At the Supreme Court
Sitting as the High Court of Justice

HCJ 1777/22
HCJ 2300/22
HCJ 2377/22
HCJ 2407/22
HCJ 2448/22
HCJ 2485/22
HCJ 2741/22
HCJ 2826/22
HCJ 4567/22

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The Petitioners in HCJ 1777/22;

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The Petitioners in HCJ 2300/22;

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The Petitioners in HCJ 2377/22;

---- Ziad, Adv. and Notary and International Mediator and 4 others

The Petitioners in HCJ 2407/22;

Sweiti and 4 others

The Petitioners in HCJ

2448/22;

Rimawi and 16 others
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The Petitioners in HCJ 2485/22;

Abu Taleb and 25 others
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and by counsel, Adv. Daniel Shenhar et al.
HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger

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The Petitioners in HCJ 2741/22;

Jerusalem Center for Human Rights and 17 others
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The Petitioners in HCJ 4567/22;

v.

1. **Minister of the Interior**
   Represented by the State Attorney's Office,

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Tel.: 073-3925101; Fax: 02-6467011

2. The Knesset
Represented by the Knesset's legal counsel,
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The Respondents in HCJ 1777/22, 2741/22 and 2826/22

1. **Minister of the Interior**
2. **Attorney General**
Respondents 1-2, 4 represented by the State Attorney's Office

3. **Israel Knesset**
Represented by the Knesset's Legal Department

4. **Commander of IDF Forces in the Area**

The Respondents in HCJ 2300/22

1. Israel Knesset
Represented by the Knesset's Legal Department

2. Ministry of the Interior
Represented by the State Attorney's Office

The Respondents in HCJ 2377/22 and in HCJ 4567/22

1. **Israel Government**
2. **Minister of the Interior**
3. **Population and Immigration Authority's Office**
Represented by the State Attorney's Office

4. **Israel Knesset**
Represented by the Knesset's Legal Department

The Respondents in HCJ 2407/22

1. **The Government of Israel**
2. **Minister of the Interior**
3. **Population and Immigration Authority's Office**
4. **The Advisory Committee to the Minister of the Interior**
5. **Commander of IDF Forces in the Area**

6. **Welfare Staff Officer Civil Administration**
7. **Hebron DCO – Permits**
   Represented by the State Attorney's Office

8. **Israel Knesset**
   Represented by the Knesset's Legal Department

The Respondents in HCJ 2448/22

1. **The Government of Israel**
2. **Minister of the Interior**
3. **Population and Immigration Authority's Office**
4. **Commander of IDF Forces in the Area**
   Represented by the State Attorney's Office

5. **Israel Knesset**
   Represented by the Knesset's Legal Department

The Respondents in HCJ 2485/22

Update Notice on behalf of the Government Respondents

1. According to the decisions of the Honorable Court an update notice is hereby submitted on behalf of the Government Respondents (hereinafter also: the **State** or the **Respondents**) as follows:

2. As recalled, it is requested by the Petitioners in their above petitions to declare that the Citizenship and Entry into Israel (Temporary Order) Law, 2022 (hereinafter: the **Temporary Order Law** or the **Law**) is not valid.

   As detailed in the response of the Government Respondents, these petitions are one more link in the chain of the constitutional litigation concerning the Temporary Order Law, the previous versions of which were discussed by expanded panels of the Honorable Court in HCJ 7052/03 **Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2), 202 (2006) (hereinafter: **Adalah**) and in HCJ 466/07 **MK Zehava Galon v. Attorney General**, IsrSC 65(2) 44 (2012) (hereinafter: **Galon**). In these two proceedings, by the end of a detailed constitutional examination, the petitions for the cancellation of the Law were dismissed by a majority of opinions.

   As known, the original Temporary Law was enacted in 2003 against the backdrop of a bloody period of attacks and terrorism, as one of the measures taken to deal with the threats of terror. In essence, the Law limits the ability of the Palestinian residents of the area as well as of the countries listed in the addendum to the Law which were defined as risk countries (Iran, Lebanon, Syria and Iraq), from settling down in Israel, the above, in view of the growing involvement of Palestinian residents of the area, who were granted status in Israel as part of family unification procedure, in activity against state security, taking advantage of their legal status in Israel and their freedom of movement between Israel and the area.

Over the years, the terror attacks have indeed taken different forms, but the goal set by the terror organizations remains the same - harming the lives and safety of the citizens of Israel and its residents.

3. In this security reality, the Temporary Order Law was used by the state as an important tool - **as a sort of a "legal security fence"** – while dealing with the dynamic, changing and continuous security threat. The continued extension of the validity of the law is examined annually by the Government and the Knesset, periodically, according to the developing security reality.

4. Meanwhile, and as was detailed in the response of the Government Respondents dated November 12, 2023, according to the opinion of the security bodies and all the data collected by them, as of 2013, escalation in the trend of terror activity has been noticed compared to previous years, manifested in a general increase in the number of terror attacks and grassroots terror attacks, as well as in the number of Israeli casualties as a result of terror activity. As stated in the response, most recent terror activity has been and continues to be led by local organizations and by "lone wolf" perpetrators, the above alongside the efforts of the terror organizations to carry out attacks on their behalf.

   Accordingly, as stated in the response, the increase in terror activity in the aforementioned period (despite a certain decline between 2016 – 2020), in both scope and severity, reflects the negative security trend which continues in Judea and Samaria and in Jerusalem, as this trend is well reflected in the accumulated terror data, commencing as of 2013 to this date.

   In 2013 approximately 1,411 attacks were recorded; in 2014 approximately 2,145 attacks were recorded; in 2015 approximately 2,540 attacks were recorded; in 2016 approximately 1,526 attacks were recorded; in 2017 1,574 attacks were recorded; in 2018 1,416 attacks were recorded; in 2019 1,334 attacks were recorded; in 2020 1,309 attacks were recorded; however, in 2021 a significant increase was recorded again with 2,046 attacks; and in 2022 2,197 attacks were recorded by the end of October.

   The situation has particularly escalated in the first half of 2022 in which the citizens of Israel have witnessed a significant security escalation in which many have lost their lives in cruel killing sprees committed by perpetrators. Meanwhile, in the period as of the end of March and by the beginning of October 2022 a series of severe attacks took place throughout the cities of Israel: in Jerusalem, Beer Sheva, Hadera, Bnei Brak, Tel Aviv, Ariel, Elad, in which 26 individuals were murdered, most of whom (19) – Israelis, who were murdered in attacks which had been committed by residents of the area. Following these severe attacks operation "Breakwater" was initiated by the security forces to thwart the terror attacks.

   It should be further noted that in the first half of 2022, the security threat posed by terror attacks led by perpetrators from Judea and Samaria and Jerusalem has significantly increased. More specifically, in the aforementioned period (by the end of October 2022) 2,197 attacks including 245 serious attacks were recorded (stabbing, ramming, gun shots, bomb, lynch or attacks in another way as a result of which Israelis were killed). As aforesaid, in 2021 2,046 attacks, including 121 serious attacks, were recorded.

5. Unfortunately, since the response on behalf of the Government Respondents was submitted in November 2022, the security threat posed by terror attacks led by perpetrators, residents of Judea and Samaria and Jerusalem, has continued to increase.

Accordingly, as of November 2022 and by July 25, 2023 murderous attacks were committed in different locations in Israel and in Judea and Samaria, including a shooting attack in Ariel, a double bombing attack in Jerusalem, a shooting attack in Neve Yaakov neighborhood Jerusalem, a ramming attack in Ramot neighborhood Jerusalem, a shooting attack in Shuafat checkpoint, a shooting attack in Hawara, a shooting attack in Ha'arava junction, a shooting attack in Dizengoff street Tel Aviv, a shooting attack in Hamara junction, a ramming attack in Charles Clore Park Yafo, a shooting attack in Hermesh, a shooting attack in Eli and a shooting attack in Kdumim.

During said period, 30 individuals were killed, both Israelis and non-Israelis, and many others were injured in terror attacks. In the above period 2,068 attacks, including 209 serious attacks, were recorded (stabbing, ramming, gun shots, bomb, lynch or attacks in another way as a result of which Israelis were killed). These murderous attacks were mostly committed by young perpetrators under 35 years of age.

In addition, and in view of the increasing scope and severity of the terror attacks, it was decided several weeks ago to launch Operation "Shield and Arrow" alongside specifically targeted operations in Jenin, which became a clear epicenter of terrorism.

6. The State's position, as broadly specified in its preliminary response, is that the constitutional discussion that the Petitioners wish to conduct cannot be held in a vacuum, but is rather rooted in a clear legal and security context; on one hand the discussion is rooted in the security reality that Israel has been facing for years, which unfortunately claimed over the years - including this year - many casualties; and on the other hand it is rooted in the decisions of the Honorable Court in the **Adalah** and **Galon** judgments.

   Given these starting points, the State argued that although it acknowledges the fact that the Temporary Order Law violates the constitutional right for equality of Israeli citizens, said violation is intended to achieve a proper purpose and meets all the other limitation clause tests. As shown in detail in the preliminary response, the Temporary Order Law, with its different amendments and versions, is intended to achieve a clear **security purpose**, which is a proper purpose that complies with the values of the state of Israel as a Jewish and democratic state. The law passes each one of the three subtests of the principle of proportionality, including, *inter alia*, given the new moderating arrangements included therein, adding to those which have already been scrutinized by the Honorable Court in **Adalah** and **Galon**, and led to the dismissal of the previous petitions.

   The state claimed further that directly following the rulings of the Honorable Court, in this case too there is no room to include in petitions requesting the cancellation of the Temporary Order Law, arguments pertaining to administrative issues rooted in the manner of implementation of other legislation.

7. At the same time, with respect to the manner of implementation of the Temporary Order Law, the Government Respondents explained in their preliminary response that "at the current political point, after the elections to the Knesset and before a new government has been formed, when the outgoing government ends its days, there are administrative issues concerning the manner of implementation of the law, which naturally will have to be brought before the incoming political echelon, and in particular before the incoming Minister of the Interior who will assume office after the formation of a new government." [Paragraph 7 of the preliminary response on behalf of the Government Respondents].

8. On December 1, 2022 a hearing was held before the Honorable Court (the Honorable President A. Hayut, the Honorable Deputy President U. Vogelman, the Honorable Justice Y. Amit) following which a decision was given on December 4, 2022 stating as follows:

"Without taking a stand on the different issues which were raised in the petitions, we wish at this time to receive respondents' position concerning the willingness to make changes in the following issues, given the comments which were made in the hearing:

a. Amending the definition of the term "resident of the area" in Section 2 of the Citizenship and Entry into Israel (Temporary Order) Law, 2022 (hereinafter: the "Law") to give solution to circumstances such as those which were described in HCJ 4567/22.

b. Including same-sex spouses in a permit given to spouses according to Section 4 of the Law.

c. Expanding the ability to receive a temporary residency visa according to Section 5 of the Law also to women over 40 years of age and to anyone who has been lawfully staying in Israel at least five years.

d. The quota established in Section 7(g) of the Law.

Respondents' position on these issues shall be submitted within 90 days from today." (Extensions have since been granted at the state's request).

9. The Government Respondents wish to inform that the decision of the Honorable Court has been examined by Respondents' officials and has thereafter been brought to the Minister of the Interior, MK Moshe Arbel. For the purpose of examining the above issues a meeting was held by the Minister with the participation of representatives of the security bodies, representatives of the Population and Immigration Authority and representatives of the Ministry of Justice. In said meeting the representatives of the Ministry of Justice presented to the Minister the history of the Temporary Order Law, including the judgments of the Honorable Court and the different issues which arose during the hearing of the above petitions, as well as the different components and aspects of the decision of the Honorable Court. In addition, the security officials have also presented their position concerning the security importance and objective of the Law and have also discussed the components of the Honorable Court's decision. By the end of the meeting, the Minister decided as follows.

10. **With respect to women ages 40-50 meeting the conditions of Section 5 of the Law**, namely spouses of an Israeli citizen or resident staying in Israel by virtue of a DCO permit at least 10 years: following and according to that which is stated in the Government Respondents' response to the petitions on this matter considering the security data which were presented there is room to reconsider their non-upgrade and the matter will be brought before the political echelon after the formation of the new government (see page 134 of the response, paragraph 317); and given the comments of the Honorable Court, the Minister of the Interior decided that **anyone included in said class will be able to upgrade the DCO permit in her possession and receive an A/5 temporary residency visa**, the above according to the power vested in the Minister of the Interior by virtue of the last part of Section 9 of the Law and in view of the fact the state has a special interest in said move. It should be emphasized that this is a special decision, solely limited and restricted to this class of women – namely, women over the age of 40, spouses of an Israeli resident or citizen lawfully staying in Israel by virtue of DCO permits according to the Law at least 10 years. It should be further clarified that the upgrade shall be made subject to meeting the required conditions for examining applications of this sort, including: proving a center of life in Israel, proving a sincere

marital connection and its existence, and the absence of an individual security and criminal preclusion. Hence, the Minister of the Interior decided that anyone complying with the above conditions, her status shall be upgraded as aforesaid. According to the data of the Population and Immigration Authority, the above class currently consists of approximately 1,300 women.

Naturally, in view of the required examinations and in view of the aforementioned data, the move shall be carried out gradually and not all at once.

11. **With respect to individuals who are registered as "residents of the area", but have never had any connection to the area other than having been registered therein**, the Minister of the Interior decided that in theses extraordinary circumstances a proper application in the matter may be submitted which shall also be examined according to the power vested in him by virtue of the last part of Section 9 of the Law.

    It should be emphasized that the aforementioned decision of the Minister is rooted in and limited to concrete circumstances only and may apply only to persons with respect of whom it shall be shown that they reside in a country which is not one of the countries listed in the Addendum to the Law; and that they have never had any connection to the area other than having been registered in the area's registry.

12. The Government Respondents wish to further emphasize that nothing stated above changes the state's consistent position pursuant to which the definition of the term resident of the area is at the core of the Temporary Order Law arrangement, realizing its underlying security purpose [for this purpose see the opinion of the Honorable President Naor in HCJ 813/14 **A v. Minister of the Interior** (October 18, 2017, hereinafter: **HCJ 813/14**)]. Beyond the aforesaid, it should be clarified that the definition of the term resident of the area, in the current version of the Law, **is identical to the definition of the term resident of the area as has already been examined in Galon**. Therefore, since it was found that the above definition of the term "resident of the area" realizes the underlying security purpose of the Law and that it shows no grounds for judicial intervention; and since an administrative route was given facilitating the examination of said isolated and extraordinary cases mentioned in paragraph 11 above; it is clear that all of Petitioners' arguments concerning the definition of the term "resident of the area" should be dismissed.

13. **With respect to the inclusion of same-sex spouses in a permit given to spouses according Section 4 of the Law**, the Minister decided that in view of the clear language of Section 4 of the Law, these applications shall continue to be discussed by the Humanitarian Committee according to Section 7 of the Law, as has been done until today for many years according to Section 3A1 of the Law in its old version. The Government Respondents wish to emphasize that they were not presented with any individual application of same-sex spouses, who had applied to the humanitarian committee and were rejected by it only for the reason that Section 4 does not apply to them. Hence, this practical solution giving status to same-sex spouses is found and is possible in the framework of the humanitarian route established in Section 7 of the law.

14. **With respect to the quota established in section 7(g) of the Law for granting status on humanitarian grounds** - the Minister decided, also considering all of his aforementioned decisions, that at this stage there is no room to change the quota established by the Law using the procedure established in Section 7(g) of the Law. As of the present time in which these lines are penned, 132 applications were opened by the Humanitarian Committee in 2023, and as of the beginning of 2023 by July 20, 2023, 14 decisions of the Minister of the Interior were given regarding the grant of status for humanitarian reasons (namely, a DCO permit or an A/5 temporary residency visa) from

the existing quota according to the Law. It should be noted that in 2022 the quota established in Section 7(g) of the Law was fully exhausted.[1] In any event, it is respondents' position that at the current point in time the implementation of all the components of the Minister's decision should be allowed, leaving the question of the need to increase the scope of the quotas for the future, on the basis of a concrete and up-to-date factual infrastructure. In this context, it should be noted that the number of applications approved by the Humanitarian Committee in 2018 naturally reflects the way the old Law was implemented, in the absence of Section 5 of the current Law (upgrading over the age of 50) and obviously the current decision of the Minister of the Interior, including its various components.

15. In conclusion, the petitions before us seek to re-visit the constitutionality of the Temporary Order Law after a version similar to the latest version of the Law has already been examined twice by the Honorable Court, and after an expanded panel of the Honorable Court has dismissed the petitions by a majority of opinions, the above, while the latest version of the Law also includes moderating arrangements which were not included in the previous version of the Law which had been scrutinized by the Honorable Court.

In this context, we shall refer to the words of the Honorable Justice Naor in HCJ 813/14 who stated as follows: "In **Galon** I pointed out that the Law which is the subject of the petitions before us "is indeed a 'temporary order', but the temporary has been prolonged as hope for better days in the relationship between Israel and the peoples of the region which has remained over the years, has, alas, been shattered against the rock of reality" (*ibid*., p. 243). Even today, the threat of terrorism still looms over citizens and residents of the country."

As specified above, currently the situation remains the same, as terror has not stopped and has even intensified with greater vigor in the last part of 2022 and in the first half of 2023.

16. The Government Respondents shall argue that the solution on the administrative level specified in detail above, which should be given the opportunity to be implemented on the ground, supports and strengthens their position that the constitutional remedies requested in the petitions should be rejected in view of the well-known rule that the constitutional route should be used as a last resort. This is the general rule, and particularly when numerically, the decisions of the Minister specified above provide a proper solution to the vast majority of the persons belonging to one of the four groups with respect of which the Honorable Court requested an additional response.

For this matter see the words of the Deputy President U. Vogelman in HCJ 8949/22 **Scheinfeld v. The Knesset** (January 18, 2023) as follow:

> "This conclusion is rooted in the rule according to which the court shall disqualify a law as a "last resort". This court has already stressed in Bank HaMizrahi case the required restraint in respect of constitutional scrutiny referring to the guidelines outlined by Justice Brandeis in

[1] It should be noted that an examination conducted by the Population and Immigration Authority showed that in 2022, 80 decisions of the then-Minister of the Interior were given and sent on granting status for humanitarian reasons. Given the fact that it was discovered after the decisions had already been sent, they remained in force. To complete the picture it should be noted in 2019, 35 decisions of the then-Minister of the Interior were given on granting status for humanitarian reasons, and in 2020, 24 decisions of this type were given. 2021was not a fully representative year in view of the expiration of the Law and the wake of COVID-19 with all ensuing consequences during said year.

> Ashwander (Ashwander v. Tennessee Valley Auth, 297 U.S. 288 (1936)). Important in the case at hand is the rule according to which the court shall discuss issues of a constitutional nature only when it is absolutely necessary. (CA 6821/93 United HaMizrahi Bank Ltd. v. Migdal Cooperative Village, IsrSC 49(4) 221, 349-350 (1995); see also: HCJ 5744/16 Ben Meir v. The Knesset, paragraph 3 of the Judgment of Justice M. Mazuz (May 27, 2018); also see and compare: my judgment in HCJ 5469/20 National Responsibility – Israel My Home v. Government of Israel (April 4, 20221); HCJ 813/14 A v. Minister of the Interior, paragraph 24 (October 18, 2017); HCJ Sabach v. The Knesset, paragraph 84 of the judgment of Justice S. Joubran (September 17, 2014); HCJ 7146/12 Adam v. Israel Knesset, IsrSC 64(2) 717, 848 (2013); HCJ 4562/92 Zandberg v. The Broadcast Authority, IsrSC 50(2) 793, 814 (1996); Aharon Barak Interpertation in Law Volume C – Constitutional Interpretation 737 (1994); Yigal Marzel "Suspension of the Nullity Declaration" Law & Governance 9, 39, 87-88 (2005))…".

17. The Respondents will argue that the above is reinforced when we are concerned with a law the vast majority of whose provisions have already been scrutinized by expanded panels of 11 Justices of the Honorable Court, which decided to dismiss said petitions by a majority of opinions. The Honorable Court has so noted in a similar situation when the (then) Minister of the Interior presented to the court similar administrative solutions, and it was so held by the Honorable President Naor in **HCJ 813/14** with respect to the previous Temporary Order Law:

> "It is also my view that at present, there is no room to grant constitutional remedy either. The minister's decision has provided an administrative opening for upgrading the status of Area residents who reside in Israel under the family unification process, by way of contacting the Humanitarian Committee under Section 3A1 of the Law (see, and compare to the remark of Justice N. Handel in Galon (§5), who alluded to the possibility of a broad interpretation of the powers to issue permits on humanitarian grounds). The minister's decision is confined to a certain group. However, without setting anything in stone, there is no impediment to raising arguments against its scope using the appropriate channels. And indeed, as the Respondents for the State have indicated, petitions concerning the manner in which the minister's decision is to be applied are already pending… While the aforesaid petitions do focus on the individual circumstances of the Petitioners therein, they do support the conclusion that the administrative remedies must be exhausted. **Since there is an alternative route wherein general or individual arguments may be raised against the prohibition on status upgrades for residents of the Area who have resided in Israel for a protracted period of time (without making a decision as to whether the correct path is a petition to this Court or another venue), I see no room, at this stage, to grant constitutional relief. Intervention in a Knesset law, particularly after it was held constitutional in two judgments given by extended panels of this Court, must constitute, in the circumstances, a measure of last resort to be invoked only after other legal avenues, if such are available, have been exhausted**. This should be the course taken in the case at hand" (paragraph 24 of her opinion; Emphasis was added).

18. The position of the state is that the above also applies to the case at hand.

19. In view of all that which is stated in the preliminary response on behalf of the Government Respondents and considering the decisions of the Minister of the Interior concerning the vast majority of the points with respect of which a concrete response was requested by the Honorable Court, Respondents' position is that the Temporary Order Law which is challenged in the petitions, like the previous Temporary Order Law – is constitutional and therefore there are no grounds for judicial intervention in its provisions.

20. Therefore, the Honorable Court shall be requested to dismiss the petitions.

21. The facts specified in this notice pertaining to the Population and Immigration Authority are supported by the affidavit of Mr. Eyal Sisso, Director General of the Population and Immigration Authority; The facts pertaining to the security aspects and data are supported by the representative of the Research Division at the General Security Service, referred to as "Siri".

Today, 9 Av 5783
July 27, 2023

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