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At the Supreme Court
Sitting as the High Court of Justice

HCI 2786/09

In the matter of:

1. **Salem**
Resident of the Occupied Territories, from Beit Sahur
2. **Salem**
Resident of the Occupied Territories, from Beit Sahur
3. **Salem**
Minor, through her parents, Petitioners 1 and 2
4. **Salem**
Minor, through his parents, Petitioners 1 and 2
5. **HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger**

all represented by counsel, Att. Ido Bloom (Lic. No. 44538) and/or Abeer Jubran-Daqwar (Lic. No. 44346), and/or Yotam Ben Hillel (Lic. No. 35418) and/or Hava Matras-Iron (Lic. No. 35174) and or Sigi Ben Ari (Lic. No. 37566) and/or Nirit Hayim (Lic. No. 48783) and/or Daniel Shenhar (Lic. No. 41065)
Of HaMoked Center for the Defence of the Individual,
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The Petitioners

- Versus -

Military Commander of the West Bank

The Respondent

Petition for Order Nisi and Urgent Request for Temporary Injunction

A petition for an Order Nisi is hereby filed which is directed at the Respondent ordering him to appear and show cause why he will not refrain from deporting Petitioner 1 (hereinafter: **the Petitioner**) from his home in the West Bank to the Gaza Strip.

The Petitioners are in the midst of collecting further documents and details and arranging to have an attorney meet with the Petitioner and therefore request to complete their arguments within a week as well as add details and documents as necessary.

Urgent Request for Temporary Injunction

The Honorable Court is hereby requested to issue an interim injunction instructing the Respondent to refrain from deporting Petitioner 1 from his home in the West Bank to the Gaza Strip, this for as long as the petition is pending.

The office of the Legal Advisor to the Respondent has given notice that the procedure of the deportation of the Petitioner to the Gaza Strip is scheduled for tomorrow, 30 March 2009.

And these are the arguments for the request:

Petitioners 1 and 2 are a Palestinian couple who live in the West Bank. They have been married since 2002 and have two children: Petitioner 3 _____, five years old and Petitioner 4, _____, three years old.

Last Thursday, 26 March 2009, in the evening, the Petitioner was arrested in his home in Beit Sahur and a deportation order was issued against him, ordering his removal from the West Bank to the Gaza Strip, based on the fact that his address is erroneously registered in the Gaza Strip.

The Petitioner has since been held in the Etzion temporary detention facility and the office of the Legal Advisor has given notice that **the Respondent intends to deport him to the Gaza Strip tomorrow, 30 March 2009.**

It shall be emphasized that the Petitioner works in the Palestinian police in the West Bank, and therefore his deportation to Hamas controlled Gaza may constitute a death sentence for him.

The balance of convenience in this matter clearly leans in favor of issuing a temporary injunction as the deportation of the Petitioner may put him in real mortal danger, and, at the very least, cause irreparable damage to the family – him, his wife and his young children. On the other hand, no interest of the Respondent would be harmed by Mr. ___’s remaining in the West Bank while his matter is reviewed by the Court.

And these are the arguments for the petition:

The parties and the facts:

1. Petitioners 1 and 2 are a Palestinian couple who live in the West Bank. They have been married since 2002 and have two children, Petitioner 3, _____, five years old, and Petitioner 4, _____, three years old. The entire family lives in Beit Sahur, which is near Bethlehem in the West Bank.
2. The Petitioner was born in 1975 in the Gaza Strip and works in the Palestinian police. He moved to the West Bank in 1995, upon the entry of the Palestinian Authority into the West Bank in the framework of the Interim Agreements (the “Oslo Accord”). His last visit to the Gaza Strip was in 1996 – **some thirteen years ago.**
3. It shall be noted that in June of 2002, the Petitioner was detained for 18 days – **at the end of which he was released to his home in the West Bank.**
4. As stated above, last Thursday, 26 March 2009, in the evening, the Petitioner was arrested in his home in Beit Sahur, and a deportation order was issued against him, ordering his removal from the West Bank to the Gaza Strip, this since his address is erroneously registered in the Gaza Strip.

The Petitioner has since been held in the Etzion temporary detention facility and the office of the Legal Advisor has given notice that **the Respondent intends to deport him to the Gaza Strip tomorrow, 30 March 2009.**

5. Petitioner 2 (hereinafter: **HaMoked - Center for the Defence of the Individual or HaMoked**) is a human rights organization which defends the rights of residents of the Occupied Territories.
6. The Respondent is the military commander of the West Bank on behalf of the State of Israel which has been holding the West Bank under belligerent occupation for over 40 years.

Exhaustion of remedies

7. Today, 29 March 2009, when the Respondent's intent to deport the Petitioner to the Gaza Strip became known, members of his family urgently appealed to the Respondent's Legal Advisor, through HaMoked - Center for the Defence of the Individual and requested the deportation procedure be halted – or, at least, delayed for a few days in order to clarify the matter and, if need be, petition the Honorable Court.

A copy of the urgent appeal made by HaMoked - Center for the Defence of the Individual to the Respondent's Legal Advisor dated 29 March 2009 is attached and marked **P/1**.

8. Shortly after transmitting the appeal, at around 11:30, counsel for the Petitioners spoke on the telephone with Lieutenant Matan Solomash of the Respondent's Legal Advisor's office. Lieutenant Solomash stated that there was indeed intent to remove the Petitioner to the Gaza Strip and that this was due to take place the following day since the arrest warrant that had been issued would then expire.

However, Lieutenant Solomash stated that in view of the Petitioner's appeal, he would examine the possibility of issuing another warrant and delaying the removal by a few days.

9. Shortly before 4 o'clock, the response of the Respondent's Legal Advisor was received, attached to it was a "questioning form". In his response, Lieutenant Solomash announced that: "**The Petitioner's removal to Gaza is to take place tomorrow, 30 March 2009**".

A copy of the response of the Respondent's Legal Advisor dated 29 March 2009 is attached and marked P/2.

The Legal Argument

10. Due to the short time and the urgency of the matter, below are the main arguments, as stated above, **the Petitioners request to complete their arguments within a week.**
11. From the procedural aspect, the Petitioners will argue that no hearing was held for the Petitioner, as required by law, and that the "questioning" he underwent does not meet the obligation to conduct a hearing. Additionally, the "questioning form" which was attached to the response of the Respondent's Legal Advisor indicates that this was an inherently defective and inadequate procedure. The form was only very partially filled out, and signatures as well as important and essential details were omitted.
12. From the substantive aspect, the Petitioners will argue that the Respondent's decision is unreasonable and disproportionate. When exercising his power, the Respondent must make considerations related purely to security. The measure taken by the Respondents does not stem from security related considerations and as such, the Respondent is impinging the basic rights of the Petitioners and their children with no grounds justifying him doing so.
13. The decision to remove the Petitioner from his home, while relying on his erroneous registered address in the population registry is extremely unreasonable. The Petitioners will claim that the removal of the Petitioner from his home and his family would constitute improper deportation and a blatant deviation from the

- powers of the military commander in the Territories, and a severe violation of international law.
14. The Respondent's claim that the Petitioner is an alleged "illegal alien" in his home is entirely baseless and does not conform to the law – neither domestic nor international. The Petitioners will argue that the Petitioner's passage from the Gaza Strip to the West Bank and his remainder there were and still are legal and lawful. It shall be emphasized, *inter alia*, that for decades, no permit existed for regulating the presence of Palestinians in the Territories (neither the West Bank nor the Gaza Strip), and that this is a demand which has no legal basis.
 15. Beyond the legal arguments, it is clear that the main issue in this petition is the simple human issue. The idea that one day, a man is taken from his home, his family and the house where he has lived for years and expelled from it – based on a technicality such as his registered address in the population registry is an intolerable idea. Note well: **this is not a foreign national, but a Palestinian resident of the Territories who lives in the Palestinian Territories!**
 16. It is clear that the expulsion of the Petitioner from his home will extremely and disproportionately infringe the Petitioners' fundamental rights to family life, to choose their shared abode, to parenting and the good of their young children – whose lives' trajectory the Respondent wishes to change at once and force them to grow up as fatherless orphans. In addition, as stated above, due to the Petitioner's position with the Palestinian police, his deportation to the Gaza Strip in the current situation may put him in true mortal danger.

This petition is supported by an affidavit sent to the undersigned by fax, following coordination over the telephone and was confirmed over the telephone. The Honorable Court is requested to accept this affidavit and the power of attorney given by Petitioner 2, also sent by fax, considering the objective difficulties relating to a meeting between the Petitioner and his counsels. In view of time constraints, this petition is submitted without power of attorney from Petitioner 1. The Honorable Court is requested to allow the Petitioners to obtain the missing power of attorney within 24 hours.

In light of the aforesaid, the Honorable Court is requested to allow the Petitioners to **complete their arguments within a week**, to issue a temporary injunction as requested and render it absolute after hearing the Respondent. The Court is also requested to rule the Respondent pay the Petitioners' expenses and attorney fees.

29 March 2009

[T.S. 60480]

Ido Bloom,
Counsel for the Petitioners

Att.