

**CRIMINAL COMPLAINT**

**BEFORE THE INTERNATIONAL CRIMINAL COURT**

**(TREATY OF ROME, ART. 15.1 AND 53)**

**IN THE MATTER OF**

**CRIMES AGAINST HUMANITY AND WAR CRIMES CONCERNING  
MURDER OF INTERNATIONAL AID WORKER AND FAMILY IN KABUL  
AFGHANISTAN BY U.S. PRESIDENT JOE BIDEN AND OTHER  
DEFENDANTS**

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Consequently, all subsequent correspondence should be sent only to the mailing and/or e-mail addresses given above. Any notification within the meaning of the Statute of the Court addressed in this way will be considered valid.

**BEFORE THE INTERNATIONAL CRIMINAL COURT**

FREEDOM WATCH, Inc.  
Washington, D.C. on behalf of American citizens  
and people of the civilized world,

Complainant,

v.

JOSEPH ROBINETTE BIDEN, Jr.,  
President of the United States of America

And

GENERAL MARK A. MILLEY,  
Chairman of the Joint Chiefs of Staff  
of the United States of America

And

GENERAL KENNETH McKENZIE, Jr.  
Commander of the U.S. Central Command  
of the United States of America

Defendants.

**CRIMES AGAINST HUMANITY AND WAR CRIMES CONCERNING MURDER OF  
INTERNATIONAL AID WORKER AND FAMILY IN KABUL AFGHANISTAN BY U.S.  
PRESIDENT JOE BIDEN AND OTHER DEFENDANTS**

Complainant Freedom Watch, Inc. (“Complainant”) submits the following Complaint, while also requesting the opening of an inquiry by the prosecutor’s office pursuant to Article 15 of the killing in Kabul, Afghanistan outside Hamid Karzai international airport by an RQ-9 “Reaper” drone missile strike ordered by the President of the United States JOSEPH ROBINETTE BIDEN, Jr. (hereinafter “President Joe Biden” or “Biden”).

This Complainant shows and alleges as follows:

## **I. INTRODUCTION AND NATURE OF THE ACTION**

1. This is a complaint for the opening of an inquiry by the prosecutor at the International Criminal Court under Article 15 of the Rome Treaty to investigate the important question of war crimes and/or crimes against humanity committed by President Joe Biden in indiscriminately launching lethal military attacks on civilian populations near the Hamid Karzai international airport in Kabul, Afghanistan.
2. The matter is urgent in that (a) evidence under these circumstances may be difficult to preserve and obtain without prompt action and (b) the precedent set by these events encourage repetition not only by the Biden-Harris controlled government but by other regimes believed to be even more lawless and rogue. The toleration of these events will make it increasingly difficult to discourage even worse crimes against humanity by regimes claiming to merely by following the precedent set here.
3. While this act -- illegal under international law -- does not relieve the need to investigate any other war crimes, terrorism, crimes against humanity, and human rights abuses by the Taliban, the pattern of reckless and indiscriminate use of deadly missile strikes from drones, without due process of law, which was done under the Presidential Administration of President Barack Obama and then Vice President Joe Biden must be stopped from becoming an accepted practice now under Obama's Vice President, President Joe Biden.
4. This is also a complaint for the Defendants' violation of international treaties and international law and obligations.

## **II. JURISDICTION**

5. The International Criminal Court ("ICC") recently determined in Appeal No. ICC-02/17

OA4 “Situation In The Islamic Republic Of Afghanistan” that the prosecutor’s office may open and conduct an investigation into the conduct of members of the United States military in Afghanistan even though the United States of America is not a member acceding to the Rome Treaty.

6. Moreover, the ICC also determined in that appeal and other cases that a country’s accession to the Geneva Conventions also provides jurisdiction on that additional basis independently because the United States of America has agreed to enforcement of the Geneva Conventions.
7. Here, the United States of America has agreed to enforcement of the Geneva Conventions.
8. An investigation into the facts would be important to the world, as well as righteous Americans.
9. Such an investigation must include deconstructing false excuses and phony defenses that are not factual and be a prelude, once the facts as set forth herein are confirmed.
10. Defendants violated the law of nations, established U.S. law, international laws, treaties and norms, including but not limited to those sections previously set forth: The Declaration on Measures to Eliminate International Terrorism and citations therein incorporated by reference adopted by the United Nations General Assembly on December 9, 1994 (GA Res. 49/50); The Anti-Terror Act, 18 U.S.C. 113B; The Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996); The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA Patriot Act”), Pub. L. No. 107-56, 115 Stat. 271 (2001); The Convention on the Prevention and Punishment of the Crime of

Genocide; Art. 2, December 9, 1949, 78 UNTS; International Convention for the Suppression of the Financing of Terrorism, 39 I.L.M. 270 (Dec. 9, 1997); G.A. Res. 54/109, 1 UN Doc A/RES/54/109 (Dec. 1, 1999) and ratified by over 130 countries (The Financing Convention); United Nations Charter, 59 State. 1031, 3 Bevans 1153 (1945); Universal Declaration of Human Rights, G.A. Res. 217A (iii), U.N. Doc. A/810 (1948); International Covenant on Civil and Political Rights, G.A. Res. 2222A(XXI), 21 U.N. Doc., GAOR Supp. (No. 16) at 52 U.N. Doc. A 6316 (1966); Common Article 3 of the 1949 Geneva Convention; Article 4 and 13 of the 1997 Geneva Protocol II; Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 37 I.L.M. 1(Dec. 18, 1997); and other fundamental principles.

11. Article 5 of the Rome Treaty<sup>1</sup> regulates crimes within the jurisdiction of the Court: “The jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole. The court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

12. Article 7 “Crimes against humanity” includes:

“1. For the purpose of this Statute, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;

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<sup>1</sup> **ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT\***, [https://legal.un.org/icc/statute/99\\_corr/cstatute.htm](https://legal.un.org/icc/statute/99_corr/cstatute.htm)

\* \* \*

- (i) Enforced disappearance of persons;

\* \* \*

- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Article 8  
War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:
  - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Willful killing;

\* \* \*

- (iii) Willfully causing great suffering, or serious injury to body or health;

- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

\* \* \*

- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian



assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

\* \* \*

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

\* \* \*

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

\* \* \*

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

\* \* \*

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

13. Here, the actions by the Defendants are not legitimate military actions because the Defendants created the chaos and danger that resulted in them killing non-combatant civilians, particularly seven children.

14. While Taliban forces were fighting the constitutionally-established government of

Afghanistan, elected into office by Afghan civilians through democratic elections, and were fighting the official Afghan Army of the constitutional-established government, the dangerous conditions in Kabul, Afghanistan, and elsewhere were created by the Defendants and their incompetent panic-like and panic-creating poorly-planned withdrawal from Afghanistan.

15. That is, had the U.S. military been allowed to carry out a normal evacuation placing the lives of civilians first, including U.S. citizens, U.S. “green card” holders (lawful permanent residents), Afghan national employees, vendors, or contractors of the U.S. Embassy in Afghanistan and of the U.S. military in Afghanistan as *de facto* extensions of the U.S. Government operations in Afghanistan, their family members, and others whom U.S. refugee and asylum laws might seek to protect and evacuate, the grave and untenable conditions around the Hamid Karzai international airport in Kabul would never have occurred.
16. Had the U.S. military been allowed to carry out a normal evacuation out of a secure, defensible airport such as Bagram Air Force base, using helicopters and other aircraft to shuttle evacuees the short distance to Bagram, allowing a great many, rapid round-trip flights per day, the conditions around the Hamid Karzai international airport in Kabul would never have occurred.
17. Thus the Defendants cannot make the excuse and thus bogus defense of killing civilians, particularly children, as a necessary part of armed conflict when they created the dangerous situation themselves.

### **III. PARTIES AND STANDING**

18. Complainant Freedom Watch, Inc. is non-profit corporation in the United States

of America, qualified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of the United States of America.

19. Complainant Larry Klayman is the founder, chairman, and general counsel of Freedom Watch, Inc., whose world national and world headquarters is located in Washington, D.C., and whose address is 2020 Pennsylvania, Avenue, N.W., Suite 345, Washington, D.C. 20006. Freedom Watch is a public interest foundation whose mission it is to enforce the rule of law, and thus to prosecute government corruption and criminality, such as occurred herein.

20. Defendant JOSEPH ROBINETTE BIDEN, Jr. (hereafter “Biden” or “President Joe Biden”) is President of the United States of America and commander in chief of the U.S. military.

21. Defendant GENERAL MARK A. MILLEY is the Chairman of the Joint Chiefs of Staff of the United States military.

22. Defendant GENERAL KENNETH McKENZIE, Jr. is Commander of the U.S. Central Command of the U.S. military with actual, direct operational authority and control over U.S. military activities in Afghanistan, upon the orders of President Joe Biden.

#### **IV. FACTS COMMON TO ALL COUNTS**

23. President Joe Biden has been for decades chronically accustomed to being praised and celebrated as a U.S. Senator in his home State of Delaware within the United States of America, which is dominated by his political party, the Democrat Party.

24. Biden was elected as U.S. Senator from Delaware from November 1972 until November 2008, when Barack Obama was elected President and Biden was elected Vice President on a combined electoral “ticket.”

25. Delaware is a State of the United States heavily dominated by Biden’s political

party, the Democrat Party. The Republican Party candidate for U.S. Senate prior to Christine O'Donnell's campaigns in 2008 and 2010 lost by a 41% margin (not 41% of the vote, but a margin of 41%). The Republican Party candidate for U.S. Senate after her lost by a 37% margin. The Republican Party never mounted any serious challenge to Biden's U.S. Senate seat.

26. Therefore, Biden has been accustomed to being re-elected and (in his mind) adored without any serious challenge to his political career.

27. Therefore, Biden is not accustomed to being criticized and is unprepared to handle criticism, having held a Senate seat from 1972 to 2008 in a State dominated by his own political party.

28. Delaware is described as following "the Delaware Party" of tacit agreements among political, governmental, and business elites in Delaware, including a tacit agreement that Republicans would not challenge Senator Joe Biden's U.S. Senate seat in return for Democrats not challenging Congressman Mike Castle's U.S. House of Representatives seat.

29. As a result, Biden never faced serious challenge in his political career.

30. As a result, Biden has chronically and publicly exhibited an extremely "thin skin" responding in irrational if not pathologically frightening sudden and sharp outbursts of shock and anger whenever questioned, challenged, criticized, or disagreed with.

31. Biden throughout his career has misinterpreted the lack of any serious challenge in his home State of Delaware as his personal popularity and him being loved by everyone (who matters).

32. Thus, while pretending to represent consensus (the consensus only of his close circle of friends and supporters), Biden lashes out suddenly and intensely when criticized, seeming to be stunned and confused by any disagreement with him.

33. As a result, Biden has never been able to mentally consider that he has ever made a mistake or give pause and careful reflection before making a new mistake.

34. In and around May to July 2021, Biden ordered the rushed, poorly-planned, chaotic, and dangerous evacuation from Afghanistan of U.S. military personnel, U.S. diplomats, and U.S. civilians including aid workers and employees of aid agencies.

35. Biden failed to coordinate these evacuation plans with the governments of other nations who also had military personnel, aid workers, and their nationals on the ground in Afghanistan.

36. Biden's reckless actions placed the nationals of many other countries in danger.

37. Unwilling to consider the nuances or fine points of a complex situation, Biden gave simplistic orders borne of a shallow, superficial understanding to abandon Bagram Air Force Base and abandon Afghanistan without the careful, proper planning that the U.S. military would normally undertake.

38. Biden also gave priority to political imagery and public relations in ordering that evacuation by an arbitrary date of August 31, 2021.

39. Always making excuses of a political nature by attacking opponents, Biden and his minions claim that the prior President Donald Trump did not leave him with a plan for withdrawal from Afghanistan when Trump passed the Presidency to Biden on January 20, 2021.

40. If true, that would have made it reckless and criminally irresponsible for Biden to proceed without a solid and rational plan for doing so.

41. The lack of a plan should have prompted Biden to pause and consider carefully his next moves in Afghanistan.

42. If it were true, the lack of any plan by the Trump Administration for the

withdrawal should have warned Biden and the other Defendants that a complete withdrawal from Afghanistan was premature, dangerous, and ill-advised until a plan were carefully worked out.

43. Thus, Biden and his team acted recklessly and with wanton disregard for human life.

44. If, as Biden seems to admit, there was no plan for a safe withdrawal, then Biden acted recklessly by proceeding with a withdrawal by an arbitrary date of August 31, 2021, in order to declare “mission accomplished” on or shortly before the 20 year anniversary of September 11, 2021.

45. Thus, based on reports within official Washington and Biden insiders, Biden rushed to implement a complete withdrawal from Afghanistan for the political imagery and public relations of celebrating it on the 20<sup>th</sup> anniversary of the 9/11 (2001) terrorist attacks upon the United States.

46. Thus, Biden placed his own self-serving partisan political goals, image, agenda and suspect personal reputation above the safety of citizens of the United States of America, citizens of other nations present in Afghanistan, and the civilian population of Afghanistan.

47. When the hurried, unplanned withdrawal of U.S. military forces turned into a predictable disaster – such that even the U.S. Embassy staff in Afghanistan was taken by surprise by the collapsing circumstances in the country and the unfolding of events – Biden came under international criticism.

48. Chronically unable to handle such criticism, Biden acted recklessly, impulsively, and wantonly to attack the crowd surrounding the Hamid Karzai international airport in Kabul, Afghanistan.

49. Biden acted to make himself look tough at the expense of now dead civilians,

including seven children. This criminal act was then covered up by the Defendants, until disclosed in the media.

50. Biden acted recklessly, impulsively, and wantonly including because his hasty, chaotic, and unplanned retreat and withdrawal predictably and foreseeably deprives the U.S. military of human intelligence information with which to make the decision to fire drone-born deadly missiles into a crowd.

51. Not only did Biden order the shooting of a deadly missile from a flying drone into a crowd, but Biden did so knowing that there was no remaining intelligent capability in Kabul with which to make a valid threat assessment and targeting decision and final shooting decision.

52. The murder of a family and others totaling 10 dead civilians including 7 children cannot be justified as part of an on-going war or threat because the Defendants lacked – and knew that they lacked – the intelligence capability to determine whether or not they were striking the innocent family of an aid worker or a genuine threat.

53. In effect, as an illustration or metaphor, the Defendants essentially shot a machine gun blindly into a crowd hoping that they might hit someone with hostile intent.

54. The Defendants indiscriminately fired deadly weapons into the crowd outside Kabul's airport knowing that they did not then (any longer) have the ability to distinguish between innocent civilians and hostile combatants.

55. Acting purely out of self-interest to dampen criticism of their mishandling of the abrupt retreat from Afghanistan, the Defendants killed by criminally intentional or reckless acts “an innocent aid worker and nine members of his family” --

An investigation by U.S. Central Command has determined that an Aug. 29 drone strike in Kabul killed an innocent aid worker and nine members of his family, not a member of the ISIS-K terrorist group, a top general announced Friday.



The command now assesses that the man targeted was not affiliated with ISIS-K, the Afghanistan branch of ISIS, or "a direct threat to U.S. forces," Gen. Frank McKenzie, head of U.S. Central Command, told reporters Friday. "Our investigation now concludes that the strike was a tragic mistake."

The news comes as U.S. leaders are already facing criticism over the Biden administration's Afghanistan withdrawal and the fact that the effort left hundreds of Americans and thousands of at-risk Afghans in the country at the end of August. More than 120,000 people were airlifted from Hamid Karzai International Airport before U.S. troops pulled out.

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Central Command ordered the Aug. 29 strike based on intelligence that the man was planning an "imminent" attack on the airport, where the military was scrambling to evacuate tens of thousands of American citizens and at-risk Afghans before the clock ran out on the withdrawal.

Gen. Mark Milley, chairman of the Joint Chiefs of Staff, in early September called the strike "righteous."

But instead, the strike "tragically" killed "as many as 10 civilians," including up to seven children, McKenzie said.

Milley on Friday acknowledged the mistake, calling the "heart wrenching" strike "a horrible tragedy of war." <sup>2</sup>

56. The Defendants committed this criminally reckless and wanton act in order to create a public relations stunt with the message that the Defendants would be able to strike terrorists "over the horizon" without having U.S. military personnel or intelligent personnel protected by the military in Afghanistan, including arguing that: "touted America's ability to strike terrorists and targets without boots on the ground."

The drone strike that the Pentagon claimed killed an ISIS-K

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<sup>2</sup> Lara Seligman, 'Tragic mistake': U.S. determines Kabul drone strike killed innocent aid worker, nine family members, POLITICO, September 17, 2021, <https://www.politico.com/news/2021/09/17/tragic-mistake-us-drone-strike-512586>

suicide bomber in Kabul actually targeted an aid worker who had filled his car with water jugs, rather than explosives, according to a shocking new report.

Zemari Ahmadi, 43, was driving the 1996 Toyota Corolla that was destroyed in the August 29 drone strike, killing him and nine family members, including seven children, according to a [New York Times](#) investigation.

The Pentagon still maintains that only three civilians died, despite the family now detailing in the new report how their 10 relatives were killed in the blast.

Days after the attack, President Joe Biden gave a speech in which he marked the withdrawal of American troops in Afghanistan by the August 31 deadline. He touted America's ability to strike terrorists and targets without boots on the ground. But he failed to mention the high civilian casualty rate from the August 29 drone strike, and he failed to mention that children had been killed.

'We struck ISIS-K remotely, days after they murdered 13 of our service members and dozen of innocent Afghans. And to ISIS-K, we are not done with you yet,' he said in his speech. <sup>3</sup>

57. Thus, the drone strike was a cheap and reckless public relations effort to cover up criticism of the Defendants' failures in their retreat out of Afghanistan, and not a genuine military act.

58. The Defendants wanted to prove that they could continue to fight terrorism such as ISIS, Al-Qaeda and the Taliban in spite of having no troops on the ground. (The U.S. military was still evacuating from the airport, but the drone strike was meant to illustrate that capability.)

59. Biden's policy depended strongly on his false claims that the U.S. military could continue to fight terrorism from afar using what he called "over the horizon" attacks such as

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<sup>3</sup> KEITH GRIFFITH, "US drone strike that Pentagon said killed Kabul suicide bomber actually 'killed aid worker and seven children who ran to greet him when he arrived home': Video allegedly shows he filled car with water not explosives," Daily Mail, September 13, 2021, <https://www.dailymail.co.uk/news/article-9979199/US-drone-strike-Kabul-actually-killed-AID-WORKER-seven-children.html>

military flying drones and cruise missiles.

60. If the Defendants were not blinded by the inept withdrawal from and collapsing conditions within Afghanistan, and the panicked evacuation of the U.S. Embassy staff, the Defendants would have known whom Zemari Ahmadi was, whom they killed:

Ahmadi worked for US-based aid group Nutrition and Education International, and spent the day running routine errands for the group, loading nothing into the car other than jugs full of water to bring home to his family, the Times reported, citing witnesses and surveillance video footage.

'All of them were innocent,' Ahmadi's brother Emal told the newspaper, noting that Ahmadi had sought refugee status with the US based on his international aid work. 'You say he was ISIS, but he worked for the Americans.'

The Pentagon has insisted that Ahmadi's movements linked him to an ISIS-K safehouse, and that there were explosives in his vehicle intended to be used in a suicide attack on US troops in the final hours of the Kabul evacuation.

'This was a righteous strike,' said Joint Chiefs Chairman Mark A. Milley last week, claiming that Ahmadi was an 'ISIS facilitator'.<sup>4</sup>

61. It is difficult to credit the Defendants' announced certainty that Ahmadi was an ISIS-K terrorist when the U.S. Embassy in Afghanistan would have known that Ahmadi was an international aid worker working for United States organizations.

62. It is not just that killing an aid worker is shocking, but that the Defendants should have known that Ahmadi was an aid worker.

63. The U.S. military tracked Zemari Ahmadi all day using an RQ-9 "Reaper" drone to follow his movements,<sup>5</sup> yet apparently could not tell the difference between tanks of water and explosive bombs in the back of his sedan. Or more likely the monitoring lacked the

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<sup>4</sup> Id.

<sup>5</sup> Id.

diligence and care necessary to tell the difference between tanks of water and explosives.

KABUL, Afghanistan — It was the last known missile fired by the United States in its 20-year war in Afghanistan, and the military called it a “righteous strike” — a drone attack after hours of surveillance on Aug. 29 against a vehicle that American officials thought contained an ISIS bomb and posed an imminent threat to troops at Kabul’s airport.

But [a New York Times investigation of video evidence](#), along with interviews with more than a dozen of the driver’s co-workers and family members in Kabul, raises doubts about the U.S. version of events, including whether explosives were present in the vehicle, whether the driver had a connection to ISIS, and whether there was a second explosion after the missile struck the car.

Military officials said they did not know the identity of the car’s driver when the drone fired, but deemed him suspicious because of how they interpreted his activities that day, saying that he possibly visited an ISIS safe house and, at one point, loaded what they thought could be explosives into the car.

Times reporting has identified the driver as Zemari Ahmadi, a longtime worker for a U.S. aid group. The evidence suggests that his travels that day actually involved transporting colleagues to and from work. And an analysis of video feeds showed that what the military may have seen was Mr. Ahmadi and a colleague loading canisters of water into his trunk to bring home to his family. While the U.S. military said the drone strike might have killed three civilians, Times reporting shows that it killed 10, including seven children, in a dense residential block.

Mr. Ahmadi, 43, had worked since 2006 as an electrical engineer for Nutrition and Education International, a California-based aid group. The morning of the strike, Mr. Ahmadi’s boss called from the office at around 8:45 a.m., and asked him to pick up his laptop.

“I asked him if he was still at home, and he said yes,” the country director said in an interview at N.E.I.’s office in Kabul. Like the rest of Mr. Ahmadi’s colleagues, he spoke on condition of anonymity because of his association with an American company in Afghanistan.

According to his relatives, that morning Mr. Ahmadi left for work around 9 a.m. in a white 1996 Corolla that belonged to N.E.I., departing from his house, where he lived with his three brothers

and their families, a few kilometers west of the airport. U.S. officials told The Times that it was around this time that their target, a white sedan, first came under surveillance, after it was spotted leaving a compound identified as an alleged ISIS safe house about five kilometers northwest of the airport.

It is unclear if officials were referring to one of the three stops that Mr. Ahmadi made to pick up two passengers and the laptop on his way to work: The latter location, the home of N.E.I.'s country director, was close to where a rocket attack claimed by ISIS would be launched against the airport the following morning, from an improvised launcher concealed inside the trunk of a Toyota Corolla, a model similar to Mr. Ahmadi's vehicle.

A Times reporter visited the director at his home, and met with members of his family, who said they had been living there for 40 years. "We have nothing to do with terrorism or ISIS," said the director, who also has a U.S. resettlement case. "We love America. We want to go there."

Throughout the day, an MQ-9 Reaper drone continued to track Mr. Ahmadi's vehicle as it drove around Kabul, and U.S. officials claimed they intercepted communications between the sedan and the alleged ISIS safe house, instructing it to make several stops.

But the people who rode with Mr. Ahmadi that day said that what the military interpreted as a series of suspicious moves was simply a normal day at work.

After stopping to pick up breakfast, Mr. Ahmadi and his two passengers arrived at N.E.I.'s office, where security camera footage obtained by The Times recorded their arrival at 9:35 a.m. Later that morning Mr. Ahmadi drove some co-workers to a Taliban-occupied police station downtown, where they said they requested permission to distribute food to refugees in a nearby park. Mr. Ahmadi and his three passengers returned to the office around 2 p.m.

As seen on camera footage, Mr. Ahmadi came out a half-hour later with a hose that was streaming water. With the help of a guard, he filled several empty plastic containers. According to his co-workers, water deliveries had stopped in his neighborhood after the collapse of the government and Mr. Ahmadi had been bringing home water from the office.

"I filled the containers myself, and helped him load them into the

trunk,” the guard said.

At 3:38 p.m., the guard and another co-worker moved the car farther into the driveway. The camera footage ends soon after, when the office shut off its generator at the end of the workday, and Mr. Ahmadi and three passengers left for home.

Around this time, U.S. officials said that the drone had tracked Mr. Ahmadi to a compound eight to 12 kilometers southwest of the airport, a location that matched N.E.I.’s office. There, they said the drone observed Mr. Ahmadi and three others loading heavy packages into the car, which they believed might contain explosives.

But the passengers said that they had only two laptops with them, which they put inside the vehicle, and that the trunk had no other cargo than the plastic water-filled containers that were placed there earlier. In separate interviews, all three passengers denied loading explosives into the vehicle they were about to commute home in. <sup>6</sup>

64. Despite having watched Ahmadi fill the plastic containers with water from a gushing water house out doors and visible from the drone, the Defendants ordered the attack at 4:50 PM.

But according to his relatives, as Mr. Ahmadi pulled into his courtyard, several of his children and his brothers’ children came out, excited to see him, and sat in the car as he backed it inside. Mr. Ahmadi’s brother Romal was sitting on the ground floor with his wife when he heard the sound of the gate opening, and Mr. Ahmadi’s car entering. His adult cousin Naser had gone to fetch water for his ablutions, and greeted him.

The car’s engine was still running when there was a sudden blast, and the room was sprayed with shattered glass from the window, Romal recalled. He staggered to his feet. “Where are the children?” he asked his wife.

“They’re outside,” she replied.

Romal ran out into the courtyard; he saw that his nephew Faysal, 16, had fallen from the exterior staircase, his torso and head

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<sup>6</sup> Matthieu Aikins, Christoph Koettl, Evan Hill and Eric Schmitt, "Times Investigation: In U.S. Drone Strike, Evidence Suggests No ISIS Bomb," *The New York Times*, September 21, 2021, accessible at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html>

grievously wounded by shrapnel. “He wasn’t breathing.”

Amid the smoke and fire, he saw another dead nephew, before neighbors arrived and pulled him away, he said.<sup>7</sup>

65. The Defendants lied by claiming that the strike was based on “good intelligence,” making it clear that Defendants are accustomed and will accept to very flawed, bad intelligence meeting a very low standard and are willing to recklessly and wantonly act upon very bad intelligence.

66. One has to be concerned that the Defendants will again in the future kill civilians based on this very poor intelligence that they consider to be “good intelligence” by some curious and dishonest standard.

WASHINGTON — U.S. military officials have insisted since the last American troops withdrew from Afghanistan last month that they would be able to detect and attack Islamic State or Qaeda threats in the country from afar.

But an errant drone strike that killed 10 civilians, including seven children, in Kabul [on Aug. 29](#) calls into question the reliability of the intelligence that will be used to conduct the operations.

U.S. commanders concede that the missions will be more difficult without a military presence in the country. But new details about the drone strike, which the Pentagon initially said was necessary to prevent an attack on American troops, show the limitations of such counterterrorism missions even when U.S. forces are on the ground.

“The U.S. has a terrible record in this regard, and after decades of failed accountability, in the context of the end of the war in Afghanistan, the U.S. should acknowledge that their processes have failed, and that vital reforms and more independent outside scrutiny is vital,” John Sifton, the Asia advocacy director at Human Rights Watch, said in an email.

Thirty-six hours before the strike, intelligence analysts and drone operators at a base in Qatar were sifting through more than 60

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<sup>7</sup> Id.

specific pieces of intelligence — some conflicting, some mutually reinforcing — related to an imminent ISIS attack, according to Gen. Kenneth F. McKenzie Jr., the commander of the military's Central Command.

The group, called the Over-the-Horizon Strike Cell, was created in early July to track and disrupt plots in Afghanistan by Al Qaeda or the Islamic State that threatened the U.S. homeland. After the sudden Taliban takeover of the country, the cell began focusing on ISIS threats against the thousands of American troops at Hamid Karzai International Airport in Kabul who were helping tens of thousands of Afghans flee the country.

On the morning of Aug. 29, the military was on high alert, looking out for a white Toyota Corolla as six Reaper drones monitored what General McKenzie called a suspected Islamic State compound, or safe house, both believed to be linked to the plot.

The strike cell commander kept in close contact with [Maj. Gen. Christopher Donahue](#), the head of the 82nd Airborne Division and the ground force commander at the airport. General McKenzie was also kept apprised of the developments during the day.<sup>8</sup>

## **V. VIOLATIONS OF INTERNATIONAL LAW REQUIRING INVESTIGATION**

1. By the acts alleged herein, Defendants, each and every one of them, jointly and severally as joint tortfeasors, have committed and/or aided and abetted and conspiring to help the commission of acts of war crimes and crimes against humanity generally.

2. Each of the Defendants, each and every one of them acting in concert as joint tortfeasors is criminally guilty of providing material support to the preparation and carrying out of numerous acts of what in effect constitutes war and other crimes against humanity which have placed the innocent civilians in imminent danger of death or illness.

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<sup>8</sup> Eric Schmitt, "A Botched Drone Strike in Kabul Started With the Wrong Car," [The New York Times](#), September 22, 2021, <https://www.nytimes.com/2021/09/21/us/politics/drone-strike-kabul.html>



3. The crime of criminally negligent homicide involves causing someone's death by acting in a manner that was reckless, inattentive, or careless.

4. In order for someone to be convicted of negligent homicide, it can be shown:

- a) That the defendant knew that their behavior included unjustifiable risk and that this caused another person to die. For instance, should someone be accidentally shot after playing with a gun, and a second person does not phone medical help, that person could be charged with negligent homicide, as this is an unjustifiable risk, since everyone is expected to know a shot wound can lead to death.
- b) That an act of omission took place. In some states, causation doesn't have to be demonstrated, and omission is enough for a charge. Using the example above of the gunshot wound, the state would have to prove that the defendant would have lived if the other did phone for medical help.
- c) That there is causation. Often, causation has to be demonstrated through an affirmative act. For instance, if someone drives over the speed limit in a school zone when children are exiting the school, and hits and kills a child, there is clear cause and effect relationship.

5. Negligent homicide occurs when someone causes the death of another through criminal negligence. Criminal negligence happens when someone behaves in a way that he or she should have known is risky. It is a much lower intent, but still a serious crime.

6. Involuntary manslaughter is defined as an unintentional killing that stems from reckless acts which constitute a criminal level of negligence.

7. In the alternative to reckless acts, the crime can also be a death that results from an unlawful act that is considered a misdemeanor or lower level felony.

8. The basis of this crime when compared to voluntary manslaughter is that the victim's death was unintentional.

9. The first element of this crime is that someone is killed as a result of the actions of the accused.

10. The second element is that the act is either inherently dangerous to others or was done with reckless disregard for the safety of people who could be affected.

11. The reckless disregard of danger to people's safety does not require the certainty that death will result, but only the possibility of death. If the accused creates (by acts or failure to act) a risk of danger of injury or bodily harm not expecting anyone to die but in fact as it turns out someone actually does die from that danger the crime of involuntary manslaughter has been committed.

12. The third and final element is that the defendant knew or should have known that his or her conduct was a threat to the lives or safety of others.

13. These elements include the accused creating a risk of injury or bodily harm to people short of death which actually does result in death. That when the accused could reasonably foresee that his actions or omissions could result in injury or bodily injury, and in fact death results instead, the crime of involuntary manslaughter has been committed.

14. Reckless disregard of danger to people's safety does not require the certainty of death where the accused's actions or failures to act create the possibility of death, all of which is present herein.

15. Here, however, firing a drone which murdered innocent civilians, including seven children, rises even to a higher, if not the highest, level of criminality.

#### **PRAYER FOR RELIEF**

Complainant Freedom Watch, on behalf of the American people and other rightminded people of the world, respectfully request that the Prosecutors Office of the International Criminal

Court open an investigation of this killing of civilians including seven children and once the facts alleged herein are confirmed to conduct criminal prosecutions to and try, convict and sentence the Defendants herein for war crimes and crimes against humanity to serve life imprisonment.

Dated: September 30, 2021

Respectfully submitted,  
/s/ Larry Klayman  
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