

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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November 15, 2023

The Honorable Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Garland,

On October 7, 2023, the designated foreign terrorist organization Hamas committed a heinous assault on innocent civilians in Israel, murdering 1,200 people and killing the most Jewish people in a single day since the Holocaust. This terrorist attack was not just on the people of Israel, but on the world: over 200 of those murdered by Hamas were nationals of at least 30 different countries.¹ The brutality of these murders has made it difficult to confirm exact numbers and identities of the victims. Even now, forensic pathologists in Israel are struggling to identify charred and mutilated human remains, unable to find DNA matches because bodies were so badly burned, or because Hamas murdered entire families.² Further complicating identifications are the bodies Hamas booby trapped with grenades in hopes of claiming more innocent victims.³

While these investigations remain ongoing, the Department of State has confirmed that Hamas terrorists murdered at least 32 Americans in these brutal attacks.⁴ We write to urge you to use all necessary Department of Justice resources to investigate and prosecute these murders pursuant to the extraterritorial jurisdiction provisions of 18 U.S.C. § 2332 (a), which grant the

¹ AFP and TOI staff, *200 foreigners, dual nationals cut down in Hamas assault. Here's where they were from*, TIMES OF ISRAEL (Oct. 27, 2023), <https://www.timesofisrael.com/200-foreigners-dual-nationals-cut-down-in-hamas-assault-heres-where-they-were-from/>.

² Kevin Sieff, *Israel's missing: Forensic workers struggle to put names to the dead*, WASH. POST (Oct. 31, 2023), <https://www.washingtonpost.com/world/2023/10/31/israel-attack-victims-forensic-identification/>.

³ *Id.*

⁴ *Department Press Briefing – October 19, 2023*, U.S. DEP'T OF STATE (Oct. 19, 2023), <https://www.state.gov/briefings/department-press-briefing-october-19-2023/>; Joanna Slater, *et. al.*, *At least 32 Americans were killed in Israel. Here's what we know so far.*, WASH. POST (Oct. 24, 2023), <https://www.washingtonpost.com/world/2023/10/11/americans-killed-israel-names-victims/>.

United States government authority to prosecute anyone who “kills a national of the United States while such national is outside the United States.”

Under 18 U.S.C. § 2332, the Department of Justice may prosecute terrorists who kill Americans overseas when that killing is murder, defined as “the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.”⁵

Based on publicly available facts, the October 7 murders plainly qualify as the “unlawful killing of a human being with malice aforethought” by Hamas terrorists. For example:

- Hamas terrorists shot Dr. Hayim Katsman, a dual U.S.-Israeli citizen committed to peace between Israelis and Palestinians, who was hiding in a closet with his neighbor, Avital Alajem, when Hamas terrorists overran his kibbutz.⁶ According to Ms. Alajem, Hamas bombed the closet door and shot Dr. Katsman before forcing her to come with them to try to lure others out of their homes.⁷
- Hamas terrorists killed Adrienne Neta, a nurse and dual U.S.-Israeli citizen, after invading her home of Kibbutz Be-eri, a place filled “with peace-loving people who were constantly engaging in a dialog with the other side.”⁸ Ms. Neta was on the phone with her son in California when the Kibbutz fell under attack.⁹ Her son urged her to get to her safe room and was on the phone with her when he heard “a terrorist barge into the house, and there was shooting and screaming.”¹⁰ He heard his mother scream back at the shooter in Arabic and then the line went dead.¹¹ Days later, her children learned that Hamas terrorists had killed her.¹²
- Hamas terrorists shot and killed U.S.-Israeli citizen Deborah Matias and her husband Shlomi as they were shielding their 16-year-old dual U.S.-Israeli citizen son, Rotem, at their home in Kibbutz Holit.¹³ Rotem was shot in the abdomen and was guided by his

⁵ 18 U.S. Code § 1111(a)

⁶ Slater *supra* note 4.

⁷ Anderson Cooper 360, Woman abducted by terrorists recounts harrowing experience, CNN (Oct. 10, 2023), <https://www.cnn.com/videos/world/2023/10/10/avital-alajem-israel-abducted-children-ac360-hnk-vpx.cnn>.

⁸ Jerusalem Post Staff, *WATCH: 'Our mother told us that she heard shouting in Arabic and shooting'*, JERUSALEM POST (Oct. 24, 2023), <https://www.jpost.com/arab-israeli-conflict/article-769853>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Frances Vinall & Kelly Kasulis Choy, *He listened, helpless, as Hamas closed in on his family: 'They came to kill'*, WASH. POST (Oct. 10, 2023), <https://www.washingtonpost.com/world/2023/10/10/israel-hamas-ilan-troen-brandeis-daughter/>.

family to care for his injuries and hide while the siege continued.¹⁴ As Rotem hid, the terrorists returned and set fire to his house and the surrounding houses in an effort to lure any surviving occupants out.¹⁵ Rotem's grandfather said of Hamas "These people came very well-rehearsed, they knew exactly what they were going to do...And they came to kill. They returned several times to ensure that they had succeeded."¹⁶ While Rotem survived, his parents' bodies were charred beyond recognition.¹⁷

In addition, 18 U.S.C. § 2332(b) grants the United States authority to prosecute those outside the United States who engage in a conspiracy by two or more persons to murder a national of the United States when "one or more of such persons do any overt act to effect the object of the conspiracy." Those involved in the financing, planning, and execution of the brutal events of October 7 plainly committed such overt acts in furtherance of a conspiracy to murder Americans and other civilians in Southern Israel.

Finally, the prosecution of any crime under 18 U.S.C. § 2332 requires you or your designee to certify that "in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population."¹⁸ In this case, recovered Hamas planning documents directed Hamas terrorists to "collect hostages," and "kill as many people as possible," and included plans to target civilian sites like supermarkets, schools and medical offices.¹⁹ Interrogations of captured Hamas operatives further reveal their instructions to torture, kidnap, and kill civilians.²⁰ Furthermore, a Hamas official justified the October 7 attack by saying, "We will repeat the October 7 attack time and again until Israel is annihilated" – clearly showing that the goal of these attacks was to coerce, intimidate, and retaliate against the government and citizens of Israel.²¹

There is a verse in the Torah that is wholly applicable here: *tzedek tzedek tirdof* – justice, justice shall you pursue. Nothing we can do will ever bring these Americans back. There is nothing we can do to take away the deep trauma and pain their families suffer. But in the pursuit of justice, we can honor their memories.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 18 U.S.C. § 2332(d).

¹⁹ Times of Israel Staff, *In coded doc, Hamas instructed terrorists to kill civilians, take captives – report*, TIMES OF ISRAEL (Oct 15, 2023), <https://www.timesofisrael.com/in-coded-doc-hamas-instructed-terrorists-to-kill-civilians-take-captives-report/>.

²⁰ Times of Israel Staff, *Kill, behead, rape: Interrogated Hamas members detail atrocities against civilians*, TIMES OF ISRAEL (Oct 24, 2023), <https://www.timesofisrael.com/kill-behead-rape-interrogated-hamas-members-detail-atrocities-against-civilians/>.

²¹ Emma Soteriou, *We will repeat the October 7 attack time and again until Israel is annihilated, says Hamas official Ghazi Hamad*, LBC (Nov. 1, 2023), <https://www.lbc.co.uk/news/hamas-october-7-attack-repeat-israel-annihilated-ghazi-hamad/>.

Accordingly, we urge you to work as swiftly as possible to use all necessary resources to investigate and prosecute these heinous and brutal crimes.

Sincerely,



Jerrold Nadler
Ranking Member



Zoe Lofgren
Member of Congress



Sheila Jackson Lee
Member of Congress



Adam B. Schiff
Member of Congress



Eric Swalwell
Member of Congress



Ted W. Lieu
Member of Congress



Deborah K. Ross
Member of Congress