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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DEFENSE FOR CHILDREN
INTERNATIONAL – PALESTINE; AL-
HAQ; AHMED ABU ARTEMA;
MOHAMMED AHMED ABU ROKBEH;
MOHAMMAD HERZALLAH; A.N.;
LAILA ELHADDAD; WAEIL ELBHASSI;
BASIM ELKARRA; and DR. OMAR EL-
NAJJAR

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., *President of the
United States*, ANTONY J. BLINKEN,
Secretary of State, LLOYD JAMES
AUSTIN III, *Secretary of Defense*, in their
official capacities,

Defendants.

Case No.: 23-cv-5829

**MOTION FOR ADMINISTRATIVE
RELIEF TO PRESENT LIVE
TESTIMONY DURING HEARING ON
PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: January 26, 2024, at 9:00 am

1 Plaintiffs respectfully request permission from this Court, pursuant to Civil Local Rules 7-11
2 and 7-6, to present live testimony at the hearing scheduled for January 26, 2024, regarding their
3 Preliminary Injunction Motion seeking relief on their claims that Defendants have failed to prevent
4 and are complicit in Israel's genocide against the Palestinian people in Gaza.¹ The already dire
5 conditions in Gaza are rapidly deteriorating, with the irreparable harms caused by Defendants' actions
6 in support of Israel's assault on Gaza quickly deepening. Plaintiffs seek to testify to provide the Court
7 with the latest facts on the harms that they have faced since the filing of their Reply Brief in Support
8 of their Preliminary Injunction Motion on December 22, 2023 – over a month prior to the hearing
9 scheduled for January 26, 2024. Plaintiffs also seek to present live testimony on the significant public
10 interest in a preliminary injunction, an issue that Defendants have contested.
11

12 District courts in this circuit commonly choose to conduct evidentiary hearings on preliminary
13 injunction motions. *See, e.g., Porretti v. Dzurenda*, 11 F.4th 1037, 1045 (9th Cir. 2021) (upholding
14 preliminary injunction issued by district court after evidentiary hearings, where court heard live
15 testimony from medical experts); *Revelry Grp. LLC v. Jobe*, No. 1:22-CV-00510-DCN, 2023 WL
16 2456287, at *4 (D. Idaho Mar. 10, 2023) (granting, with limitations, plaintiff's request for evidentiary
17 hearing on preliminary injunction motion); *Zepeda Rivas v. Jennings*, 504 F. Supp. 3d 1060, 1066
18 (N.D. Cal. 2020) (after evidentiary hearing, finding that detainees were entitled to second preliminary
19 injunction); *Denbicare Inc. v. Toys "R" Us Inc.*, No. C 87 5746 TEH, 1988 WL 1091937, at *1 (N.D.
20 Cal. Jan. 13, 1988) (ordering evidentiary hearing on preliminary injunction motion). The Ninth Circuit
21 has outlined the following principles to guide district courts in determining whether to grant an
22 evidentiary hearing for a preliminary injunction: "Where sharply disputed the facts are simple and
23 little time would be required for an evidentiary hearing, proceeding on affidavits alone might be
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27 ¹ Separately, Plaintiffs have requested that the hearing be in-person, with videoconferencing
28 capability remaining activated. ECF No. 39. Some witnesses would be able to testify in-person, and
others remotely.

1 inappropriate.” *Int’l Molders’ & Allied Workers’ Loc. Union No. 164 v. Nelson*, 799 F.2d 547, 555
2 (9th Cir. 1986). The Ninth Circuit has instructed that consideration be given to “general concepts of
3 fairness, the underlying practice, the nature of the relief requested, and the circumstances of the
4 particular cases” when making this determination. *Id.* (citation omitted).
5

6 In this instance, an evidentiary hearing is necessary. First, Plaintiffs intend to testify as to the
7 irreparable harm that they are facing as a result of Defendants’ actions, and in particular on the
8 additional harms that they have faced since filing their Reply Brief in Support of their Preliminary
9 Injunction Motion on December 22, 2023. A showing of irreparable harm is crucial to Plaintiffs’
10 Motion, particularly in the Ninth Circuit, where preliminary injunction factors are evaluated “on a
11 sliding scale, such ‘that a stronger showing of one element may offset a weaker showing of another[,]’”
12 *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 82 F.4th 664,
13 684 (9th Cir. 2023) (quoting *Recycle for Change v. City of Oakland*, 856 F.3d 666, 669 (9th Cir.
14 2017)), and “[w]hen the balance of equities ‘tips sharply in the plaintiff’s favor,’ the plaintiff must
15 raise only ‘serious questions’ on the merits—a lesser showing than likelihood of success.” *Id.* at 684,
16 695 (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32, 1134-35 (9th Cir. 2011)).
17 Plaintiffs request the opportunity to present to the Court live testimony on the most up-to-date
18 information related to the harms that are worsening on a daily basis. This request is based on the unique
19 circumstances of this particular case: while some Plaintiffs have submitted written testimony, that is
20 not an adequate substitute for live testimony here given the amount of time that will have lapsed since
21 December 22, in the context of rapidly deteriorating conditions in Gaza.² These are deep, irreparable
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25 ² For example, in the month between the filing of Plaintiffs’ Motion for Preliminary Injunction
26 and the filing of Plaintiffs’ Reply in Support of their Motion for Preliminary Injunction, Plaintiff Al-
27 Haq’s staff member, Ahmed Abofoul, had over 50 members of his family in Gaza killed by Israeli
28 airstrikes. *See* Pls.’ Reply Br. 1, ECF No. 44. Since December 22, when Plaintiffs filed their Reply
Brief in Support of their Preliminary Injunction Motion, Israel’s assault on Gaza has killed
approximately 3,000 more people. Sharma Pokharel Decl. ¶ 3.

1 Dated: January 8, 2024

Respectfully submitted,

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