At the Supreme Court **HCJ 2741/22**
Sitting as the High Court of Justice

The Petitioners:

Taleb and 25 others

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v.

The Respondents:

1. The Knesset

Represented by the Knesset's legal counsel,
The Knesset, Jerusalem

2. Minister of Interior

Represented by the State Attorney's Office,
Ministry of Justice, Jerusalem

Petitioners' Reply

According to the decision of the Honorable President dated August 7, 2023 the Petitioners in HCJ 2741/22 hereby respectfully reply to the update notice on behalf of the Government Respondents dated July 27, 2023.

1. On December 4, 2022, following the hearing which was held on December 1, 2022, the Honorable Court instructed 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. Amending 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."

2. The update notice refers to these matters and to these matters only. Namely, the Respondents response is not to the matters at the core of the law: the general prohibition against granting status; the arrangements for granting permits and residency visas to family members in relation to age; the set of rights of the family members; and the prohibition against granting status for humanitarian reasons to an individual who does not have a family member.

3. In fact, the update notice does not grant remedy to any of the Petitioners. It does not solve the matter of female citizens and permanent residents having Palestinian spouses, who were not allowed to acquire any status due to the Temporary Order being under 35 years of age (such as Petitioners 15-16 and 17-18). It does not enable the acquisition of permanent status by individuals who had received permits or residency visas years ago, were "frozen" in the status given to them, and but for the Temporary Order would have completed the graduated procedure years ago, and would have long ago been eligible for citizenship or permanent residency (such as Petitioners, 1-2, 3-4, 5-6, 7-8, 10-11, 19 and 20). It does not enable status upgrade for individuals who had received permits or residency visas as children and were "trapped" in this status due to the Temporary Order without an ability to upgrade it (such as Petitioners, 9, 12 and 13). It does not give remedy to women who were married to Israeli citizens and residents, mothers of Israeli children, who but for the Temporary Order could have completed the graduated procedure and acquire citizenship or permanent residency, but the Temporary Order did not enable the procedure to be completed, their Israeli spouses passed away, and they were subsequently given permits or residency visas, to which they were bound without the ability to acquire a permanent status (such as Petitioners 22 and 23). It does not assist in any way those who grew up in Israel in difficult life circumstances, but whose status applications for humanitarian reasons were not heard and they have received nothing, because they are unable to formulate ties with a family member, a "sponsor" having status in Israel, which is a pre-condition according to the Temporary Order for Palestinians to be heard in a status application for humanitarian reasons (such as Petitioners 14 and 21).

4. The Respondents required over seven months in order to inform of a partial and very limited change with respect to two of the four matters specified in the decision of the Honorable Court which concern a limited number of persons. Respondents' adherence only to those matters which were specified in the court's decision and their refusal, as we shall specify in detail below, to examine additional matters which are not at all different, demonstrate the arbitrary manner by which the arrangements to whom the law applies are determined, and the lack of connection to the security purpose claimed by the Respondents. If the Honorable Court had also included in its decision mothers of children, women victims of violence, widows or girls and children who received permits, then possibly - we may dare say: it is likely - that the Respondents would have changed the arrangements which apply to them as well. However, the Honorable Court did not do so, and therefore neither did the Respondents. Hence, the above is clearly further proof of the demographic purpose of the law.

5. Before we turn to the facts themselves, we wish to say a few words about the background presented in the update notice. Like in their response to the petition, the Respondents also reiterate in the update notice the principles of their general arguments disregarding the factual and legal claims which were raised in the petition and were heard at the hearing, including, *inter alia*, the backdrop against which the previous law and the new law were enacted; the depth of the ongoing violation of human rights of families, women and children; the changes which have taken place in the two decades since the previous law was enacted (*inter alia* in the number of persons entering Israel and the methods of their inspection); and the legislative process of the new law, which placed its demographic purpose at the center in a way which served, alongside other extraneous purposes, to design the arrangements in the law.

6. It appears from the update notice as well as from the response to the petition that the Respondents do not take seriously the extremely severe violations of human rights which have been continuing for over twenty years. Once again the Respondents deny the violation of the right to family life (the only right which according to them has been violated is the right to equality). Again severe violations of human rights which have been continuing for two decades are reduced to "administrative" and "applicative" issues which should not at all be discussed in the framework of a constitutional petition, as if the horrible violations are not caused by the Law and as if these issues were not at the center of the legislation.

7. It should be reiterated that all the severe violations of human rights which disappeared from Respondents' response to the petition and from the last update notice, were discussed by the Knesset at length during the legislative process. The Knesset discussed the differences between a military permit and a temporary residency visa and between them and a permanent status, and the host of rights embodied therein or absent therefrom, by virtue of different laws. The Knesset held long meetings precisely on these: to understand the implications of the Temporary Order, including its effects and arrangements and their impact on those who are not permitted to enter Israel and acquire status therein, and mainly – an issue to which most meetings were dedicated – on persons who were permitted to stay in Israel in an inferior, unstable and disenfranchised status. The Foreign Affairs and Security Committee of the Knesset emphasized the serious violations of human rights of the latter, and stressed that said violations did not serve any security need. Accordingly, *inter alia,* there is no security justification for denying social rights and state health insurance, to preventing access to welfare and housing services, to limiting employment and livelihood opportunities, to preventing legal aid and more. There is no security justification for denying rights from children, women and the elderly. There is no security justification for not allowing the regulation of status of same-sex spouses. There is no security justification for binding status applicants for humanitarian

reasons to a "sponsor", and there is certainly no justification for subjecting status granted on humanitarian grounds to quotas.

8. No response was given to the above issues, neither in the response to the petition or in the hearing, nor in the update notice. It should be reminded that MK Ram Ben-Barak, chairman of the Foreign Affairs and Security Committee of the Knesset which discussed the legislation, stated that the Law violated human rights without justification. Among other things he said: "We should maintain state security and not be vicious" (page 70 of the minutes of the meeting dated March 6, 2022). He also said: "It is not a secret that I would have wanted to do more, but did not succeed in the political reality**" (**page 3 of the minutes of the meeting dated March 7, 2022), and concluded the meeting by saying: "Everybody knows what I think and I think that this law should have been greatly improved making it much more considerate than it is. I also think that it could have been done while maintaining security but we did not succeed" **(**page 116 of the minutes of the meeting dated March 7, 2022).

9. The above also arises from the update notice. If the Respondents are of the opinion that the arrangements of the Law should now be changed ever so slightly be it only due to the court's decision, what prevented them from doing so earlier, in the legislation process? Even the Respondents acknowledge the fact that the threat posed by the acquisition of status in Israel by the vast majority of those who are adversely affected by it, such as women, children and the elderly, is close to zero. Hence, the legal arrangements were not established due to a security need, but rather in a political game of arm wrestling. Some wanted the legislation to severely violate human rights, and in the political bargaining they strove to have human rights extensively trampled on, and when they succeeded – they regarded it as an achievement of which one should be proud.

10. In view of the above we shall now discuss matters on their merit. The Government Respondents have accordingly referred in their update **solely** to the four issues which were included in the decision of the Honorable Court dated December 4, 2022. As aforesaid the Respondents limited themselves only to these issues, and as we shall show – they have not at all considered deviating therefrom. We shall discuss these four issues below, as they appear in the Honorable Court's decision and Respondents' update notice.

11. As stated in the updated notice, persons who are registered as residents of the Palestinian Authority but have **never** had **any connection** to the West Bank or to the Gaza Strip will be able to submit applications which shall be examined at the discretion of the Minister of the Interior to grant any status according to Section 9 of the Law.

    It is a change, but a change which is nothing but a narrow exception: first, it applies to persons who "never" – namely, at no time – had "any connection", without defining what "any connection" is (presence many years ago? relatives residing in the territories? relatives who are registered in the territories? and additional questions that the Respondents did not refer to). Second, the matter is at the discretion of the Minister of the Interior who can grant or refuse to grant, and if he grants – he can grant any status at his choice.

    This means that the definition of the term "resident of the area" does not change. All those registered in the Palestinian registry are still caught by the Law and its limitations and are defined as "residents of the area" even if they have never lived in the area. The vast majority of them will not be able to prove that they do not have "any connection". Even if they have no connection – and it is not at all clear how and according to what criteria – their matter shall be still examined as "residents of the area" by virtue of the Law. The exception is not according to criteria, but rather according to the discretion of

the Minister of the Interior "in exceptional circumstances" (this according to the wording of the update notice) and these exceptional circumstances have not been clarified.

12. Also according to the update notice, same-sex spouses **shall not be included** in the permit given to spouses according to Section 4 of the Law. The Respondents argue that the reason for that is "the clear wording of Section 4 of the Law". Namely, the Respondents admit that the legislation was deliberately drafted in a manner which discriminates against same-sex spouses. As stated by MK Ben-Barak in his words while referring to the matter: "The Israel Knesset in this respect is a reactionary Knesset" (page 90 the minutes of the meeting dated March 7, 2022).

    The solution, according to the Respondents, is the one pointed at by them in their response and in the hearing: submission of status applications for humanitarian reasons.

    As was clarified by the Petitioners in their petition, even if a decision to grant status for humanitarian reasons is given, the mere fact that same-sex spouses are referred to the Humanitarian Committee, as if LGBT relations is a humanitarian matter, and delaying the decision in their matter until the decision of the Minister is made violates, as such, the rights to family life and equality (and therefore are not an "upholding interpretation" of a discriminatory legislation). The discrimination against members of the LGBT community – and most certainly discrimination whose only reason is a "reactionary Knesset" – violates the hard core of the right to equality.

    As we shall show below, in any event persons who received or will receive a permit for humanitarian reasons according to Section 7 of the Law (Section 3A1 of the previous law) will not be able to receive temporary residency in the future since the status upgrade arrangement applies only to spouses who received their status according to the provisions of Section 4 and 5 of the Law, and not to persons who received it according to Section 7 of the Law.

    It should also be reminded as we shall specify below that status granted to same-sex spouses for humanitarian reasons is at the expense of the meager quota allotted to humanitarian cases – only 58 cases per annum (the number of positive decisions given in 2018). Namely, LGBT relations should, according to Respondents' position, receive priority over mothers of children, women victims of violence, widows and real humanitarian cases.

13. As to the expansion of the possibility to receive a temporary residency visa according to Section 5 of the Law by both women over the age of 40 and anyone who has lawfully stayed in Israel at least five years – the Respondents informed that by virtue of the power vested in the Minister of the Interior according to Section 9 of the Law to grant status due to the state's special interest, the Minister decided to grant temporary residency to about 1,300 women over the age of 40 who have been lawfully staying in Israel by permit over ten years at the minimum.

    In addition, the arrangement – which is carried out in a graduated manner (at this point the Petitioners can update that it is virtually in its first stages) – applies only to female spouses of Israeli citizens and residents who received their status according to Sections 4 and 5 of the Law (Section 3 of the previous law), and for as long as they are in the spousal relationship.

    Since the submission of the update notice the Petitioners communicated with Respondents' counsels to clarify the matter and were advised that **the arrangement does not apply** to any person who received a permit for any other reason. For instance, women over the age of 40 who have been staying in Israel over ten years, who have received

permit due to the fact that they are mothers of children, or because they were separated from their spouses due to violence or abuse or because they were widowed or received status for any humanitarian reason. These women who are certainly not different from married women, shall be left with a permit, regardless of how many years they have been lawfully staying in Israel and regardless of their age. Their only sin is that they are not in a spousal relationship (relationship which may have ended in serious or unfortunate circumstances) and have received their permits, at a certain point, for humanitarian reasons according to the provisions of Section 7 of the Law (Section 3A1 of the previous law).

Moreover – a woman holding a permit who is in an abusive relationship must know that if she dares to sever the relationship before she turns 40, and takes the humanitarian route, she will also be punished in that she will be left under permit and shall not be able to receive temporary residency in the absence of a spousal relationship. In doing so, the Respondents encourage women holding permits not to break free of violent relationships.

Moreover – the arrangement does not apply to persons who received permits when they were children according to Section 6 (Section 3A of the previous law). They too, whatever their age may be at maturity, and no matter how many years they have lawfully lived in Israel – are not entitled to have their status upgraded. Since the Temporary Order have been in effect for over two decades and due to the limitations imposed by it on status upgrade, persons who received permits when they were minors are currently adults in the third and fourth decades of their life who are still holding permits. We have discussed in the petition the severe harm inflicted on those who are led to a life of hardship and limited possibilities. The Respondents did not explain what is the justification for causing such a severe harm to children of permanent residents, whose application to regulate their status was submitted when they were children, the center of their lives is in Jerusalem, and the permits granted to them are repeatedly approved in the absence of any criminal or security preclusion and according to an evaluation conducted in their matter for years. The data presented in the discussions at the Knesset and in Respondents' response to the petition show that such justification does not exist, certainly not a security justification.

14. And finally, as for the quota for obtaining status for humanitarian reasons - it remains, according to the update notice, 58 per annum only (the number of positive decisions given in 2018), on the pretext that at this time there is no need for more. Namely, mothers of children, women victims of violence, widows, LGBT spouses and more - we are satisfied with up to 58 of them per annum and not even one more is needed.

We wish to remind that when the Law was enacted, MK Ben-Barak testified that it was clear to him that the low quota that the Knesset entrenched in the Law was not constitutional, stating: "Okay. The court will raise it" (page 41 of the minutes of the meeting dated March 7, 2022). He later informed that he had agreed with the then-Minister of the Interior that the quota would be raised after the enactment of the Law: "I state to the protocol that I received a commitment from the Minister of the Interior that to the extent that it is not 70 as we think, she will raise it to 100" (page 4 of the minutes of the meeting dated March 10, 2023).

In their response the Respondents renounce this obligation.

15. In conclusion – the Respondents presented only two changes, which are also partial and limited, referring only to two of the issues specified by the Court in its decision. It became evident that the Minister of the Interior can exercise the power vested in him according to Section 9 of the Law based on the state's special interest to grant status – temporary residency, permanent residency and even citizenship. Why shouldn't he use his above

power in respect of additional aspects which are at the core of the Law – persons lawfully staying in Israel for many years; persons who received status for humanitarian reasons; children staying by virtue of permits and adults who received permits as children; same-sex spouses – this has not been clarified. Arbitrariness and nothing more.

16. And remedy to the Petitioners at hand? Was not given, not even remotely.

17. "We must take into consideration the price that we shall pay as a society in the long run if the Citizenship Law with its sweeping prohibitions shall continue to exist in the law books" wrote Justice Hayut (as then titled) in 2006 in her judgment in **Adala**. As twenty one years have passed since the government resolutions and orders which became a law, and since the Law has been in force for twenty years now; due to the numerous changes which occurred and the continuing reality of life – the persons living in Israel for years, the critical and continuing violation of human rights, the number of persons entering Israel and the ways by which they are examined, the objectives which expressly underlined the enactment of the new Law; the time has come to re-visit the Law and its heavy tolls.

Therefore, the Honorable Court shall be requested to issue an order nisi and schedule a hearing in the Petition as soon as possible.

September 21, 2023

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Oded Feller, Adv.	Reut Shaer, Adv.
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Counsels for the Petitioners