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At the Supreme Court
Sitting as the High Court of Justice

HCJ 726/08
scheduled for 3 February 2008

_____ **Al-'Adluni et al.**
represented by counsel, Att. Ido Bloom et al.
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

GOC Central Command et al.
by the State Attorney's Office
Ministry of Justice Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondent

Preliminary Response on behalf of the Respondents

In accordance with the decision of Honorable Justice Arbel dated 23 January 2008, and ahead of the hearing on the petition scheduled for 3 February 2008, the Respondents hereby respectfully submit their response to the petition.

1. Petitioners 1-4, minors (hereinafter: **the Petitioners**), residents of the Gaza Strip seek to travel to the West Bank, where, it is claimed, their mother has been present since September 2007, due to her medical condition. According to the Petitioners, the mother's medical condition requires she remain in the West Bank, and therefore, request that the Respondents allow their passage to the West Bank as well.

In effect, and without expressly stating as much, **the Petitioners in fact seek to change their residence from the Gaza Strip to the West Bank**. This, given the Petitioners' claim that their father has moved to the West Bank from the Gaza Strip for the purpose of employment, as early as January 2007, and, according to the Petitioners, cannot return to the West Bank for the time being due to the fact that his life is at risk there as he is a member of the "Fatah" movement. Thus, in effect, the Petitioners' parents have been present in the West Bank for some time and the Petitioners seek, in fact, to join them and settle in the West Bank.

2. The Respondents maintain that the petition must be rejected for lack of cause. After having conducted a telephone conversation with the health coordinator at the Civil Administration, who had been

presented with the medical documents attached to the petition regarding the mother's medical condition (P/7-P/10), the office of the legal advisor to the Judea and Samaria Area notified that the medical documents indicated that the mother's medical condition does not require her to be present in the West Bank in particular. In any case, the Respondents maintain that the Petitioners' mother is able return to the Gaza Strip, where she resides and reunite with her children there. Inasmuch as the Petitioners' mother files a further application to leave the Gaza Strip and travel to the West Bank for medical treatment, her application will be reviewed in accordance with the medical documents attached thereto and the circumstances at the time.

3. **However, the Respondents wish to note that inasmuch as the mother's medical condition requires her to remain in Ramallah, the Respondents do not object to the Petitioners' passage to the West Bank, if the Petitioners' mother pledges that the Petitioners and their mother will return to the Gaza Strip at the end of the medical treatment which necessitates the mother's presence in the West Bank, inasmuch as such exists. This, by way of permits to remain in the West Bank, the renewal of which will be reviewed upon presentation of appropriate medical documents.**

The Factual Foundation

4. According to the petition, in 1994, the Petitioners' father arrived in Jericho along with Palestinian Authority officials and received residency status. At a later date, as claimed, his wife joined him and received residency status in the Territories through family unification. The family then moved to the Gaza Strip.
5. The petition further claims that the Petitioners' father relocated from the Gaza Strip to Ramallah in 2007 as part of his employment with the Palestinian Authority. An inquiry conducted by the Respondents indicated that in January 2007, the Petitioners' father filed a request to allow him to "return to his home" in the Judea and Samaria Area, despite the fact that, as stated, he had been living in the Gaza Strip for some 13 years. His request was approved.
6. According to the Petitioners' claim, the father can no longer return to the Gaza Strip, as, being a "Fatah" man, his life is in danger. An inquiry conducted by the Respondents with security officials reveals that this concern lacks a factual foundation. The Petitioner is a helicopter pilot who is employed by the Palestinian Authority. As far as the Respondents know, there is no basis for the claim that his life is in danger due to the aforesaid position. It must be noted that there are many Palestinians who are affiliated with "Fatah" in the Gaza Strip today, the vast majority of whom continue to be employed by the various organs of the Palestinian Authority. In the past few months, passage has been approved only for Palestinians who it was proven faced mortal danger in the Gaza Strip and following a request made by the Palestinian Authority to the Respondents.
7. In any case, beginning at the time the father travelled to the Judea and Samaria Area and before the mother moved there, the mother and her children, the Petitioners, contacted the Respondents requesting to travel to the West Bank for the purpose of settling therein. These requests were denied for lack of cause.
8. The Petitioners' mother was granted a permit to enter Israel for 11 September 2007, for the purpose of "ambulatory treatment" after she had filed an application claiming to have a medical condition which required treatment. According to the petition, the Petitioner travelled to Ramallah, and in so doing, reunited with her husband, the Petitioners' father. It should be noted, that this permit was probably given on the basis of the medical document from September 2007 which was attached to the petition and marked P/7 and notes a certain medical exam the Petitioner had to undergo which was

not available in Gaza.

9. Document P/7 by the Palestinian health ministry dated 5 September 2007 issued by a general surgeon, Dr. Shawahin, states (according to a translation by the Civil Administration medical coordinator)

“Suffered from a reduced left kidney which caused pain in the left side of the abdomen and a burning sensation in the urinary tract. An ultrasound revealed a reduced left kidney which necessitates a renal scan (radioactive isotope scan). This scan is not available in Gaza.”

It shall be noted that, according to the office of the legal advisor to the Judea and Samaria Area, which conducted a telephone conversation with the Civil Administration medical coordinator, as far as the medical documents attached to the petition indicate, the Petitioner has not undergone this test, despite the fact that she has been in the Judea and Samaria Area for over four months. In fact, the mother has now been illegally present in the Judea and Samaria Area for a few months.

10. Document P/8 dated 11 November 2007, which is a medical report from the Sheikh Zayid hospital in Ramallah states that the patient arrived at the emergency room in a state of anorexia, fatigue and swollen bones. The report also states that laboratory tests revealed the following: anemia – very low hemoglobin (7.6), kidney degeneration and arthritis. It was further stated that the patient suffers from Behçet disease (a peripheral nervous system disorder). The report finally notes that the patient must check in for follow up.
11. Document P/9, dated 20 November 2007 and document P/10 dated 30 December 2007, by Dr. Inas Muhana, a rheumatologist state, *inter alia*, that the patient suffers from Behçet disease and is receiving treatment in my clinic, must arrive every month for laboratory tests and follow up, and is receiving drug treatment in order to maintain the immune system.

Namely, the medical documents indicate that beyond the renal scan mentioned in the document by the Gaza Strip physician, the mother requires a monthly doctor’s examination and laboratory tests, which may be conducted in the Gaza Strip without difficulty.

12. An inquiry held by the Respondents also reveals that in October 2007, the mother applied to the Civil Administration several times for a permit to travel through Israel in order to return to the Gaza Strip. **All of the mother’s requests were approved, but she chose not to use the permits.**
13. Now, as stated, the Petitioners are seeking to travel from the Gaza Strip to Ramallah and in so doing, are effectively seeking to settle in the West Bank.

The Respondents’ position – travel from the Gaza Strip to the West Bank

14. The Respondents will argue that the petition must be rejected for lack of cause for the Honorable Court’s intervention in the Respondents’ decision. The Petitioners have no vested right, neither under Israeli law nor under the rules of international law, to travel from the Gaza Strip, a territory no longer under military control to the Judea and Samaria Area, a closed zone under the order of the military commander. The Respondents will argue that they have broad discretion in matters of this sort and there is no room for the Honorable Court’s intervention therein. The same is all the more true in matters relating to passage through Israel.

15. Upon the entry of the IDF into the Judea and Samaria Area and the Gaza Strip, these territories were proclaimed closed zones. Entry into and exit out of the same required a permit from the commander of the IDF forces in the Area according to the Order concerning Closure of the Area (Gaza Strip Area) (No. 144) 5728-1968 and the Order concerning Closure of the Area (West Bank Area) (No. 34) 5727-1967.
16. In all matters concerning the Judea and Samaria Area, this situation has remained in effect, when, according to the security legislation in force, this Area is a closed zone entry into and exit out of which are prohibited unless an individual permit has been granted by the commander of the IDF forces in the Area or a person authorized by him (see Section 90 of the Order regarding Defense Regulations (Judea and Samaria) (No. 378) 5730-1970). This provision indicates that any soldier, police officer or competent authority in the Area appointed thereto, has the power to remove a resident of the Gaza Strip who is present in the Judea and Samaria Area without a permit outside the Area.
17. As far as the Gaza Strip is concerned, as known, during August and September of 2005, Israel implemented a plan to disengage from the Gaza Strip. Upon completion of the plan and after the last IDF soldier left Gaza, on 12 September 2005, a proclamation by the IDF commander in the Area notifying of the termination of the military administration in the Area came into force.
18. It shall be noted that over the years, this Honorable Court has reviewed many petitions relating to the military commander's authority to prevent entry into and exit out of the Area. In its rulings, the Honorable Court has upheld, time and again, the legal validity of the security legislation, while sanctioning the security considerations weighed by the military commanders in the Area when making decisions regarding movement of residents out of the Area or into it.

See for example, HCJ 9293/01 **MK Muhammad Barakeh v. Minister of Defense**, *Piskey Din* 56(2) 509 pp. 515-516, as follows:

The Order concerning Closure of the Area (Gaza Strip Area) (No. 144) 5728-1968 issued by the commander of the IDF forces in the Area stipulates that in order to "maintain proper governance and security in the Area, the entire Area shall be a closed zone" (Section 1 of the Order). It was also determined that "A person shall not enter the Area and shall not leave it other than by a permit issued by him [*sic*] or by a person empowered thereto by me in writing, or in accordance with the provisions of a general permit issued by me"... **Indeed, there is no dispute in the petition before us regarding the authority of the military commander in the Area to issue such orders or prevent entry into and exit out of the closed area**" (emphasis added).

19. In light of the aforesaid, the Respondents' position is that the military commander is charged with security and public order in the Area and all the crossings and that, in accordance thereto, he has the authority to deny or approve exit out of or entry into the Judea and Samaria Area.
20. As noted above, on 12 September 2005, the last Israeli soldier left the Gaza Strip and as a result, the military administration which had been in force in the Gaza Strip since 1967 was abolished. Once Israeli soldiers entirely evacuated the Gaza Strip, the Respondents' position regarding the absence of a vested right to travel to a territory under Israeli control – whether the territory of the State of Israel, through which the Petitioners seek to travel, or the territory of the Judea and Samaria Area, a closed

zone by force of an order issued by a military commander, is reinforced. Indeed, even today there is still some degree of connection between the Gaza Strip and the Judea and Samaria Area, which has also been taken into consideration in the Respondents' decision, yet, this connection is insufficient to entitle residents of the Gaza Strip to a right to enter the Judea and Samaria Area.

21. In these circumstances, the Respondents maintain that the military commander of the Judea and Samaria Area has broad discretion regarding the decision to grant persons who are not registered residents of the Judea and Samaria Area to enter the Area.
22. According to the Respondents, in light of the revocation of the military administration in the Gaza Strip, they are under no obligation, under security legislation, Israeli law, or the rules of international law, to grant permits to residents of the Gaza Strip, a territory which is not under Israeli military control, to enter the Judea and Samaria Area, a closed zone held under belligerent occupation by the State of Israel and the responsibility for security and order therein is at the hands of the military commander.
23. In late 2005, Israel implemented the disengagement plan and the State of Israel evacuated all its settlements, citizens and military forces from the Gaza Strip. On 25 March 2006, the Hamas government was sworn in, following elections held in the Palestinian Authority on 25 January 2006. Since that day, control of the Gaza Strip has been transferred to a terror organization whose goal is the destruction of the State of Israel.

In March 2007, a "national unity government" was established in the Gaza Strip. It included representatives from most Palestinian movements. However, in May 2007, internal conflict between the Hamas and Fatah movements erupted again and climaxed in June 2007, when the Hamas organization seized control the entire Gaza Strip using violence. Hamas now effectively controls both the Gaza Strip and the Palestinian side of the crossings between Israel and the Gaza Strip.

24. Due to this unique security situation, passage from the Gaza Strip to Israel via the Erez Crossing is now routinely generally confined to humanitarian cases including urgent medical cases, life saving, passage of international organizations' staff, passage of "split family" spouses (where the other spouse lives in the Gaza Strip), a small number of foreign journalists and a few senior Palestinian merchants on whom Gaza's economy depends – and this subject to the discretion of the State of Israel which is under no obligation in this matter.

The Respondents' position – change of residence from the Gaza Strip to the West Bank

25. As detailed above, the Judea and Samaria Area has been proclaimed a closed military zone. Therefore, any person who is not a permanent resident of the Judea and Samaria Area is required to receive a permit to enter and remain in the Area. In accordance thereto, a permanent change of residence from the Gaza Strip to the Judea and Samaria Area requires a permit from the commander of IDF forces in the Judea and Samaria Area, in accordance to an application for change of residence forwarded by the Palestinian Authority on behalf of the resident.
26. Therefore, persons whose entry into the Judea and Samaria Area was permitted and who sought to **permanently** change their place of residence to the Judea and Samaria Area were required to obtain the Respondents' authorization thereto and only after such authorization was granted did the change of residence effectively materialize and permanent presence in the Judea and Samaria Area rendered legal.

27. The validity of a permit for passage granted to persons who are not residents of the Judea and Samaria Area and whose visit to the Judea and Samaria Area for one purpose or another was approved by the military commander, expires upon expiration of the permit, or once the purpose for which the permit was granted has been fulfilled and when a closure is imposed. At such time, the resident holding the permit for passage is required to return to the Area from whence he came and his presence in the Judea and Samaria Area is no longer permitted. **The travel permit revocation naturally does not apply to persons whose change of residence to the Judea and Samaria Area was approved by the military commander, as such persons have become permanent residents of the Judea and Samaria Area and the same was recorded in the Area's population registry.**
28. The interim agreement between Israel and the PLO has not changed this state of affairs. The interim agreement was incorporated in the security legislation in the Area in the Military Proclamation regarding Implementation of the Interim Agreement (Judea and Samaria) (No. 7), 5756-1995.

Section 6 of the Proclamation determines that the commander of the IDF forces in the Area will continue to hold powers and areas of responsibility, including, *inter alia*, in areas of responsibility which had not been transferred to the Council. **Section 6 of the Proclamation further establishes that the determination of the commander of the IDF forces that he continues to hold powers and responsibilities shall be decisive for this matter.**

29. The interim agreement does not directly address the question of travel between the Areas for the purpose of settling. **The military commander's interpretation of the agreement has been and still is that the authority to approve permanent settlement in the Judea and Samaria Area is vested in him, as was the case prior to the interim agreement's entry into force.** This interpretation was presented to the Palestinian side immediately upon implementation of the agreement and this is the manner in which the parties routinely operated until September 2000. Throughout those years, Israel routinely approved changes of residence and settlement in the Judea and Samaria Area in accordance to applications forwarded by the Palestinian Authority and in the absence of a security impediment. In cases where a security impediment existed, the State of Israel did not approve the change of residence and settlement in the Judea and Samaria Area.
30. Additionally, **in September 2000, given the outbreak of security events, Israel ceased to approve passage of Palestinians from Gaza to the Judea and Samaria Area, as well as changes of residence to the Judea and Samaria Area other than in exceptional humanitarian cases.**
31. Therefore, the Respondents' demand that a change of residence from Gaza to the Judea and Samaria Area be carried out only with their approval is not a new demand. The Respondents have acted in this manner for many years, before the interim agreement came into force and after the agreement came into force, in coordination with the Palestinian Authority.
32. In light of the aforesaid, there is no flaw in the Respondents' position according to which their approval is required for a change of residence from Gaza to the Judea and Samaria Area and that in the absence of such a permit, settlement in the Judea and Samaria Area is illegal. The Respondents are authorized to approve or deny changes of residence and this power was exercised in the years prior to the Interim agreement and in the years since the interim agreement, with the coordination of the Palestinian side as detailed above.

As stated, the Petitioners do not directly challenge this position of the Respondents; however, the "latent" relief sought in the petition is, effectively, a change of the Petitioners' residence to

the Judea and Samaria Area.

33. We shall further note that this issue of changes of address from Gaza to the Judea and Samaria Area (and family unification in the Area) is inextricably linked to the **political relationship between Israel and the Palestinian Authority**. Therefore, for this reason too, the Respondents maintain that there is no cause for the Honorable Court's intervention in their decision.
34. **In light of all the aforesaid, the Respondents maintain that there is no cause to intervene in their decision.** As far as the Respondents are aware of the medical condition of the Petitioners' mother, she can return to the Gaza Strip and reunite with her children there. However, and as stated in the beginning, inasmuch as the mother's medical condition requires her to remain in Ramallah, the Respondents do not object to the Petitioners' passage to the West Bank, if the Petitioners' mother pledges that the Petitioners and their mother will return to the Gaza Strip at the end of the medical treatment which necessitates the mother's presence in the West Bank, inasmuch as such exists. It is superfluous to note that the mother must have permits to remain in the Judea and Samaria Area and renew them as needed.

Therefore, and in light of the aforesaid the Respondents maintain that the petition must be rejected.

Today,
24 Shvat 5768
31 January 2008

[signed]
Ro'i Shweika
Assistant to the State Attorney