

United States Senate

WASHINGTON, DC 20510

June 5, 2024

The Honorable Merrick Garland
U.S. Department of Justice
950 Pennsylvania Ave, N.W.
Washington, DC 20530

Dear Attorney General Garland,

We write urging you to immediately investigate whether the Prosecutor of the International Criminal Court, Karim Asad Ahmad Khan KC, has broken American law by materially supporting terrorism through his unjust and unjustified targeting of Israel's Prime Minister and Defense Minister.

Hamas, which has governed Gaza for nearly twenty years, is a U.S.-designated foreign-terrorist organization. Federal law prohibits any material support to terrorist groups, including "expert advice or assistance," which the law defines as "advice or assistance derived from scientific, technical or other specialized knowledge."¹ Legal advice or assistance falls within this category. The use of an international organization to advance the interests of a terrorist organization can qualify as material support, particularly when done "in coordination" which such groups, as found in *Holder v. Humanitarian Law Project*, 561 U.S. 1, 20 (2010).

The ICC's action against Israel—which Hamas requested and now applauds—manifestly provides "material support" to Hamas by attempting to isolate Israel politically and diplomatically through legal advocacy for Hamas. The extent of ICC-Hamas coordination is unknown, but express statements by Mr. Khan and others associated with the prosecution suggest that the coordination may have been extensive.

For example, when announcing his request for arrest warrants on May 20, Mr. Khan claimed that his office took "evidence" from supposed witnesses in Gaza. Mr. Khan's witnesses could've been Hamas members, agents, or sympathizers. He also noted that he has consulted with "local ... doctors" in Gaza. Of course, Gazan hospitals are often Hamas military bases, operated with the cooperation of medical staff, some of whom are senior Hamas officials. Mr. Khan also visited the Rafah border crossing in February, which Hamas controlled at the time. Thus, we urge you to investigate the following questions:

1. Who are the "witnesses" with whom Khan met and the source of the "audio and visual materials" he collected from areas under Hamas control?

¹ 18 USC § 2339A(b)(1)

2. What contacts did he have with individuals or entities, including NGOs, with direct ties to designated terror organizations, including Hamas officials or others exercising control in Gaza?
3. How much of the "evidence" for Khan's arrest warrants was based on such contacts?
4. Were Hamas or other members of designated terror organizations involved in facilitating his visit to Rafah and arranging security for him?
5. Are such contacts effectively requests for his expert services in targeting Israeli officials?

ICC prosecutors aren't above the law. Nor is Mr. Khan's potential criminal liability diminished by his request for arrest warrants against Hamas officials. In fact, his simultaneous requests may have been designed to equate the terrorists who orchestrated the October 7 massacre and continue to hold innocent civilian hostages with the leaders of our democratic ally. Not only is such false equivalency through legal advocacy unconscionable, but it too provides material support to Hamas.

These potential serious crimes by Mr. Khan in support of savage terrorists can't be ignored and demand the immediate attention of our Department of Justice. We hope you will open an investigation promptly. If not, we suspect a more responsible administration will do so next year. Either way, Mr. Khan is due for a taste of his own medicine.


Thank you for your attention to this important matter.

Sincerely,


Tom Cotton
US Senator


Mike Braun
US Senator


JD Vance
US Senator


Rick Scott
US Senator