

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

MATTHEW SMITH and AKILA
RADHAKRISHNAN,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 1:25-cv-00158-JAW

DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendants submit this answer to the First Amended Complaint filed by Plaintiffs Matthew Smith and Akila Radhakrishnan (“Plaintiffs”), ECF No. 31. Defendants’ responses below correspond to the numbered paragraphs and subparagraphs of the First Amended Complaint.

1. Except as expressly admitted elsewhere in this answer, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs’ citizenship, professional activities, work with the International Criminal Court (“ICC”) or Office of the Prosecutor (“OTP”), and alleged cessation of that work and therefore deny those allegations. Defendants admit that President Trump issued Executive Order 14203, entitled “Imposing Sanctions on the International Criminal Court,” and respectfully refer the Court to that Executive Order for its complete and accurate contents. Defendants admit that Plaintiffs purport to bring this action to challenge that Executive Order. Defendants deny that the challenged actions violate the First Amendment or unlawfully prohibit constitutionally protected speech. Defendants deny the remaining allegations in paragraph 1.

2. Defendants admit that the ICC is a permanent court based in The Hague, the Netherlands, that the Rome Statute was adopted in 1998, and that the United States participated in negotiations concerning that Statute. Defendants further admit that, as of July 22, 2025, the ICC identified 125 “States Parties” to the Rome Statute. Defendants deny that the United States was among those that “established” the ICC and deny the remaining allegations in paragraph 2.
3. Defendants admit that the United States supported the United Nations Security Council referrals concerning Darfur and Libya, assisted in transferring fugitives to ICC custody, and shared evidence with the ICC consistent with the Dodd Amendment to the American Servicemembers’ Protection Act. Defendants further admit that the Biden administration issued statements supporting accountability in Venezuela and Myanmar. To the extent this paragraph refers to official statements, United Nations Security Council actions, or federal legislation, Defendants respectfully refer the Court to those materials for their complete and accurate contents and deny any characterization inconsistent with those materials. Defendants deny the characterization of the ICC’s work as “critical.” Except as expressly admitted above, Defendants deny the remaining allegations in paragraph 3.
4. Defendants admit that President Trump issued Executive Order 14203 on February 6, 2025. To the extent this paragraph quotes or characterizes the Executive Order, Defendants respectfully refer the Court to the Order for its complete and accurate contents and deny any characterization inconsistent with the Order. Defendants deny the remaining allegations in this paragraph.
5. Defendants admit that Executive Order 14203 invokes the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. § 1701 et seq., and identifies Karim Khan in its Annex as subject to the sanctions specified in the Order. Defendants further admit that the

U.S. Department of the Treasury's ("Treasury") Office of Foreign Assets Control ("OFAC") added Karim Khan to the Specially Designated Nationals and Blocked Persons List (the "SDN List") on February 13, 2025. Defendants further admit that OFAC added the four judges to the SDN List on June 5, 2025 and Ms. Francesca Albanese on July 9, 2025. To the extent this paragraph characterizes the Executive Order or IEEPA, Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities. Defendants deny the remaining allegations in this paragraph.

6. Defendants admit that Executive Order 14203 authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate additional foreign persons under the criteria specified in the Order. Defendants further admit that, pursuant to section 1(a)(ii)(A) of the Order, the Secretary of State designated four ICC judges on June 5, 2025, and Francesca Paola Albanese, the United Nations Human Rights Council Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, on July 9, 2025. To the extent this paragraph characterizes the Executive Order, Defendants respectfully refer the Court to the Order for its complete and accurate contents and deny any characterization inconsistent with the Order. Defendants deny the remaining allegations in this paragraph.
7. Defendants admit that section 3(a) of Executive Order 14203 addresses the provision of services to or for the benefit of persons whose property and interests in property are blocked pursuant to the Order. To the extent this paragraph quotes or characterizes the Executive Order or IEEPA, Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities. Defendants deny that the challenged prohibitions violate the First Amendment,

constitute unconstitutional content-based restrictions on speech, or exceed the authority conferred by IEEPA. Defendants deny the remaining allegations in this paragraph.

8. Defendants admit that OFAC issued 31 C.F.R. part 528 on July 1, 2025, to implement Executive Order 14203. Defendants further admit that 31 C.F.R. § 528.201(a) provides that “[a]ll transactions prohibited pursuant to E.O. 14203 of February 6, 2025 are prohibited pursuant to this part.” Defendants respectfully refer the Court to the regulations for their complete and accurate contents and deny any characterization inconsistent with those regulations. Defendants deny the remaining allegations in this paragraph.
9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs’ wishes and alleged cessation of their work with the OTP and therefore deny those allegations. Defendants deny that the Executive Order forced Plaintiffs to cease their work or that the challenged restrictions are unconstitutional, unlawful, or exceed the authority conferred by IEEPA. Defendants admit that Plaintiffs seek the declaratory, injunctive, and Administrative Procedure Act (“APA”) relief described in this paragraph, but deny that Plaintiffs are entitled to that relief. Defendants deny the remaining allegations in this paragraph.
10. This paragraph contains legal conclusions concerning the Court’s subject matter jurisdiction to which no response is required. To the extent a response is required, Defendants deny those allegations.
11. This paragraph contains legal conclusions concerning the Court’s authority to grant relief to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to declaratory or injunctive relief and deny the remaining allegations in this paragraph.

12. Defendants admit that the agency Defendants are agencies of the United States and that the individual Defendants are sued in their official capacities. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation concerning Plaintiff Matthew Smith's residence and therefore deny that allegation. Defendants do not contest venue in this district for purposes of this action.
13. Defendants admit that Plaintiff Matthew Smith is a co-founder and Chief Executive Officer of Fortify Rights, which describes its mission as ensuring human rights for all. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them.
14. Defendants admit that Plaintiff Akila Radhakrishnan serves as a legal advisor for the End Gender Apartheid campaign. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them.
15. Defendants admit that Donald J. Trump is the President of the United States, that he issued Executive Order 14203 invoking, *inter alia*, IEEPA, and that Plaintiffs sue him in his official capacity.
16. Defendants admit the allegations in this paragraph.
17. Defendants admit that Marco A. Rubio is the United States Secretary of State and that Plaintiffs sue him in his official capacity. Defendants further admit that section 1(a)(ii) of Executive Order 14203 provides for determinations by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, as to whether a foreign person meets the criteria specified in subsections (A)-(C). To the extent this paragraph quotes or characterizes the Executive Order, Defendants respectfully refer the Court to the Order for its complete and accurate contents and deny any characterization inconsistent with the Order. Defendants deny the remaining allegations in this paragraph.

18. Defendants admit that Treasury is a United States agency headquartered in Washington, D.C. Defendants further admit that section 10 of Executive Order 14203 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take actions and employ powers granted to the President by IEEPA as may be necessary to implement the Order.
19. Defendants admit the allegations in this paragraph.
20. Defendants admit that the U.S. Department of Justice (“DOJ”) is a United States agency headquartered in Washington, D.C., and is responsible for prosecuting criminal violations of IEEPA, including violations of Executive Order 14203 that satisfy the applicable statutory requirements.
21. Defendants admit that Pamela Bondi was the United States Attorney General when the First Amended Complaint was filed and that Plaintiffs named her as a defendant in her official capacity.
22. Defendants admit that OFAC is an office within Treasury located in Washington, D.C. and is responsible for civil enforcement of IEEPA such as applicable prohibitions under Executive Order 14203. Defendants further admit that OFAC added Karim Khan, then the ICC Prosecutor, to the SDN List on February 13, 2025.
23. Defendants admit that Lisa M. Palluconi was the Acting Director of OFAC when the First Amended Complaint was filed and that Plaintiffs named her as a defendant in her official capacity. Ms. Palluconi has since resumed her position as Deputy Director of OFAC.
24. Defendants admit that the Rome Statute of the ICC was adopted on July 17, 1998, that it provides for the establishment of the ICC, and that the United States participated in negotiations concerning that Statute. To the extent this paragraph characterizes the Rome Statute, Defendants respectfully refer the Court to that treaty for its complete and accurate

contents and deny any characterization inconsistent with that treaty. Defendants deny the remaining allegations in paragraph 24.

25. Defendants admit that the United States participated in the Nuremberg Trials and supported the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as the hybrid tribunals for Cambodia and Sierra Leone. Defendants further admit that the United States signed the Rome Statute on December 31, 2000, and that President Clinton issued a statement that day containing the quoted language. Defendants respectfully refer the Court to that statement for its complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning unspecified “other conflict zones” and therefore deny those allegations. Except as expressly admitted above, Defendants deny the remaining allegations in paragraph 25.
26. Defendants admit that the United States signed the Rome Statute but has not ratified it. Defendants further admit that, as of July 22, 2025, the ICC identified 125 “States Parties” to the Rome Statute, including 30 of NATO’s 32 members. Defendants deny the remaining allegations in paragraph 26 to the extent they characterize all States Parties as “countries.”
27. This paragraph contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the Rome Statute, including Article 11, for its complete and accurate contents. Defendants deny that every State that ratifies or accedes to the Rome Statute thereby consents to ICC jurisdiction over crimes committed on or after July 1, 2002, and deny any characterization inconsistent with that treaty.

28. This paragraph contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants admit that Article 1 describes the ICC as “complementary to national criminal jurisdictions.” Defendants respectfully refer the Court to the Rome Statute for its complete and accurate contents and deny the remaining characterizations in this paragraph.
29. The allegations in this paragraph characterize provisions of the Rome Statute and the United Nations Charter, including Article 39, which speak for themselves. Defendants admit that the United States is a permanent member of the United Nations Security Council and has the power to veto proposed substantive actions. To the extent the remaining allegations require a response, Defendants deny them.
30. To the extent this paragraph characterizes the procedures prescribed by the Rome Statute or the ICC’s Rules of Procedure and Evidence, Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities.
31. This paragraph contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the Rome Statute for its complete and accurate contents and deny any characterization inconsistent with that treaty.
32. This paragraph contains assertions concerning the OTP’s organizational structure and the responsibilities of its divisions. Defendants respectfully refer the Court to the Regulations of the Office of the Prosecutor and deny any characterization inconsistent with those regulations or the actual, current practice of the OTP.

33. Defendants admit that the OTP was staffed with a Prosecutor and two Deputy Prosecutors supported by advisers and staff and that Karim Khan was elected ICC Prosecutor by the Assembly of States Parties in 2021 and held that office when the First Amended Complaint was filed.
34. This paragraph contains legal conclusions concerning the Rome Statute and the ICC's Rules of Procedure and Evidence to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities.
35. This paragraph contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the Rome Statute for its complete and accurate contents and deny any characterization inconsistent with that treaty.
36. This paragraph contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the Rome Statute and the cited ICC webpage for their complete and accurate contents and deny any characterization inconsistent with those authorities. Defendants lack knowledge or information sufficient to form a belief as to the truth of any remaining allegations concerning the OTP's actual practices and therefore deny those allegations.
37. This paragraph contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Article 15 of the Rome Statute for its complete and accurate contents and deny any characterization inconsistent with that provision.

38. This paragraph contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Article 53(3) of the Rome Statute for its complete and accurate contents and deny any characterization inconsistent with that provision.
39. Defendants admit that OTP often sends personnel to relevant countries with their consent to collect evidence of alleged crimes.
40. Defendants admit the allegations concerning the sources from which the OTP seeks or obtains information and assistance. The final sentence contains legal conclusions concerning the Rome Statute to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Article 42(1) of the Rome Statute for its complete and accurate contents and deny any characterization inconsistent with that provision.
41. Defendants admit the allegations in this paragraph concerning the participation of victims, their representatives, and civil society groups in ICC proceedings and their interactions with the OTP.
42. This paragraph contains legal conclusions concerning the Rome Statute and the ICC's Rules of Procedure and Evidence to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Article 15(3) of the Rome Statute and Rule 50(3) for their complete and accurate contents and deny any characterization inconsistent with those authorities.
43. Defendants admit that the United States facilitated the transfer to ICC custody of Bosco Ntaganda in March 2013 and Dominic Ongwen in January 2015, as further described in their responses to paragraphs 44(a) and 44(b), respectively. To the extent this paragraph characterizes the ICC's authority to issue arrest warrants, Defendants respectfully refer the Court to the Rome Statute for its complete and accurate contents and deny any

characterization inconsistent with that treaty. Defendants deny the characterization of U.S. assistance as “critical.” Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations in this paragraph and therefore deny those allegations.

44. Defendants admit that the United States has not ratified the Rome Statute and admit the instances of U.S. support for ICC investigations and prosecutions expressly admitted in the subparagraphs below. Except as expressly admitted, Defendants deny the remaining introductory allegations in paragraph 44.

- a. Defendants admit that the United States has not ratified the Rome Statute. Defendants further admit that, in March 2013, Bosco Ntaganda voluntarily surrendered at the U.S. Embassy in Kigali, Rwanda, and that the United States facilitated his surrender to the ICC in cooperation with the Rwandan, Dutch, and British governments. Defendants admit that Secretary of State John Kerry’s March 22, 2013 statement and Ambassador at Large Stephen J. Rapp’s November 21, 2013 remarks contain the quoted language, and respectfully refer the Court to those statements for their complete and accurate contents. Defendants admit the allegations concerning the Democratic Republic of the Congo’s referral, the opening of the OTP’s investigation, and Ntaganda’s charges, conviction, and sentence. Defendants respectfully refer the Court to the ICC’s records concerning the Situation in the Democratic Republic of the Congo and the Ntaganda proceedings for their complete and accurate contents.
- b. Defendants admit the allegations concerning Dominic Ongwen’s capture and transfer to ICC custody such as the involvement of U.S. special forces. Defendants further admit the allegations concerning Uganda’s referral, the OTP’s investigation, and the number of arrest warrants issued, and respectfully refer the Court to the ICC’s records concerning

- the Situation in Uganda for their complete and accurate contents. Defendants admit that U.S. Department of State spokesperson Jen Psaki's January 20, 2015 statement contains the quoted language, and respectfully refer the Court to that statement for its complete and accurate contents.
- c. Defendants admit that the U.S. Department of State issued a statement on March 22, 2016, which contains the quoted language concerning U.S. support for the ICC's investigations in the Central African Republic, and respectfully refer the Court to that statement for its complete and accurate contents. Defendants admit the allegations concerning the Central African Republic's referrals and the opening of the OTP's investigations into the alleged crimes described in this subparagraph. Defendants respectfully refer the Court to the ICC's records concerning the situations in the Central African Republic for their complete and accurate contents and deny any characterization inconsistent with those materials.
- d. Defendants admit that, on March 31, 2005, the United Nations Security Council adopted Resolution 1593, referring the situation in Darfur since July 1, 2002, to the ICC Prosecutor, and that the United States abstained from the vote. Defendants admit that the United States, as a permanent member of the Security Council, has the power to veto proposed substantive actions. Defendants further admit that the Security Council's March 31, 2005 press release reports the quoted remarks by the Acting U.S. Permanent Representative and that the U.S. Department of State's February 27, 2007 briefing contains the quoted language. Defendants respectfully refer the Court to those materials for their complete and accurate contents and deny any characterization inconsistent with those materials. Defendants respectfully refer the Court to the ICC's records concerning the Situation in Darfur, Sudan, for their complete and accurate contents regarding the date and scope of the OTP's investigation and deny any characterization inconsistent with those materials.

- Defendants deny the remaining allegations in this subparagraph.
- e. Defendants admit that, in February 2011, the United Nations Security Council referred the situation in Libya to the ICC Prosecutor and that the United States voted in favor of the referral. To the extent this subparagraph quotes or characterizes statements by the U.S. Permanent Representative or a Security Council press release, Defendants respectfully refer the Court to those materials for their complete and accurate contents and deny any characterization inconsistent with those materials. Defendants respectfully refer the Court to the ICC's records concerning the Situation in Libya for their complete and accurate contents regarding the alleged attacks and the date and scope of the OTP's investigation, and deny any characterization inconsistent with those materials. Defendants deny the remaining allegations in this subparagraph.
 - f. Defendants admit that the U.S. Department of State issued an October 1, 2015 statement containing the quoted language concerning Ahmad Al Faqi Al Mahdi's surrender to the ICC and Mali's cooperation with the ICC. Defendants respectfully refer the Court to that statement for its complete and accurate contents and deny any characterization inconsistent with that statement. Defendants respectfully refer the Court to the ICC's records concerning the Situation in Mali for their complete and accurate contents regarding Mali's referral and the date and scope of the OTP's investigation and deny any characterization inconsistent with those materials. Defendants deny the remaining allegations in this subparagraph.
 - g. Defendants admit that, in her December 1, 2022 remarks, Ambassador at Large Beth Van Schaack stated that she had announced U.S. support for the ICC's work in Venezuela. Defendants further admit that her December 8, 2023 remarks welcomed the Court's reauthorization of the Venezuela investigation and progress in other ICC matters.

Defendants respectfully refer the Court to those statements for their complete and accurate contents and deny any characterization inconsistent with those statements. Defendants respectfully refer the Court to the ICC's records concerning the Situation in the Bolivarian Republic of Venezuela I for their complete and accurate contents regarding the referral, alleged crimes, and procedural history of the investigation, and deny any characterization inconsistent with those materials. Defendants deny the remaining allegations in this subparagraph.

- h. To the extent this subparagraph quotes or characterizes the Secretary of State's statement cited in footnote 17 of the First Amended Complaint, Defendants respectfully refer the Court to that statement for its complete and accurate contents and deny any characterization inconsistent with that statement.
- i. Defendants admit that President Joseph R. Biden, Jr.'s March 17, 2023 remarks contain the quoted language concerning the ICC's arrest warrant for Vladimir Putin and respectfully refer the Court to those remarks for their complete and accurate contents. To the extent this subparagraph characterizes federal legislation, Defendants respectfully refer the Court to the applicable legislation for its complete and accurate contents and deny any characterization inconsistent with that legislation. Defendants respectfully refer the Court to the ICC's records concerning the Situation in Ukraine for their complete and accurate contents regarding the referral and the date and scope of the OTP's investigation and deny any characterization inconsistent with those materials. Defendants deny the remaining allegations in this subparagraph.

45. Defendants admit that, on September 18, 2018, then-ICC Prosecutor Fatou Bensouda announced the opening of a preliminary examination concerning the alleged deportation of the Rohingya people from Myanmar to Bangladesh. Defendants respectfully refer the Court to that announcement for its complete and accurate contents and deny any characterization inconsistent with that announcement.
46. Defendants admit that, on July 4, 2019, then-ICC Prosecutor Fatou Bensouda requested authorization from the Pre-Trial Chamber pursuant to Article 15(3) of the Rome Statute to investigate alleged crimes against humanity, such as deportation and persecution, against the Rohingya population in the situation in Bangladesh/Myanmar. To the extent this paragraph characterizes that request, Defendants respectfully refer the Court to the request for its complete and accurate contents and deny any characterization inconsistent with that request.
47. Defendants admit the allegations in this paragraph.
48. Defendants admit that, in a November 27, 2024 statement, then-ICC Prosecutor Karim Khan announced that his Office was filing an application for an arrest warrant against Senior General and Acting President Min Aung Hlaing for alleged crimes against humanity of deportation and persecution of the Rohingya people committed in Myanmar and partly in Bangladesh. Defendants further admit that the statement describes the OTP's allegations concerning the dates and participants identified in this paragraph. Defendants respectfully refer the Court to the statement for its complete and accurate contents and deny any characterization inconsistent with that statement. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that the application remained pending before the Pre-Trial Chamber as of July 22, 2025 and therefore deny that allegation.

49. Defendants admit that one of the four ICC judges sanctioned in June 2025 has been assigned to the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar and respectfully refer the Court to the ICC's records concerning judicial assignments for their complete and accurate contents.
50. Defendants admit the allegations in this paragraph and respectfully refer the Court to the ICC's records concerning the Situation in Afghanistan for their complete and accurate contents.
51. Defendants admit the allegations in this paragraph and respectfully refer the Court to the ICC's records concerning the Situation in Afghanistan for their complete and accurate contents.
52. Defendants admit the allegations in this paragraph and respectfully refer the Court to the ICC's records concerning the Situation in Afghanistan for their complete and accurate contents.
53. Defendants admit that, in a September 27, 2021 statement, then-ICC Prosecutor Karim Khan announced that he had requested authorization from the Pre-Trial Chamber to resume the Afghanistan investigation and had decided to focus the OTP's investigations on alleged crimes by the Taliban and the Islamic State-Khorasan Province ("IS-K") and to deprioritize other aspects of the investigation. Defendants admit that the statement contains the quoted language and respectfully refer the Court to that statement for its complete and accurate contents. Defendants respectfully refer the Court to the ICC's records concerning the Situation in Afghanistan for their complete and accurate contents regarding the scope of the deprioritized aspects of the investigation, the effect of that deprioritization on potential investigative action or prosecution targeting U.S. persons, and the October 31, 2022 ruling and its grounds, and deny any characterization inconsistent with those materials.

54. Defendants admit that, in a January 23, 2025 statement, then-ICC Prosecutor Karim Khan announced that the OTP had filed applications for arrest warrants against Haibatullah Akhundzada, identified as the Supreme Leader of the Taliban, and Abdul Hakim Haqqani, identified as the Chief Justice of the “Islamic Emirate of Afghanistan,” for the alleged crime against humanity of persecution on gender grounds. Defendants respectfully refer the Court to that statement for its complete and accurate contents. Defendants further admit that the Pre-Trial Chamber issued those warrants on July 8, 2025, and respectfully refer the Court to the ICC’s records concerning those warrants for their complete and accurate contents.
55. Defendants are not aware of any arrest warrants issued by the ICC for U.S. persons in connection with the OTP’s investigation into the Situation in Afghanistan as of July 22, 2025. Defendants respectfully refer the Court to the ICC’s public records concerning that situation for their complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that no such warrants had been issued and therefore deny that allegation.
56. Defendants admit that Plaintiff Smith is a co-founder and Chief Executive Officer of Fortify Rights. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them.
57. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny them.
58. Defendants admit that then-ICC Prosecutor Fatou Bensouda’s request for authorization to investigate the situation in Bangladesh/Myanmar repeatedly cited a Fortify Rights report. Defendants respectfully refer the Court to that request for its complete and accurate contents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them.

59. Defendants lack knowledge or information sufficient to form a belief as to the truth of the introductory allegations concerning Plaintiff Smith's regular sharing and discussion of evidence with OTP and ICC personnel and therefore deny those allegations.

- a. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
- b. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
- c. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.

60. Defendants lack knowledge or information sufficient to form a belief as to the truth of the introductory allegations concerning Plaintiff Smith's meetings, interactions, and public appearances with OTP personnel and therefore deny those allegations.

- a. Defendants admit that Fortify Rights co-hosted a side event on December 7, 2021, at the ICC's annual Assembly of States Parties in The Hague, which involved a public panel discussion entitled "Myanmar: What Next for International Justice Efforts Following the Coup?" Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this subparagraph and therefore deny them.
- b. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
- c. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.

61. Defendants lack knowledge or information sufficient to form a belief as to the truth of the introductory allegations concerning Plaintiff Smith's cessation of ongoing or planned communications with the OTP and his reasons for refraining from those communications and therefore deny those allegations. To the extent the introductory allegations assert that the Executive Order, regulations, and designations prohibit those communications or create a substantial risk of penalties under IEEPA, they contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.

- a. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff Smith's communications, plans, reasons for refraining from communications, and the alleged request from OTP personnel, and therefore deny those allegations. To the extent this subparagraph characterizes the scope or legal effect of the Executive Order, regulations, designations, or the International Emergency Economic Powers Act ("IEEPA"), Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities.
- b. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
- c. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
- d. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the report, the arrest, and Plaintiff Smith's intentions and reasons for refraining from communications with OTP staff and therefore deny those allegations. To the extent this subparagraph characterizes the scope or legal effect of IEEPA, Defendants respectfully refer the Court to the statute for its complete and

accurate contents and deny any characterization inconsistent with that statute.

62. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore deny them.

63. Defendants lack knowledge or information sufficient to form a belief as to the truth of the introductory allegations concerning the focus and nature of Plaintiff Radhakrishnan's work with the OTP and ICC and therefore deny those allegations.

- a. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
- b. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
- c. Defendants admit that, in December 2022, Plaintiff Radhakrishnan spoke on a panel during the ICC's Assembly of States Parties with then-Prosecutor Khan on justice options for Myanmar. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations concerning Plaintiff Radhakrishnan's activities and the described events and therefore deny those allegations. Defendants admit that, on November 27, 2024, then-ICC Prosecutor Karim Khan announced that his Office was filing an application for an arrest warrant against Min Aung Hlaing.
- d. Defendants admit that Plaintiff Radhakrishnan argued as amicus on the definition of "forced pregnancy" under the Rome Statute before the Appeals Chamber in *The Prosecutor v. Dominic Ongwen* concerning a Ugandan war criminal and respectfully refer the Court to that filing for its complete and accurate contents and deny any allegations inconsistent with that material.

- e. Defendants admit that Plaintiff Radhakrishnan moderated a roundtable with prospective judicial candidates for the ICC in November 2023 and respectfully refer the Court to the record of those proceedings for its complete and accurate contents and deny any allegations inconsistent with that material.
 - f. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
 - g. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
 - h. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them.
 - i. Defendants admit that Plaintiff Radhakrishnan sits on the Board of the Women's Initiatives for Gender Justice and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this subparagraph and therefore deny them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this subparagraph and therefore deny them.
64. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff Radhakrishnan's work, plans, communications, and reasons for ceasing or abandoning those activities, and therefore deny those allegations. To the extent this paragraph characterizes the scope or legal effect of E.O. 14203, regulations, designations, or IEEPA, Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities.

65. This paragraph contains legal conclusions concerning IEEPA, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to 50 U.S.C. §§ 1701 and 1702 for their complete and accurate contents and deny any characterization inconsistent with those authorities.
66. This paragraph contains legal conclusions concerning IEEPA, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to 50 U.S.C. § 1701(b) for its complete and accurate contents and deny any characterization inconsistent with that provision.
67. To the extent this paragraph characterizes IEEPA or executive orders issued pursuant to it, it contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to IEEPA and the applicable executive orders for their complete and accurate contents and deny any characterization inconsistent with those authorities.
68. To the extent this paragraph characterizes IEEPA, executive orders issued pursuant to it, or OFAC regulations, it contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the applicable authorities, such as 31 C.F.R. § 589.331, for their complete and accurate contents and deny any characterization inconsistent with those authorities.
69. Defendants admit that OFAC adds persons designated for blocking sanctions to the SDN List. Defendants deny the remaining allegations to the extent they suggest that every sanctions designation results in inclusion on the SDN List.
70. To the extent this paragraph characterizes IEEPA, 18 U.S.C. § 371, or the cited penalty adjustment, it contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to 50 U.S.C. § 1705, 18 U.S.C. §

371, and 90 Fed. Reg. 3687, 3688 (Jan. 15, 2025), for their complete and accurate contents and deny any characterization inconsistent with those authorities. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning prior prosecutions under 18 U.S.C. § 371 and therefore deny those allegations.

71. Defendants admit that OFAC is responsible for civil enforcement of sanctions administered by OFAC under IEEPA and imposes civil penalties on individuals and entities for violations of those sanctions.

72. Defendants admit that DOJ is responsible for criminal enforcement of IEEPA sanctions regimes and has prosecuted persons for IEEPA violations.

73. To the extent this paragraph characterizes the legal consequences of orders issued under IEEPA, it contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to IEEPA and the applicable orders and regulations for their complete and accurate contents and deny any characterization inconsistent with those authorities. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the deterrent effect of potential penalties on individuals and entities and therefore deny those allegations.

74. This paragraph contains legal conclusions concerning IEEPA and OFAC regulations, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to 50 U.S.C. § 1702(b)(3) and 31 C.F.R. § 560.210(c) for their complete and accurate contents and deny any characterization inconsistent with those authorities.

75. Defendants admit that Presidents have invoked IEEPA to address weapons proliferation and threats involving Iran and North Korea. Defendants further admit that President Trump issued Executive Order 13928 on June 11, 2020, and that Fatou Bensouda and Phakiso Mochochoko were subsequently designated under that Order. Defendants admit that, on

January 4, 2021, the court in *Open Society Justice Initiative v. Trump*, 510 F. Supp. 3d 198 (S.D.N.Y. 2021), preliminarily enjoined enforcement of IEEPA's civil and criminal penalty provisions against the plaintiffs in that action for the conduct specified in its opinion. To the extent this paragraph characterizes the cited regulations, Executive Order, or judicial decision, it contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that "only once before" a President imposed sanctions of the kind described and therefore deny that allegation.

76. Defendants admit that Executive Order 14203 invokes, among other authorities, IEEPA, contains the quoted language, and declares a national emergency. Defendants respectfully refer the Court to the Executive Order for its complete and accurate contents and deny any characterization inconsistent with the Order.

77. Defendants admit that Sections 8(d)(i) and 8(d)(ii) of Executive Order 14203 identify the categories of "protected person" quoted in this paragraph and that Section 8(c) contains the quoted definition of "United States person." Defendants respectfully refer the Court to the Executive Order for its complete and accurate contents and deny any characterization inconsistent with the Order.

78. Defendants admit that Section 1(a) of Executive Order 14203 blocks the property and interests in property of Karim Khan and foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to meet the quoted criteria, when such property is in the United States, comes within the United States, or is within the possession or control of a United States person, subject to Section 1(b).

Defendants respectfully refer the Court to the Executive Order for its complete and accurate contents and deny any characterization inconsistent with the Order.

79. Defendants admit that Sections 3(a) and 3(b) of Executive Order 14203 contain the quoted prohibitions and that 31 C.F.R. § 528.201(a) prohibits all transactions prohibited pursuant to the Order. To the extent this paragraph characterizes the scope or application of those prohibitions, it contains legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the Executive Order and 31 C.F.R. § 528.201 for their complete and accurate contents and deny any characterization inconsistent with those authorities.

80. Defendants admit that OFAC has issued guidance concerning dealings with government agencies in which an SDN is an official and that OFAC FAQ 840 contains the quoted language. Defendants further admit that Executive Orders 13692 and 13936 contain prohibitions on contributions or provisions of funds, goods, or services by, to, or for the benefit of blocked persons. To the extent this paragraph characterizes the guidance or Executive Orders, Defendants respectfully refer the Court to those authorities for their complete and accurate contents and deny any characterization inconsistent with those authorities.

81. This paragraph contains legal conclusions concerning the scope and application of the Executive Order and Regulations, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to Executive Order 14203 and 31 C.F.R. part 528 for their complete and accurate contents and deny any characterization inconsistent with those authorities.

82. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs' wishes and cessation of communications with the OTP and therefore deny those allegations. The remaining allegations contain legal conclusions concerning the First Amendment and the scope and application of the Executive Order and corresponding regulations, to which no response is required. To the extent a response is required, Defendants deny those allegations.
83. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs would resume their communications with the OTP, and therefore deny that allegation. To the extent this paragraph characterizes the Executive Order and corresponding regulations as imposing unlawful speech restrictions on Plaintiffs, Defendants deny that characterization.
84. Defendants incorporate by reference their responses to the paragraphs incorporated in this paragraph as though fully set forth herein.
85. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.
86. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs' wishes and asserted chilling of their communications with the OTP and therefore deny those allegations. The allegation that Plaintiffs face a substantial risk of penalties contains a legal conclusion to which no response is required. To the extent a response is required, Defendants deny that allegation.
87. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.
88. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.

89. The Court dismissed Count II of the First Amended Complaint. ECF No. 47. Defendants provide the following responses to paragraphs 89-93 to the extent those allegations are incorporated into the remaining claims. Defendants incorporate by reference their responses to the paragraphs incorporated in this paragraph as though fully set forth herein.
90. This paragraph contains legal conclusions concerning IEEPA, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to 50 U.S.C. § 1702(b)(3) for its complete and accurate contents and deny any characterization inconsistent with that provision.
91. This paragraph contains legal conclusions concerning 50 U.S.C. § 1702(b)(3), OFAC's interpretation of that provision, and the cited legislative history, to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to 50 U.S.C. § 1702(b)(3), 31 C.F.R. § 560.210(c)(2), and the cited conference report for their complete and accurate contents and deny the allegations that OFAC's interpretation is inconsistent with the statute or congressional intent.
92. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs' past activities and intentions to continue those activities and therefore deny those allegations. To the extent this paragraph asserts that Plaintiffs' activities constitute the importation or exportation of information or informational materials within the meaning of 50 U.S.C. § 1702(b)(3), it contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.
93. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.
94. Defendants incorporate by reference their responses to all prior paragraphs of the Complaint as though fully set forth herein.

95. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.

96. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.

RESPONSE TO PRAYER FOR RELIEF

Th Defendants deny that Plaintiffs are entitled to any of the relief requested in the Prayer for Relief or to any other relief.

October 13, 2026

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

STEPHEN M. ELLIOTT
Assistant Branch Director

/s/ Kian K. Azimpoor
KIAN K. AZIMPOOR (D.C. Bar No. 90024613)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Tel: (202) 598-0860; Fax: (202) 616-8470
E-mail: kian.k.azimpoor@usdoj.gov

Counsel for Defendants