

Exhibit 2

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LEILA N. SADAT; K. ALEXA KOENIG; NAOMI ROHT-ARRIAZA; and STEVEN M. WATT,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; U.S. DEPARTMENT OF STATE; ANTONY J. BLINKEN, in his official capacity as Secretary of State; U.S. DEPARTMENT OF THE TREASURY; JANET L. YELLEN, in her official capacity as Secretary of the Treasury; U.S. DEPARTMENT OF JUSTICE; MERRICK B. GARLAND, in his official capacity as Attorney General; OFFICE OF FOREIGN ASSETS CONTROL; and BRADLEY T. SMITH, in his official capacity as Acting Director of the Office of Foreign Assets Control,

*Defendants.*¹

Civil Case No.: 3:21-cv-00416-CRB

DECLARATION OF K. ALEXA KOENIG

¹ Pursuant to Federal Rule of Civil Procedure 25(d), the Defendants originally named in this action have been substituted with the names of their successors in office.

1 I, K. Alexa Koenig, hereby declare as follows:

2 1. I am a plaintiff in the above-captioned action.

3 2. I currently serve as a Lecturer in Residence and the Executive Director of the Human
4 Rights Center at the University of California, Berkeley School of Law. I reside in San Rafael, California,
5 and am a citizen of the United States.

6 3. At the law school, I teach courses on human rights and international criminal law, with a
7 particular emphasis on the use of emerging technologies to help map and document human rights abuses
8 and mass atrocities in conflict zones.

9 4. My involvement with the International Criminal Court (“ICC”), and the Office of the
10 Prosecutor (“OTP”) specifically, began in the early 2010s, when I began researching the experiences of victims
11 and witnesses participating in ICC proceedings. In 2012, I arranged, in consultation with the Director of the
12 OTP’s Investigations Division, Michel de Smedt—who reports to Fatou Bensouda, the Prosecutor of the
13 ICC—and other OTP personnel to place one of the Human Rights Center’s graduate students at the OTP to
14 help research how scientific and technology solutions might be employed to aid OTP in its preliminary
15 examination, investigation, and prosecution processes. Following this placement, I and some of my colleagues
16 from the Human Rights Center travelled to The Hague, The Netherlands, where we met with Mr. de Smedt
17 and other OTP personnel to discuss the creation of a series of workshops bringing together the OTP and
18 scientists, technologists, and human rights documenters to consider strategies to diversify the scientific and
19 technological evidence that could be used to support OTP cases.

20 5. In 2014 and 2015, I continued to work and meet with Mr. de Smedt and others in the OTP with
21 the goal of creating a Technology Advisory Board for OTP, which was established in February 2016. Under
22 the Terms of Reference of the Board, the Board’s purpose is to “advise OTP on matters related to technological
23 developments, by providing updates, insight, and guidance” on issues such as methodologies for online
24 investigations, verification and analysis of potential evidence obtained from online sources, open-source
25 documentation methods, and the incorporation of technology solutions into the OTP’s practices and standard
26 operating procedures.

1 6. I have served as co-chair of the Board since its inception in 2016. In that role, I typically
2 meet with Mr. de Smedt and other OTP personnel at The Hague and by telephone on an annual or biannual
3 basis to discuss the challenges facing the OTP and how the Board could help resolve those challenges. Based
4 on those discussions, I lead the effort to craft the Board's membership and priorities for the coming year, and
5 also contribute to the regular substantive work of the Board. Since its inception, the Board has transmitted to
6 Mr. de Smedt and other OTP personnel a number of reports documenting the discussion during the Board's
7 annual meeting and recommending technological solutions to various investigative and prosecutorial
8 challenges facing the OTP.

9 7. In addition to my role on OTP's Technology Advisory Board, I conduct research of interest
10 to the OTP on technology and other issues related to the OTP's investigative and prosecutorial work. I have
11 also communicated with OTP personnel on incorporating the Berkeley Protocol on Digital Open Source
12 Investigations, which articulates standards for using digital open source information in international criminal
13 and human rights investigations, into the OTP's practices and standard operating procedures. In 2019, I
14 discussed with OTP personnel the possibility of the Human Rights Center supporting specific OTP
15 investigations.

16 8. Since 2012 I have helped to place numerous students and staff of the Human Rights Center
17 with OTP for internships, research fellowships, and consulting positions, with the most recent fellowship
18 occurring in the spring of 2020. Under my supervision, these students and staff have conducted research and/or
19 advised on how digital fact-finding methods can strengthen the OTP's investigations and prosecutions.

20 9. Over the past several years, I have visited the ICC in The Hague approximately twice per year.
21 During those visits, I would meet with OTP personnel responsible for investigations and prosecutions to
22 discuss challenges facing the OTP, to structure the work of the Board, to discuss implementation of the
23 Berkeley Protocol, and to evaluate the OTP's need for research and other assistance from me, my students,
24 and the staff at the Human Rights Center.

25 10. Before the issuance of the Executive Order, I had planned to advise and co-supervise a Student-
26 Initiated Legal Services Project that would have provided legal research and analysis to the OTP during the
27

1 Fall 2020 and Spring 2021 semesters in support of the OTP’s preparation for a trial regarding alleged war
2 crimes and crimes against humanity.

3 11. The threat of enforcement of civil and criminal penalties under the International
4 Emergency Economic Powers Act (“IEEPA”) for violations of the Executive Order and Regulations has
5 caused me to cease engagement with the OTP, halting progress on ongoing reports and freezing
6 discussions regarding the work of the Board and the Human Rights Center’s support of OTP
7 investigations. I have also ceased ongoing advising work to the OTP; stopped all work involving my
8 students in support of the OTP, including abandoning plans to supervise students working on the Legal
9 Services Project that I referenced in Paragraph 10; and cancelled plans to travel to The Hague in the fall
10 of 2020 and the spring of 2021 to meet with OTP personnel.

11 12. If not for the Executive Order, Designations, and Regulations, I would have performed
12 these actions both in the United States and abroad, and in the process would have communicated and
13 exchanged materials with people in other countries via the Internet or telephonically. I intend to
14 immediately resume engaging with the OTP if the Executive Order, Designations, and Regulations are
15 enjoined or rescinded.

16 I declare under penalty of perjury under the laws of the United States of America that the foregoing
17 is true and correct. Executed in San Rafael, California on March 12, 2021.

18
19 /s/ K. Alexa Koenig

20 K. Alexa Koenig

21
22 **FILER’S ATTESTATION**

23 Pursuant to Civil L.R. 5-1(i)(3), I, Trisha B. Anderson, hereby attest that concurrence in the filing
24 of this document has been obtained from the above signatory.

25
26 Dated: March 12, 2021

By: /s/ Trisha B. Anderson

27 Trisha B. Anderson