At the Supreme Court **HCJ 7085/15**
Sitting as the High Court of Justice

In the matter of:

1. **_____Haj Hamed, ID No. _____**
2. **_____Haj Hamed, ID No. _____**
3. **_____Haj Hamed, ID No. _____**
4. **_____Haj Hamed, ID No. _____**
5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

Represented by counsel, Adv. Labib Habib et. al.,
New Beit Hanina, P.O.Box 21225, Jerusalem 97300
Tel/Fax: 02-6263212; Cellular: 052-4404477

The Petitioners

v.

Military Commander of IDF Forces in the West Bank

Represented by the State Attorney's Office

The Respondent

Petition for *Order Nisi* and Interim Order

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause:

a. Why he should not refrain from the seizure and demolition of the homes located on the second and third floors in Nablus, or from causing them damage in any other manner.

b. Alternatively, why he should not choose a less injurious sanction.

c. In any event, even if a decision is made to demolish the house, why he should not carry out the demolition moderately, in a manner which does not cause environmental damage.

d. Why he should not transfer in any event the interrogation material forming the basis for the suspicions which lead him to issue the order;

Petition for Interim Order

The honorable court is further requested to issue an interim order against the respondent directing him to refrain from the seizure and demolition of the two above homes or from damaging them in any other manner, until the conclusion of the proceedings in this petition.

The grounds for the petition are as follows:

Factual background:

1. On October 15, 2015, around midnight, the respondent delivered notice of the intention to seize and demolish the residential apartment in which the petitioners live by virtue of the authority vested in him according to Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: the **Regulation**). The notice stated that an objection could be submitted to the respondent until October 17, 2015, at 12:00.

   It should be noted that the above notice which was delivered to the petitioners contained severe contradictions: its Arabic version stated that the floor designated for demolition was the lower floor only, while its Hebrew version stated that the first and second floors were designated for demolition!

   A copy of the notice (hereinafter: the **notice**), is attached and marked **P1**.

2. The notice stated that the son of petitioners 1 and 2, who lived in the apartment, located on the second floor, prior to his recent detention, _____ Hamed, "carried out a terror attack on October 1, 2015, in which he shot and killed the late Henkin spouses."

3. On October 17, 2015 an objection was submitted, a copy of which is attached hereto, constitutes an integral part of this petition and marked **P2**.

4. On October 20, 2015, respondent's decision dated October 19, 2015, to dismiss the objection was received, accompanied by the seizure and demolition order, and 48 hours were given to file the petition, until October 22, 2015 at 09:00.

   A copy of the decision and the order is attached hereto and marked **P3**.

   The Parties:

5. In his decision to dismiss the objection, the respondent noted that **he intended to demolish two floors, namely, two separate homes, located on the middle floors in a four story building**!

6. On the first floor above the ground floor lives petitioner 1, the detainee's father who is 71 years old, together with the mother, petitioner 2, who is 65 years old; their daughter, petitioner 3 and her two daughters; and their son, petitioner 4 who is 22 years old. Altogether, six persons live on this floor.

7. The apartment located on the second floor above the ground floor is owned by petitioner 2. The son _____, who is currently detained lived in said apartment as a tenant and used to live and sleep therein.

8. The entire building is registered under the name of petitioner 2 who rents out the apartments to tenants. A copy of the lease agreement for the third floor is attached hereto and marked **P4**.

9. Petitioner 5 is a registered association, which has engaged for many years in the protection of human rights.

10. The Respondent, GOC Home Front Command, has been authorized to act as the military commander for the Jerusalem region pursuant to the Defence (Emergency) Regulations, 1945. As such, he has the authority to issue seizure, sealing and demolition orders pursuant to Regulation 119 of said regulations.

The Legal Argument

Flawed hearing is void *ab initio:*

11. **The hearing in this case was made in breach of all customary rules applicable to a hearing and due process: the notice of the intention to demolish as aforesaid, had two versions, an Arabic version according to which the lower floor was designated for demolition, and the Hebrew version according to which the two middle floors were designated for demolition. This flaw, in and of itself, is sufficient to invalidate the entire proceeding, and for this reason alone the order should be revoked**!

12. In view of the fact that it is impossible to defend against an impingement the nature of which is unknown, the undersigned tried to receive clarifications concerning the contradiction, and demanded that he be notified which version was binding in view of the substantial differences between the two versions, and that after such clarification was made he would be given additional time to complement the argument. This demand was also disregarded, and it seemed that the demolishing legal bulldozer was underway and that no protest could stop it.

13. Said disregard indicates that in the case at hand a hearing was not conducted, the right to present arguments was not given and neither real nor apparent discretion was exercised, but rather, a full and final decision was made to demolish the apartments as a revenge, in accordance with the *'Zeitgeist'*, that the arguments presented in the hearing fell on deaf ears and that the sole purpose of the hearing was to validate the demolition, this and nothing more.

14. The fact that the order was issued hastily, without a real hearing and without discretion, not even for the sake of appearance, and the concern that the respondent does not seek deterrence but rather revenge in accordance with the '*Zeitgeist'*, all indicate that the hearing was conducted for the sake of appearance only whereas the final decision has already long been made.

15. In addition, the respondent did no enable to conduct a real hearing. He did not disclose to the petitioners the interrogation material which gives rise to the suspicion based on which the order was issued. In addition, no details were given regarding the suspicions, the acts and other circumstances, other than the general argument which appeared in the order.

16. Said deficiency violates petitioners' right to be heard and prevents them from raising dense arguments against the order.

17. The hearing must be made according to the rules of natural justice and the duty of the authority to act fairly, which includes the right of the injured party to be informed of the grounds for the impingement inflicted on him and his rights, of the arguments alleged against him and even of the evidence supporting such allegations:

> The special status of this right in employer-employee relationships was discussed more than once by the National Labor Court. Accordingly, in LabC 3-148 Shekem Ltd. – Grinberg [23] and in LabA 1027/01 Guterman – The

> Academic College of Emek Yezreel [24], the court stated, *inter alia*, that "It is the initial right of the employee to know what are the allegations which are raised against him or in his matter and to accordingly respond to them, to present the opposing arguments from his point of view and to try to convince the authorized person to changed his mind in as much as it prejudices his rights…" (page 455).
>
> 28. The hearing conducted by the authority must be fair and must enable the civilian to present his case. Sometimes the presentation of evidence is involved.
>
> The presentation of arguments before the administrative authority includes, as a matter of fact, the presentation of evidence, in view of the fact that occasionally the authority relies on facts, which allegedly, do not provide a full or accurate picture. Therefore, the hearing may focus on facts. Without the opportunity to add facts or to refute facts, the hearing may be futile" Zamir in his above mentioned book [25], page 819)."

HCJ 3379/03 **Moustaki v. State Attorney's Office**, IsrSC 58(3), 865, 891;

See also the book of Y. Zamir, **The Administrative Authority**, Volume B (5756), page 816.

18. Therefore, the honorable court is requested to obligate the respondent to disclose such interrogation material as requested in the beginning of the petition, and to enable the petitioners to complement their arguments.

The suspicions have not yet be substantiated:

19. The petitioners will argue that respondent's decision to take these measures against the apartment is premature, since it was made even before the interrogation of the detained family member was completed. At the time the notice was given and the objection filed, the detainee was undergoing interrogation. This fact has compromised the ability of the Petitioners to properly defend themselves.

20. a. One cannot accept a situation in which an injurious sanction is taken against an apartment before the detainee's fate is decided in court.

b. Taking the sanction at this stage constitutes an infringement of a basic legal principle, according to which a man is presumed innocent until proven guilty.

c. Damaging the apartment at this stage also infringes the principle of separation of powers, and could send the message that the judicial proceeding against the detainee is a colorable proceeding only, and that his guilt was decided even before the Court made its decision.

What would the Respondent say if, after the house is demolished, the Court acquits the detainee of the charges pressed against him, in whole or in part, which is a valid and feasible possibility in our legal system?

d. Such an administrative decision may be made at a later stage, when the proceedings are concluded. For instance, in HCJ 2/97 and 11/97**, Halawe et al. v. GOC Home Front Command**, TakSC 97(3) 111, injurious measures against apartments in **Jerusalem** were discussed only after the suspects had been convicted, as stated at the outset of the judgment:

> **<u>Following the conviction of the persons involved in the attacks</u> (emphasis added, L.H.), the GOC Home Front Command (respondent 1) issued, on 29 December 1996, orders for the seizure and sealing of housing units in which the petitioners reside.**

In the case at hand, the injurious measure is requested **<u>before conviction and even before the filing of an indictment</u>**.

21. The petitioners will argue that only in cases in which the prosecution of a suspect is impossible, or involves great difficulty, such an authority may be exercised without a judicial ruling. However, once it was decided to prosecute the suspects, this proceeding should be exhausted, and no additional proceedings should be taken at the same time against the suspects.

22. Taking the high road and awaiting judgment should be preferred in the absence of weighty circumstances which would require deviation from this principle.

23. The Honorable Court has also determined in its judgments that the institution of administrative proceedings before a judicial decision has been made is irregular and extraordinary under general principles of law.

24. a. HCJ 518/78 **Daniel Avrahami v. The Minister of Transportation et al**., IsrSC 32(3) 675, discussed the power of the administrative authority to revoke a driving license prior to conviction. The court reviewed the language of the regulation, and held as follows:

> **The judgments on which Ms. Naor relied do not support her arguments. Indeed, it was ruled more than once, and recently in the said HCJ 338/77, in which a judgment was given by a majority opinion of three justices against two, that an administrative authority may exercise its punitive authority also without being preceded by a criminal conviction, but all of the cases in which it was so ruled, concerned the provisions of statutes which did not stipulate, as does Regulation 264, that the condition for the exercise of the authority was the existence of proof before the authority that the person had "committed an offense". Therefore, those judgments are irrelevant to the case before us. Conversely, the judgment given in FH 13/58 (The City of Tel Aviv Jaffa v. Joseph Lubin, IsrSC 13 118, 125; TakSC 38 6) (in the matter of the City of Tel Aviv v. Lubin) supports, to a certain extent, the interpretation presented by the petitioner. Although it is true that said judgment cannot serve as a direct reference for the issue before us, because it did not concern the revocation of a license by the authority that granted it, but rather the infringement of a person's property by confiscating an asset which belongs to him, the grounds for the majority decision there are equally applicable here. In that case it was ruled that an inspector may not confiscate pork without a judicial proceeding, despite the fact that the authorizing article did not require that a proceeding be held as a condition for the confiscation. <u>The majority opinion in FH 13/58, which was expressed mainly in the opinion of Justice Landau (as then titled), was based on the fact that legitimizing an administrative confiscation before an offense was irregular under general principles of law</u>**.

b. FH 13/58, **The City of Tel Aviv Jaffa v. Joseph Lubin,** IsrSC 13 118, 125 quoted above, discussed the issue of an administrative confiscation of property before a judicial decision. It was

ruled that the administrative authority should not be exercised while damage to property was concerned before a judicial decision was given, despite the fact that the authorizing article did not condition the confiscation upon the holding of a judicial proceeding:

> **And now just think how the interpretation which seeks to legitimize an administrative confiscation before an offense is irregular under general principles of law. This has already been explained in the majority judgments given in the first hearing, and all I need do is summarize them: This interpretation allows property to be confiscated without a prior judicial examination, neither by a court of law nor by any other judicial instance, and certainly not by the local authority itself or by the inspector, because, as noted by the president… the authorizing statute does not confer upon the local authority the power to investigate or compel people to answer its questions or the questions of its inspectors. And yet, this interpretation conditions the confiscation power upon the existence of facts which are far from simple, regarding the possessor's mental state… and all other relevant circumstances… as well as regarding the determination of the nature of the merchandise as pork or as a pork food product (and the sausage will prove these evidentiary difficulties). It should also be kept in mind that the bylaw seeks to entrust the decision of all of the above to an inspector, without requiring him to have any training for this duty. Having considered all of the above, I respectfully concur with the president ... that "this is a very rare case in legislation, and as far as our jurisprudence is concerned it is very difficult to accept it**".
>
> See: page 125.

25. In the case at hand both conditions are satisfied, each of which justified, in the foregoing cases, to postpone the exercise of power by the authority until a judicial decision was made: Firstly, our case also concerns damage to property and breach of the right to own property, not only of the suspect but of his family as well. Secondly, the language of the Regulation and an internal comparison of its text, also supports this outcome, and so it reads:

> **... or any house, structure or land ... whose inhabitants he knows ... to have committed, or attempted to commit ... any offence pursuant to these regulations, an offense involving violence or intimidation or an offense that is tried in a military court**.

26. There is no justification for deviating from the above principle, also in light of the passage of time since the suspects' arrest and in light of the fact that the injury would be inflicted upon innocent family members.

Regulation 119 is contrary to the norms by which the military commander is bound

27. The military commander must act according to international humanitarian law and the rules of belligerent occupation which form an integral part thereof. The respondent is a trustee of the Occupied Palestinian Territories (OPT) and is not the sovereign thereof. All of his powers in the OPT derive from international law, which constitutes the sole normative basis for the exercise of his powers (HCJ 2150/07 **Abu Safiyeh v. Minister of Defense** (not reported, December 29, 2009)).

28. Regulation 119 runs contrary to two main provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (hereinafter: the **Fourth Geneva Convention**), which forms the basis for the rules of occupation under international law. Article 33, which prohibits the imposition of collective penalties and reprisals against protected persons and their property and Article 53 of the convention which prohibits the destruction of homes and personal belongings by the occupying power. The Regulation also runs contrary to Article 50 of the regulations annexed to the Convention respecting the Laws and Customs of War on Land (Hague, 1907), which prohibits the imposition of collective punishment and to Article 43 of said convention which prohibits the infliction of damage and destruction of property.

29. Secondly, the respondent must also act according to international human rights law, and first and foremost according to the UN covenants on civil and political rights and on social and economic rights. It was so held in the opinion of the International Court of Justice in connection with the separation wall. This honorable court has also examined the acts of the military commander according to these norms. (**Albasyuni v. The Prime Minister**, TakSC 2008(1) 1213; HCJ 7957/04 **Mar'aba v. The Prime Minister of Israel, TakSC 2005(3) 3333, paragraph 24; HCJ 3239/02 Marab v. Commander of IDF Forces,** TakSC 2003(1) 937; HCJ 3278/02 **HaMoked: Center for the Defence of the Individual v. Military Commander of IDF Forces in the West Bank**, IsrSC 57(1) 385).

30. Regulation 119 also runs contrary to Article 17 of the Covenant on Civil and Political Rights (a person's right not to be subjected to arbitrary or unlawful interference with his home), Article 12 (a person's right to freely choose his place of residence) Article 26 (the right to equality before the law) and Article 7; (the right not to be subjected to cruel, inhuman and degrading treatment or punishment). Statements to the same effect were made by the Human Rights Committee of the UN which is responsible for the examination of the manner by which the covenant is implemented by the states members, in its opinion of 2003 concerning Israel.

31. In addition, Regulation 119 runs contrary to certain provisions of the Covenant on Social and Economic Rights, primarily the provisions of Article 11 (the right to housing and proper living conditions) and Article 10 (special protection of the family unit); the Regulation runs contrary to Articles 12-13 and Article 17 of the Universal Declaration on Human Rights; and may even amount to a war crime as this term is defined in Article 8(2)(iv) of the Rome Statute for the establishment of the International Criminal Court (Extensive destruction and appropriation of property, not justified by military necessity).

The order breaches the prohibition against collective punishment and violates fundamental rights

32. The prohibition against collective punishment is a basic principle of law:

> That be far from Thee to do in this manner — to slay the righteous with the wicked; and that the righteous should be as the wicked, that be far from Thee! Shall not the Judge of all the earth do right?" (Genesis 18; 25).

33. The prohibition against collective punishment was expressed, as aforesaid, in international customary law. Article 50 of the Hague Convention states:

> No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

34. Whereas Article 33 of the Fourth Geneva Convention stipulates categorically as follows:

> No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited…
>
> Reprisals against protected persons and their property are prohibited.

35. And it was so held by this honorable court:

> My colleague Justice M. Cheshin has already discussed this issue in connection with Regulation 119 of the Defence (Emergency) Regulations, 1945. The basic principle is that "The person who sins will die... There is no punishment without a warning, and punishments are inflicted only upon the offender himself." (HCJ 2006/97 **Janimat v. GOC Home Front Command – Uzi Dayan**, IsrSC 51(2) 651, page 654).

36. It should be noted that even if, as argued by the respondent, the purpose of the demolition is to deter, it actually injures innocent people and therefore, in fact, it constitutes a collective punishment.

37. House demolition violates the hard core of human dignity. A person's dignity is critically violated when he is deprived of his home and is left homeless without a roof over his head and with no shelter. The grave violation of dignity also stems from the fact that a person's home is not just a physical structure, but also a place with which a person has a strong emotional affiliation, a place where all his intangible property and memories are found.

Disproportionality

38. The principle of proportionality is a superior principle which the respondent must undoubtedly follow while exercising a draconian power which severely injures innocent people such as in the case at hand:

> The exercise of power according to Regulation 119 of the Defence Regulations must be the outcome of balances: between the severity of the act committed by the perpetrator and the severity of the sanction take; between the injury caused to the perpetrator's family and the gain achieved as a result of the deterrence of other potential perpetrators; between the right of family members of the perpetrator to have property and the safeguarding of public security. Said balancing, which forms part of the known constitutional proportionality tests, mandates that the deterring measure taken will rationally bring about the realization of the proper purpose; and that the measure chosen will also satisfy the third sub-test of the relevant "relativity", namely, that proper relation is found ("proportionality" in the narrow sense) between gain that arises from the act and the realization of its underlying purpose and the injury which may be inflicted as a result thereof on the constitutional right. (see: Aharon Barak Proportionality in Law 471 (2010); compare: MApp(Crim) 8823/07 **A v. State of Israel**, paragraph 26 of the judgment of my colleague, deputy president, Justice E. Rivlin. In this context the court must also be convinced that the same purpose may not be realized by a less drastic measure than house demolition or sealing (see: HCJ Abu Dheim; Sharif)(HCJ 5696/09 **Mughrabi v. GOC Home Front Command;** hereinafter: **Mughrabi**, paragraph 12 of the judgment).

39. In view of the above the petitioners will argue that the seizure and demolition of petitioners' homes for deterring purpose does not satisfy the proportionality tests – neither the rational connection test between the means and the purpose, and beyond need, nor the least injurious measure test and the harm *vis-à-vis* the gain test (proportionality in the narrow sense).

40. Neither proportionality was applied nor discretion exercised in this case, but rather execution of the decision made by the political level to destroy houses, this and nothing more. The respondent disregarded his obligation to examine from time to time the effectiveness of the sanction and the rational connection between the sanction and the expected result, and the heavy burden imposed on him to justify impingement of innocent people by proper evidence, and in so doing he disregarded the words of the Supreme Court which were adopted and clarified on October 15, 2015 by the Honorable Justice U. Vogelman in HCJ 5839/15 **Sidr et al., v. Military Commander of IDF Forces** (not reported yet):

> Firstly, this deterrence which the Regulation at hand hopes to establish. Deterring terrorists from taking part in atrocities – and though we are in crazed days of a murderous terror wave, this is true in "normal" times as well – has a large benefit. In effect, if the demolition of a certain terrorist's house deters an unknown terrorist from harming human life, then we may say that the chosen means has granted the greatest benefit imaginable. Except that there may be room to wonder whether this deterrence is in fact achieved through the implementation of the authority granted to the Respondents under Regulation 119. It would seem that the military authorities did so; even though they believed that there was a connection between the demolition of terrorists' houses and deterrence, they noted that as a system there exists a tension between deterrence and "the price of demolition"; they even concluded that "the tool of demolition in the framework of a deterrent element has been eroded'" (see slides 17, 20 and 22 of the presentation given by the Committee headed by Major-General Ehud Shani which examined this subject in 2004 and 2005, and which was attached as Addendum No. 1 to HaMoked petition). As a result the security authorities chose – a decision later amended – to cease house demolition activity for purposes of deterrence as a method in the area (while keeping it available in extreme cases) (see *ibid*., paragraph 6 of the opinion by Justice E. Hayut). This Court took this stand as well when it emphasized that even though it is impossible to prove "how many terror attacks were prevented, and how many lives were saved as a result of the deterring actions of sealing and demolishing houses" (HCJ 2006/97 **Janimat v. GOC Central Command**, IsrSC 51(2) 651, 655 (1997) (words of Justice Goldberg) (hereafter: **Janimat**)), still "it behooves the State authorities to examine the tool and its concomitant benefit from time to time […] [and] to provide […] statistics indicating the effectiveness of the method of house demolitions as a deterrent in such a manner as justifies the harm to those who are not suspects or defendants" (HaMoked petition, paragraph 27; and paragraph 6 of the opinion of Justice E. Hayut).

41. Furthermore. Proportionality in its narrow sense was not applied nor was the least injurious sanction chosen. Respondent's intention to demolish two apartments located on two floors, while the detained son did not live on the floor on which the petitioners live, but rather on the upper floor, turns the decision to demolish petitioners' apartment into an arbitrary and disproportionate decision.

42. Moreover. In view of the fact that the second floor, on which the detained son lived, is not owned by him and that he lived there as a lessee only, it should not be demolished, due to the severe and disproportionate damage inflicted by it on the owner of the building.

The manner by which the impingement is realized

43. The petitioners will argue further that the obligation to act proportionality also applies to the manner by which the sanction is realized. In their objection, the petitioners requested clarifications as to the manner by which the respondent intends to demolish the apartment. No response was given to said request.

44. The petitioners will argue that should the remedy of the revocation of the order be denied, the state should be directed to refrain from detonating the apartment, and take a moderate approach in the execution of the sanction, should it be approved.

45. The petitioners will argue that the state's undertaking according to which it would not cause damage to the environment cannot be relied on. Firstly, said undertaking was given half-heartedly: **"… considering the need to refrain as much as possible from damage to neighboring buildings…**" (paragraph 15 of the decision in the objection), and it seems to only raises the concern of impingement rather than diminishing it! Secondly, past experience shows that similar cases in the past in which similar undertakings were given resulted in severe damages to adjacent building without any consideration whatsoever.

46. On this issue, the petitioners and additional tenants who intend to file a separate petition to the honorable court, will request to prepare and present evidence in support of their above argument.

Discrimination

47. The family of Ami Popper who slaughtered innocent workers, did not rush to evacuate its house in view of the fact that said sanction did not hover over its head. Neither did the Goldstein family, which resides in the OPT, think that it had to look for alternate housing after a member of the family slaughtered dozens of worshipers. The house of those who burnt and murdered Mohammad Abu Khdeir is not at risk. Those who burnt and murdered the Dawbsheh family were not even arrested.

48. The fact that the respondent uses this sanction exclusively against Palestinians, a sanction which is inappropriate in and of itself, adds to the sanction a flair of unlawfulness.

In Conclusion

49. The infliction of Injury on innocent people, their property and lives is prohibited. This is the essence of the rule of law. The breach of said principle, and most certainly by state authorities, gives a very problematic and colored message. Precisely in these difficult times, a restraining message is required, and there is a need to go back to the basic, just and moral principle:

> **That be far from Thee to do in this manner — to slay the righteous with the wicked; and that the righteous should be as the wicked, that be far from Thee! Shall not the Judge of all the earth do right?**

(Genesis 18; 25).

50. And even if the language of Regulation 119 allows such an action, causing harm to innocent people as a lesson for all to see, the respondent must interpret the power and exercise it in this spirit. He must refrain from leaving a large family without a roof over its head and must find another way to achieve his goal.

And the above was so stated in the case law of this honorable court, by the Honorable Justice Cheshin:

> **This is a basic principle which our people have always recognized and reiterated: every man must pay for his own crimes. In the words of the prophet: The soul that sins it shall die. The son shall not bear the iniquity of the father neither shall the father bear the iniquity of the son. The righteousness of the righteous shall be upon him and the wickedness of the wicked shall be upon him (Ezekiel 18:20). One should punish only cautiously and one should strike the sinner himself alone. This is the Jewish way as prescribed by the Law of Moses**:
>
> **The fathers shall not be put to death for the children nor the children be put to death for the fathers: but every man shall be put to death for his own sin (Kings II 14:6).**
>
> **… since the establishment of the state – certainly since the Basic Law: Human Dignity and Liberty – when we have read Regulation 119 of the Defense Regulations, we have read it and vested it with our values, the values of the free and democratic Jewish state. These values guided us on the path of justice during our people's ancient times and our own times are no different: "They shall say no more, The fathers have eaten sour grapes, and the children's teeth are set on edge. But everyone shall die for his own iniquity: every man that eats sour grapes, his teeth shall be set on edge**"
>
> (HCJ 2006/07 **Abu Phara Janimat et al., v. GOC Central Command,** IsrSC 51(2) 651, 654-655; and see also the opinion of the Honorable Justice Cheshin in HCJ 4722/91 **Hizran et al., v. Military Commander of IDF Forces in the Judea and Samaria Area** (IsrSC 46(2) 150); in HCJ 4722/92 **Alamarin v. Military Commander of IDF Forces in the Gaza Strip** (IsrSC 46(3) 693) and in HCJ 6026/94 **Nazal et al., v. Military Commander of IDF Forces in the Judea and Samaria Area** (IsrSC 48(5) 338)).

51. Nowadays, when the security situation is severe, when the rule of law is not taken for granted, a message of self restraint and prohibition against the impingement of innocent people is required, rather than a message of revenge and oppression.

52. Attached is an affidavit in support of the petition.

For all above reasons the honorable is requested to issue an order nisi and interim order as requested in the beginning of the petition, and after hearing respondent's response, to make them absolute.

(Signed)

_____

Labib Habib, Advocate