ¹² Time, *What to Know About U.S. Military Support for Israel's Gaza Offensive*, 11/3/2023, <
28 <https://time.com/6331133/israel-gaza-biden-military-support/>>.

1 The court concluded by imploring President Biden and his cabinet members to “examine the
2 results of their unflagging support of the military siege against the Palestinians in Gaza.” *Id.*,
3 Slip. Opn. at 5. The court stated, “It is every individual's obligation to confront the current siege
4 in Gaza”. *Id.*, Slip Opn at 3.
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6 **II. The Complaint Should Be Dismissed in the Interest of Justice.**

7 **A. This Court Has Discretion to Dismiss the Charges in the Interest of Justice.**

8 Penal Code section 1385 provides, in pertinent part, that “[t]he judge or magistrate may,
9 either of his own motion or upon the application of the prosecuting attorney, and in furtherance
10 of justice, order an action to be dismissed.” The statute vests in the court the common law power
11 of *nolle prosequi* to dismiss a criminal action in its discretion at any time during the proceeding.
12 *People v. Superior Court* (1968) 69 Cal.2d 491, 501. Regardless of whether the prosecution has
13 moved for a dismissal, the defendant may invite the court to exercise its power, and the court
14 must consider evidence offered by the defendant in support of his assertion that dismissal on the
15 court's own motion would be in furtherance of justice. *Rockwell v. Superior Court* (1976) 18
16 Cal.3d 420; *People v. Superior Court (Flores)* (1989) 214 Cal.App.3d 127, 137.
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19 The discretion granted a trial court under section 1385 “is, and should be, very broad” so
20 long as the court states the reasons for dismissal in the minutes and has properly considered the
21 facts. *People v. Curtiss* (1970) 4 Cal.App.3d 123, 126. Whether a dismissal would be “in the
22 furtherance of justice” has not been defined by the Legislature, thus the court must consider both
23 the constitutional rights of the defendant and the interests of society in determining whether there
24 should be a dismissal, and the reason for dismissal must be “that which would motivate a
25 reasonable judge.” *People v. Orin* (1975) 13 Cal.3d 937, 945.
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1 **B. The Interest of Justice Weigh In Favor of Dismissal Here.**

2 Defendants’ nonviolent protest was intended to urgently call President Biden’s attention
3 to the genocide in Gaza, which he has the ability to stop. Biden has unconditionally supported
4 and continues to support Israel’s war, despite voluminous letters, phone calls and other
5 indications that the majority of Americans are in favor of a ceasefire. Defendants are among
6 millions of people worldwide who have been protesting for a ceasefire and end to the death and
7 destruction. Protest is a notable way that citizens attempt to communicate their views on key
8 issues. Fisher, et al., *The science of contemporary street protest: New efforts in the United States*
9 *Sci Adv.* 2019 Oct; 5(10): eaaw5461 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6810161/>.
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11 There is a moral imperative, and thus a public interest, in preventing genocide. In 1945,
12 Justice Robert R. Jackson stated in his opening at the Nuremberg Trials, where the concept of
13 genocide took shape: “The wrongs which we seek to condemn and punish have been so
14 calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored,
15 because it cannot survive their being repeated.”¹³ The Genocide Convention was ratified by the
16 United States in 1988, and Congress enacted a criminal statute to provide for criminal liability in
17 United States courts for those found guilty of, or complicit in, genocide. 18 U.S.C. § 1091, et
18 seq. The treaty ratification and the criminal statute codify and reaffirm the pre-existing legal
19 prohibition against and right of action for genocide under customary international law. *Kadić v.*
20 *Karadžić*, 70 F.3d 232, 242, 242 n.6 (2d Cir. 1995). Article I of the Genocide Convention
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27 ¹³ Robert H. Jackson, Chief Counsel for United States, Opening Statement before the International Military Tribunal
28 (Nuremberg) 11/21/1945, <https://www.roberthjackson.org/speech-and-writing/opening-statement-before-the-international-military-tribunal/>.

1 emphasizes the legal duty to prevent genocide. This obligation to prevent genocide reflects the
2 international community's collective commitment to ensure that no human beings and groups are
3 targeted for destruction because of their identity or affiliation with a group.

4
5 Protest and civil disobedience have played an important role in bringing about social
6 change throughout U.S. history. "[F]rom the Boston Tea Party and the signing of the Declaration
7 of Independence, to the freeing of the slaves by operation of the underground railroad in the
8 mid-1800's... disobedience of 'Jim Crow' laws ... as a catalyst to end segregation ... and
9 violation of selective service laws contributed to our eventual withdrawal from the Viet Nam
10 War." *United States v. Kabat*, 797 F.2d 580, 601 (8th Cir. 1986). Scholars have demonstrated the
11 social value of protest in a wide range of arenas, such as struggles by minority groups for
12 procedural rights and substantive justice, the fight for democracy against authoritarian
13 governments, and transnational efforts to end war and militarism. Fisher, et al. *The science of*
14 *contemporary street protest*, supra, and articles cited therein at endnotes 4-10.

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17 In line with this long tradition -- particularly strong here in the Bay Area, from the fight
18 for labor rights to the Black Panthers, to ending the Vietnam war and South African apartheid, to
19 the Gay Liberation movement, and more-- the Bay Bridge protest was used as a tool for positive
20 social change. Direct action, such as blocking bridges, has been effective. For example, the
21 disruptive tactics of the HIV/AIDS activist movement succeeded in changing the rules for drug
22 trials and experimental treatments for life threatening diseases, saving lives and later facilitating
23 the quick release of COVID vaccines and treatments.¹⁴

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27 ¹⁴ Grossman, Lewis A., *Choose Your Medicine: Freedom of Therapeutic Choice in America* (New York, 2021;
28 online edn, Oxford Academic, 21 Oct. 2021), <https://doi.org/10.1093/oso/9780190612757.001.0001>.

1 Judge White said, “It is every individual's obligation to confront the current siege in
2 Gaza”. The Bay Bridge 78 were taking actions of conscience to stop genocide by calling
3 attention to their government’s facilitation of it and demanding an end and change in policy. The
4 temporary inconvenience to motorists on the Bay Bridge, on a day when traffic delays were
5 expected, pales in comparison to the mass slaughter, maiming, starvation, and destruction which
6 continue to be inflicted on the 2.3 million people of Gaza with U.S. weapons and tax dollars.
7 Protesting genocide serves the public interest. There is no public interest to be served by
8 proceeding with this wasteful prosecution.
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10 As another court observed, “What a huge debt this nation owes to its “troublemakers.”
11 From Thomas Paine to Martin Luther King, Jr., they have forced us to focus on problems we
12 would prefer to downplay or ignore. Yet it is often only with hindsight that we can distinguish
13 those troublemakers who brought us to our senses from those who were simply ... troublemakers.
14 Prudence, and respect for the constitutional rights to free speech and free association, therefore
15 dictate that the legal system cut all non-violent protesters a fair amount of slack.” *Garcia v.*
16 *Bloomberg*, 865 F. Supp. 2d 478, 482 (S.D.N.Y. 2012), aff'd sub nom. *Garcia v. Does*, 764 F.3d
17 170 (2d Cir. 2014), on reh'g, 779 F.3d 84 (2d Cir. 2015), and rev'd sub nom. *Garcia v. Does*, 779
18 F.3d 84 (2d Cir. 2015).
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1 **CONCLUSION**

2 On January 29, 2024, 5-year-old Hind Rajab climbed into a car with her aunt, her uncle
3 and her cousins in Gaza City as they prepared to flee to the southern part of Gaza, as instructed
4 by the Israeli military. But as they were in the car, an Israeli tank approached them and opened
5 fire. Hind’s 15-year-old cousin Layan called the Red Crescent for help. She can be heard
6 screaming on the recorded call until she was silenced and killed by the Israeli military, likely
7 with U.S. weapons. The only one in the car who remained alive was 5-year-old Hind. Wounded
8 and trapped in the car with her dead family members, she spoke to her mother and the Red
9 Crescent. “*Mama don’t leave me. I’m scared. I’m hurt. Please come,*” she pleaded. It took three
10 hours for the Red Crescent to coordinate safe access for an ambulance to go to Hind’s location.
11 Once the green light was given, two emergency workers with the Palestine Red Crescent, Yusuf
12 Zeino and Ahmed al-Madhoun, went to try to rescue Hind. But dispatchers lost contact with the
13 medics after they reported that they could see Hind in the car and that the Israeli military was
14 shining a laser on them.
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18 Nearly two weeks later, Israeli forces finally withdrew from the area, and Hind’s
19 surviving family ventured back to the neighborhood. They found Hind dead inside the car
20 alongside the bodies of five of her family members, the car riddled with bullet holes. The bodies
21 of the two emergency workers were also found in an ambulance nearby, which appears to have
22 been bombed by the Israeli military.¹⁵
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27 ¹⁵ Democracy Now, “*They Were So Close*”: *Israel Kills Medics Trying to Save Dying 6-Year-Old Hind Rajab*,
28 2/16/2024, https://www.democracynow.org/2024/2/16/gaza_hind_rajab_palestine_red_crescent.

1 **PROOF OF SERVICE**

2 I, Rachel Lederman, declare:

3 I am employed in the City and County of San Francisco, State of California. I am
4 over the age of eighteen years and am not a party to the within-entitled action. My business
5 address is 1720 Broadway, Suite 430, Oakland, CA 94612.

6 On February 23, 2024, I served the **DEFENDANTS’ REQUEST THAT THE COURT**
7 **EXERCISE ITS POWER TO DISMISS THE CHARGES IN THE INTEREST OF**
8 **JUSTICE and** Memorandum of Points and Authorities in Support on the below-listed parties,
9 by email to:

10 Assistant District Attorney Al Ujcic, albert.j.ujcic@sfgov.org

11 Assistant District Attorney Kirk Earl, kirk.earl@sfgov.org

12 I declare under penalty of perjury that the foregoing is true and correct, under the
13 laws provided by the State of California and the United States, and that this declaration
14 was executed on February 23, 2024 in San Francisco, California.

15 */S/ Rachel Lederman*