

# United States Senate

WASHINGTON, DC 20510

February 23, 2024

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear President Biden,

We understand that your Administration is planning to submit to the Congress a notice for another major transfer of U.S. weapons, including bombs, to the Netanyahu government for use in the war in Gaza. We write to express our concern about this proposed transfer in light of the current humanitarian disaster in Gaza and the developing crisis in Rafah. As a result, we urge you to provide Congress with certain commitments and assurances from the Netanyahu government before such a transfer could take place and ask that Congress receive additional information needed to effectively review such a request as a part of our oversight duties.

Like you, we have repeatedly emphasized our support for Israel's right, indeed duty, to defend itself in the aftermath of the horrific Hamas terror attack of October 7th, when about 1,200 people were murdered and more than 240 individuals were taken hostage. There must be no more October 7th's and the remaining hostages must be returned safely home. Furthermore, we continue to approve of the U.S. providing Israel with defensive systems, which is why we have supported earlier requests made by the Administration to replenish the Iron Dome and for other air defense systems. We have also previously stated, as have you, that how the war in Gaza is conducted matters for both moral and strategic reasons. A just war must nevertheless be waged justly and Hamas's despicable tactic of operating from amongst the civilian Palestinian population does not absolve Israeli forces of the legal duty to operate in a manner that minimizes civilian harm.

You have previously stated that the Netanyahu government's military campaign in Gaza has been "over the top" and has included "indiscriminate" bombing. More than 29,000 Palestinians have been killed, over two thirds of them women and children — including an untold number of deaths from bombs and other weapons provided by U.S. military assistance to Israel. Tens of thousands more Palestinian civilians have been wounded, over 1.7 million displaced, and over 400,000 people are on the verge of starvation, with the entire population at crisis levels of food insecurity. All major hospitals in Gaza have been damaged and most are no longer functioning. Palestinian civilians are undergoing surgery — including amputations and cesarean sections — without anesthesia, potable water is scarce and diseases are spreading as sewage is pouring into the streets. This devastation has led to a humanitarian disaster in Gaza at a once

unimaginable scale, and has been exacerbated by the restrictions placed on the provision of aid and the dangers of delivering it.

Under these circumstances, the Administration and Congress must scrutinize the future transfer of U.S.-taxpayer financed weapons to the Netanyahu coalition with extreme caution and careful oversight. It is our duty to ensure that such transfers do not make an already catastrophic situation even worse. Accordingly, if the Secretary of State plans to submit the notice that is reportedly being prepared by the Administration, we urge you to seek the following four commitments from the Netanyahu government to ensure that American aid does not contribute more to the disaster that is unfolding and to push the Netanyahu government to respect the requests you have made about the conduct of this war and the need for aid to reach the people in Gaza. Furthermore, it remains important that Congress has all the facts needed to assess the appropriateness of this transfer before any action is taken.

**1. No Major Military Operation in Rafah:** The population of Rafah has grown fivefold in five months as more than one million Palestinians from other parts of Gaza were told to flee there for their safety. Any major military operation in Gaza would further displace Palestinians and add significantly to the already staggering civilian death toll. As we witness the current humanitarian disaster in Gaza, we have no confidence that the Netanyahu government can implement a plan with adequate civilian protections. It is imperative that the Administration holds firm and use all the tools at its disposal to stop any major military operation. Rafah has been one of the few entry points of aid into Gaza, and if there is further widespread destruction, the current disaster will only get worse.

**2. Implement Additional Measures for the Immediate Delivery of Humanitarian Relief:** Gaza recently crossed the grisly threshold from children being “on the verge of starvation” to children having died of starvation. This cannot stand. Cindy McCain, the Director of The World Food Program, warned recently that “famine is imminent.” Much more international aid as well as many more commercial trucks with food for grocery stores and other life-sustaining essentials must be allowed to enter Gaza. Aid workers must be able to distribute supplies without being killed. Last week Ambassador Satterfield reported that Israeli strikes had recently killed police officers who were escorting United Nations aid convoys. He has also repeatedly confirmed — in spite of the Netanyahu government’s assertions — that he has received “no allegations, evidence or reports of incidents of Hamas diversion or theft of U.S. or other assistance or fuel from UN delivered assistance from any of our partners or from the Government of Israel since humanitarian assistance was resumed in Gaza on October 21st.”

On February 2nd, twenty-five senators wrote to you urging you to insist that the Netanyahu government take five specific steps to address the humanitarian crisis. Those measures must be implemented. In addition, this government held up tons of flour for starving people, paid for by the U.S., for over a month at the Port of Ashdod and only agreed to release it today after constant engagement by the Administration. Even now there is a question of whether the flour can reach people in need because, in the aftermath of relief convoys being hit during IDF operations, the World Food Program announced on February 20th that it was suspending relief efforts in northern Gaza. This cannot continue.

**3. Prioritize the Return of the Hostages:** We know that from the time they were kidnapped by Hamas, you have prioritized the safe return of the hostages, including American citizens. We also know that, as so many of the hostage families themselves have remarked, Prime Minister Netanyahu has not adequately done so. At this point, it has become clear that Prime Minister Netanyahu has one overriding objective — keeping himself and his extremist right-wing government in power. It is essential that he change course and that his government makes the safe return of the hostages their top objective, even if that requires a cessation of hostilities.

**4. Application of National Security Memorandum-20:** We applaud you for the important step you took in issuing National Security Memorandum-20 which, for the first time, requires that every recipient of U.S. security assistance promise to use that assistance in accordance with international humanitarian law and, as applicable, international law. It also mandates, for the first time, that every such recipient promise to facilitate and not arbitrarily restrict the delivery of U.S. supported humanitarian aid into conflict zones where U.S. weapons are being used. While the NSM-20 gives the Administration until March 24th to secure those promises from countries engaged in conflict, including the Netanyahu government, there is nothing that prevents you from obtaining them earlier, and we believe those commitments must be made before any more taxpayer-funded assistance is provided to the Netanyahu coalition.

American taxpayers deserve to have confidence that their funds are being used in ways that align with our values and our interests. We believe it would be wrong and a strategic mistake to send the Netanyahu government any additional military assistance without achieving the objectives stated above, and without firmly holding Netanyahu accountable to these commitments, many of which you yourself have expressed so well.

In addition to obtaining the four commitments from the Netanyahu government outlined above, we ask that you direct your Administration to provide the Senate with certain information regarding its analysis of how the proposed arms transfer meets the requirements of Section 4 of the Conventional Arms Transfer Policy and an explanation of why the Administration has not invoked the Humanitarian Aid Corridor Act to secure the safe passage of humanitarian assistance to civilians in Gaza.

**Analysis of the Conventional Arms Transfer (CAT) Policy:** Section 4 of the Conventional Arms Transfer Policy, entitled “Arms Transfers and Human Rights” prohibits the transfer of U.S. weapons if the U.S. “assesses that it is more likely than not that the arms to be transferred will be used by the recipient country to commit...serious violations of international humanitarian law or human rights law.” The directive requires that the assessment include consideration of “credible reports that the recipient committed any of the above violations.” We ask that you direct the State Department and any other relevant agencies to provide us with any “credible reports” that were reviewed in reaching its determination that the Netanyahu government meets the Section 4 requirements for the proposed arms transfer and the Administration’s assessment and analysis of such reports.

**Application of the “Humanitarian Aid Corridor Act”:** We respectfully request that you direct the State Department and any other relevant agencies to provide us with a detailed explanation of how they have reached the determination that the Netanyahu government has not restricted,

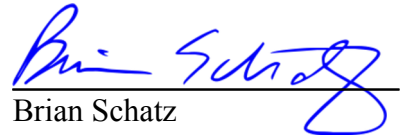
directly or indirectly, the transport of delivery of U.S. humanitarian assistance with respect to the requirements under the Humanitarian Corridor Act, Section 620I(C) of the Foreign Assistance Act.

Mr. President, in conclusion, we have joined you in expressing our full support for Israel's legitimate right to self-defense while also expressing serious concerns about the manner in which the Netanyahu government is conducting its operations and restricting delivery of humanitarian aid in Gaza. We fully support requests to help replenish Iron Dome and support other defensive systems but given the unacceptable level of death, destruction and devastation in Gaza, we remain extremely concerned about how the Netanyahu government is choosing to prosecute this war and urge you to secure these commitments from Prime Minister Netanyahu and hold him firmly accountable to them. Congress must also have the information we are requesting here to better determine how a transfer, like the one reportedly proposed, comports with U.S. laws and policies and serves the strategic interests of the United States.

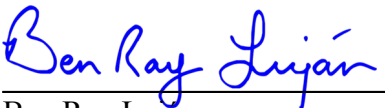
Sincerely,



Chris Van Hollen  
United States Senator



Brian Schatz  
United States Senator



Ben Ray Lujan  
United States Senator



Martin Heinrich  
United States Senator