At the District Court of Jerusalem
Sitting as the Court for Administrative Affairs

AP /18

In the matter of:

1. **Human Rights Watch**, non-profit corporation no. 13-2875808 (incorporated in the State of New York, USA).
2. **Omar Shakir** (American passport no. [redacted]).

The Petitioners

Represented by Adv. Michael Sfard and/or Adv. Emily Schaefer Omer-Man and/or Adv. Sophia Brodsky and/or Adv. Michal Pasovsky
of 12 Hachmi St. Tel Aviv, 6777812
Tel: 03-6206947/8/9, Fax: 03-6206950
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v.

1. **Minister of Interior – Aryeh Deri**
2. **Ministry of Interior – Permit Officer, Employers and Foreign Workers Services Administration**

The Respondents

Represented by counsel from the Jerusalem District Attorney's Office
7 Mahal St. Maalot Dafna, Jerusalem
POB 49333, Jerusalem 9149301
Tel: 02-5419555, Fax: 02-6468053

A. Introduction

1. The petition herein concerns a dangerous political decision made by Respondent 1, and, as a result, by Respondent 2 as well, to deny the Petitioner, a renowned, well-known and esteemed human rights researcher, permission to remain in Israel and represent Petitioner 2, one of the world's largest, most important, oldest and professionally reputable human rights organizations.

2. The petition herein concerns the extreme, dangerous use of a problematic authority vested in Respondent 1 under Amendment No. 28 to *The Entry into Israel Law 1952*, passed by the Knesset last March (hereinafter: Amendment 28) to withhold a visa or permit from anyone "who has knowingly made a public call for a boycott of the State of Israel". The petition herein also concerns the entirely unreasonable and disproportionate interpretation given to this authority. The petition herein also concerns the decision to reject the request made by HRW to extend the permit for employment granted to it under *The Foreign Workers Law 1991* for the purpose of employing Petitioner 2 in Israel. The two decisions are interlaced.

3. The decision which is the subject of this petition was made after an Israeli government ministry undertook the **unprecedented** action of **collecting information about the views and positions held by a human rights defender and his indisputably lawful public activities**. The decision was made after the Ministry for Strategic Affairs, pressured by a right-wing organization that has gone as far as petitioning this Honorable Court in the matter, drafted a **political dossier** regarding the Petitioner's aforesaid views and activities, which focuses mostly on **statements the Petitioner made years ago, when he was a university student!**

4. Based on this investigation into the statements and ideological positions of a civilian human rights activist – and the fact that the Israeli government collects such information about individuals should sicken anyone familiar with the history of government surveillance of civilians – Respondent 1 concluded that Petitioner 1 was a "BDS activist" and therefore revoked the work visa he had been given.

5. Moreover, the aforesaid politically motivated investigation and surveillance have led the Ministry of Strategic Affairs, which carried them out, and the Ministry of Interior, which examined them, to conclude that "no information regarding such activity has emerged" since Petitioner 2 joined Petitioner 1, i.e., in nearly two years. In other words, the decision to revoke the Petitioner's work visa was made in full consciousness of the fact that even according to the Respondents, the Petitioner has not called for a boycott of Israel in recent years, which runs contrary to the criteria for implementation of Amendment 28 put in place by the Respondents themselves.

6. **The Petitioners will argue first and foremost, that given the history of this affair, including a previous attempt to deny HRW any representative in Israel and the Occupied Territories altogether, which failed due to the harsh reaction and rebuke attracted by this undemocratic measure, the motivation for the decision to remove the Petitioner is not his alleged past support of boycotts, but the drive to prevent an institution that is critical of the policies of the Government of Israel from carrying out research activities here and in the Occupied Territories.**

7. **Hence, the Petitioners will argue the decision is tainted by grievous bad faith and that it wrongly included extraneous considerations.**

8. The Petitioners will also argue that even if the authority set out in Section 2(d) of *The Entry into Israel Law* under Amendment 28 allows denying a visa to a person who has yet to enter and remain in Israel, **it does not allow denying a visa already granted**.

9. The Petitioners will alternatively and additionally argue that the authority set out in Section 2(d) of *The Entry into Israel Law* **is unconstitutional** as it contravenes basic tenets in Israel's legal system, fundamental democratic values and fundamental rights such as freedom of speech, freedom of conscience and the right to participate in public life.

10. The Petitioners will argue that the authority set out in Amendment 28 inevitably leads to the establishment of a system of political surveillance of civilians, even if they are not suspected of having committed crimes or posing a threat to national security in a manner that could justify collecting information about them. **This outcome is blood curdling as it means the creation of databases on the political views, opinions and statements of civilians. It is not a slippery slope in the ordinary sense of the word, but a slope slathered in grease which will necessarily result (and already has) in a descent into the abyss of political persecution of individuals who are critical of the regime.**

11. The Petitioners will also argue that even if the authority set out in Amendment 28 is found to meet the test of legality, the interpretation given to it by Respondent 1, and thereafter by Respondent 2, is **unreasonable and disproportionate**. It also fails to meet the **criteria** issued by the Ministry of Interior with respect to the use of said authority, given that the Petitioner, as a human rights activist has called to refrain from complicity in human rights violations stemming from the occupation and the settlements. These are not the types of statements the Amendment was designed to address. Additionally, the Petitioner's activity cannot be said to have been "consistent and continuous", as required in the criteria, since, even the Respondents maintain that he has not called for boycotts in nearly two years.

12. As a third alternative, the Petitioners will argue that the exceptions to the authority vested in the Ministry of Interior under Amendment 28 are present herein. These exceptions are set out in Section 2(e) of *The Entry into Israel Law* and relate both to the humanitarian services the Petitioners provide to victims of human rights abuses, and to harm to Israel's status and foreign relations.

13. It will also be clarified that removing the Petitioner from Israel will cause immense damage to both him and to HRW. The Petitioner, like his predecessors in the role, was stationed in Israel because performing the work HRW carries out in the best possible way and fulfilling its mandate requires its principal researcher to have close, personal knowledge of the reality in Israel and the Occupied Territories and direct access to the Israeli and Palestinian victims of human rights abuses. The Petitioner was selected for the position from a pool of 350 candidates, and as is apparent from his professional experience and academic background, detailed below, it is, without a doubt, difficult to imagine anyone more suitable for the position.

14. Hence, the Petitioner's removal would severely harm the work of HRW, as the person identified by the organization as most suitable to carry out the work, will be unable to do so. Moreover, the Petitioner's removal would result in the loss of, or at least harm to, a large body of research and reporting work he has carried out since he took on the position in October 2016, including the past thirteen months, in which he has been carrying out research in Israel and the Occupied Territories based on visas granted to him by the Respondents.

15. Prior to proceeding with the presentation of the facts underlying this petition and the legal arguments the Petitioners maintain compel the abrogation of the decisions that are the subject of this petition, we wish to further state the following: Israel is not the first country in which the Petitioner has been stationed as a human rights researcher. As detailed in the factual section, the Petitioner has worked in many other places around the globe and has gained a great deal of experience facing regimes that were displeased with the criticism he or his organization leveled at them. To this date, the Petitioner has had to leave two countries: Egypt, which he left due to an incitement campaign against him which threatened his safety, launched after he authored a report on the massacre of protestors at Rab'ah Square by the Egyptian authorities. The Petitioner has also had to leave Syria, and was later barred entry in an apparent attempt to thwart his critical reporting about the regime in the country. **This petition is filed to stop Israel from joining this unattractive list of countries so fearful of criticism that they drove the person voicing it outside their borders.**

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C. The legal argument

I. The argument in brief

55. The Petitioners will argue that given that a visa for employment and temporary stay in Israel was granted to the Petitioner and a permit for employment was granted to HRW, the onus is on the Respondents to justify their revocation. Hence, it is argued that in this petition, the Respondents must persuade the Honorable Court why the Petitioners' vested right has been denied.

56. The Petitioners will further argue that the authority vested in the Minister of Interior under Section 2(d) of *The Entry into Israel Law* **focuses on rejecting an application for a visa and does not empower the minister to revoke a visa that has already been granted.**

57. In other words, the Petitioners will argue that the Amendment to the Law was not meant for and does not allow revoking visas and deporting foreign nationals who are lawfully present in Israel, but is limited to preventing the entry into Israel of foreign nationals who promote a boycott of Israel. The Petitioners will argue that the criteria have further clarified this purpose and reduced the application of the Law to major activists and organizations that call for a boycott of Israel. It will be argued that any other interpretation is not only inconsistent with the purpose pursued by the legislator when the Law went into effect, but it is also a departure from the authority vested in the Respondents under Section 2(d) of the law which will result in serious violations of the human rights of foreign nationals and the fundamental rights of Israeli citizens and residents, as detailed below.

58. The Petitioners will further argue that it was not the question of whether or not the Petitioner had in fact supported and advocated for boycotts in the past that motivated the decision, but rather the drive to prevent an institution that is critical of the policies of the Government of Israel from carrying out research activities here (Israel) and in the Occupied Territories. This is an unacceptable motivation and a decision made based upon it is **lacking good faith and tainted by extraneous considerations**, even according to the criteria issued by the Ministry of Interior with respect to the implementation of Amendment 28 to *The Entry into Israel Law* (Criteria for Preventing Entry into Israel by Boycott Activists, published by the Population and Immigration Authority on July 24, 2017, on which we elaborate below).

59. The Petitioners will also argue that the conditions stipulated in the criteria issued by the Ministry of Interior with respect to the implementation of the Amendment have not been met. The Petitioner does not meet the requirement of "actively, consistently and continuously" supporting boycott, as, even according to the Respondents, his activity (inasmuch as it can be deemed to support boycott) ceased when he joined HRW more than 19 months ago. Therefore, the decision, which departs from the criteria designed to strike a balance between the purpose of the Amendment, i.e. fighting boycotts of Israel, and the great, important value of freedom of political expression, is tainted with extreme unreasonableness.

60. The Petitioners further argue that the Respondents' decision should be struck down as, though it does rely on a statutorily enacted authority introduced some eighteen months ago, the statute in question breaches fundamental rights and principles to a degree that exceeds necessity and as such, should be repealed as unconstitutional.

61. The Petitioners will alternatively argue that the correct interpretation of the authority vested in the Minister of Interior under Amendment 28 is that said authority (if it does indeed apply to revoking an existing visa as distinct from not issuing a visa in the first place) does not encompass cases in which a

call to refrain from economic ties is predicated on the belief that such ties lead to specific human rights violations, but is rather designed for cases in which a boycott is meant as a means of putting political pressure to change government policies with respect to the conflict. Hence, the Petitioners argue, the Petitioner's case does not come under the terms of the Amendment.

62. **Incidentally, the Respondents' position that the Petitioner's refraining from statements they consider as "a call for boycott" upon joining HRW does not obviate the cause for visa revocation under Section 2(d) means that an organization seeking to hire personnel for work in Israel is expected to conduct sweeping investigations into their candidates' history of political activities and statements.** Hence the petitioning organization, an international human rights organization, is expected to conduct such an investigation and avoid hiring persons who, prior to their hiring, had made political statements, been involved in political statements or engaged in **peaceful** political activism, instead of requiring new employees to follow HRW protocols regarding public statements upon commencement of employment. This position is untenable, and not a single human rights organization worthy of the title in the world would agree to conduct such investigations into candidates. The Petitioners will argue that no evidence has been put forward to show the Petitioner failed to meet the requirement to set aside his past political activities and statements in order to properly represent HRW, which expresses no position on the BDS movement. Indeed, the Respondents acknowledge that the Petitioner has in fact, done just that and has not called for a boycott since joining HRW in his current capacity.

63. The Respondents' position that the fact that the Petitioner had refrained from statements they see as a "call for boycott" since joining HRW does not obviate the cause for visa revocation also constitutes a violation of HRW's freedom of occupation. This position means that, in practical terms, HRW is required to accept for employment only those candidates who, in their own personal history and prior to joining HRW, have complied with the policies of the State of Israel, as stipulated by Israel.

64. The Petitioners will further argue that given the immense harm the visa revocation and non-extension would cause both the Petitioner and HRW, and given the fact that the Respondents admit that the Petitioner has not called for a boycott in the past 19 months, the decision which is the subject of this petition is exceptionally disproportionate.

65. In addition, the Petitioners will argue that the two exceptions set out in the criteria, the humanitarian exception and the state interests exception, are present in the case of the Petitioner.

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87. Moreover, a different interpretation of Section 2(d), which provides for the revocation of existing temporary stay visas and permits for employment and the deportation of all non-citizens and non-permanent-residents who support or have in the past supported boycotts against the country creates an inconceivable situation – opening the door for the authorities to undertake political investigations of the type carried out against the Petitioner into any foreign national lawfully present in Israel, in preparation for status revocation. This may have a chilling effect on freedom of speech in Israel, as the entire population of foreign nationals would become apprehensive about voicing criticism against the Israeli authorities, irrespective of calls for a boycott, fearing the Respondents would deport them from the country in order to silence the criticism.

88. **This Orwellian scenario is not hypothetical. It is what the Petitioners did in the case of the Petitioner.** The Petitioners issued the Petitioner and HRW a work permit and temporary stay visa, pursuant to which he entered Israel and began his work here. As part of said work, the Petitioner and HRW openly criticized the actions of the Israeli authorities (as well as those of the Palestinian Authority and Hamas). The Ministry of Strategic Affairs retaliated by collecting information about the Petitioner and about HRW, including monitoring the Petitioner's statements in Israel. Having found out that the Petitioner had not engaged in calls for boycotts since he took on the position, the Ministry of Strategic Affairs decided to dig through the Petitioner's student days, and based on this history, the Respondents ordered his deportation from the country. The interpretation adopted by the Petitioners is an invitation for a witch hunt against foreign nationals lawfully residing in Israel. The legislator did not empower the Respondents to act in this manner and the Respondents must not expand the authority they were given while chipping away at the open space without which a democracy is not possible.