

United States Senate

February 15, 2024

The Honorable Merrick Garland
United States Department of Justice
950 Pennsylvania Avenue NW
Washington D.C. 20530-0001

Attorney General Garland,

We write to call on you to open a criminal investigation into UNRWA USA, its principals, and its leadership for knowingly providing material support to foreign terrorist organizations, including Hamas. This support facilitated and continues to facilitate terrorism, including the October 7 terrorist attack in which Palestinian terrorists killed or kidnapped dozens of Americans and over 1,200 Israelis.

UNRWA USA is an independent 501(c)(3) in the United States that raises funds for the United Nations Relief and Works Agency (UNWRA). According to its 2021 annual report, UNRWA USA dispersed nearly \$5 million in donations to UNRWA that year, making the organization UNRWA's largest institutional donor.

In 2004, then-UNRWA commissioner-general Peter Hansen said in an interview "I am sure there are Hamas members on the UNRWA payroll and I don't see that as a crime."

That assessment is incorrect. It is in fact a crime.

Americans are in general prohibited from knowingly providing material support to Foreign Terrorist Organizations (FTOs). 18 U.S.C. § 2339B states that "Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life." The term "terrorist organization" in the statute means an organization designated as a terrorist organization by the Secretary of State under section 219 of the Immigration and Nationality Act, i.e. an FTO, and "material support or resources" means "any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials."

In 2010 the Supreme Court ruled in *Holder v. Humanitarian Law Project (HLP)* ruled that the terms "service," "training," and "expert advice or assistance," are included within the definition of "material support." The Court ruled that those terms may encompass a range of activities including writing and distributing publications supportive of the FTO. The Court repeatedly emphasized that even humanitarian assistance meant to further peaceful goals could constitute material support for terrorism: "when Congress enacted §2339B, Congress simultaneously removed an exception that

had existed... for the provision of material support in the form of ‘humanitarian assistance to persons not directly involved in’ terrorist activity... That repeal demonstrates that Congress considered and rejected the view that ostensibly peaceful aid would have no harmful effects” and “material support meant to ‘promote peaceable, lawful conduct’... can further terrorism by foreign groups in multiple ways... such support frees up other resources within the organization that may be put to violent ends... [and] also importantly helps lend legitimacy to foreign terrorist groups – legitimacy that makes it easier for those groups to persist, to recruit members, and to raise funds – all of which facilitate more terrorist attacks.”

UNRWA has for decades provided Hamas and other terrorist groups with material support, including the provisioning of personnel, facilities, and physical materials. Those activities have been supported by UNRWA USA fundraising. There can be little doubt that UNRWA USA, its principals, and its leadership knew about these activities.

The Biden administration has also channeled hundreds of billions of dollars into the Gaza Strip largely through UNRWA. The administration assessed in its opening weeks that “there is a high risk Hamas could potentially derive indirect, unintentional benefit from U.S. assistance to Gaza” in violation of American laws against benefiting terrorists. To facilitate the provisioning of such aid, the administration first issued special licenses and then in December 2022 added a general license to the Global Terrorism Sanctions Regulations. These actions were designed to insulate U.S. officials and organizations like UNRWA from exposure to anti-terrorism sanctions.

However, the administration did not and indeed cannot exempt American citizens from criminal statutes prohibiting the provisioning of material support for terrorism.

UNRWA is the second-largest employer in the Gaza Strip. Israel had already detailed several cases in a 2003 letter to the U.N. Secretary General. An UNRWA employee, Nidal Abd El Fatah Abdallah Nazal, had been arrested and admitted to being a Hamas member who used his UNRWA ambulance to transport arms for terrorists and the freedom of movement provided by that ambulance to pass messages between other Hamas terrorists in various towns. Another UNRWA employee, Nahed Rashid Ahmed Attalah, used his role transporting food for UNRWA as cover to transport weapons and explosives to terrorists.

Again, by 2004 UNRWA’s employment of Hamas personnel had become so undeniable and broadly known that even the organization’s commissioner-general acknowledged it openly.

These cases did not stop UNRWA from continuing to employ open Hamas personnel. In February 2017 Muhammad al-Jamassi, who was then a senior engineer employed by UNRWA, and Suhail al-Hindi, was then the head of UNRWA’s staff union and a school principal, were elected to leadership positions in the Hamas hierarchy. Al-Hindi had been known as a Hamas official, and an advocate of suicide bombings, for several years before.

Israeli officials have presented detailed evidence credibly alleging that 190 UNRWA staff are “hardened fighters, killers,” and that roughly 10 percent of UNRWA staff – 1,200 personnel – are affiliated with terrorist groups.

UNRWA employees and officials actively participated in the October 7 atrocities. Israeli officials have publicized compelling evidence that at least a dozen UNRWA employees took part in the attack itself. They actively participated in the murders, kidnapped Israelis, moved ammunition, and seized the body of a dead soldier. After the initial attack, an Israeli who had been held hostage in the Gaza Strip said that he was kept and abused in the home of an UNRWA teacher. Other UNRWA employees who did not physically participate in the terrorist atrocities provided advocacy and support. Roughly 300 UNRWA employees published content praising the October 7 terrorist attack, according to Israeli officials.

UNRWA has also for decades provided facilities to Hamas. An unclassified report by the State Department in 2021 noted that “UNRWA also found a cavity or tunnel under two of its schools in Gaza following [Israeli] airstrikes during the May 2021 violence” and that just in 2021 “298 security and conflict-related incidents with neutrality implications occurred in 2021... [including] unauthorized use of UNRWA installations, such as armed, non-UNRWA personnel attempting to distribute supplies to civilians on UNRWA grounds; and the use of weapons in or near facilities.” UNRWA officials had previously said they found tunnels or Hamas weapons in their schools in 2014 and 2017, and later again in 2022. UNRWA USA continued to fundraise for UNRWA despite Hamas’s acknowledged use of these facilities.

UNRWA has even facilitated Hamas’s acquisition with physical materials used for terrorism. Photos and videos have demonstrated that Hamas stores weapons in UNRWA-labeled bags. UNRWA supplies have been repeatedly found in Hamas’s underground terrorist infrastructure, and indeed Hamas used UNRWA sacks to build those tunnels. On October 16, UNRWA briefly acknowledged – and then deleted – revelations that Hamas had acquired thousands of liters of fuel from an UNRWA facility.

Congress has been explicit about its rationale for the federal material support statutes: in Section 301 of the Antiterrorism and Effective Death Penalty Act of 1996, “Findings and Purpose,” Congress found that “foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.”

Hamas’s October 7 atrocities have underlined the need to robustly enforce American anti-terrorism laws. There is overwhelming evidence UNRWA USA, its principals, and its leadership knowingly provided material support to Hamas before and even after October 7, and we call on you to thoroughly investigate them for potential violations.

Sincerely,



Ted Cruz
U.S. Senator



Marco Rubio
U.S. Senator



Roger Marshall, M.D.
U.S. Senator



Bill Hagerty
U.S. Senator



Rick Scott
U.S. Senator



Pete Ricketts
U.S. Senator



Marsha Blackburn
U.S. Senator