

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DR. SAMIRA ASGARI,

Plaintiff,

Case No. 17-10182

v.

DONALD TRUMP, President of the United States, JOHN KELLY, Secretary of the Department of Homeland Security; KEVIN K. MCALEENAN, Acting Commissioner of the Customs and Border Patrol Division of DHS; and WILLIAM MOHALLEY, Boston Field Director of the CBP,

Date: February 1, 2017

Defendants.

COMPLAINT

Introduction

1. This is “an appropriate action,” pursuant to Fed. R. Civ. P. 81(b), to compel officers of the United States and the agencies thereof to perform a duty imposed upon them by the Court, and owed to the Plaintiff pursuant to 28 U.S.C. § 1361.

Parties

2. Plaintiff Dr. Samira Asgari is an Iranian national who currently resides in Lausanne, Switzerland.

3. Defendant Donald Trump is the President of the United States. He is sued in his official capacity.

4. Defendant John Kelly is the Secretary of the United States Department of Homeland Security (“DHS”), the cabinet department of the United States government responsible for the enforcement of immigration laws. Secretary Kelly is responsible for the

administration of immigration laws at the border and in the interior. He is sued in his official capacity.

5. Defendant Kevin K. McAleenan is the Acting Commissioner of the U.S. Customs and Border Protection (“CBP”), the division of DHS responsible for the protection of the United States border, including the admission of travelers at airports and other ports of entry. Acting Commissioner McAleenan is responsible for the administration of immigration laws at the border, including the admission of travelers to the United States. He is sued in his official capacity.

6. Defendant William Mohalley is the Director of the Boston Field Office of CBP. He is sued in his official capacity.

Jurisdiction

7. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1361.

8. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(2).

Facts

9. As set out in Exhibit 1 attached hereto, Plaintiff, an Iranian citizen, holds a doctorate degree from the École Polytechnique Fédérale de Lausanne in Switzerland, and is an expert in genomics, infectious diseases, and computational biology. Dr. Asgari’s research focuses on state-of-the-art sequencing technologies for finding the variants that confer susceptibility to infections, and in particular, pediatric infections. Her work focuses on the role of human genomic variations on susceptibility to infections and the progression of infectious disorders.

10. Dr. Asgari received the Swiss National Science Foundation Early Postdoc Mobility Grant in October of 2016, and was a finalist for the ASHG/Charles J. Epstein Trainee Award for Excellence in Human Genetics Research in October of 2015.

11. Dr. Soumya Raychaudhuri, a scientist and physician at Brigham and Women's Hospital in Boston, runs a world-renowned human genomics laboratory. Dr. Raychaudhuri is renowned for scholarship that elucidates the role of human genetic variation in tuberculosis progression.

12. In 2016, Dr. Raychaudhuri recruited Dr. Asgari to join his laboratory for post-doctoral training on a project with particular focus on tuberculosis progression. Dr. Asgari's work in the laboratory was to further explore the role of human genetic variations, using genomics approaches, as it relates to tuberculosis. It was hoped that this research would further the collective understanding of translational medicine, and lead to the development of safer and more effective drugs for the treatment of tuberculosis.

13. In late November, 2016, after learning that she would have the opportunity to come to Boston to work with Dr. Raychaudhuri, Dr. Asgari applied for a J-1 visa, resigned from her position in a genomics laboratory in Lausanne, Switzerland, and arranged to lease her apartment.

14. On January 25, 2017, Dr. Asgari received confirmation from the United States Embassy in Switzerland that her visa application had been approved.

15. The United States issued a J-1 visa to Dr. Asgari on January 27, 2017 (the "Visa").

16. Dr. Asgari promptly made arrangements to fly to Boston. She booked a ticket for Saturday, January 28, 2017 to fly from Zurich, Switzerland to Boston, via Frankfurt, Germany, aboard Lufthansa Air Lines (“Lufthansa”).

17. On January 27, 2017, the President executed an Executive Order (“Executive Order”), that purports generally to bar entry into the United States by nationals of seven Muslim-majority countries. Citing the threat of terrorism committed by foreign nationals, the Executive Order directs a variety of changes to the manner and extent to which non-citizens may seek and obtain entry to the United States. Section 3(c) of the Executive Order states, in part:

. . . I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order

18. Among the countries specified by the Order’s reference to 8 U.S.C. § 1187(a)(12) is Iran.

19. On the morning of Saturday, January 28, Dr. Asgari completed the first leg of her travel from Zurich to Frankfurt without incident. However, when she arrived at the Lufthansa gate at the Frankfurt Airport to board a flight from Frankfurt to Boston, she was turned away. A person in front of the Lufthansa gate, who introduced himself as a representative from the consulate of the United States of America, told Dr. Asgari that she was ineligible to board a flight to the United States because of the Executive Order issued hours before.

20. At about the same time, other holders of visas were arriving and being detained at Logan International Airport.

21. Early on January 29, 2017, in the case of *Tootkaboni, et. al v. Trump, et. al*, No. 17-cv-10154, Dkt. No. 6 (D. Mass. Jan. 29, 2017), District Judge Burroughs and Magistrate Judge Dein issued a Temporary Restraining Order that provided immediate protection to, among

others, “holders of valid immigrant and non-immigrant visas . . . who, absent the Executive Order, would be legally authorized to enter the United States.” (Burroughs, J., Dein, M.J.) (the “Order”). A copy of the Order is attached to this Complaint as Exhibit 2.

22. As holder of the Visa, a valid J-1 non-immigrant visa, Dr. Asgari is and remains subject to the Order’s protection.

23. The Order requires CBP to “notify airlines that have flights arriving at Logan Airport of this Order and the fact that individuals on these flights will not be detained or returned solely on the basis of the Executive Order.” *Id.* The Order provided that it would remain in effect for seven days following its issuance. *Id.* It remains in effect today.

24. In reliance on the Order, on Monday, January 30, 2017, Dr. Asgari booked a seat on Swiss International Air Lines (“SWISS”) Flight no. LX52, scheduled to depart from Zurich at 5:25 p.m. (local time), and arrive in Boston at approximately 8:00 p.m. on Tuesday, January 31, 2017.

25. On the morning of Tuesday, January 31, 2017, while Dr. Asgari was traveling from Lausanne to Zurich, she received a telephone call from a representative at SWISS who informed her that she would not be permitted to board Flight LX52. Dr. Asgari attempted to explain that the Order had been issued and required that SWISS permit her to board.

26. Arriving at the gate at the Zurich Airport, Dr. Asgari was met by a SWISS customer service representative. The agent told Dr. Asgari that SWISS had been directed by CBP that she should not be permitted to board the flight to Boston. Dr. Asgari had a copy of the Order, which she showed to the agent, but the agent advised that SWISS was obligated to comply with the Directive.

27. The agent had a printed copy of the Directive. Dr. Asgari photographed the Directive with her cellphone and sent the photograph to her counsel.

28. Prior to the departure of Flight LX52, Dr. Asgari's counsel emailed counsel for CBP with an urgent request that CBP contact SWISS and permit her to board. No such communication was given, and the aircraft departed without Dr. Asgari.

29. As set out in Exhibit 3 attached hereto, on information and belief, CBP threatened that if SWISS did not comply with the Directive, the flight might be denied permission to land, and the airline might be subject to fines of up to \$50,000.

30. Dr. Asgari remains in Switzerland, unable to commence work at Brigham & Women's Hospital.

CAUSE OF ACTION

Count One:

Relief Compelling Officers of the United States to Perform Duty Owed to the Plaintiff

31. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

32. The Order has been, at all times from January 29, 2017 through the present, an effective order of the Court which bound the parties to compliance.

33. While the Order may subsequently be extended, modified, or vacated, it was in effect at all relevant times to this Action.

34. The Order imposed upon each Defendant duties to the Court, the Parties and the Plaintiff as alleged above.

35. The Defendants knowingly and intentionally breached their duties to the Court, the Parties and the Plaintiff under the Order.

36. Defendants' intentional breach of the Order was a breach of their duty to all persons protected by the Order.

37. The duties breached by the Defendants were nondiscretionary, plainly defined, and amounted to a positive command.

38. Plaintiff fully exhausted all remedies reasonably available to her, in that the only possible exhaustion method was to urgently request that Defendants comply with the Order, which she did when it became apparent that they were not doing so.

39. The Defendants' knowing and intentional breach of their duty of compliance with the Order proximately caused irreparable harm to the Plaintiff by denying her the opportunity to appear at the Boston port of entry and apply for entry through the presentation of the Visa, subject to the protections of the Order.

40. The Defendants' knowing and intentional breach of their duty of compliance with the Order intruded impermissibly on the authority of the judicial branch.

41. Plaintiff has no adequate remedy at law and has been irreparably harmed by being denied the opportunity to work in collaboration with the researchers identified above.

42. Separation of Powers concerns, and the lack of any adequate remedy at law justify an order compelling the Defendants to perform their duty owed to the Plaintiff pursuant to the Order.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

- (1) Enter an order compelling the Defendants to perform all those duties to the Plaintiff that were imposed upon them by the Order;
- (2) Fashion equitable and declaratory relief that will have the effect of restoring Plaintiff to the position she would have enjoyed had the Defendants fully complied with the Order in a timely fashion, including, without limitation, that the Defendants instruct the relevant airlines to permit Dr. Asgari promptly to travel to the Boston port of entry and there afford her all of the benefits of the Order as it existed on January 31, 2017; and
- (3) Grant to Plaintiff such other and further relief as may be just and proper.

Respectfully submitted,

/s/ Sabin Willett

Sabin Willett (BBO No. 542519)
Thane D. Scott (BBO No. 449340)
Julia Frost-Davies (BBO No. 630590)
Noah J. Kaufman (BBO No. 678968)
Nathaniel P. Bruhn (BBO No. 681994)
MORGAN, LEWIS & BOCKIUS LLP
One Federal Street
Boston, MA 02110-1726
617.951.8000

Dated: February 1, 2017

DECLARATION OF DR. SAMIRA ASGARI

I, Dr. Samira Asgari, state and affirm the following:

1. I am an Iranian-born scientist and medical researcher. I hold a doctorate degree from the École Polytechnique Fédérale de Lausanne (EPFL) in Switzerland. I am an expert in genomics, infectious diseases, and computational biology. My research focuses on state-of-the-art sequencing technologies that allow me to find the variants that confer susceptibility to infections. During my stay at EPFL I have been working mostly on pediatric infections. I am particularly interested in understanding the role of human genomic variations on susceptibility to infections and the progression of infectious disorders. In addition to other grants and awards, I was proud to receive the Swiss National Science Foundation Early Postdoc Mobility Grant in October of 2016 and to be a finalist for the ASHG/Charles J. Epstein Trainee Award for Excellence in Human Genetics Research in October of 2015.
2. Dr. Soumya Raychaudhuri, a scientist and physician at Brigham and Women's Hospital, runs one of the world's most respected human genomics laboratories. Dr. Raychaudhuri is widely renowned for, among other works, his attempts to elucidate the role of human genetic variation in tuberculosis progression.
3. I was honored, therefore, when Dr. Raychaudhuri recruited me to join his laboratory for post-doctoral training on a project in line with my doctoral training and with particular focus on tuberculosis progression. My work in the laboratory will be to further explore the role of human genetic variations, using genomics approaches, as it relates to tuberculosis. This research will further our collective understanding of basic biology and translational medicine, and it will lead to the development of safer and more effective drugs for the treatment of tuberculosis.
4. I was particularly excited to have the opportunity to perform this research in the Boston area. Not only is Dr. Raychaudhuri's laboratory affiliated with Harvard Medical School, giving me access to the world's foremost researchers and clinicians, but also Boston is a cultural hub in which I was eager to become immersed.
5. On November 30, 2016, after learning that I would have the opportunity to come to Boston to work with Dr. Raychaudhuri and to conduct my research, I applied for a J-1 visa. I quit my job working in a genomics laboratory in Lausanne, Switzerland and arranged to lease my apartment. On January 25, 2017, I was thrilled to receive confirmation from the United States Embassy in Switzerland that my visa application had been approved. My visa was issued two days later on January 27, 2017. A true and accurate reproduction of the identifying page of my passport and the enclosed visa is attached hereto as **Exhibit A**.
6. I promptly made arrangements to fly to Boston. I booked a ticket for Saturday, January 28, 2017 to fly from Zurich, Switzerland to Boston, via Frankfurt, Germany, aboard Lufthansa Air Lines ("Lufthansa").

7. On the morning of Saturday, January 28, I completed the first leg of my voyage from Zurich to Frankfurt without incident. However, when I arrived at the gate to board the flight from Frankfurt to Boston, I was turned away. A person in front of the Lufthansa gate, who introduced himself as a consulate of the United States of America in Frankfurt, told me that I was ineligible to board a flight to the United States because of an executive order issued by the President of the United States on January 27, 2017, entitled “Protection of the Nation From Foreign Terrorist Entry Into the United States.”
8. I was heartbroken because I was so eager to go to Boston to continue my research.
9. I returned to Zurich and sought the assistance of an attorney in the United States. Through a mutual contact, I was put in touch with Attorney Noah Kaufman of the law firm of Morgan, Lewis & Bockius LLP.
10. From Attorney Kaufman, I learned that in the matter of *Tootkaboni v. Trump*, a case pending in the United States District Court for the District of Massachusetts, the Honorable Allison D. Burroughs and the Honorable Judith Gail Dein issued a Temporary Restraining Order (the “Order”) that granted relief from the President’s executive order to individuals like me, who hold valid visas for entry into the United States.
11. In reliance on the Order, on Monday, January 30, 2017, I booked another flight to the United States. My flight, Swiss International Air Lines (“SWISS”) Number LX52, was scheduled to depart from Zurich at 5:25 p.m. local time on Tuesday, January 31, 2017, and arrive in Boston at approximately 8:00 p.m. A true and accurate reproduction of my ticket purchase confirmation and boarding pass is attached hereto as **Exhibit B**.
12. On the morning of Tuesday, January 31, 2017, I was in the process of getting to the airport in Zurich when I received a telephone call from a representative at SWISS who informed me that I would not be permitted to board Flight LX52.
13. I remained hopeful that I would be permitted to board the flight and I continued to the airport. Once I arrived, I cleared security and checked my bags.
14. When I arrived at the gate, I was met by a SWISS customer service representative who identified herself as Sibylle Port. Ms. Port told me that SWISS had been directed by Customs and Border Protection that I should not be permitted to board the flight to Boston. I showed Ms. Port a copy of the Order, but she responded that SWISS was obligated to comply with the express directive of Customs and Border Protection that I was not to board the flight. At my request, Ms. Port spoke directly to Attorney Kaufman, but Ms. Port remained adamant that I would not be allowed onboard as a result of the Customs and Border Protection directive.
15. I observed that Ms. Port had a printed copy of the directive from Customs and Border Protection. I was able to take a picture of the directive using my cellphone and I promptly sent the picture to Attorney Kaufman. I am informed and believe that Attorney

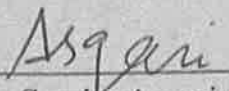
Kaufman has a copy of the photograph and can produce it to the Court upon request. I also have an original copy of the Customs and Border Protection directive in my possession.

16. My luggage was removed from the airplane and the flight departed without me.

[Signature page follows]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 31, 2017,



Dr. Samira Asgari

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAZDAK POURABDOLLAH
TOOTKABONI and
ARGHAVAN LOUHGHALAM,

Petitioners,

CIVIL ACTION NO. 17-cv-10154

v.

DONALD TRUMP, President of
The United States, et al.,

Respondents

TEMPORARY RESTRAINING ORDER

January 29, 2017

BURROUGHS, U.S.D.J.

On January 28, 2017 the Petitioners filed a Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief.

After consideration of the written submissions, arguments of counsel, and the hearing held on January 28-29, 2017, the Court hereby finds as follows:

1. The petitioners have met their burden of establishing a strong likelihood of success in establishing that the detention and/or removal of the petitioners and others similarly situated would violate their rights to Due Process and Equal Protection as guaranteed by the United States Constitution;

2. Absent a stay of removal, petitioners and others similarly situated, including lawful permanent residents, citizens, visa-holders, approved refugees, and other individuals from nations who are subject to the January 27, 2017 Executive Order, are likely to suffer irreparable harm.

3. The balance of harms favors the issuance of this temporary restraining order and its issuance is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED

I. that respondents, their officers, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them:

a) shall limit secondary screening to comply with the regulations and statutes in effect prior to the Executive Order, including 8 U.S.C. § 1101(a)(13)(C);

b) shall not, by any manner or means, detain or remove individuals with refugee applications approved by U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, lawful permanent residents, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen who, absent the Executive Order, would be legally authorized to enter the United States;

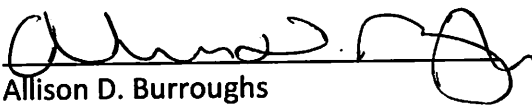
c) to assure compliance with this Order, the United States Marshal for the District of Massachusetts shall be served with this Order and is further directed to take those actions deemed necessary to enforce this Order; and

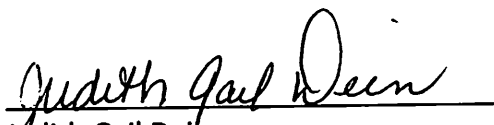
d) Customs and Border Protection shall notify airlines that have flights arriving at Logan Airport of this Order and the fact that individuals on these flights will not be detained or returned based solely on the basis of the Executive Order.

II. This Order shall remain in effect for a period of seven (7) days from the date of this Order.

The Court shall schedule a hearing prior to the expiration of this Order.

III. Petitioners shall file an Amended Complaint by January 30, 2017.


Allison D. Burroughs
United States District Judge


Judith Gail Dein
United States Magistrate Judge

January 29, 2017

DECLARATION OF NOAH J. KAUFMAN

I, Noah J. Kaufman, state and affirm the following:

1. I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts. I am associated with the law firm of Morgan, Lewis & Bockius LLP, which represents Dr. Samira Asgari. The following facts have become known to me in the course of our representation of Dr. Asgari.
2. I am informed and believe that Dr. Asgari is an Iranian national who holds an Iranian passport. Dr. Asgari is a scientist and a medical researcher holding a doctorate degree from the École Polytechnique Fédérale de Lausanne in Switzerland.
3. I am informed and believe that Dr. Asgari received a J-1 visa dated January 27, 2017 to enter the United States in order to perform medical research at Brigham and Women's Hospital and Harvard Medical School in Boston, where she had been awarded a research position devoted to finding a cure for tuberculosis. A true and accurate reproduction of the identifying page of Dr. Asgari's passport and the enclosed visa is attached hereto as **Exhibit A**.
4. I am informed and believe that on Saturday morning, January 28, 2017, Dr. Asgari attempted to board a Lufthansa Air Lines flight from Frankfurt, Germany to Boston, Massachusetts. At the gate, Dr. Asgari was informed by a representative of the United States Consulate in Germany that she was not permitted to board the flight on the basis of the President's executive order dated January 27, 2017, entitled "Protection of the Nation From Foreign Terrorist Entry Into the United States."
5. On Sunday, January 29, 2017, I became aware that in the matter of *Tootkaboni v. Trump*, Case No. 1:17-cv-10154 (D. Mass.), the Honorable Allison D. Burroughs and the Honorable Judith Gail Dein had issued a Temporary Restraining Order directing, *inter alia*, that the President and certain other respondents "shall not . . . detain or remove . . . holders of valid immigrant and non-immigrant visas . . . and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen who, absent the Executive Order, would be legally authorized to enter the United States" (the "Order"). The Order directed that Customs and Border Protection "shall notify airlines that have flights arriving at Logan Airport of this Order and the fact that individuals on these flights will not be detained or returned solely on the basis of the Executive Order."
6. I am informed and believe that on Monday, January 30, 2017, in reliance on the Order, Dr. Asgari booked passage on a Swiss International Air Lines ("SWISS") flight from Zurich, Switzerland to Boston, Massachusetts. The flight, SWISS 52, was scheduled to depart Zurich at 5:25 p.m. local time on Tuesday, January 31, 2017. A true and accurate reproduction of Dr. Asgari's ticket purchase confirmation and boarding pass is attached hereto as **Exhibit B**.

7. I am informed and believe that on the morning of Tuesday, January 31, 2017, while traveling to the Zurich airport, Dr. Asgari received a telephone call from a staff member at SWISS informing her that she would not be permitted to board the flight. Dr. Asgari promptly relayed this information to me.
8. Later on Tuesday, January 31, 2017, I spoke by telephone with a SWISS representative in Zurich, who identified herself as Dominique Fehlmann, an in-house attorney at SWISS with general responsibility for compliance with United States customs and immigration matters. Ms. Fehlmann stated the following:
 - As required by United States laws and regulations, SWISS provided a passenger manifest to United States customs and immigration officials for Flight 52, which contained Dr. Asgari's name.
 - At some point on Monday evening, January 30, 2017, or Tuesday, January 31, 2017, SWISS received a directive from Customs and Border Protection which provided, *inter alia*, that Dr. Asgari should not be permitted to board the flight.
 - Customs and Border Protection informed SWISS that failure to comply with its directive could result in fines of up to \$50,000 and refusal of permission for Flight 52 to land in the United States.
9. Because Dr. Asgari booked passage on Flight 52 with SWISS on January 30, the passenger manifest and directive described above must have been created after entry of, and service upon the United States of the Order.
10. In our January 31, 2017 telephone conversation, Ms. Fehlmann stated to me that Customs and Border Protection had directed SWISS not to provide a copy of its directive to any third party.
11. I offered to provide Ms. Fehlmann with a copy of the Order. She responded that she already had received a copy, but that SWISS had no choice but to comply with the directive of Customs and Border Protection, and to refuse Dr. Asgari the right to board.
12. Ms. Fehlmann stated that she was not aware of any guidance or other communication sent to SWISS by Customs and Border Protection regarding the Order. She stated further that if SWISS had received any such communication, it likely would have been directed to her attention.
13. I am informed and believe that Dr. Asgari proceeded to the airport in Zurich and attempted to board Flight 52. When Dr. Asgari arrived at the gate, she was met by a SWISS representative who identified herself as "Port."
14. While Dr. Asgari was at the gate, I received a telephone call from Port. Port informed me that she had in hand a copy of this Court's Order, but that she could not allow Dr. Asgari to board the flight in light of the Customs and Border Protection directive. Port informed

me that the only circumstance under which Dr. Asgari would be allowed to board the flight was if an employee of Customs and Border Protection could offer written assurances that Dr. Asgari should be allowed to board and that SWISS would not be liable for non-compliance with the Customs and Border Protection directive.

15. My colleagues and I attempted to obtain such written assurances from Customs and Border Protection. My colleague Sabin Willett sent an urgent email to Attorneys Rayford Farquhar, Ellen Souris, Keara Martin, and Katherine Shinnars, a copy of which is attached hereto as **Exhibit C**. We received no response until approximately five hours later, at which point Attorney Willett received an email from Attorney Shinnars stating that “we [the Department of Justice] do not read the Court’s order to [allow Dr. Asgari to travel to the United States].” A true and correct copy of Attorney Shinnars’s email is attached hereto as **Exhibit D**.
16. Dr. Asgari then telephoned to inform me that she had been unable to board, the gate had closed, and the aircraft had departed.
17. I am informed and believe that, at the gate for Flight 52, Port had a printed copy of the Customs and Border Protection directive regarding Dr. Asgari. Dr. Asgari was able to take a photograph of the directive with her cellphone and she sent that photograph to me by email. However, I note that the photographed document is directed to SWISS, and directs the air carrier not to disclose the document. Its contents appear to be highly material to provisions of the Order. I will provide the photograph to the Court or the parties, as the Court directs.

[Signature page follows]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2017



Noah J. Kaufman