

United States Senate

WASHINGTON, DC 20510

January 26, 2024

The Honorable Antony J. Blinken
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Secretary Blinken:

We seek more information about this administration's decision to repeatedly use emergency authorities to circumvent congressional review of arms transfers to Israel.

We shared the world's horror at Hamas's terrorist attacks on October 7, in which Hamas killed 1,200 Israelis and foreign nationals,¹ committed gross violations of human rights including using sexual violence as a weapon of war,² and took approximately 240 people hostage.³ However, we are also deeply disturbed that Israel's response to this attack included indiscriminate bombing⁴ and has killed over 22,000 Palestinians, the majority of whom have been civilians,⁵ including thousands of children.⁶ It is essential for Congress to be able to conduct oversight of these arms transfers and determine whether they are consistent with humanitarian principles and U.S. law, and whether they advance or harm U.S. national security.

The Arms Export Control Act⁷ (AECA) requires the U.S. Department of State (State Department), on behalf of the president, to notify Congress of major arms sales, enhancements, and upgrades⁸ as part of a broader policy to ensure all sales "are consistent with the foreign

¹ New York Times, "What We Know About the Death Toll in Israel From the Hamas-Led Attacks," Aaron Boxerman, November 12, 2023, <https://www.nytimes.com/2023/11/12/world/middleeast/israel-death-toll-hamas-attack.html>.

² New York Times, "Oct. 7 Assaults, Including Sexual Violence, Could be Crimes Against Humanity, 2 U.N. Experts Say," Taylia Miinsberg, January 8, 2024, <https://www.nytimes.com/2024/01/08/world/middleeast/hamas-sexual-violence-un-israel.html>.

³ New York Times, "What We Know About the Death Toll in Israel From the Hamas-Led Attacks," Aaron Boxerman, November 12, 2023, <https://www.nytimes.com/2023/11/12/world/middleeast/israel-death-toll-hamas-attack.html>.

⁴ PBS News Hour, "Biden takes a tougher stance on Israel's 'indiscriminate bombing' of Gaza," Colleen Long and Aamer Madhani, December 12, 2023, <https://www.pbs.org/newshour/world/biden-takes-a-tougher-stance-on-israels-indiscriminate-bombing-of-gaza>.

⁵ CNBC, "Israeli drone kills Hamas deputy leader in Beirut; Gaza death toll passes 22,000," January 2, 2024, <https://www.cnbc.com/2024/01/02/fighting-between-hamas-and-israel-rages-on-palestinian-death-toll-passes-22000.html>.

⁶ New York Times, "So Many Child Deaths in Gaza, and for What?" Nicholas Kristof, December 6, 2023, <https://www.nytimes.com/2023/12/06/opinion/gaza-israel-deaths.html>.

⁷ Arms Export Control Act (P.L. 90-629).

policy interests of the United States.”⁹ It has also been a longstanding practice of the State Department to provide the Senate Foreign Relations Committee and House Foreign Affairs Committee with informal notifications of prospective sales.¹⁰ Both informal and formal notifications are essential for congressional oversight and the State Department “generally will not formally notify an arms transfer if a member of Congress raises significant concerns by placing a hold during the informal notification stage.”¹¹ This review process may only be waived if Congress receives notification that “an emergency exists” for the sale or export license to be approved immediately.¹²

It is highly unusual for the president to bypass congressional oversight through an emergency declaration. In fact, since the AECA was passed into law, an emergency declaration authority has only been used 18 times in nearly 50 years.¹³ Yet in a single month this administration used the authority twice: first to approve the sale of nearly 14,000 rounds of 120mm tank ammunition worth more than \$106 million¹⁴ and then to approve the sale of fuzes, primers, and charges worth \$147.5 million that allow for the use of 155mm shells.¹⁵ We are also troubled by the decision to provide equipment for 155mm shells, which over 30 U.S.-based civil society organizations warned poses “a grave risk to civilians”¹⁶ and are “inherently indiscriminate”¹⁷ when used in densely populated areas like Gaza.

In addition to the civilian harm risks inherent to the nature of these weapons, we are concerned that the weapons the U.S. provides could be used in a manner that violates of U.S. policy and international law. A *Reuters* investigation linked 120mm shells to “an Israeli tank crew [that]

⁸ Congressional Research Service, “Arms Sales: Congressional Review Process,” Paul Kerr, January 4, 2024, p. 2, <https://sgp.fas.org/crs/weapons/RL31675.pdf>.

⁹ Arms Export Control Act (P.L. 90-629), as amended through P.L. 117-263, p. 2., <https://www.govinfo.gov/content/pkg/COMPS-1061/pdf/COMPS-1061.pdf>.

¹⁰ Congressional Research Service, “Arms Sales: Congressional Review Process,” Paul Kerr, January 4, 2024, p. 1, <https://sgp.fas.org/crs/weapons/RL31675.pdf>.

¹¹ State Department Office of Inspector General, “Review of the Department of State’s Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates,” August 10, 2020, p. 1, https://www.stateoig.gov/uploads/report/report_pdf_file/isp-i-20-19_7.pdf.

¹² Arms Export Control Act (P.L. 90-629), Sections 36(b)(1), 36(c)(2), and 36(d)(2).

¹³ State Department Office of Inspector General, “Review of the Department of State’s Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates,” August 10, 2020, p. 20-21, https://www.stateoig.gov/uploads/report/report_pdf_file/isp-i-20-19_7.pdf; Forum on the Arms Trade, “Examples of U.S. ‘Emergency’ Arms Sales,” <https://www.forumarmstrade.org/emergencies.html>; Congressional Research Service, “Arms Sales in the Middle East: Trends and Analytical Perspectives for U.S. Policy,” Clayton Thomas, November 23, 2020, pp. 52-60, <https://crsreports.congress.gov/product/pdf/R/R44984/7>; Congressional Research Service, “Arms Sales: Congressional Review Process,” Paul Kerr, January 4, 2024, p. 7, <https://sgp.fas.org/crs/weapons/RL31675.pdf>.

¹⁴ Defense Security Cooperation Agency, “Israel – M8301A1 120MM Tank Cartridges,” December 9, 2023, <https://www.dsca.mil/press-media/major-arms-sales/israel-m830a1-120mm-tank-cartridges>.

¹⁵ Defense Security Cooperation Agency, “Israel – 155mm artillery ammunition,” December 29, 2023, <https://www.dsca.mil/press-media/major-arms-sales/israel-155mm-artillery-ammunition>.

¹⁶ Washington Post, “Pentagon urged to halt plans for giving Israel artillery supplies,” Missy Ryan, November 13, 2023, <https://www.washingtonpost.com/national-security/2023/11/13/israel-us-155mm-artillery/>; reliefweb, “Joint open letter on transfer of 155mm artillery shells to Israel,” November 13, 2023, <https://reliefweb.int/report/occupied-palestinian-territory/joint-open-letter-transfer-155mm-artillery-shells-israel>.

¹⁷ reliefweb, “Joint open letter on transfer of 155mm artillery shells to Israel,” November 13, 2023, <https://reliefweb.int/report/occupied-palestinian-territory/joint-open-letter-transfer-155mm-artillery-shells-israel>.

killed Reuters journalist Issam Abdallah and wounded six reporters” in Lebanon.¹⁸ An independent investigation by Amnesty International concluded “the group was visibly identifiable as journalists and that the Israeli military knew or should have known that they were civilians yet attacked them anyway.”¹⁹ Human Rights Watch came to the same conclusion, finding the strikes were “deliberate attacks on civilians.”²⁰

The “Leahy Laws”²¹ set a clear standard that the U.S. should not provide assistance to foreign security force units if there are credible allegations that a unit has committed a “gross violation of human rights.”²² In addition to those provisions, the Biden administration released a revised conventional arms transfer policy in February 2023 that “makes it clear that under this administration, the United States will utilize a holistic approach to conventional arms transfers and adherence to our agreements on the use of U.S. origin defense equipment by our Allies and partners, compliance with the law of armed conflict, and respect for human rights.”²³ This includes assessing whether it is “more likely than not that the arms to be transferred will be used by the recipient to commit, facilitate the recipients’ commission of, or to aggravate risks the recipient will commit”²⁴ serious violations of international humanitarian or human rights law, including “attacks intentionally directed against civilian objects or civilians protected as such.”²⁵ That assessment shall include “consideration of the available information and relevant circumstances, including the proposed recipient’s current and past actions.”²⁶ Congress and the American public deserve thorough answers on how this policy was applied for these two emergency transfers.

Use of a national emergency waiver does not exempt the U.S. government from assessing whether arms sales are consistent with these policies. The State Department Inspector General previously found that the State Department’s emergency certification to provide arms to Saudi Arabia and the United Arab Emirates “did not fully assess risks and implement mitigation measures to reduce civilian casualties and legal concerns.”²⁷ The Department of Defense also issued a new civilian harm mitigation and response instruction in December establishing our

¹⁸ Reuters, “US skips congressional review to approve emergency sale of tank shells to Israel,” Humeyra Pamuk and Mike Stone, December 9, 2023, <https://www.reuters.com/world/us-oks-potential-sale-tank-cartridges-israel-1065-mln-2023-12-09/>.

¹⁹ Amnesty International, “Lebanon: Deadly Israeli attack on journalists must be investigated as a war crime,” December 7, 2023, <https://www.amnesty.org/en/latest/news/2023/12/lebanon-deadly-israeli-attack-on-journalists-must-be-investigated-as-a-war-crime/>.

²⁰ Human Rights Watch, “Israel: Strikes on Journalists in Lebanon Apparently Deliberate,” December 7, 2023, <https://www.hrw.org/news/2023/12/07/israel-strikes-journalists-lebanon-apparently-deliberate>.

²¹ 22 U.S.C. § 2378d and 10 U.S.C. § 362.

²² Congressional Research Service, “Global Human Rights: Security Forces Vetting (“Leahy Laws”),” Michael A. Weber, August 5, 2022, p. 1, <https://crsreports.congress.gov/product/pdf/IF/IF10575>.

²³ U.S. Department of State, “The U.S. Conventional Arms Transfer Policy,” Fact Sheet, February 23, 2023, <https://www.state.gov/the-u-s-conventional-arms-transfer-policy/>.

²⁴ The White House, “Memorandum on United States Conventional Arms Transfer Policy,” February 23, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ State Department Office of Inspector General, “Review of the Department of State’s Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates,” August 10, 2020, p. 11, https://www.stateoig.gov/uploads/report/report_pdf_file/isp-i-20-19_7.pdf.

enduring responsibilities to protect civilians, including the director of the Defense Security and Cooperation Agency’s duty to identify “arms transfers and activities within U.S. security cooperation and security assistance programs, including the transfer or sale of defense articles and services, that may warrant providing ancillary capabilities to further mitigate civilian harm.”²⁸

We appreciate that your administration has repeatedly urged the Israeli government to take additional steps to reduce civilian casualties.²⁹ However, we are concerned that these transfers and the administration’s evasion of congressional oversight may be inconsistent with broader U.S. foreign policy goals. As the conventional arms transfer policy notes, “the legitimacy of and public support for arms transfers among the populations of both the United States and recipient nations depends on the protection of civilians from harm, and the United States distinguishes itself from other potential sources of arms transfers by elevating the importance of protecting civilians.”³⁰ In order to assess whether these transfers are consistent with international humanitarian law, we request answers to the following questions by February 9, 2024:


1. Please provide the U.S. government’s rationales in determining that an emergency existed to necessitate both immediate transfers to Israel.
2. How was the conventional arms transfer policy, including the “more likely than not” standard, applied for each of the emergency transfers to Israel? Please provide any assessments. If no assessments were undertaken or provided, please explain why.
3. For what purposes does the U.S. government believe Israel needs and will use 155mm shells in their military campaign?
4. What, if any, mitigation measures or conditions were put into place to reduce civilian casualties as conditions for these arms transfers?
5. Will the U.S. government provide Israeli forces any ancillary capabilities to further mitigate civilian harm?
6. Has the United States conducted any Leahy Law vetting of Israeli forces since October 7?
 - a. Were there any findings of credible information that forces committed gross violations of human rights?


²⁸ Department of Defense, “DoD Instruction 3000.17 Civilian Harm Mitigation and Response,” December 21, 2023, p. 10, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/300017p.pdf>.

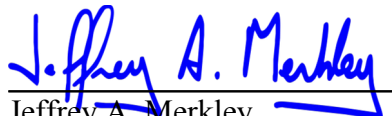
²⁹ New York Times, “U.S. Officials Outline Steps to Israel to Reduce Civilian Casualties,” Adam Entous, Eric Schmitt, and Julian E. Barnes, November 4, 2023, <https://www.nytimes.com/2023/11/04/us/politics/israel-gaza-deaths-bombs.html>.

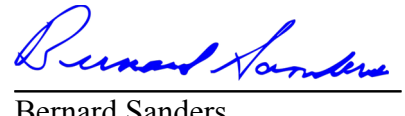
³⁰ The White House, “Memorandum on United States Conventional Arms Transfer Policy,” February 23, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

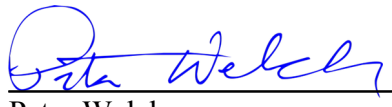
Sincerely,



Elizabeth Warren
United States Senator

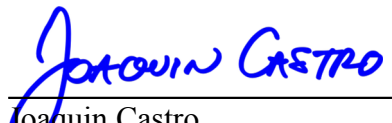

James P. McGovern
Member of Congress

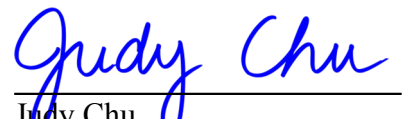

Jeffrey A. Merkley
United States Senator

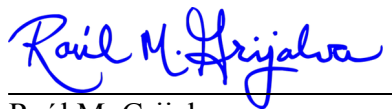

Bernard Sanders
United States Senator

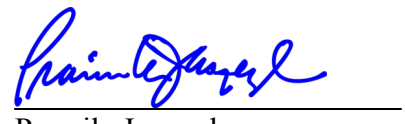

Peter Welch
United States Senator


Earl Blumenauer
Member of Congress


Joaquin Castro
Member of Congress

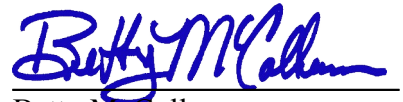

Judy Chu
Member of Congress


Raúl M. Grijalva
Member of Congress


Pramila Jayapal
Member of Congress



Barbara Lee
Member of Congress



Betty McCollum
Member of Congress



Eleanor Holmes Norton
Member of Congress



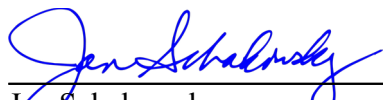
Chellie Pingree
Member of Congress



Mark Pocan
Member of Congress



Delia C. Ramirez
Member of Congress



Jan Schakowsky
Member of Congress



JM Tokuda
Member of Congress



Maxine Waters
Member of Congress