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#### Via Electronic and Priority Mail

April 27, 2022

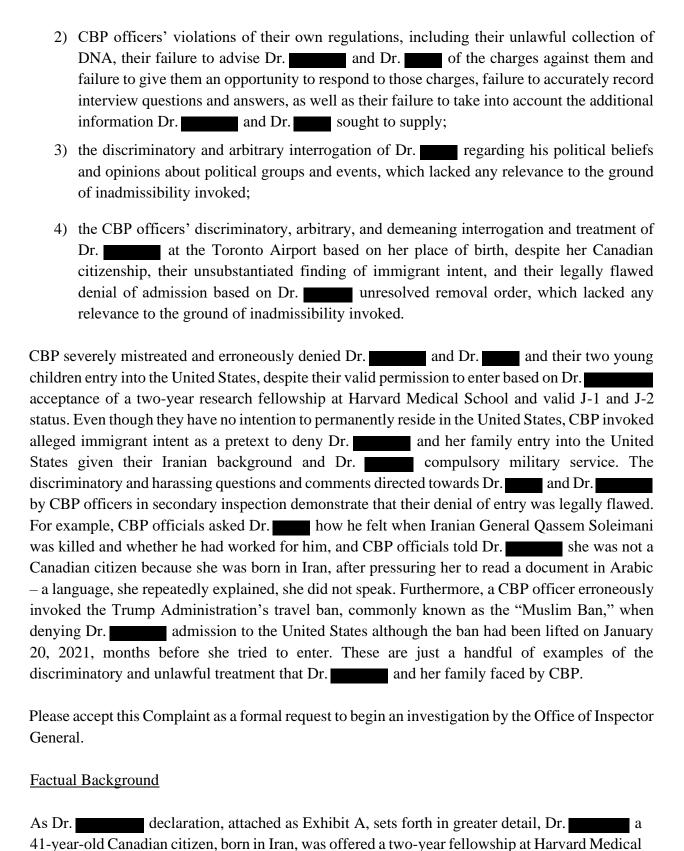
Dana Salvano-Dunn
Director, Investigations
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
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RE: Maryam & Babak

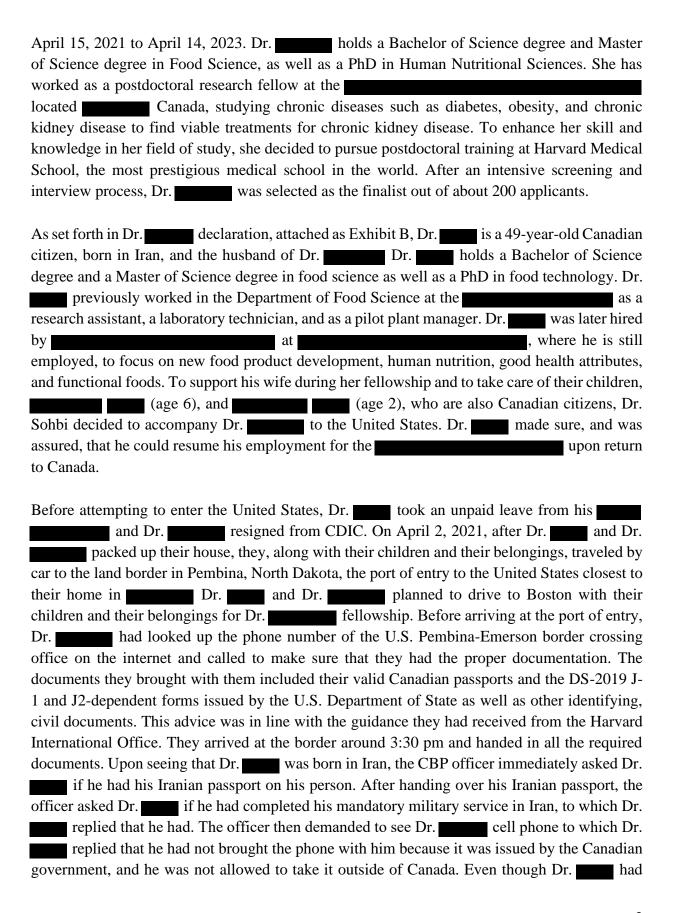
Dear Director Salvano-Dunn:

We are filing this complaint with regard to the mistreatment of Canadian citizens Dr. Maryam and her husband Dr. Babak by Customs and Border Protection ("CBP") officers at the port of entry in Pembina, North Dakota on April 2, 2021, and Dr. Maryam subsequent mistreatment at Toronto Airport on April 18, 2021, including, but not limited to:

1) the legally flawed expedited removal order, barring Dr. from the U.S. for five years, that was entered into his record pursuant to INA § 212(a)(7)(A)(i)(I), without any documentation or information to support a finding of immigrant intent and without allowing him to withdraw his application for admission;



School and Beth Israel Deaconess Medical Center ("BIDMC") for which she was to serve from



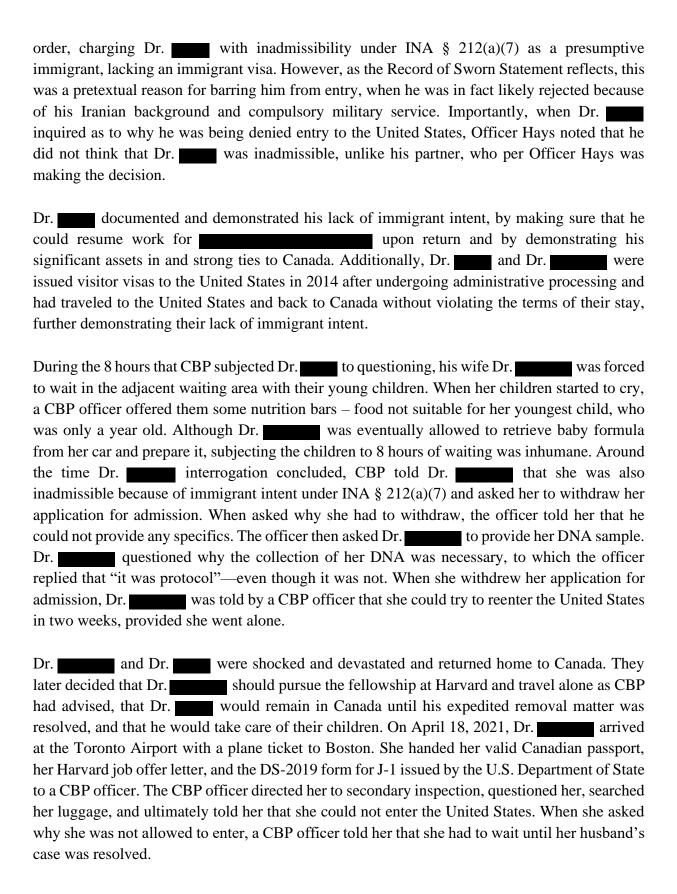
not brought his phone, CBP officers asked for his phone several times during the interrogation that ensued in secondary inspection.

CBP also asked Dr. to hand over his social media accounts, including Facebook, Instagram, LinkedIn, and Twitter IDs, with which he fully complied. CBP officers then took him to an interview room and questioned him predominantly about his mandatory military service in Iran 20 years earlier. The CBP officer asked Dr. what languages he spoke, where he was born, where his father was born, where his mother was born, what military he served in, how long he was in the military, the tasks he performed in the military, how many people he was in charge of, and whether any weapons were present at his place of work, whether schooling was paid by the military or the Iranian government, and various questions about his profession and education. These questions were recorded in the sworn statement signed by Dr.

Dr. was truthful and thorough in his responses. Dr. stated he was "in the ground force" and that "Every man has to serve to leave [the] country to be able to get a passport or job." When asked about what job he had while serving in the military, he stated that he had two jobs. The first was working in a warehouse which contained supplies such as "socks, boots, backpack, uniforms, tents, nothing related to armor." His second job was an administrative position in HR that consisted of "checking people coming in on time and leaving on time," and checking their vacation time. When asked about deployment, Dr. stated that he was never deployed and never sent to another country for any training or military efforts.

However, the Record of Sworn Statement in Proceedings, signed by CBP Officer Hays, omitted three additional questions that were asked by a different officer whom Dr. describes as "older than Officer Hays." The officer asked about how Dr. felt when Iranian General Qassem Soleimani was killed, whether he had worked for Qassem Soleimani, and when he had last been to Iran. Dr. responded that he did not want to say anything about the Iranian government because he had family in Iran and had heard stories of Iranians being detained, imprisoned, and punished by the Iranian government because they, or their family members, had condemned their government publicly or, "said the wrong thing." He noted that, for this reason, he did not get involved in politics. Dr. also noted that his mandatory service was completed 20 years ago, that he did not know who was in charge of the military, and that he had visited Iran two years ago to see his family and receive a hair graft, at which point the officer turned his head and stopped listening. While the questions asked by Officer Hays were recorded in the sworn statement, the questions of the older officer who questioned Dr. were omitted entirely.

At 10:00 pm, after around 8 hours of questioning without being offered food or water, the CBP officers informed Dr. that he was not admissible because he had shown immigrant intent. CBP then asked him to provide a DNA sample and his fingerprints. Importantly, CBP did not allow Dr. to withdraw his application for admission and issued him an expedited removal



Additionally, she was told by a CBP officer that she could not enter because she was "Iranian and there was a travel ban," which at that time was no longer true. She was then humiliated and told that she was not a Canadian, because CBP "never pull[s] actual Canadians into secondary inspection." She was also pressured to read a document that seemed to be composed in Arabic. Dr. repeatedly stated that she did not speak Arabic, but the CBP officers insisted that she did. After this, although most of the questions to her by the CBP officers focused on her Iranian background, she was found inadmissible because of immigrant intent. The sworn statement provided to her by CBP leaves out these derogatory comments.

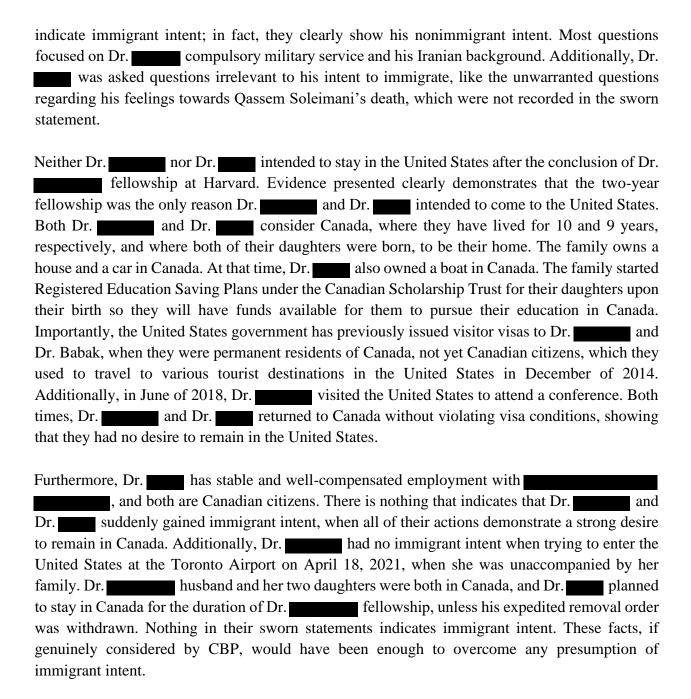
Dr. left the Toronto airport in tears, crying for days. As a result of CBP's unjust and prejudicial treatment, she still suffers from sleep disturbances and was prescribed anti-depression and anti-anxiety medication. She is seeing a therapist to cope with the trauma sustained during her repeated mistreatment by CBP. To make things worse, when Dr. subsequently applied for a J-1 visa through the U.S. Consulate in Calgary, her case was placed in administrative processing, and she again was told to wait until her husband's case was resolved.

## Request for Investigation

In light of the aggressive, demeaning, and discriminatory questioning and treatment that Dr. and Dr. endured by CBP officers, we respectfully request that the Office of Civil Rights and Civil Liberties conduct an investigation.

# 1. <u>Dr. and Dr. lack immigrant intent and were not inadmissible under INA § 212(a)(7)(A)(i)(I)</u>

First, we ask that the Office of Civil Rights and Civil Liberties review the erroneous determination that Dr. were inadmissible under INA § 212(a)(7)(A)(i)(I) as immigrants without a valid unexpired immigrant visa, border crossing identification card, or other valid entry document as required at the time of application for admission. Relevant and reliable evidence provided at the time of CBP's decision, as well as evidence subsequently submitted with a motion to rescind Dr. expedited removal order, demonstrates that Dr. was coming to the United States to support Dr. not to stay long-term. The evidence further shows that Dr. does not and never had immigrant intent. At the time of the interrogation, Dr. and Dr. provided CBP with various pieces of evidence documenting their ties to Canada, including a lien on their house in Canada and ownership documents for Dr. boat. Importantly, at no point in the almost 8 hours spent at the Pembina, North Dakota point of entry—and nowhere in the documents CBP provided to Dr. and Dr. at that time or since then—has CBP disclosed any information or evidence to support their immigrant intent finding. The sworn statement from April 2, 2021 shows that the CBP officers at the Pembina port of entry questioned Dr. regarding his immigrant intent. However, none of Dr. answers



CBP's abuse of discretion in denying entry and revoking valid visas based on unfounded suspicions and pretextual reasons has been well-documented and deserves scrutiny in this case.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> See, e.g., American Civil Liberties Union, American Exile: Rapid Deportation That Bypass the Courtroom 54-58 (Dec. 2014); Khan v. Holder, 608 F.3d 325, 329 (7th Cir. 2010) (noting that the expedited removal process "is fraught with risk of arbitrary, mistaken, or discriminatory behavior").

Dr. and Dr. have not been the only individuals with Iranian backgrounds treated in this manner by CBP officers.<sup>2</sup>

## 2. CBP violated its own administrative regulations

It is well-established that a government agency must comply with its own administrative regulations.<sup>3</sup> Yet, CBP's actions in this case reflect flagrant procedural violations of agency regulations that we ask this Office to investigate.

Specifically, in the expedited removal context, the regulations require examining officers to (1) "create a record of the facts of the case and statements made by the [non-citizen];" (2) "have the [non-citizen] read (or have read to him or her) the statement," and "sign and initial each page of the statement and correction," "[f]ollowing questioning and recording of the [non-citizen]'s statement regarding identity, alienage, and inadmissibility;" (3) "advise the [non-citizen] of the charges against him or her on Form I-860, Notice and Order of Expedited Removal" and afford "an opportunity to respond to those charges in the sworn statement;" and (4) "serve the [non-citizen] with Form I-860 and the [non-citizen] shall sign the reverse of the form acknowledging receipt[,] [a]fter obtaining supervisory concurrence."

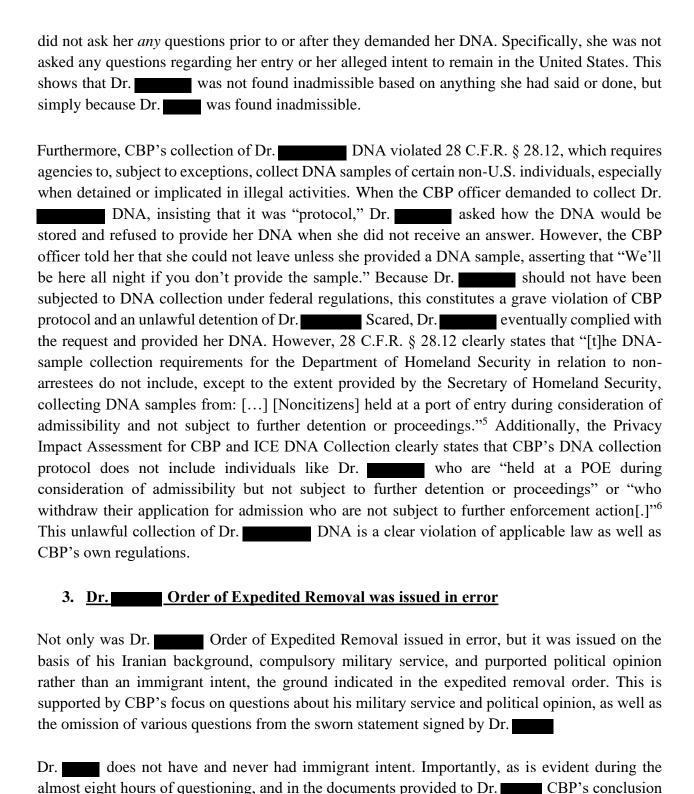
Here, CBP failed to accurately list all questions posed to Dr. in his sworn statement. The questions omitted relate to Dr. political opinions and questions about his connections to Iran, factors wholly irrelevant to the immigrant intent ground of inadmissibility invoked. The questions that were omitted from the sworn statement asked Dr. how he felt when Iranian General Soleimani was killed, if he had ever worked for Soleimani, and when he had last been to Iran. His answers revealed that he was not interested in politics, that he did not want to make any political statements fearing harm to his family in Iran, that he did not know whether Soleimani was in charge of the military 20 years ago, and that he had visited Iran two years ago to see his family and get a hair graft. These omissions are a clear violation of CBP's own administrative regulations.

Additionally, although Dr. was also found inadmissible per INA § 212(a)(7)(A)(i)(I) when she attempted to enter the United States with her family on April 2, 2021, the CBP officers

<sup>&</sup>lt;sup>2</sup> 'Demeaned and Humiliated': What Happened to These Iranians at U.S. Airports, N.Y. Times, Jan. 25, 2020, <a href="https://www.nytimes.com/2020/01/25/us/iran-students-deported-border">https://www.nytimes.com/2020/01/25/us/iran-students-deported-border</a> https://www.nytimes.com/2020/01/06/us/border-iranians-washington-patrol.html.

<sup>&</sup>lt;sup>3</sup> See United States ex. rel. Knauff v. Shaughnessy, 338 U.S. 537, 544 (1950). When an agency fails to do so, its action cannot stand. See United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954). See also Bridges v. Wixon, 326 U.S. 135, 152-53 (1945) (invalidating deportation based on statements taken without compliance with rules requiring signatures and oaths, noting that rules were designed "to afford . . . due process of law" by "providing safeguards against essentially unfair procedures").

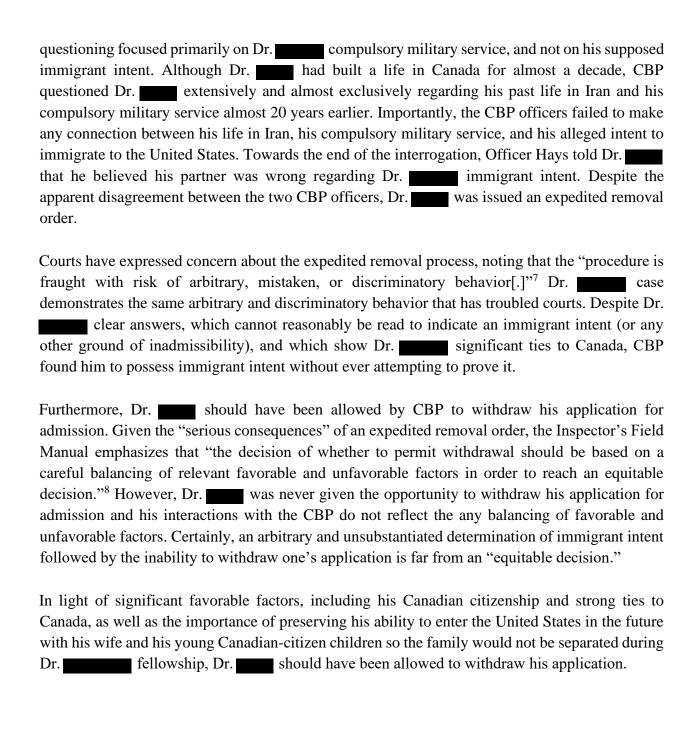
<sup>&</sup>lt;sup>4</sup> 8 C.F.R. § 235.3(b)(2).



of immigrant intent is unsubstantiated. Instead, the evidence clearly indicates that CBP's

<sup>&</sup>lt;sup>5</sup> 28 CFR § 28.12 - Collection of DNA Samples.

<sup>&</sup>lt;sup>6</sup> Privacy Impact Assessment for CBP and ICE DNA Collection, DHS Reference No. DHS/ALL/PIA-080, July 23, 2020, https://www.dhs.gov/sites/default/files/publications/privacy-pia-dhs080-detaineedna-october2020.pdf.



<sup>&</sup>lt;sup>7</sup> See, e.g., Khan v. Holder, 608 F.3d 325, 329 (7th Cir. 2010).

<sup>&</sup>lt;sup>8</sup> IFM § 17.2(a), https://www.aila.org/File/Related/11120959E.pdf.

treatment by CBP at the Toronto Airport on April 18, 2021, was discriminatory, demeaning, and constitutes a serious violation of her civil rights treatment and the relevant circumstances clearly indicate that she was denied entry not based on immigrant intent, as CBP stated, but on her husband's expedited removal order and the fact that she was born in Iran. Although Dr. had followed CBP's instructions and tried to travel to the United States unaccompanied by her family, CBP still found that she was inadmissible due to immigrant intent – ignoring that everything she loved and owned was waiting for her in Canada upon completion of her prestigious fellowship at Harvard Medical School. sworn statement indicates that much of her interrogation by CBP focused on her and her husband's past in Iran. The sworn statement clearly indicates that Dr. "must wait for her husband to inquire about his admissibility to the United States before making entry to the United States," and that she must wait for her husband to "obtain a proper entry document or entry authorization." Finding her inadmissible pursuant to INA § 212(a)(7)(A)(i)(I), CBP did not distinguish or explain the connection between her husband's expedited removal order and her alleged immigrant intent. Indeed, Dr. Indeed that Dr. husband "admitted he had served in the Iranian military" and "was referred to NTC for possible exclusion under Section 212(a)(3)(B)(i)(II)." Dr. III II-213 Record of Deportable/Inadmissible Alien, dated April 18, 2021, adds that Dr. husband "was nominated by TRTT for possible 3B" and her "admissibility could not be determined until 3B nomination is completed for her husband. At the time of entry there were no updates given by TTRT or NTC." These statements clearly support the claim that Dr. was not denied admission because of immigrant intent, but because of other reasons, including Dr. I compulsory military service. In fact, because CBP had issued her husband an expedited removal order (and denied him entry to the United States for five years), that is further reason why she would *not* have immigrant intent. It is unclear why CBP asked Dr. to wait for her husband's case to be resolved, when her husband had no open case at that time. However, even if Dr. military service was the reason invoked for her inadmissibility, consular officers are authorized to exempt spouses and children of those inadmissible under INA § 212(a)(3)(b), if the activity causing the finding of

inadmissibility occurred more than 5 years before their application for entry to the United States. INA § 212(a)(3)(b)(i)(IX). Moreover, this ground of inadmissibility does not apply to a spouse or child who did not know or should not reasonably have known of the applicant's activity that caused the applicant to be found inadmissible. Therefore, given that her husband's military service concluded five years before she met him, Dr. "should not reasonably have known" of

any activity that Defendants may contend could make her husband inadmissible. INA § 212(a)(3)(b)(ii)(I).

Next, Dr. was also told by a CBP officer that she could not enter the United States because

Next, Dr. was also told by a CBP officer that she could not enter the United States because of the "travel ban" on Iran, presumably referring to former President Trump's Executive Orders and Proclamations barring entrance to nationals of several countries, including Iran. When Dr. explained that the ban had been revoked, the CBP officer responded with, "We do not have the executive protocols yet." Though it is unclear why the officer invoked a travel ban that no longer existed, these comments underscore that the reason for Dr. finding of inadmissibility was not because of immigrant intent, but rather because of her Iranian background.

Additionally, the CBP officer humiliated Dr. and subjected her to arbitrary and prejudicial questioning which had nothing to do with the finding of her alleged immigrant intent. During secondary inspection, the CBP officer focused on her Iranian background and asked if her husband and her father knew how to use firearms, if they had ever killed anyone, if she was ever trained as a spy, and what her parents' professions were. Dr. truthfully answered that her husband had completed his compulsory service, that neither of them had killed anyone, and that she had never received "spy training," and that her father was a chemistry teacher. The CBP officer then focused on Dr. father, asking if he was able to build a bomb. Dr. was shocked and replied that he was a simple chemistry teacher. The harassment did not stop there. Next, Dr. was presented with a document and asked to read it. Dr. stated that she was unable to read it because it seemed to be written in Arabic, a language Dr. could not speak or read. The officer said, "This is Arabic, they teach you that in school – read it and tell me what it says." Dr. repeated that she did not speak or read Arabic.

Dr. explained several times to the CBP officer that she was a Canadian scientist trying to pursue her dream job by accepting a fellowship at Harvard Medical School, but the CBP officer would not listen, insisting that she was Iranian, not Canadian. The CBP officer responded that although she was a Canadian citizen, she was not Canadian but a native of Iran and therefore Iranian. The CBP officer also asked Dr. to stop referring to herself as Canadian and pointed to other passengers scanning their documents, saying "You see them? Those are Canadians, not you. We never pull actual Canadians into secondary inspection." The officer then told Dr. that her "J-1 was not being canceled," and that she was allowed to withdraw her application for admission. She was told that she "should apply for a visa as all Iranians must do."

Dr. was escorted out of secondary inspection and started to cry because she could not believe how she was treated. CBP completely disregarded her civil rights and subjected her to this

<sup>&</sup>lt;sup>9</sup> Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017); Exec. Order No. 13,780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

<sup>&</sup>lt;sup>10</sup> Proclamation No. 10141, 86 FR 7005 (2021).

inhumane treatment based on nothing more than her Iranian background, and falsely stated the reason for her inadmissibility as "immigrant intent." Due to this trauma, Dr. has been plagued by nightmares and is being treated with anti-depression and anti-anxiety medication.

The Withdrawal of Application for Admission from Toronto reads that Dr. "appears inadmissible to the United States pursuant to section § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act. Subject does not appear to be a bona fide visitor for pleasure and cannot overcome the presumption of being an intended immigrant." The basis for her rejection is baseless and arbitrary as Dr. was never a "bona fide visitor for pleasure" but a scholar trying to enter for a two-year fellowship on J-1 status. Additionally, considering that Dr. had been to the United States in 2014, and then again in 2018 for a conference without ever attempting to remain in the United States, as well as the fact that her family remained in Canada, finding "immigrant intent," is incomprehensible and simply a pretextual reason for denying her admission on the account of her Iranian background and Dr. compulsory military service. This is supported by the hateful, harassing, and discriminatory comments made to Dr. by the CBP officer.

In sum, Dr. and Dr. suffered, and continue to suffer, severe prejudice and lasting trauma due to CBP's egregious violations of its regulations and federal law, and the procedural rights accorded to them thereunder. We therefore ask that this Office investigate their case.

Respectfully submitted,

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