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At the Supreme Court
Sitting as the High Court of Justice

H CJ 2786/09

In the matter of: _____ **Salem et al.**

Represented by counsels, Att. Ido Bloom et al.

The Petitioners

- Versus -

Military Commander of the West Bank

The Respondent

Petition for Writ of Habeas Corpus

The honorable court is requested to order the immediate release of the petitioner from his unlawful detention to his home in the West Bank.

1. This petition concerns the Respondent's decision to deport the Petitioner – a Palestinian who has been living in Beit Sahur in the West Bank for the past fourteen years, a married father of two young children – from his home in the West Bank to the Gaza Strip based on the fact that his address in the population registry still erroneously appears in the Gaza Strip (despite his attempts to update it).
2. As stated in the Respondent's Response, since 30 March 2009, (a day after the petition was submitted), the Petitioner has been held in detention pursuant to a

deportation order issued against him under the Order regarding Prevention of Infiltration (No. 329) 5729-1969, which, according to the Respondent “also serves as a legal reference for holding him in custody pending his removal to the Gaza Strip”. The order was attached to the Respondent’s Response as appendix R/3.

3. **However, this is a procedure which lacks any legal basis, as it is clear and manifest that the Petitioner, who is a resident of the Territories, cannot be considered an “infiltrator” under the Order regarding Prevention of Infiltration!**
4. When the Petitioner moved from the Gaza Strip to the West Bank (and in the years that followed), there was no dispute that the Gaza Strip and the West Bank constituted a single territorial unit. This was the foundation for the Interim Agreement. The Court described this in the **Ajuri** case, in reference to the possibility of issuing a warrant for assigned residence from the West Bank to the Gaza Strip and vice versa – on the basis of their being one area:

In the case before us, we are concerned with the assigned residence of a person from his place of residence to another place in the same territory for security reasons in an area subject to belligerent occupation...

It was argued before us that the Gaza Strip — to which the military commander of Judaea and Samaria wishes to assign the place of residence of the petitioners — is situated outside the territory [...]

This argument must be rejected... From a social and political viewpoint, the two areas are conceived by all concerned as one territorial unit, and the legislation of the military commander in them is identical in content. Thus, for example, our attention was drawn by counsel for the Respondent to the provisions of clause 11 of the Israeli-

Palestinian Interim Agreement on the West Bank and the Gaza Strip, which says:

‘The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which shall be preserved during the interim agreement.’

This provision is repeated also in clause 31(8) of the agreement, according to which the ‘safe passage’ mechanisms between the area of Judaea and Samaria and the area of the Gaza Strip were determined. Similarly, although this agreement is not decisive on the issue under discussion, it does indicate that the two areas are considered as one territory held by the State of Israel under belligerent occupation

[...]

[T]he area of Judaea and Samaria and the area of the Gaza Strip should not be regarded as territories foreign to one another, but they should be regarded as one territory.

(HCJ 7015/02 **Ajuri v. Commander of the IDF Forces**, *Takdin Elyon* 2002(3) 1021, 1028-1029).

[Translation: the Supreme Court website, http://elyon1.court.gov.il/files_eng/02/150/070/A15/02070150.a15.htm]

5. Accordingly, Section 1 of the Order regarding Prevention of Infiltration indeed establishes that an “infiltrator” is solely a person who arrived from outside the Territories and entered them “knowingly and illegally” (or remained in the Territories after the expiration of the permit he had been issued) following a period of remaining in one of the foreign countries bordering Israel:

“**Infiltrator**” – a person who entered the Area knowingly and illegally following a period of remaining in the East Bank of the Jordan, Syria, Egypt or Lebanon subsequent to the decisive day.

6. **It is clear that a person cannot be considered an “infiltrator” if he entered one part of the Area from another part of the Area, and, in any case, the language of the Order excludes such a person from the scope of its application.**
7. It shall be noted that when referring to the Order regarding Prevention of Infiltration which was issued at the same time regarding the Gaza Strip, the Court clarified that when the original Order was issued, in 1967, a person who had crossed between the West Bank and the Gaza Strip could have been considered an “infiltrator”. However, in 1969, the Order was amended, **and its language from that point and thereafter – which is identical to the current language of the Order regarding Prevention of Infiltration referring to the West Bank, which is relevant to our case – explicitly excludes those who moved between the West Bank and Gaza Strip from the scope of its application:**

On 4 September 1967, the Order regarding Prevention of Infiltration (Gaza Strip and Northern Sinai) (No. 82), 5727-1967, was published in the Gaza Strip, according to which infiltration was established as an offence and a definition of an infiltrator was presented, which refers, according to its language, to persons who entered the Area knowingly and illegally following a period of remaining in a different area, in Egypt, the East Bank of the Jordan, the West Bank, Syria or Lebanon. The Order applied as of 6 June 1967.

Incidentally, entry into the Gaza Strip following a period of remaining in Judea and Samaria was considered infiltration

at the time the aforementioned Order was published, if a permit to enter the Area had not been granted.

[...]

In conclusion, a person who entered the Gaza Area subsequent to 6 June 1967, following a period of remaining in one of the aforementioned countries or in Judea and Samaria, without being granted a permit, personal or general, to render his entry legal, is considered, in the Gaza Strip, an infiltrator...

The Order which is valid today is the Order regarding Prevention of Infiltration (Gaza Strip and Northern Sinai) (No. 290), of 18 June 1969, which in Section 1, presents a definition of infiltrator the language of which is as follows:

“‘Infiltrator’ – a person who entered the Area knowingly and illegally following a period of remaining in the East Bank of the Jordan, Syria, Egypt or Lebanon subsequent to the decisive day”.

The material difference in this definition is the exclusion of the reference to remaining in another held territory from the definition.

(HCJ 159/84 *Shahin v. Commander of IDF Forces*, *Piskey Din* 39(1) 309, 318-319; emphasis added).

8. The form relating to the questioning the Petitioner underwent prior to the issuance of the warrant (attached to the Respondent’s Response as appendix R/2), unveils the extent of the absurdity:

The form is entitled “**Protocol for Deportation of Jordanians**” (on the top left hand side) and is entirely directed at foreign nationals who did indeed arrive from

foreign countries and are not residents of the Territories. Thus, for example, according to the form, the candidate for removal must be identified by his **foreign identity card or passport** number, the **country of origin** must be indicated, etc.

9. In light of the above, it is clear that the deportation order issued against the Petitioner as an “infiltrator”, under the Order regarding Prevention of Infiltration lacks any legal basis and is invalid.

The significance of this is that since 30 March 2009, the Petitioner has been held in custody with no legal reference.

10. Therefore, the Honorable Court is requested to instruct the Respondent to release the Petitioner from the illegal custody in which he is being held forthwith.

23 April 2009

[T.S. 60480]

Ido Bloom,
Counsel for the Petitioners

Att.