At the Supreme Court **HCJ 8134/14**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Abu Jamal, ID No. _____**
2. **_____ Abu Jamal, ID No. _____**
3. **_____ Abu Jamal, ID No. _____**
4. **_____ Abu Jamal, ID No. _____**
5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Benjaim Agsteribbe (Lic. No. 58088) and/or Noa Diamond (Lic. No. 54665) and/or Adv. Sigi Ben Ari (Lic. No. 37566) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbeihat (Lic. No. 49838) and/or Abir Joubran-Dakwar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398)

Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. Minister of Interior
2. Chair of the Interior Minister's Humanitarian Advisory Committee
3. Head of Population and Immigration Authority
4. Minister of Public Security

represented by the State Attorney's Office
29 Salah a-Din Street, Jerusalem
Tel: 02-6466590, Fax: 02-6466713

The Respondents

Urgent Petition against Deportation from Israel

An urgent petition is hereby filed against the decision of Respondent 1, the Minister of Interior (hereinafter: **the Respondent**), to revoke the Israeli stay-permit given to Petitioner 1, the mother of three minors who are residents of Israel (Petitioners 2-4), a flawed decision, reached without due process, without providing for the right to argue one's case, and consequently, without proper consideration of all circumstances.:

The decision is dated November 25, 2014, but it was furnished to Petitioner's counsel only today, November 30, 2014, after urgent requests and communications made since November 26, 2014.

Urgent Motion for Interim Injunction Precluding Removal from Israel

As detailed below, the Petitioner, the mother of three minors, permanent residents of Israel, is facing immediate removal from Israel, following an inherently flawed "summary" procedure, without a hearing and without consideration of the overall circumstances. **Thus, the Honorable Court is moved hereby to order the Respondents to refrain from executing their decision regarding the Petitioner's removal from Israel, pending exhaustion of her rights before this Honorable Court.** The requested Order is required in order to preserve the existing situation and prevent one of two alternatives, both unreasonable and injurious: tearing the Petitioner away from her young children, residents of Israel, or deporting the children who are permanent residents to the Occupied Palestinian Territories (OPT) along with their mother.

It is further noted that the police requires the Petitioner to report to the Lev Habira police station at the Russian Compound in these very moments, and the Petitioners are concerned that removal procedures will be commenced against the Petitioner without her having sufficient time to challenge the decision pursuant to which she will be removed.

Given the fact that, to the best knowledge of the Petitioners, no security allegations have been made against the Petitioner, nor has any allegation been made that **her presence** is dangerous or constitutes a threat to public security **per se**, it is clear that the balance of convenience necessitates the issuance of the Order as requested.

The facts

1. Petitioner 1 (hereinafter: **the Petitioner**), _____ Abu Jamal, originally a resident of the OPT, is the widow of _____ Abu Jamal, one of the perpetrators of the attack on the synagogue in Har Nof, and the mother of three minor children, Petitioners 2-4, born in 2008, 2010 and 2012 respectively (hereinafter: also **the children**). The children are permanent residents of Israel and registered as such.

2. The Petitioner has been under a family unification procedure with her husband since 2009. Her current permit is valid until May 2015.

The Petitioner's current permit is attached hereto and marked **P/1**.

3. On November 26, 2014, the media reported that the Respondent had revoked the Petitioner's stay-permit. At the time, the Petitioner had received no notice in the matter.

4. Therefore, the undersigned urgently contacted the Respondent to inquire whether the reports were correct and accurate. The undersigned noted that if the reports were indeed true, this conduct was unacceptable as it is inconceivable that a person should learn her fate from the media rather than the entity that makes the decision itself.

5. It was also argued that if the reports were indeed true, the procedure that preceded the decision to revoke the permit was grievously deficient as the decision was made without prior notice of the intent to make such a decision being given, without provision of an opportunity to argue in writing or orally and with legal counsel, and ostensibly, without the individual circumstances of the Petitioner's family being taken into account. Thus, for example, it is highly doubtful that any weight was given to the fact that two of the Petitioner's children suffer from chronic medical conditions. This conduct, it was argued, fails to comply with the rule of law and with the jurisprudence of the Supreme Court.

6. The communication also included a demand that the Respondent confirm whether various media reports were correct and accurate, furnish Petitioner's counsel with a copy of the decision to revoke her permit, inasmuch as such decision was made; if the permit had indeed been revoked, overturn the decision leading thereto and instead, follow a proper administrative procedure and furnish Petitioner's counsel with any further notifications regarding her matter.

   Urgent letter to the Respondent dated November 26, 2014, is attached hereto and marked **P/2**.

7. On the same day, it became known that the national medical insurance of Petitioners 2-4, the children, had been denied. An urgent letter sent to the director of the National Insurance Institute as soon as the matter became known, was not answered

   Urgent letter to the director of the National Insurance Institute, dated November 26, 2014 is attached hereto and marked **P/3**.

8. On November 28, 2014, before any response arrived from the Respondent, the Petitioner was informed that she was required to report to the Russian Compound police station on November 30, 2014, to receive an order for immediate removal from the country issued against her. Thus, **the Respondent's decision is to be executed immediately**.

9. On November 30, 2014, Petitioner's counsel, the undersigned, went to the Russian Compound police station to collect the order on behalf of the Petitioner. An officer by the name of Yigal Almaliah told the undersigned that he was requested to inform the Petitioner that her presence in Israel became illegal the moment notice of the revocation of her permit was received. The officer said he did not have a formal order to provide to the undersigned to take to the Petitioner, and that the summons to the police station had been in aid of explaining to her what was explained to the undersigned.

10. In the interim, when members of the family went to the mail distribution unit in their neighborhood, they discovered that on November 19, 2014, the East Jerusalem bureau of the Population and Immigration Administration (PIA) sent a letter reading:

> Given the death of your spouse, the graduated procedure has ceased. I hereby inform you **that we are considering** the cessation of stay-permits approved for you pursuant to the captioned application. Your file has been transferred to the Minister's professional advisory committee under Section 3A1 to the Citizenship and Entry into Israel Law (Temporary Order).

A notice from the East Jerusalem PIA bureau dated November 19, 2014, is attached hereto and marked **P/4**. (Emphases added, B.A., N.D.)

11. The Petitioner notified the undersigned immediately upon receipt of the aforesaid letter, and they immediately contacted the secretariat of Respondent 2 (hereinafter: also **the Committee**). Since no response was provided by the Committee's secretariat, the undersigned contacted Respondent's bureau to inquire whether the Committee had made its recommendation to the Respondent and whether the latter had made a final decision in the Petitioner's matter. Respondent's office referred the undersigned back to the Committee's secretariat. The Committee's secretary, Ms. Mazal, refused to provide Petitioner's counsel with documents and decisions regarding her matter without approval from Petitioner 2, Adv. Rosenthal, who is out of the country. Ms. Mazal also refused the undersigned's request to contact Mdv. Rosenthal. Counsel for the Petitioner pleaded, arguing that Petitioner and her counsel were being put in an impossible position, with the Petitioner facing deportation – but to no avail. In another conversation with Respondent's office, with Ms. Mali, the undersigned were referred to the legal department of the PIA. The undersigned therefore contacted the secretary of the PIA Legal Advisor by telephone and by e-mail. The only answer received was that the matter was in processing.

E-mail to the secretary of the PIA Legal Advisor is attached hereto and marked **P/5**.

12. At 2:40 P.M., Officer Yigal Almaliah arrived at the offices of Petitioner 5 and said that if the Petitioner did not come at the Russian Compound police station, he would "come to her".

13. It was only at 3:11 P.M., that Petitioner's counsel finally received Respondent's decision of **November 25, 2014** with respect to the Petitioner. The grounds for the decision to revoke Petitioner's stay-permit were: a) The family unit had "ceased to exist" after the husband's death; b) The Petitioner had "only" had a stay permit since 2010; c), "the committee has inquired and found" that "almost" all of the Petitioner's relatives were residents of the OPT, living in a-Sawahrah, such that there was no impediment to the Petitioner's returning to live there with her family; d) No further humanitarian grounds were found to justify the Petitioner's continued presence in Israel.

The decision of the Respondent dated November 25, 2014, is attached hereto and marked **P/6**.

14. Thus, the Petitioner is facing a clear and immediate threat of removal from Israel, without having been given the opportunity to exhaust her rights before the courts. Hence this urgent petition and hence the urgent motion for an order precluding the Petitioner's removal.

The legal framework

15. Below, we argue, that the Petitioner has fallen victim to a summary procedure. Her fundamental right to a hearing and to argue her case has been severely violated, and as a result, Respondent's conduct has also violated the rights of Petitioner's children, permanent residents of Israel. Since

the Petitioner's right to a hearing was denied, the Respondent made his decision based on incomplete, biased, facts. We specify.

Was a summary process required?

16. It might have been expected that in these difficult times, when emotions run high, senior ministers would act responsibly, use discretion, consider the overall circumstances and refrain from taking extreme measures against innocents. This is not the case.

17. The serious flaw in the Respondent's conduct also stems from the fact that no security allegations were made against the Petitioner. Her presence in Jerusalem was not alleged to be dangerous. There is no justification for the summary actions taken by the Respondent against the Petitioner, punishing her for an act she did not commit and seriously harming her minor children, residents of the State of Israel.

18. The Petitioner's removal from Israel will have one of two serious ramifications: de-facto removal of the children, permanent residents of Israel from the country, along with the Petitioner, or tearing the children away from their mother. The Respondent should have considered his actions carefully before deciding on a measure that has such serious consequences, violates rights so severely and contradicts the child's best interest.

The right to argue one's case and the duty to hold a hearing

19. The right to argue before an administrative authority which is considering or about to take action that violates an individual's right or interest, has been recognized as a supreme right which forms part of natural justice (see, e.g. HCJ 3/58 **Berman v. Minister of Interior**, IsrSC 12 1493, 1508; HCJ 3379/03 **Motsky v. State Attorney's Office**, IsrSC 58(3) 865, 899; HCJ 5627/02 **Seif v. Government Press Office**, IsrSC 58(5) 70, 75).

20. This Court has just recently ruled that "**the key to making a hearing a genuine proceeding is to provide the applicants with real information**, as much as possible, albeit with understandable constraints, such that they may prepare for the proceeding adequately." (AAA 1038/08 **State of Israel v. Ghabis**, unpublished, hereinafter: **Ghabis**).

21. Thus, in paragraph 31 of the judgment in Ghabis, the Court ruled that in order to exercise the right to argue one's case prior to a decision, the hearing shall be held "**following a notice containing as many details as possible regarding the reasons for considering the rejection of the applications, so that the applicants may prepare for it adequately**" (emphasis added, N.D.).

22. With respect to individuals who are entitled to a hearing in their matter, the Court has held:

> This Court has ruled that **the right to argue one's case is granted both to Israeli citizens whose protected interests might be harmed and to foreign residents or citizens, as case law speaks of "a person" who may be harmed by an administrative decision rather than a "citizen" exclusively** (HCJ 3495/06 **Israel Chief Rabbi v. Attorney General** [published in Nevo], July 30, 2007)
>
> (AAA 4231/12 **Botowsky v. Ministry of Interior**, published in Nevo, emphases added, B.A., N.D.)

23. And with respect to the timing of the hearing, in the same matter, the following was held:

> "The right to argue one's case", which sometimes finds its expression in what is referred to as a "hearing", **must be granted prior to making an administrative decision**. This right may take different forms, "the hearing is sometimes held in writing and sometimes orally. When the hearing is oral it is conducted together, in the presence of all parties. It is sometimes conducted in phases, with each party heard in turn" (HCJ 161/84 **Windmill LTD. v. Minister of Interior**, IsrSC 42(1) 793, 796 (1988)); see also AAA 4013/06 **Akerstein v. Israel Land Authority** (published in Nevo) (December 4, 2008); HCJ 3194/10 **Doriano v. Minister of Defense** (published in Nevo) (March 23, 2011); Dafna Barak-Erez, **Administrative Law**, Vol. A, 515 (2010)).
>
> (Ibid., emphases added, B.A., N.D.)

Respondent's decision

24. Given the fact that the Respondents did not bother to hold a hearing in Petitioner's matter and allow her to argue her case in an orderly manner, it is no surprise that the Respondent's reasoning for his decision is materially flawed.

25. The Respondent's decision entirely ignores the existence of Petitioners 2-4, the Petitioner's minor children and permanent residents of the State of Israel. When the Respondent holds that once the husband died, the "family unit ceased to exist", he blatantly ignores the fact that the children are part of the family unit. In the same manner, when the Respondent notes that "almost" all the Respondent's relatives live in a-Sawahrah, he does not bother to mention that the "almost" does not include Petitioner's children.

26. The Respondent asserts that the Petitioner has "only" had a stay-permit since 2010 (The Petitioner claims she has been under the graduated procedure since 2009). Yet this is a period of almost five years, almost the entire length of the "routine" graduated procedure for spouses of permanent residents, if it had not been for the Temporary Order.

27. Finally, the Respondent asserts there are no special humanitarian grounds for granting a stay-permit. How does the Respondent know this without holding a hearing in Petitioner's matter?

Conclusion

28. The Respondent has notified Petitioner of the cessation of the graduated procedure and of the fact that her matter had been referred to Respondent 2. However, what ensued was a summary procedure whose haste seems to have no apparent justification and during which the Petitioner was given no opportunity to argue her case before the Respondent. The Respondent committed a further transgression when he failed to provide the Petitioner with the final decision in her matter, until her counsel intervened, and even then, after a great deal of effort and after counsel was referred from one official to the next.

29. All this, even as enforcement agencies browbeat the Petitioner.

30. It appears that the Respondent's rash conduct, punishing individuals who have done nothing wrong, had no justification other than the desire to show "results". This is a petition to revoke Respondent's decision and instead conduct a proper administrative procedure allowing the Petitioner to argue her case before the Respondent and exhaust her rights before the courts.

31. Given the urgency of the matter, the petition is submitted with minimal detail. The Petitioners will complete any argument if instructed to do so by the Court.

32. Thus the Honorable Court is moved to accept the petition as stated herein.

Jerusalem, November 30, 2014

[signed]	[signed]
Noa Diamond, Adv.	Benjaim Agsteribbe, Adv.
Counsel for the Petitioners	Counsel for the Petitioners