

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DR. SAMIRA ASGARI,

Plaintiff,

Case No. 17-10182-ADB

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 2, 2017

Defendants.

**PLAINTIFF DR. SAMIRA ASGARI'S EMERGENCY MOTION SEEKING A
TEMPORARY RESTRAINING ORDER AND HEARING BEFORE THE COURT**

This lawsuit seeks to remedy the flagrant violation by the Defendants of a Temporary Restraining Order issued by this Court (the "Order"). Pursuant to Federal Rule of Civil Procedure 65(b), Plaintiff Dr. Samira Asgari respectfully requests that the Court enter a Temporary Restraining Order directed to the immediate facts and circumstances of Dr. Asgari and enabling Dr. Asgari's counsel and the Court quickly to determine the Defendants' compliance or non-compliance with the Order. Dr. Asgari further requests that the Court immediately schedule a hearing on this motion.

On January 29, 2017, this Court issued the Order in the matter of *Tootkaboni et. al v. Trump et. al.* No. 17-cv-10154, Dkt. No. 6 (D. Mass. Jan. 29, 2017). That order, which issued after a duly-convened hearing at which all parties were represented by counsel, expressly directed as follows: "[R]espondents . . . shall not, by any manner or means, 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 on Immigration issued on January 27, 2017], would be legally authorized to enter the United States.” *Id.* The Order further 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 based solely on the basis of the Executive Order.” *Id.* By its terms, the Order is to remain in effect for seven days, until Saturday, February 4, 2017.

The Defendants are in flagrant violation of the Order. Not only have they failed to notify airlines of the Order and its terms, but in fact they have done the *exact opposite*.

Dr. Asgari, an Iranian scientist holding a valid J-1 visa to enter the United States to perform research related to pediatric tuberculosis, purchased a ticket to fly on a Swiss International Air Lines (“SWISS”) flight from Zurich, Switzerland to Boston, Massachusetts on January 31, 2017. At the gate, Dr. Asgari was turned away on the basis of a directive from Customs and Border Protection (“CBP”) that she not be allowed to board her flight. Dr. Asgari was able to photograph that directive and to transmit the photograph to undersigned counsel. The directive states, in plain and unequivocal terms, that CBP recommends that Dr. Asgari be denied the right to board the flight because she “will likely be deemed inadmissible upon arrival at a U.S. airport or preclearance location.” Separately, a representative from SWISS’s legal department stated to undersigned counsel that CBP informed SWISS that it could face fines and a refusal of permission for the flight to land in the United States if Dr. Asgari was permitted to board. *See* Declaration of Noah Kaufman, Dkt. No. 1-5 ¶ 8.

In light of the irrefutable evidence of the Defendants’ violation of the Order set forth in Dr. Asgari’s pleadings, and the imminent expiration of the Order, Dr. Asgari has demonstrated that she will encounter immediate and irreparable injury, loss, or damage in the absence of relief.

Furthermore, undersigned counsel represents that on Wednesday, February 1, 2017, he sent copies of the pleadings in this matter to four attorneys at the United States Department of Justice¹ (the “DOJ”) with a request that they accept service on behalf of the Defendants. Undersigned counsel received a response that the DOJ was unwilling to do so. Undersigned counsel will transmit a copy of this Motion to the same DOJ attorneys, and is currently effectuating service as required by Federal Rule of Civil Procedure 4.

WHEREFORE, Plaintiff Dr. Samira Asgari respectfully requests entry of a Temporary Restraining Order as described above. Dr. Asgari further requests that the Court immediately schedule an emergency hearing to address this motion, and to grant all other and further relief as may be just and proper.

Respectfully submitted,

/s/ Noah J. Kaufman

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Dated: February 2, 2017

¹ Two of whom are counsel of record in the *Tootkaboni et. al v. Trump et. al* matter.

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2017, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's CM/ECF system to all registered parties and this filing may be accessed through the Court's CM/ECF system. I further certify that a copy of the foregoing will be immediately served by email on Attorneys Rayford Farquhar, Ellen Souris, Keara Martin, and Katherine Shinnars of the United States Department of Justice. I further certify that, as soon as is practicable, a copy of the foregoing will be served on all Defendants.

/s/ Noah J. Kaufman