

# Congress of the United States

Washington, DC 20515

May 15, 2024

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Dear Attorney General Garland,

I write with grave concern regarding President Biden's recent announcement to freeze the delivery of 1,800 2000-lb bombs and 1,700 500-lb bombs that were appropriated for by Congress and set to be delivered to Israel. This wrongheaded and dangerous policy decision comes on the heels of the decision to the delay on the pending sale of Joint Direct Attack Munitions (JDAMs) and Small Diameter Bombs (SDBs) to Israel. This delayed action by the Administration is arguably a violation of the Impoundment Control Act of 1974 (ICA) and subsequent Supreme Court case law. The ICA (2 U.S.C. 681-688) outlines clear requirements for any deferral of budget authorities by the President and these requirements have been ignored by the Biden administration. As such, I therefore demand that a special counsel be appointed to investigate, and if necessary, prosecute, any illegal actions by President Biden or his staff concerning the inexplicable delay of aid to Israel.

As you know, on April 23, 2024, the House of Representatives overwhelmingly passed H.R. 8034, the Israel Security Supplemental Appropriations Act, 2024, which was ultimately signed into law as a part of a larger emergency aid package. This bill appropriated funds in support of Israel's ongoing military operations against Hamas. Congressional intent with this legislation is clear: this aid is urgently needed and must be delivered as expeditiously as possible.

However, instead of following the law, the Biden administration has delayed the delivery of this essential aid that has already been obligated. Under the ICA (2 U.S.C. 682), a deferral of budget authority is defined as "any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority...." Further, under 2 U.S.C. 684, if the President or any officer or employee of the United States proposes to defer any budget authority, the President must send a special message to the House of Representatives and the Senate specifying, among other things, the amount of the deferral, the period of time of the deferral, and the reasons for the deferral. Furthermore, 2 U.S.C. 684 specifies that a deferral is only valid if it is for a contingency, to achieve savings or greater efficacy, or as specifically provided by the law.

With the announcement that the expenditure for 2000-lb and 500-lb bombs is frozen, and the sale of the JDAMs and SDBs delayed, the Biden administration has deferred its budget authority. A recent POLITICO article summarized this issue by saying that "While the Biden administration has not formally denied the potential sale, it is essentially taking action through inaction — holding off on approvals and other aspects of the weapons transfer process — to send a message to Israel, a U.S. administration official familiar with the process told POLITICO." These actions appear to violate the Impoundment Control Act of 1974, especially since President has failed to send a special message to Congress as required by law.

The decision to delay aid to Israel also undermines the principles of separation of powers outlined by the Constitution. Congress appropriated this aid to be obligated and expended expeditiously, and yet the Biden administration is unnecessarily delaying the expenditure of this aid. This potential violation of statute and dangerous failure to comply with Constitutional precedent by the Biden administration must be fully

investigated by a special counsel. Due to the grave urgency of this issue, I demand that a special counsel be appointed immediately to investigate and prosecute any wrongdoing.

Please advise no later than May 22, 2024.

Very Truly Yours,

Claudia Tenney