At the Supreme Court
Sitting as the High Court of Justice

HCJ 5135/14
HCJ 5136/14
HCJ 5498/14
HCJ 6209/14
HCJ 6211/14
HCJ 6404/14
HCJ 6713/14
HCJ 8408/14

In the matter of
HCJ 5135/14 et al.

_____ **Nofal et al.,**

Represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Sigi Ben-Ari (Lic. No. 37566) et al.,

Of HaMoked Center for the Defence of the Individual,
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And in the matter of
HCJ 8408/14

_____ **Mahamid et al.,**

Represented by counsel, Adv. Adi Lustigman (Lic. No. 29189) et al.,

27 Shmuel Hanagid St., Jerusalem 94269
Tel: 02-6222808; Fax: 02-5214947

The Petitioners

v.

1. **Israeli Knesset**
2. **Prime Minister**
3. **Minister of Interior**
4. **Attorney General**

Represented by the State Attorney's Office
29 Salah A-din St., Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

Petitioners' Response

According to the decision of the honorable court dated August 12, 2015, the petitioners in HCJ 5135/14, HCJ 5136/14, HCJ 5498/14, HCJ 6209/14, HCJ 6211/14, HCJ 6404/14, HCJ 6713/14 and HCJ 8408/14, hereby respectfully submit a joint response on their behalf to the updating notices submitted on behalf of the respondents on August 5, 2015, as follows:

Background

1. In the beginning of their response, the petitioners wish to reiterate that the above captioned petitions – and additional petitions – were filed with the honorable court following the scathing comments of the court in the context of its judgment dated May 20, 2013 in AAA 6407/11 **Dejani et al., v. Ministry of Interior – Population Authority** (May 20, 2013) and other judgments which were given thereafter (AAA 4014/11 **Abu 'Eid v. Minister of Interior**, AAA 9168/11 **A. v. Ministry of Interior**, AAA 6480/12 **Dahnus (Rajbi) v. Ministry of Interior** and AAA 9167/11 Hassan v. Ministry of Interior, 4324/11 Muhammad v. Ministry of Interior, 1145/13 **Abu Habaleh v. Ministry of Interior**) (hereinafter: **Dejani** and together with the additional judgments the **judgments concerning Dejani**), namely, **judgments the first of which was given more than two years ago**.

2. It should be further emphasized that following the **Dejani** judgments, the petitioners turned to the respondents and requested that the matters of applicants who have been lawfully residing in Israel for many years in the framework of family unification procedures be handled, so that they would receive status in Israel, according to the important remarks of the court.

3. However, although the respondents had ample of time to examine the court's remarks and the manner of their implementation before the extension of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the **Temporary Order**), the respondents have since then extended the Temporary Order twice, in 2014 and 2015, without any pertinent examination of the court's remarks in the **Dejani** judgment prior to said extensions.

4. Regretfully, a perusal of the updating notices indicates that again, no pertinent responses were provided, neither to the court's remarks in the **Dejani** judgments, nor to the remarks of the court in the context of the hearing which was held in the petitions at hand on June 8, 2015, and the arguments of the petitioners in the above captioned petitions. In addition, the notice contains no substantial discussion of the main issue with which all of the above petitions and the court's remarks are concerned, which is the **passage of time**. Furthermore, respondents' response is not supported by an affidavit and data to adequately substantiate the arguments raised in the notice.

5. Therefore, as it seems that even after the passage of two years from the date of the **Dejani** judgment and more than thirteen years from the application of the legal situation being the subject matter of the petitions at hand, the respondents prefer to submit updating notices consisting of general statements which are nothing but another attempt to delay the inevitable, the petitioners request the honorable court once again to issue an order nisi, as requested in the petitions. We shall now respond to the arguments in an orderly manner.

Petitioners' response to respondents' updating notices

6. In paragraph 5 of the updating notice of respondents 1-3 and 5-6, which constitutes the core of the notice, they notify that according to the opinion of the Israel Security Agency (ISA), which was submitted to the Minister of Interior and transferred to the members of the government for their review, prior to the last extension of the Temporary Order, the population of family unification applicants from the Occupied Palestinian Territories (OPT) – along additional populations – is a risk posing population as compared to other family unification applicants from other places, in view of the proven possibility that the above population may be used for the furtherance of the execution of terror attacks, given the freedom of movement and preferred accessibility of the holders of stay permits and even more so, of individuals having residency status in Israel. As stated in the updating notice by the respondents themselves, the above did not constitute a new professional position but rather a well known argument which, according to the respondents, was also valid at this time. Therefore, and in addition to national security considerations, the respondents informed in their notice that the position of the security agencies was that security reasons existed which justified, in and of themselves, the extension of Temporary Order at this time.

7. As specified above, there is nothing new in the above arguments of the respondents. The respondents raised these arguments in the hearing which was held in the petitions on June 8, 2015, when they clarified to the court that as the saw the situation, the passage of time had no effect on the risk posed by the population of OPT residents lawfully residing in Israel for many years by virtue of family unification procedures. Moreover. In fact, these arguments have been raised by the respondents, in these version or another, ever since the government resolution entered into effect in 2002 and the Temporary Order entered into effect in 2003, and until this date.

8. However, the honorable court which heard the **Dejani** case and the petitions at hand knew and was well aware of these arguments. Nevertheless, said arguments did not prevent the court from making its scathing remarks to the respondents concerning the significance of the passage of time in family unification procedures.

9. Thus, for instance, we shall remind the words of the honorable Justice Baron in the hearing dated June 8, 2015, who joined the comments of the honorable Justice Amit in this regard:

> Isn't it possible that the passage of time affects this provision in a manner that with respect to a certain sector it may be said that it is disproportionate considering the passage of time. The constitutional examination is made in view of the passage of time. (page 12, lines 20-22 of the protocol of the hearing dated June 8, 2015).

And see also the words of the honorable President Naor, when she referred to the argument of the legal counsel who represented the state in the hearing, according to which there was ostensibly security preclusion for the status upgrade of applicants who have been residing in Israel for many years:

> In the material before us, the entire security thesis, where does it appear in your response? (page 12, line 36 of the protocol of the hearing dated June 8, 2015).

10. Immediately thereafter, the state was questioned about the data on which its position was based, as opposed to the general statements regarding the current security condition, statements which were repeated by the respondents in their above captioned notice.

11. And indeed, the arguments regarding a future security threat which ostensibly arises from the population in the matter of which the petition was filed should its status be upgraded are not supported by affidavits or by any data which substantiate them. We are therefore ostensibly concerned with general arguments which were not put to the test and the correctness of which may not be examined without clear data. The examination of said general arguments and the data on which they are based is required particularly in view of the fact that these arguments are repeatedly used to justify a law which should have been a temporary order and in fact, its sweeping impingements have been in effect for over thirteen years.

12. And indeed, it would have been appropriate for the above captioned updating notice to have been supported by concrete data. To petitioners' best knowledge the respondents have never presented data to substantiate their argument according to which precisely the grant of temporary residency status in Israel to the population in the matter of which the petition had been filed – OPT residents who have been living lawfully in Israel for many years by virtue of family unification procedures, including the children of East Jerusalem residents who grew up in Israel – increases the risk posed by it and escalates its involvement in terror attacks, as compared to the current situation in which said population resides in Israel by virtue of stay permits.

Conclusion

13. Hence, not only had the respondents failed to present, in the context of the notice submitted by them, even a shred of an evidence to support their general arguments before the court, but rather, they in fact notify that in the two years and two months which passed since the date on which the **Dejani** judgment was given, and in the framework of the two annual extensions of the law, neither the Knesset nor the government, have considered the remarks of the court. Only now, following the decision of the court dated June 8, 2015, "the Population Authority started to conduct administrative work concerning the remarks of the honorable court to the Temporary Order Law". In addition, the respondents admit in their notice that the administrative work specifically pertains to the remarks of the court in the hearing dated June 8, 2015, and to the questions which were raised in the petitions with respect to that sector of the population which undergoes family unification procedures for a long time. It therefore seems that the security opinion which is referred to by the respondents in the notice – an opinion which preceded the administrative work of which the respondents now report – did not specifically refer to said population and to the possibility to accommodate it in accordance with the remarks of the court. Respondents' conduct attests to the fact that it was necessary to file the petitions which were filed after a complete and protracted exhaustion of remedies process and based on the remarks of almost all of members of the Supreme Court.

14. Hence, and in view of respondents' updating notices, the petitioners reiterate their request as stated in the petition that the honorable court issue an *order nisi*. In addition, the petitioners request the honorable court to schedule the petitions for a hearing before an expanded panel.

September 7, 2015

Benjamin Agsteribbe, Advocate Counsel for the petitioners	Adi Lustigman, Advocate Counsel for the petitioners