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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

Scheduled for: July 8, 2024

Adalah – The Legal Center for Arab Minority Rights in Israel

Represented by counsel, Adv. Adi Mansur et al. of
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The Petitioners in HCJ
1777/22;

----- **Ziad and 521 others**

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The Petitioners in HCJ
2300/22;

1. **St. Yves Association**

St. Eve Association, P.O. Box 1244 Jerusalem 91000

2. **Rajbi and 11 others**

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The Petitioners in HCJ
2377/22;

Abdallah 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

All represented by counsel Adv. Abdallah Ziad, Adv. and Notary and International Mediator (Harward)
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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

and by counsel, Adv. Adi Lustigman et al.
on behalf of Physicians for Human Rights – Israel

The Petitioners in HCJ
2741/22;

Jerusalem Legal Aid Center and 17 others

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The Petitioners in HCJ
2826/22;

Abu Taha

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The Petitioners in HCJ
4567/22;

v.

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

29 Sala a-Din Street, Jerusalem
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2. **The Knesset**
Represented by the Knesset's legal counsel,
Kiryat Ben Gurion, Jerusalem
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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 Before a Hearing on behalf of the Government Respondents

1. In preparation for the continuance hearing scheduled in the Petitions an update notice is hereby submitted on behalf of the Government Respondents (hereinafter also: the **State** or the **Respondents**). The purpose of the update notice is to lay down before the Honorable Court an updated framework following that which is stated in the State's response to the Petitions dated November 13, 2022 and in the update notice on behalf of the State dated July 27, 2023 (hereinafter: the **Previous Update Notice**).
2. The Petitions concern Petitioners' request 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 extended 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, and was extended from time to time; until 2021 when it was not extended and has expired. The Law was re-enacted in its current version in March 2022.
4. On November 13, 2022 the State submitted a detailed response to the petitions. The State's position, as broadly specified in its response, is that the constitutional discussion that the Petitioners wish to hold 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 which 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.

5. 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].
6. On December 1, 2022 a hearing was held before the Honorable Court (the Honorable President A. Hayut, the Honorable Deputy President U. Vogelmann, 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. Amendment of 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."

7. On July 27, 2023, and after the matter was brought before the Minister of the Interior, the State submitted an update notice on its behalf referring to the four points in the decision of the Honorable Court. Subsequently, and after Petitioners' reply to the update notice had been submitted, it was decided that a continuance hearing shall be scheduled in the Petitions (decision dated November 21, 2023).
8. Now, in preparation for the continuance hearing in the Petitions scheduled for July 8, 2024, we wish to provide up-to-date information about the security situation which as aforesaid is well rooted in the basis of the Temporary Order Law; about the extension of the Law; and about the implementation of the administrative aspects of the Law, and particularly about the implementation of the Minister's decisions which were specified by the State in the previous update notice.

The Security Situation

9. As was specified in detail in the response to the Petitions submitted on behalf of the Government Respondents, 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

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 27 individuals were murdered. Following these severe attacks operation "Breakwater" was initiated by the security forces to thwart the terror attacks.

10. It should be further noted that in 2022, the security threat posed by terror attacks led by perpetrators from Judea and Samaria and Israel has significantly increased. More specifically, in the aforementioned period (namely, throughout 2022) 2,636 attacks including 202 serious attacks were recorded (namely, in one of the following ways - stabbing, ramming, gun shots, bomb, lynch or attacks in another way as a result of which Israelis were killed). As aforesaid, in 2021 2,136 attacks, including 118 serious attacks, were recorded.
11. 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 East Jerusalem, has continued to increase. Meanwhile, during 2023 the number of terror attacks promoted from Judea and Samaria has significantly increased. Throughout said year 2,956 attacks and attempted attacks against Israeli targets were committed, including **393 serious attacks**. It should be clarified that serious attacks for this purpose include – as defined by the security bodies – the following actions: bombing attack, gun shot, ramming, stabbing, kidnapping, suicide and any other act of terror causing a person's death. As a result of these attacks (which were promoted from Judea and Samaria), 22 Israelis and non-Israelis were murdered during 2023.

It should also be noted that as of the beginning of 2024 and until June 18, 2024, 1,010 attacks and attempted attacks were carried out including 139 serious attacks, as a result of which 13 Israelis and non-Israelis were murdered.

12. In addition to the above, one should also take into consideration the effect of Iron Swords war, which broke out following the murderous attack led by the terror organizations in the Gaza Strip on October 7, 2023, headed by Hamas organization. Hamas organization attaches great importance to its ability to harness additional populations to the circle of terror, for the purpose of harming and killing Israelis anywhere and in any manner, and in this context the terror organization attaches great importance to promoting and realizing attacks within the territory of the state of Israel, including by connecting with potential perpetrators from among the population undergoing family unification.
13. It should be noted that the security bodies point out that the Palestinian public in Judea and Samaria has been showing over the years hostile attitudes towards the state of Israel, which, *inter alia*, are reflected in high rates of support for violence as a tool in the Palestinian national struggle. The Iron Swords War led to a further radicalization of these positions. Accordingly, for instance, it arises from public opinion polls conducted by Dr. Khalil Shkaki that as of May 2024, 52% of the public in Judea and Samaria regards an armed struggle as the "best means to end the occupation". It also arises that individual attacks receive a high support rate (43% as of March 2024). It also appears that the support rate received by the Hamas organization since October 7, 2023 amounts to about 40% - the highest rate in over a decade. Meanwhile, about 71% were of the opinion, as of March 2024, that Hamas's decision to launch the murderous attack on October 7, 2023 was correct, also considering its consequences and implications on the Gaza Strip.

Unfortunately, these hostile attitudes are not mere attitudes, and over the years they have been reflected in the proliferation of violent incidents perpetrated by Palestinians against Israelis. According to the data collected by the security bodies with respect to the involvement of Judea and Samaria residents in serious attacks as of 2015 to date, segmented by age, it appears that **89% of the male perpetrators were 35 years old and younger** (1,039 out of 1,167), and **60% of the female perpetrators were 25 years old and younger** (45 out of 75).

With respect to the aforementioned rule, the Respondents will request, subject to the Parties' consent, to present to the Honorable Court, *ex parte* and behind closed doors, a privileged opinion regarding the security threat posed by the residents of Judea and Samaria and the Gaza Strip.

14. **Hence, the professional assessment of the security bodies regarding the security need to continue to impose the limitations on granting status to the residents of the area and nationals of enemy states stands in force.** This position is based on forward looking, security-preventive reasons, concerning the intensified security threat posed by said population for a collection of circumstances, including the broad freedom of movement granted by the status in Israel to its recipient in the territories of Israel, the connections that said population has with the terror organization acting in the area, and the connection of said population to the Palestinian arena and its identification with its struggle against the state of Israel. Furthermore, it was found that the previous Temporary Order Law served its designated purpose and constituted an effective tool to limit terror and prevent the security threat posed to the residents and citizens of Israel, forming a "legal security fence".

Extension of the Temporary Order Law

15. Section 18 of the Temporary Order Law provides that: "This law shall be valid one year from its commencement, but the government, with the approval of the Knesset after having received the recommendation of the committee designated by the Knesset Committee for this purpose, may, by order, extend its validity for a period which shall not exceed one year at a time."
16. On February 5, 2024 the government's request was submitted to the Knesset requesting it to approve the extension of the Law's validity. On March 4, 2024 a discussion was held by the joint committee to the Foreign Affairs and Security Committee and the Interior Committee of the Knesset with the participation of some of the security bodies. Later that day, the Knesset, after receiving the committee's recommendation on this matter, approved the extension of the Law's validity for a period of one year, until March 14, 2025.
17. On March 6, 2024, the Prime Minister signed the Citizenship and Entry into Israel Decree (Temporary Order) (Extension of the Validity of the Law), 2024, which extends the validity of the Law until March 14, 2025.

A photocopy of the Decree is attached and marked **RS/1**.

Administrative Aspects - Implementation of the Law and Decisions of the Minister of the Interior

18. Women of ages 40-50 meeting the conditions of Section 5 of the Law: spouses of an Israeli citizen or resident staying in Israel by virtue of a DCO permit at least 10 years (subject to examination of center of life, sincerity of the connection and an individual security and criminal examination).

Following the Minister's decision according to which anyone included in this group may upgrade her DCO permit and receive an A/5 temporary residency visa (as specified in paragraph 10 of the previous update notice), we wish to inform that to date temporary residency visas (A/5) were issued to 701 women pursuant to applications submitted in the matter; 249 temporary residency visas in 2023 and 452 additional visas in 2024. It should also be clarified that any woman complying with the conditions outlined in the Minister's decision will be able to submit an application on the date she complies with

the required conditions, and to the extent that the conditions in her case are met she will be able to upgrade her DCO permit into a permanent residency visa.

19. Individuals who are registered as "residents of the area", but have never had any connection to the area other than having been registered therein: as of the date these lines are penned and as informed by the Population and Immigration Authority, one application was submitted to the Minister of the Interior in that regard (following that which is stated in paragraph 11 of the previous update notice), in the matter of the Petitioners in HCJ 4567/22. Said application which was submitted on September 10, 2023 is still pending and a decision therein is expected to be made soon.
20. Applications of same-sex spouses: as informed by the State in its previous update notice, in view of the clear language of Section 4 of the Law, these applications are heard by the humanitarian committee according to Section 7 of the Law, as was the case for many years according to Section 3A(1) of the previous version of the Law.

We wish to update that during 2023 and by the submission of this notice, and following a manual examination conducted by the coordinator of the committee acting by virtue of Section 7 of the Law, two family unification applications were submitted to the humanitarian committee by same-sex spouses. Said applications had been heard by the humanitarian committee and were dismissed on their merits. It should also be noted that said applications involved sponsored persons under the age of 35.

21. With respect to the quota established in section 7(g) of the Law concerning the grant of status on humanitarian grounds – it should be reminded that the Minister decided, also considering all of his aforementioned decisions concerning the implementation of the Law, 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. The Respondents stressed 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".

In this regard we wish to inform that in 2023, 260 applications were opened by the humanitarian committee, and in total 56 decisions were given by the Minister of the Interior granting status for humanitarian reasons (namely, decisions to grant a DCO permit or an A/5 temporary residency visa).

With respect to 2024, as of June 17, 2024, 117 applications were opened by the humanitarian committee. In addition, as of the beginning of 2024 and by June 17, 2024, 23 decisions were given by the Minister of the Interior granting status for humanitarian reasons (DCO permit or temporary residency visa). It is important to emphasize that said decisions were not necessarily given in applications which had been submitted in 2024. It was further informed that there are about 70 applications in which a positive recommendation was formulated which are intended to be brought to the Minister.

22. 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 **A v. Minister of the Interior** (hereinafter "A") 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." (Paragraph 19 of the opinion of the Honorable Justice Naor).

As specified above, currently the situation remains the same, as terror has not stopped and has even intensified with greater vigor over the last two years, and particularly since "Iron Swords" war broke out and the murderous attack launched by the terror organizations from the Gaza Strip on October 7, 2023.

23. The Government Respondents shall argue that the solution on the administrative level the implementation of which has commenced in the last year, 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 (for this matter see the words of the Deputy President U. Vogelman in HCJ 8949/22 **Scheinfeld v. The Knesset** (January 18, 2023)). 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.

The Respondents will argue further 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. In this regard see the words of the Honorable President Naor in paragraph 14 of her opinion in **A** concerning the previous Temporary Order Law, which also apply to the case at hand.

24. In view of all that which is stated in the response on behalf of the Government Respondents to the Petitions, 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 as was specified in the previous update notice and that which is stated is the aforementioned update notice, 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.
25. Therefore, the Honorable Court shall be requested to dismiss the Petitions.
26. 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 specified in this notice pertaining to the security aspects and data are supported by the attached affidavit of the representative of the Research Division at the General Security Service, referred to as "Giora".

July 3, 2024

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