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5 Attorneys for PLAINTIFFS  
Esam Kaoud, Ameer Kaoud; Nezam Kaoud

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 ESAM KAOD; AMEER KAOD;  
11 NEZAM KAOD,

12 *Plaintiffs*

13  
14 *vs.*

15 United States Secretary of State,  
16 ANTONY BLINKEN, in his official  
17 capacity only; United States Secretary  
18 of Defense LLOYD AUSTIN, in his  
official capacity only;

19 *Defendants.*

Case no.: 23-2292

**EMERGENCY COMPLAINT FOR  
MANDAMUS WITH REQUEST  
FOR INJUNCTIVE RELIEF FOR:**

- 1) **Denial of Equal Protection Under the Fifth Amendment (5th Amendment and 42 U.S.C 1983);**
- 2) **Violations of the Administrative Procedures Act (5 U.S.C. 706(2)(A));**
- 3) **Injunctive Relief;**
- 4) **Declaratory Relief.**

21 NOW COME, Plaintiffs, by and through their respective counsel, and hereby  
22 submit the following Complaint, stating the following:

23 This matter seeks to compel the United States (“U.S.”) Government to  
24 evacuate three U.S. citizens that are trapped in the Gaza Strip in Palestine under  
25 constant, indiscriminate bombardment. The complaint and motion are a *literal*  
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1 matter of life and death. Every day that the Government delays evacuating these U.S.  
2 citizens could be their last.

### 3 **JURISDICTION AND VENUE**

4 1. This case arises under the United States Constitution, 42 U.S.C. 1983, and the  
5 laws of the United States and presents a federal question within this Court's  
6 jurisdiction pursuant to the United States Constitution 28 U.S.C. 1331. This Court  
7 may also exercise jurisdiction under the Administrative Procedures Act, 5 U.S.C.  
8 702-704. Finally, this Court may also exercise jurisdiction under 28 U.S.C 1361 for  
9 mandamus jurisdiction over this action.

10 2. Venue is proper pursuant to 28 U.S.C. 1391 in the United States District Court  
11 for the Central District of California where the Plaintiffs reside.

### 12 **PLAINTIFFS**

13 3. Plaintiffs Esam Kaoud, Ameer Kaoud, Nezam Kaoud are United States  
14 Citizens of Palestinian ethnicity and residents of Hesperia, California (hereinafter  
15 "Plaintiffs"). They are currently trapped abroad in the Gaza Strip in an active war  
16 zone where they are under imminent threat of death or serious bodily injury. On  
17 information and belief, they are not alone among U.S. Citizens also in grave danger.  
18 However, they have lost any effective means of regular communication with the  
19 outside world.

### 20 **DEFENDANTS**

21 4. Defendant Antony Blinken ("Blinken") is the United States Secretary of State  
22 and, as the head of the United States Department of State ("State Department"), is  
23 the senior diplomatic officer of the United States. Blinken is responsible for  
24 providing consular and other services to United States Citizens traveling abroad as  
25 well as decisions of the United States government for the evacuation of U.S. citizens  
26 abroad during times of crisis. In this case, there has been no Noncombatant  
27 Evacuation Order ("NEO"). This type of operation is normally implemented during

1 a crisis or war to evacuate U.S. Citizens and their families from abroad and to secure  
2 their return to the United States.

3 5. Defendant Lloyd Austin (“Austin”) is the United States Secretary of Defense  
4 and, next to the President of the United States responsible for civilian control of the  
5 United States Military and the U.S. Department of Defense (“Defense Department”).  
6 In his capacity he directs all branches of the military and is responsible for military  
7 strategy of the U.S. government. Austin is responsible for executing any NEO to  
8 evacuate U.S. Citizens and their families from areas under siege or war around the  
9 world in conjunction with co-Defendant Blinken.

### 10 **EXHAUSTION OF REMEDIES**

11 6. Plaintiffs have exhausted their remedies, as there are no remedies outside of  
12 judicial action where a federal constitutional violation is alleged. It is well-settled  
13 that exhaustion of remedies is not required if it would be futile. *See, e.g. American-*  
14 *Arab Anti-Discrimination Committee v. Reno* 10 F.3d 1045, 1058 (9<sup>th</sup> Cir. 1995); *see*  
15 *also Ruiz v. Mukasey*, 269 Fed. Appx. 616, 618 (9<sup>th</sup> Cir 2007). Furthermore,  
16 exhaustion of remedies is not required if there would be irreparable harm.  
17 *Richardson v. Reno*, F. Supp., 1998 WL 74229 \* 3 (S.D. Fla. February 13, 1998);  
18 *Peralta Veras v. Ashcroft* (E.D.N.Y. 2002). No action or any other request has been  
19 made in Federal or any other Court to review the Complaint herein.

### 20 **PRELIMINARY STATEMENT AND FACTUAL BACKGROUND**

21 7. Plaintiffs reallege the allegations in paragraphs 1-6 inclusive as if fully set  
22 forth herein.

23 8. This lawsuit challenges the constitutionality of the U.S. Government’s  
24 actions/failure to act to protect United States citizens trapped in Gaza, Palestine, an  
25 active war zone. Their lives are in grave danger from ongoing military action and  
26 violence in which they are non-combatants. This lawsuit is by no means an attempt  
27 to interfere with the armed conflict in Israel and Palestine. This action seeks only to

1 compel a governmental agenc(ies) to initiate evacuation efforts and secure the safety  
2 and well-being of its citizens on equal terms to other non-combatants in the same  
3 war zone.

4 9. U.S. Citizens, including those who are plaintiffs, are being subjected to  
5 trauma, both physical and mental, and many have witnessed fellow family members  
6 or relatives being killed or seriously injured in the ongoing conflict in the Gaza Strip.

7 10. The State Department has advised outreach efforts on behalf of Plaintiffs that  
8 it would not engage in evacuation efforts, procedures, and or processes to safely  
9 evacuate United States citizens in Gaza. These statements—especially given the on-  
10 going bombardment of the area—constitute final agency action.

11 11. On October 11, 2023, the State Department declared that Gaza was unsafe and  
12 issued a travel advisory for U.S. citizens travelling there. Unfortunately, there were  
13 already U.S. citizens in Gaza who had no prior notice of or the ability to flee the  
14 violence.

15 12. There are far too many press reports to cite regarding the bombardment of  
16 civilian installations in Gaza and the inability of people to flee.

17 13. At the present moment, estimates of the civilian casualties in Gaza number in  
18 the ten thousands.

19 14. The Gaza Strip is surrounded by an ongoing naval blockade making escape  
20 by sea impossible. Borders to Egypt and Israel have been closed. Active fighting is  
21 ongoing and blocking routes from population centers to those border crossings.

22 15. U.S. Citizens have already been reported dead from aerial bombardment  
23 which is likely to precede a ground invasion by Israeli Defense Forces. Upon  
24 information and belief U.S. Citizens, such as the Plaintiffs, will be subject to assault,  
25 attack, bombardment, dismemberment, and death if they attempt to escape through  
26 any route out of population centers.  
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1 16. According to press reports, Israeli Defense forces plan to intensify attacks on  
2 Gaza’s population centers. Water, electricity, food and medical supplies have been  
3 prevented from entering the affected area. Hospitals are closed, damaged and unable  
4 to intake more patients as they are over capacity.

5 17. The Prime Minister of Israel has made statements indicating that a massive  
6 attack is coming to the densely populated Gaza strip.<sup>1</sup>

7 18. At least 12 other countries are engaged in active efforts to evacuate their  
8 citizens from the war zone:

9 **Australia** [https://www.reuters.com/world/australia-organise-flights-  
10 evacuate-citizens-israel-2023-10-11/](https://www.reuters.com/world/australia-organise-flights-evacuate-citizens-israel-2023-10-11/)

11 **Cyprus** [https://www.barrons.com/news/cyprus-offers-transit-for-foreign-  
12 evacuees-from-israel-6d474bc1](https://www.barrons.com/news/cyprus-offers-transit-for-foreign-evacuees-from-israel-6d474bc1)

13 **Denmark** [https://www.firstpost.com/world/denmark-airforce-to-evacuate-  
14 citizens-from-israel-palestine-13234762.html](https://www.firstpost.com/world/denmark-airforce-to-evacuate-citizens-from-israel-palestine-13234762.html)

15 **Mexico** [https://www.theyucatantimes.com/2023/10/mexico-evacuates-more-  
16 than-270-citizens-from-the-israeli-gaza-war/](https://www.theyucatantimes.com/2023/10/mexico-evacuates-more-than-270-citizens-from-the-israeli-gaza-war/)

17 **United Kingdom** <https://www.bbc.com/news/uk-67091170>

18 **Poland** [https://notesfrompoland.com/2023/10/09/first-military-flights-  
19 evacuating-poles-from-israel-arrive-in-warsaw/](https://notesfrompoland.com/2023/10/09/first-military-flights-evacuating-poles-from-israel-arrive-in-warsaw/)

20 **Kazakhstan** [https://astanatimes.com/2023/10/kazakh-nationals-return-home-from-israel/  
21](https://astanatimes.com/2023/10/kazakh-nationals-return-home-from-israel/)

22 **Italy** [https://www.aa.com.tr/en/middle-east/200-italian-citizens-stranded-in-  
23 israel-return-home/3014450#](https://www.aa.com.tr/en/middle-east/200-italian-citizens-stranded-in-israel-return-home/3014450#)

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24 <sup>1</sup> [https://www.msn.com/en-us/news/world/watch-live-benjamin-netanyahu-  
25 provides-update-on-israel-war-after-hamas-threatens-executions/ar-AA1hW60E](https://www.msn.com/en-us/news/world/watch-live-benjamin-netanyahu-provides-update-on-israel-war-after-hamas-threatens-executions/ar-AA1hW60E)

- 26 - 1:00 - “clear the villages”
- 27 - 1:12 – re “terrorists” – “working around the clock to eliminate them”
- 1:15 – “start a massive attack against the Hamas with forces has never seen before”
- 2:43 – “the images of Hamas, places in Gaza, is just the beginning. We have killed many terrorists and this is not going to stop. **Any place from where Hamas operates will turn into rubble.** This is already happening today, and it will continue happening even more so.”

1 **South Korea** <https://www.reuters.com/world/asia-pacific/flight-carrying-south-koreans-tel-aviv-arrives-home-2023-10-10/>

2 **Switzerland** <https://www.swissinfo.ch/eng/business/third-swiss-repatriation-flight-from-israel-arrives-in-zurich/48886930>

3 **Ukraine** [https://news.yahoo.com/first-200-ukrainians-evacuated-israel-144858098.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cub2Zm dGhlymVhdGVucG9pbmRzLmNvbS8&guce\\_referrer\\_sig=AQAAAM1Nbg a94onFpmJ2Zf5Dkzofync07uGHTlvH59VMJyx3KXrCtg4EckWsZ8USQH GKyaWO1kMctS0POes6pabGGxisAcuy0jLN6MhyY-QSX5 5HOLE- 2T2Fg Jd6gHupOKN5Dg8VaejZNymy97eeUBkF2WHoPDqF7- ik5s01WKpCLF](https://news.yahoo.com/first-200-ukrainians-evacuated-israel-144858098.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cub2Zm dGhlymVhdGVucG9pbmRzLmNvbS8&guce_referrer_sig=AQAAAM1Nbg a94onFpmJ2Zf5Dkzofync07uGHTlvH59VMJyx3KXrCtg4EckWsZ8USQH GKyaWO1kMctS0POes6pabGGxisAcuy0jLN6MhyY-QSX5 5HOLE- 2T2Fg Jd6gHupOKN5Dg8VaejZNymy97eeUBkF2WHoPDqF7- ik5s01WKpCLF)

4 **Canada** <https://www.reuters.com/world/americas/canada-planning-evacuate-canadians-israel-coming-days-foreign-minister-2023-10-10/>

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10 19. The U.S. Government, while denying its citizens trapped in Gaza *any*  
11 evacuation services, has offered humanitarian flights to U.S. Citizens out of Israel:  
12 [U.S. offers flights for Americans seeking to leave Israel amid war - Los Angeles](#)  
13 [Times \(latimes.com\)](#)

14 20. A partial list of instances since 1975 of when the U.S. has mobilized the  
15 military and disaster relief agencies to evacuate U.S. Citizens from active war zones  
16 or from similar dangerous situations during times of war/armed hostilities:

- 17 a. Vietnam, 1975  
18 b. Lebanon, 1976  
19 c. Iran, 1981  
20 d. Bosnia, 1992  
21 e. Kosovo, 1999  
22 f. Iraq War (Various, including during initial hostilities)  
23 g. Libya, 2011  
24 h. Egypt, 2011  
25 i. Syria, 2014  
26 j. Afghanistan, 2021  
27

1 21. Between 2001 and 2006, the United States conducted over 80 evacuations of  
2 U.S. citizens abroad. *See United States Government Accountability Office, GAO-07-*  
3 *893 U.S. Evacuations from Lebanon, at 3 (July 7, 2007).*

4 22. The U.S. has not evacuated a single U.S. citizen from Gaza since the  
5 commencement of hostilities on October 10, 2023.

6 23. Plaintiffs have attempted multiple times to flee Gaza through the Egyptian  
7 boarder at the Rafah border crossing, only to be turned away by the Egyptian  
8 authorities.

9 24. All three are trapped with no possibility of escape from the violence and  
10 carnage that is, and will continue, to ensue in Gaza.

11 25. Plaintiff Ameer Kaoud has reported that since the war started “no one has  
12 food, no one has water, innocent babies [are dying] around us, bombs are [dropped]  
13 every day, [and we] can’t sleep.” On at least on occasion, Plaintiff Ameer Kaoud  
14 reported, there was a “big bomb right next to us, in Khan Younis, it hit right next to  
15 the school where all the people are supposed to be sheltered at. Where is the safety?  
16 Where is the shelter? Where is anything?” He emphasized, “if we stay here, we  
17 might run out of food, might run out of water, we might get hit, we don’t know.  
18 We’re worried. **We’re trying to leave, we can’t leave.**”

19 26. Despite this, United States citizens who are Israeli are being evacuated by  
20 the United States, from the same region, for the same conflict.

21 27. The United States has influence over the state of Israel (which is commonly  
22 referred to as ‘the United States greatest ally’) and, therefore, over the Israeli  
23 Defense Forces. The United States also provides foreign aid to Israel which it can  
24 condition upon the safe return of its citizens.

25 28. The violence in Gaza is currently being perpetrated by Israel, and it would  
26 be clearly feasible for the United States to demand that Israel allow US Citizens in  
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1 Gaza to escape through the Israel-Palestine border, on boats, or in certain safe zones  
2 in Gaza designated by Israel.

3 29. Similarly, the United States has great influence over the Egyptian  
4 government and could easily ensure that the United States citizens in Gaza are able  
5 to flee through the Egyptian-Israeli border as the United States also provides  
6 tremendous financial support to it which, again, can be conditioned upon the safe  
7 return of its citizens.

8 30. The United States has not done, and does not plan to do, any of the above.  
9 What other purpose does foreign aid serve other than the advancement of American  
10 interests abroad? What higher interest does any government have than the safety  
11 and protection of its citizens?

12 **CLAIMS FOR RELIEF**  
13 **COUNT I: DENIAL OF EQUAL PROTECTION**  
14 **(5<sup>th</sup> Amendment and 42 U.S.C 1983)**

15 31. Plaintiffs reassert paragraphs 1-30 inclusive as if fully set forth herein.

16 32. Plaintiffs Esam Kaoud, Ameer Kaoud, and Nezam Kaoud are members of the  
17 protected class of Palestinian Americans. They are also members of the protected  
18 class of Muslim Americans.

19 33. They are similarly situated to other U.S. Citizens that have received  
20 evacuation services from the very same war zone in which they now find themselves  
21 trapped and with no means of escape.

22 34. They are being refused entry at the Egyptian border.

23 35. The United States is currently evacuating United States citizens of different  
24 ethnic and religious backgrounds from the same region.

25 36. They are also similarly situated to U.S. Citizens who, on numerous previous  
26 occasions listed above, were evacuated from other war zones and places of other  
27 similar human catastrophes.



1 37. The disparate treatment set forth above has impermissibly infringed upon the  
2 exercise of their fundamental rights to life, liberty and the pursuit of happiness  
3 protected by the United States Constitution.

4 38. The disparate treatment set forth above was not necessary to serve the only  
5 compelling governmental interest at stake here which is to protect the safety and  
6 well-being of its citizens.

7 39. Defendants Blinken and Austin are state actors acting under color of law in  
8 the performance of their official duties.

9 **COUNT II:**  
10 **DEFENSE AND STATE DEPARTMENTS' VIOLATIONS OF THE**  
11 **ADMINISTRATIVE PROCEDURES ACT, 5 U.S.C. 706(2)(A) ("APA")**  
12 **ARBITRARY AND CAPRICIOUS ACTION**

13 40. Plaintiffs incorporate and reallege paragraphs 1-39 inclusive as if fully set  
14 forth herein.

15 41. Pursuant to the APA, Plaintiffs are entitled to judicial review from this Court  
16 of the State Department's refusal to coordinate evacuation efforts, processes, and/or  
17 procedures of U.S. citizens from Gaza. Plaintiffs have suffered a legal wrong  
18 because of agency action or have been adversely affected or aggrieved by agency  
19 inaction.

20 42. Pursuant to the APA 5 U.S.C. 704, Plaintiffs are entitled to judicial review by  
21 this Court the Department of State's final agency action to not evacuate United States  
22 citizens from Gaza because Plaintiffs have no other adequate remedy at law.

23 43. Defendants are in violation of the APA, 5 U.S.C. 706 because Defendants  
24 unlawfully withheld and/or unreasonably delayed agency action to which Plaintiffs  
25 are entitled, the Defendants have taken action to which the Plaintiffs are entitled, the  
26 Defendants have taken action that is arbitrary and capricious and an abuse of  
27 discretion and not in accordance with law, and the Defendants have failed to provide  
through direct military assistance or contracting with commercial entities the

1 necessary equipment, ships, airplanes, and other items that are available to  
2 Defendants to insure the security, safety, and well-being of U.S. citizens.

3 44. As a result of Defendants' violations of the APA, the Plaintiffs have been  
4 deprived of a swift, accommodating, and reasonable evacuation from Gaza,  
5 Palestine. Plaintiffs continue to suffer mental and physical trauma and hardship that  
6 is a result of waiting for the Defendants to protect them and evacuate them safely.

7 **INJUNCTIVE RELIEF**

8 45. Plaintiffs incorporate and reallege paragraphs 1-44 inclusive as if fully set  
9 forth herein.

10 46. The State Department's highest priority is to protect U.S. citizens abroad in  
11 foreign nations.

12 47. The State Department failed to protect U.S. citizen Plaintiffs when it failed  
13 and or refused to include them in its existing plans to evacuate other classes from  
14 the same war region.

15 48. The State Department failed to provide adequate notice to travelling U.S.  
16 citizens so that they could have left in advance of the escalation of hostilities.

17 49. The State Department and Defense Department provided NO substantive  
18 means for Plaintiff U.S. citizens to leave the war zone or even communicate about  
19 their well-being.

20 50. Thousands of similarly-situated Americans remain in the direct line of fire of  
21 a heavily armed force with the stated purpose of attacking combatants whether or  
22 not they are located in proximity to civilian American citizens.

23 51. Defendants' inaction in failing to evacuate U.S. Citizens is the very definition  
24 of arbitrary and capricious, especially in light of their previous efforts under similar  
25 circumstances to keep travelling U.S. Citizens out of harm's way.

26 52. Absent an order from this Court compelling the Defendants to act and perform  
27 their sworn duties, their lives will remain in great peril.

1 53. That unless immediately restrained by this Court from their refusal to act, the  
2 Defendants' failure to protect U.S. citizens where it has the ability to do so, Plaintiffs  
3 will suffer great and irreparable harm, including the loss of life. Plaintiffs have no  
4 adequate remedy at law and seek this Court's protection.

5 **IRREPARABLE HARM**

6 54. The Defendants' conduct is causing irreparable harm and injury to vulnerable  
7 U.S. citizens who are now under constant bombardment by modern weapons of war  
8 that do not discriminate between civilians and combatants. There is no realistic  
9 means for United States Citizens to safely leave Gaza, Palestine without the  
10 Defendants' support and assistance.

11 **WHEREFORE**, Plaintiffs request that injunctive relief be granted and  
12 judgment entered in favor of Plaintiffs and against Defendants, requiring that:

13 A. The Defendants use all resources at their disposal that are necessary and  
14 available, including but not limited to deployment of military ships, vessels  
15 and airplanes and/or contracting with private commercial ship liners and  
16 airline carriers to evacuate U.S. citizens from Gaza and return them safely to  
17 the United States or another nation outside of the warzone in the most  
18 expeditious manner available; and

19 B. Declare the Defendants' inaction in failing to evacuate U.S. citizens from  
20 Gaza as arbitrary and capricious and violative of the statutory and  
21 constitutional provisions set forth herein.

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Respectfully submitted,

By: /s/ SARA B. KOHGADAI

Sara B. Kohgadari [REDACTED]

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Attorneys for Plaintiffs

Dated: November 7, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused the foregoing documents and any attachments to be filed with the Clerk of Courts using the electronic filing system, which will serve notice to all parties of record.

Respectfully submitted,

/s/ SARA B. KOHGADAI

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Dated: November 7, 2023