

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

At the Supreme Court
Sitting as the High Court of Justice

H CJ 4976/13

In the matter of:

1. _____ **Abu Wadi, ID No. _____**
Resident of the Occupied Territories
2. **HaMoked: Center for the Defence of the Individual,**
founded by Dr. Lotte Salzberger – Registered
Association

all represented by counsel, Adv. Tal Steiner (Lic. No. 62448) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Noa Diamond (Lic. No. 54665) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Bilal Sbihat (Lic. No. 49838) and/or Anat Gonen (Lic. No. 28359)

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. **Israel Prison Service**
2. **Military Commander of the West Bank**
3. **Minister of Interior**
4. **Israel Police**

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering it to appear and show cause why it should not refrain from deporting petitioner 1 (hereinafter: the **petitioner**), who is about to be released from prison next Sunday, July 14, 2013, to the Gaza Strip, and instead, release him to the West Bank, his home for thirteen years.

Due to the urgency of the matter the petition is already filed at this present time, although the petitioners are still acting to gather documents and additional data. Therefore, the petitioners will request to complete their arguments within a week and to add data and documents to the extent required.

Urgent Request for an Interim Order

A request for an interim order is hereby filed which is directed at the respondents ordering them not to forcibly transfer petitioner 1 (hereinafter: the **petitioner**) who is about to be released from prison on **July 14, 2013**, to the Gaza Strip.

The petitioner, a Palestinian registered in the Palestinian population registry, has been living in Qalqilya in the West Bank since 2000. The petitioner moved with his family to the West Bank in 2000, when he was only ten years old. It should be noted that the family moved to the West Bank lawfully, with respondents' full knowledge and consent.

As aforesaid, the petitioner has been living in the West Bank for thirteen years, where he moved to under the "safe passage" arrangement. His center of life is in the West Bank. His home is over there and his family is over there – his parents and his siblings. The petitioner, a young bachelor, is supported by his parents and prior to his arrest was living with them in a house owned by them.

It should be emphasized that Qalqilya is petitioner's sole home and that for thirteen years he has not set foot in the Gaza Strip. Due to respondents' policy, which severely limits the passage from the Gaza Strip to the West Bank, it is highly likely that should the petitioner be forcibly transferred to the Gaza Strip – he would never be able to leave it, and would not be able to return to his home and parents, who anxiously look forward for his return.

The balance of convenience in this case clearly favors the issuance of an interim order, due to the fact that petitioner's deportation will cause him irreparable damage. On the other hand, petitioner's stay in the West Bank while his case is pending before the court, will not harm any of respondents' interests.

Request for an Urgent Hearing

The honorable court is requested to schedule an urgent hearing in the petition.

The petitioner is about to be released from prison on Sunday, **July 14, 2013**. His parents and siblings are waiting for him in their home in Qalqilya. Notwithstanding the urgency of the matter, the respondents delayed their answers to petitioners' requests, requests which sought to ensure that the petitioner would indeed be sent to his home upon his release. Only on July 9, 2013 the respondents notified that they intended to transfer the petitioner to the Gaza Strip upon his release from prison.

The Factual Infrastructure

The Parties

1. The petitioner, born in 1990, is a Palestinian who lives in Qalqilya in the West Bank. Currently the petitioner is serving a prison sentence in the Damon prison, for an illegal presence in Israel.

The petitioner will be released from prison on July 14, 2013.

2. Petitioner 2 (hereinafter: **HaMoked**) is a not for profit association which acts to promote human rights in the Occupied Territories.

3. Respondent 1 holds petitioner 1 in its custody and is in charge of releasing prisoners and accompanying them to the place of their release. Petitioner 1 is obligated to protect the rights of the prisoners held in its custody, and according to its own rules and international law, it must release prisoners near their place of residence.
4. Respondent 2 is the military commander of the West Bank area on behalf of the state of Israel, which holds the West Bank under belligerent occupation for forty six years.
5. Respondent 3 has the authority to order that a person be deported from Israel due to lack of status therein, including prisoners and detainees who are neither Israeli citizens nor Israeli residents.
6. Respondent 4 is responsible for the execution of the deportation from Israel of a person who has no status therein.

Factual Background

7. The petitioner was born in the Gaza Strip in 1990. In 2000 petitioner's parents moved, together with their six children, from the Gaza Strip to the West Bank, under the "safe passage" arrangement which was in force at that time between the Gaza Strip and the West Bank. It should be noted that petitioner's parents were not required to obtain any special permit for said passage.
8. The petitioner and his family established their lives in the city of Qalqiliya, and even acquired a residential home over there. More children, a boy and girl, were born to petitioner's parent in the West Bank.

A copy of a confirmation issued by the municipality of Qalqiliya to the effect that petitioner's father lives in a house owned by him in the city of Qalqiliya is attached and marked **P/1**.

9. In 2002 the family members gave notice of a change of their address to Qalqiliya, to the Palestinian ministry of interior bureau in Qalqiliya. In 2011 the address of petitioner's parents and three of his brothers was updated – but for some unknown reason, petitioner's address in his identification card was not updated, and he is still mistakenly registered as a Gaza Strip resident.

A copy of the identification card of petitioner's father is attached and marked **P/2**.

A copy of the identification card of petitioner's mother is attached and marked **P/3**.

10. It should be noted that the issue concerning the update of the address of West Bank residents who are mistakenly registered as Gaza Strip residents was raised in H CJ 4019/10 **HaMoked: Center for the Defence of the Individual v. Military Commander of the West Bank Area**, which was filed by petitioner 2 and fifteen additional organizations. In said petition HaMoked has already warned that as a result of the failure to change the addresses of residents as aforesaid, they would suffer many difficulties and hardships in their lives, as petitioner's case clearly demonstrates. The petition was deleted in view of respondents' undertaking to refrain from deporting residents who moved to the West Bank before 2005 (the ramifications of said undertaking to the case at hand will be specified in detail below).
11. In 2008 petitioner's elder brother, _____ Abu Wadi, was arrested for an illegal presence in Israel. The brother was indicted and sentenced to two years in prison. When he was released from prison, in 2010, the brother was forcibly removed, without prior notice, to the Gaza Strip, rather than to his home in the West Bank. Since then the brother has been living in the Gaza Strip, away from his home and family, and cannot return to Qalqiliya.

12. In February of this year, as a result of an economic distress, the petitioner entered Israel to look for work and was caught for an illegal presence in Israel. Immediately upon his arrest the petitioner was questioned about his registered address in his identification card, and the petitioner explained that he had been residing in the West Bank since he was a young boy, and that due to a mistake which was not under his control his registered address was not updated. The petitioner was indicted and convicted, and was sentenced to two months in prison.
13. The petitioner is about to be released from prison on July 14, 2013, within a few days.

Exhaustion of remedies

14. Towards the completion of his last prison sentence, the petitioner feared that like his brother, _____, he would also be forcibly removed to the Gaza Strip upon his release, due to his registered address.
15. Therefore, on June 30, 2013 HaMoked wrote, on behalf of petitioner 1, to the commander of the Damon prison and requested to ascertain that the petitioner would be released to his home in the West Bank.

A copy of HaMoked's letter to respondent 1 dated June 30, 2013 is attached and marked **P/4**.

16. On July 2, 2013 HaMoked's representative spoke with a representative of respondent 1, a prison guard from the registration office of the Damon prison. The prison guard told HaMoked's representative that its request was received and asked whether the petitioner was not a Gaza Strip resident, as indicated by his identification card. HaMoked's representative clarified that the petitioner was residing with his family in the West Bank, where he should be sent to upon his release. Respondent's representative referred HaMoked's representative to Chief Superintendent (Rav Kalai) Nava Shabudi, the inmates' officer at the Damon prison, to discuss the matter with her.
17. On July 4, 2013 HaMoked's representative spoke with the inmates' officer, who said that due to a heavy workload, she would not be able to attend to petitioner's request that week, and asked HaMoked representative to speak with her again in the beginning of the following week.
18. Hence, on July 7, 2013 HaMoked's representative spoke again with the inmates' officer, who promised that a written answer would be forwarded to HaMoked on that very same day.
19. Towards the end of the day and as no written answer has been received, HaMoked's representative spoke again with the inmates' officer, who has adamantly refused to respond verbally to petitioner's request, and requested HaMoked's representative to speak with her again on the following day.
20. On July 8, 2013 HaMoked's representative spoke with the inmates' officer for the fourth time, but the latter told him that she was not yet able to give an answer to petitioner's request.
21. Only on July 9, 2013 the answer of the inmates' officer to petitioners' request was received. The letter stated that the petitioner would be released on July 14, 2013. As to the designated location of his release, **only a vague and general answer** was given, according to which "as a general rule – a prisoner is released to his home according to the residential address which appears in the population registry. The residents of Judea and Samaria are usually released in the Salem crossing, while Gaza Strip residents are usually released in the Erez crossing. Changes may occasionally occur."

A copy of respondent 1's letter dated July 9, 2013 is attached and marked **P/5**.

22. It is clear that this response does not answer HaMoked's explicit request, to be advised of the location in which the specific petitioner at hand would be released. Therefore, on that very same day HaMoked wrote again to the inmates' officer and requested her to clarify her answer.

A copy of HaMoked's letter to respondent 1 dated July 9, 2013 is attached and marked **P/6**.

23. At the same time, and due to the upcoming release of the petitioner and in an attempt to prevent the risk that he would be forcibly removed to the Gaza Strip, HaMoked wrote also to the office of the legal advisor for the West Bank on behalf of respondent 2, and requested to ascertain through it too that the petitioner would be sent, upon his release, to his home in the West Bank.

A copy of HaMoked's letter to respondent 2 dated July 9, 2013 is attached and marked **P/7**.

24. A few hours after the above letter was sent, the undersigned spoke with the legal advisor's representative, first lieutenant Omer Knobler. Respondent's representative said that to the best of his knowledge no decision has yet been made concerning the location of petitioner's release, and requested to receive the letters sent by HaMoked's representatives to the representatives of the Israel Prison Service in petitioner's matter.

25. Accordingly, HaMoked's letters concerning petitioner's matter were sent to the legal advisor's representative (which are mentioned above and marked P/4, P/6). In addition, HaMoked sent to the legal advisor's representative letters which were written by him in the past concerning other prisoners who were about to be forcibly removed to the Gaza Strip, under circumstances similar to those of the petitioner (whose cases will be described in detail below). HaMoked proposed to implement in this case the same solutions which were implemented in the past, in order to prevent the deportation of the petitioner to the Gaza Strip, where he had no one.

A copy of HaMoked's second letter to respondent 2 dated July 9, 2013 is attached and marked **P/8**.

26. On that very same day an additional letter from the inmates' officer at the Damon prison, respondent 1's representative, was received in HaMoked's offices. In her letter the officer notified that "according to the population registry – [the petitioner, T.S.] is the resident of Beit Lahia in the Gaza region. **He will be released in the Erez crossing.**"

A copy of respondent 1's second letter dated July 9, 2013 is attached and marked **P/9**.

27. Only after this notice, it became clear that respondent 1 actually intended to forcibly remove the petitioner to the Gaza Strip, based on his registered address. Hence, the undersigned spoke again with the legal advisor's representative and advised him that the Israel Prison Service notified of its intention to remove the petitioner to the Gaza Strip, and requested that he would urgently handle the matter.

28. On the following day, July 10, 2013, a letter from the legal advisor's representative was received in HaMoked's offices, according to which "Your client's request [not to be deported to the Gaza Strip, T.S.] will be examined and a decision will be made by the military commander before his release."

A copy of respondent 2's letter dated July 10, 2013 is attached and marked **P/10**.

29. On that very same day the undersigned spoke with the legal advisor's representative several times – but the latter told her that no decision has yet been made in petitioner's matter.

30. Under these circumstances, and in view of the upcoming release of the petitioner, the petitioners have no alternative but to turn to the court.

The Legal Argument

A. Respondents' obligation to release a person near his place of residence

31. Upon the completion of petitioner's arrest, respondent 1, which holds the petitioner in its custody in prison and is responsible for having him released and for bringing him to the place in which he would be released, is liable to release him near his place of residence in the West Bank.
32. It should be noted that in HCJ 3278/02 **HaMoked: Center for the Defence of the Individual v. Commander of IDF Forces in the West Bank**, which concerned the incarceration conditions and the manner by which detainees are released, respondent 2 submitted a notice to the court on April 24, 2002, which stated, in section 27 thereof, as follows: "According to the command's directives, detainees are released to the **extent possible near their place of residence**".

A copy of the state's response dated April 24, 2002 in HCJ 3278/02 is attached and marked **P/11**.

33. Even according to respondent 1's procedures, a detainee should be released in a checkpoint near his place of residence (see Israel Prison Service procedure 7.09 "Release of prisoners residents of the Palestinian Authority in checkpoints").
34. There is no dispute that the petitioner has been residing in Qalqiliya for many years. The petitioner moved to the West Bank lawfully, under the "safe passage" arrangement, together with his family members, when he was ten years old.
35. Therefore, it would be absurd to argue that petitioner's home is in the Gaza Strip, only because he was born there, although he has already notified of a change of his address to respondent 2 in 2002, and to expel him from his home and family, based on technical or bureaucratic arguments which have nothing to rely on.

B. From the general to the particular: respondents' obligation to release the petitioner to his home in Qalqiliya

36. As described above, the petitioner has been living in Qalqiliya in the West Bank for thirteen years. However, petitioner's address is registered in the copy of the population registry held by the respondents in a town located in the Gaza Strip.
37. As has been held in the past more than once, the data registered in the population registry are *prima facie* evidence of the correctness of their contents, and see for instance: HCJ 143/62 **Funk Schlezinger v. Minister of Interior**, IsrSC 17(1), 225, 243 (1963); HCJ 58/68 **Shalit v. Minister of Interior**, IsrSC 23(2) 477 (1970); HCJ 264/87 **Sepharadi Torah Guardians – Shas Movement v. Director of Population Registration at the Ministry of Interior**, IsrSC 43(2) 723 (1989); HCJ 2888/92 **Goldstein v. Minister of the Interior**, IsrSC 50(5) 89, 93-94 (1994); HCJ 1779/99 **A. v. Minister of Interior**, IsrSC 54(2) 368, 375-376 (2000); HCJ 5070/95 **Na'amnat – Movement of Working Women & Volunteers v. Minister of Interior**, IsrSC 56(2) 721 (2002); HCJ 2901/97 **Na'amnat v. Minister of the Interior**, TakSC 2002(1) 634, 640 (2002); HCJ 3045/05 **Ben Ari v. Director of the Population Registry**, TakSC 2006(4) 1725, 1731 (2006).
38. Parenthetically, the above is also explicitly stated in the military order governing population registry, the Order on Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729-1969. Section 11B of the order provides that "The registration in the registry, any copy or summary thereof and any certificate issued under this Order will be *prima facie* evidence of the correctness of

the registration details specified in sub-sections... (13)...". Sub section (13) to section 11 of the Order, concerns a person's address.

39. Since the respondents were advised that the petitioner was residing in the West Bank, despite the registered data in their possession, and since he has managed to prove it, they must release him to his actual place of residence – rather than to the place which appears in their records as a *prima facie* evidence only.
40. It has also been acknowledged by the court that the Palestinian population registry is only a *prima facie* evidence of its correctness, and it was therefore held under exactly the same circumstances – of a release from prison of a resident of the Area who challenged the correctness of his registered address in the registry and requested to be released to his home in the West Bank rather than to the Gaza Strip – as follows:

It would be appropriate for the respondents to consider the establishment of a procedure according to which a person who is about to be expelled, under adequate circumstances and without an order for the assignment of residence, would be entitled to a hearing in which he would be able to raise his arguments against the registration in the Palestinian population registry.

(HCJ 3519/05 **Ward v. Commander of Military Forces in the West Bank** (not reported; July 26, 2006)).

41. It should be pointed out, that **in our case, the petitioner did not undergo any hearing** before a decision was made to remove him to the Gaza Strip upon the completion of his arrest. Respondent 1 made a unilateral decision in this matter, of which he has notified the petitioner only shortly before his expected release from prison, without giving him an opportunity to challenge said decision and make his arguments in connection therewith.

C. The prohibition to expel the petitioner to the Gaza Strip and the violation of his rights

42. The petitioner, a protected resident in an occupied territory, who is registered in the Palestinian population registry, has the right to live in his home in Qalqiliya. Petitioner's forcible removal to the Gaza Strip violates the rights afforded to him under both Israeli and international law: his right to free movement in his own country; his human liberty and dignity; his right to family life; and furthermore, according to international law, a person's right not to be removed from his home and place of residence is a material and central basic right, and it is explicitly prohibited to remove a person from his home.

The fundamental premise is that the displacement of a person from his place of residence and his forcible assignment to another place seriously harms his dignity, his liberty and his property. A person's home is not merely a roof over his head, but it is also a means for the physical and social location of a person, his private life and his social relationships (see M. Stavropoulou, "The Right not to be Displaced", 9 *Am. U. J. Int'l L. & Pol'y.*, 687, 717 (1994)). Several basic human rights are harmed as a result of an involuntary displacement of a person from his home and his residence and his assignment to another place, even if this assigned residence does not involve the crossing of an international border (see F. M. Deng, Internally Displaced

Persons: Compilation and Analysis of Legal Norms, 14 (1998). These human rights derive in part from the internal law of the various countries, and are in part enshrined in the norms of international law.

(HCJ 7015/02 **Ajuri v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 352, paragraph 14 (2002)).

43. And moreover, in a general petition which was filed on the issue of the status of West Bank residents whose registered address is in Gaza (the above referenced HCJ 4019/10) respondent 2 undertook that:

Gaza Strip residents who entered the Judea and Samaria Area before the end of the military administration in the Gaza Strip (the "disengagement from the Gaza Strip") is September 12, 2005, will not be expelled, unless there is a specific security justification for their expulsion.

Respondents' response in HCJ 4019/10 dated October 23, 2012 is attached and marked **P/12**.

44. The court reiterated said undertaking which was made by the respondents and subject to said undertaking the petition was deleted.

A copy of the judgment in HCJ 4019/10 dated April 21, 2013 is attached and marked **P/13**.

45. Hence, also according to respondent's undertaking, the petitioner, who moved to the West Bank in 2000, should not be expelled to the Gaza Strip.
46. With respect to the exclusion which was included in respondents' undertaking – the existence of a "specific security justification for their expulsion" – it should already be noted at this point that the offense committed by the petitioner of an illegal entry into Israel for working purposes without any additional criminal offense ancillary thereto, for which he was sentenced only to two months in prison, can not constitute a "security justification" for his expulsion. In addition, the petitioner has already served his sentence for this offense, and his expulsion from his home for the same offense would constitute a disproportionate and unjust double punishment.

D. Respondent's conduct in other cases of applicants in petitioner's condition – the cases of S.H. and A.A.

47. In similar cases which took place in the past, the respondent indeed refrained from removing applicants in petitioner's condition to the Gaza Strip upon the completion of their arrest, subject to conditions.
48. This was the case in the matter of Mr. S.H., who moved with his family from the Gaza Strip to the West Bank in 1997, and who was caught in 2008 in Israel as an illegal alien, was indicted and convicted of this offense and other ancillary offenses, and was sentenced to two years in prison. When he was about to be released, the prison authorities notified that they intended to release him to the Gaza Strip, according to his registered address. Therefore, HaMoked's representatives sent an urgent application to the legal advisor for the West Bank, respondent 2's representative in our case, and requested to instruct the competent authorities to release S.H. to the West Bank rather than to the Gaza Strip.

49. Following this application, the legal advisor's representative notified that S.H. would be released to the West Bank, his home, provided that he signed an undertaking not to engage in criminal or security activity and provided further that a monetary guarantee was deposited to secure his compliance with said undertaking.

A copy of the letter of the legal advisor's representative in S.H.'s matter dated December 9, 2010 is attached and marked **P/14**.

50. This was also the case in the matter of A.A., a Gaza Strip resident who fled in 2007 to the West Bank in fear of Hamas, due to the fact that until the takeover in Gaza by Hamas he was employed by the Authority's services in the Gaza Strip. A.A. was also sentenced to prison for an illegal presence in Israel, and towards the end of his arrest he was notified that he would be expelled to the Gaza Strip.

51. Following HaMoked's intervention in A.A.'s matter, the representative of the legal advisor for the West Bank notified that notwithstanding "his intense involvement in criminal activity in the territory of the state of Israel" and despite "additional negative security material which exists in his matter" – A.A. would be released to the West Bank rather than to the Gaza Strip, provided that he signed an undertaking not to engage in criminal or security activity, and provided further that a monetary guarantee was deposited to secure his compliance with said undertaking. A.A.'s return to the West Bank was approved "temporarily" until a hearing is held in his case.

A copy of the letter of the legal advisor's representative in A.A.'s matter dated December 5, 2010 is attached and marked **P/15**.

52. This raises the question – if in S.H. and A.A.'s cases the respondent could find solutions which in fact prevented their expulsion to the Gaza Strip, why can't such a solution be also found in petitioner's case? It seems that by his expulsion to the Gaza Strip the Petitioner is being discriminated against as compared to others in his condition, for whom reasonable and proportionate solutions were found, which made their return to their homes in the West Bank possible.
53. Furthermore: if in A.A.'s case, who was allegedly involved in intense criminal and security activity, both within the state of Israel and in the West Bank, a solution was found which made his return to his home possible – such a solution should all the more so be found in petitioner's case, a young man who other than having illegally stayed in Israel did not commit any ancillary offense, and with respect of whom it has never been argued that any security material existed.
54. Even if it is argued that the decisions in S.H. and A.A.'s matters were made for "humanitarian reasons" or "*ex-gratia*" etc., this argument is not relevant since it has already been held that "humanitarian reasons constitute part of the law, and there is an obligation to take them into account." (HCJ 5504/03 **Kahlut v. Commander of IDF Forces in the West Bank**, TakSC 2004(2) 3155, 3156 (2004)); and see also: HCJ 9393/03 **Watson v. Minister of Interior**, TAKsc 2004(1) 2522, 2522 (2004); HCJ 4465/05 **Gdili v. Commander of IDF Forces in the West Bank**, TakSC 2005(3), 4161 (2005)).

Conclusion

55. The petitioner, a protected resident in an occupied territory, wishes to ascertain that upon his release from prison in Israel he would return to his home in his country. The petitioner has been living in Qalqiliya for more than a decade, where his home and family are located, after he has lawfully moved from one part of his country to another.

56. After repeated requests submitted by the petitioners, the respondents have only recently notified of their intention to expel the petitioner to the Gaza Strip upon his release from prison, without having given the petitioner an opportunity to challenge this decision and without holding a hearing in his case.
57. In their decision, the respondents ignore the fact that the petitioner has been living in the West Bank for thirteen years, where his sole home is located, and he that has no one in the Gaza Strip. In their decision the respondents also ignore their undertaking given to this honorable court, in HCJ 4019/10.
58. In view of all of the above, this honorable court is requested an *order nisi* as requested, and after hearing respondent's response, make it absolute. The honorable court is also requested to order the respondents to pay petitioners' costs and legal fees.

Tal Steiner, Advocate
Counsel to the Petitioners

July 11, 2013

[File No. 78362]