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HARVARD IMMIGRATION
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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
Building 410, Mail Stop #0190
Washington, D.C. 20528
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RE: Maryam [redacted] & Babak [redacted]

Dear Director Salvano-Dunn:

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

1) the legally flawed expedited removal order, barring Dr. [redacted] 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;

2) CBP officers' violations of their own regulations, including their unlawful collection of DNA, their failure to advise Dr. [redacted] and Dr. [redacted] of the charges against them and failure to give them an opportunity to respond to those charges, failure to accurately record interview questions and answers, as well as their failure to take into account the additional information Dr. [redacted] and Dr. [redacted] sought to supply;

3) the discriminatory and arbitrary interrogation of Dr. [redacted] regarding his political beliefs and opinions about political groups and events, which lacked any relevance to the ground of inadmissibility invoked;

4) the CBP officers' discriminatory, arbitrary, and demeaning interrogation and treatment of Dr. [redacted] at the Toronto Airport based on her place of birth, despite her Canadian citizenship, their unsubstantiated finding of immigrant intent, and their legally flawed denial of admission based on Dr. [redacted] unresolved removal order, which lacked any relevance to the ground of inadmissibility invoked.

CBP severely mistreated and erroneously denied Dr. [redacted] and Dr. [redacted] and their two young children entry into the United States, despite their valid permission to enter based on Dr. [redacted] acceptance of a two-year research fellowship at Harvard Medical School and valid J-1 and J-2 status. Even though they have no intention to permanently reside in the United States, CBP invoked alleged immigrant intent as a pretext to deny Dr. [redacted] and her family entry into the United States given their Iranian background and Dr. [redacted] compulsory military service. The discriminatory and harassing questions and comments directed towards Dr. [redacted] and Dr. [redacted] by CBP officers in secondary inspection demonstrate that their denial of entry was legally flawed. For example, CBP officials asked Dr. [redacted] how he felt when Iranian General Qassem Soleimani was killed and whether he had worked for him, and CBP officials told Dr. [redacted] she was not a Canadian citizen because she was born in Iran, after pressuring her to read a document in Arabic – a language, she repeatedly explained, she did not speak. Furthermore, a CBP officer erroneously invoked the Trump Administration's travel ban, commonly known as the "Muslim Ban," when denying Dr. [redacted] admission to the United States although the ban had been lifted on January 20, 2021, months before she tried to enter. These are just a handful of examples of the discriminatory and unlawful treatment that Dr. [redacted] and her family faced by CBP.

Please accept this Complaint as a formal request to begin an investigation by the Office of Inspector General.

Factual Background

As Dr. [redacted] declaration, attached as Exhibit A, sets forth in greater detail, Dr. [redacted] a 41-year-old Canadian citizen, born in Iran, was offered a two-year fellowship at Harvard Medical School and Beth Israel Deaconess Medical Center ("BIDMC") for which she was to serve from

April 15, 2021 to April 14, 2023. Dr. [redacted] holds a Bachelor of Science degree and Master of Science degree in Food Science, as well as a PhD in Human Nutritional Sciences. She has worked as a postdoctoral research fellow at the [redacted] located [redacted] Canada, studying chronic diseases such as diabetes, obesity, and chronic kidney disease to find viable treatments for chronic kidney disease. To enhance her skill and knowledge in her field of study, she decided to pursue postdoctoral training at Harvard Medical School, the most prestigious medical school in the world. After an intensive screening and interview process, Dr. [redacted] was selected as the finalist out of about 200 applicants.

As set forth in Dr. [redacted] declaration, attached as Exhibit B, Dr. [redacted] is a 49-year-old Canadian citizen, born in Iran, and the husband of Dr. [redacted] Dr. [redacted] holds a Bachelor of Science degree and a Master of Science degree in food science as well as a PhD in food technology. Dr. [redacted] previously worked in the Department of Food Science at the [redacted] as a research assistant, a laboratory technician, and as a pilot plant manager. Dr. [redacted] was later hired by [redacted] at [redacted], where he is still employed, to focus on new food product development, human nutrition, good health attributes, and functional foods. To support his wife during her fellowship and to take care of their children, [redacted] [redacted] (age 6), and [redacted] [redacted] (age 2), who are also Canadian citizens, Dr. Sohbi decided to accompany Dr. [redacted] to the United States. Dr. [redacted] made sure, and was assured, that he could resume his employment for the [redacted] upon return to Canada.

Before attempting to enter the United States, Dr. [redacted] took an unpaid leave from his [redacted] [redacted] and Dr. [redacted] resigned from CDIC. On April 2, 2021, after Dr. [redacted] and Dr. [redacted] packed up their house, they, along with their children and their belongings, traveled by car to the land border in Pembina, North Dakota, the port of entry to the United States closest to their home in [redacted] Dr. [redacted] and Dr. [redacted] planned to drive to Boston with their children and their belongings for Dr. [redacted] fellowship. Before arriving at the port of entry, Dr. [redacted] had looked up the phone number of the U.S. Pembina-Emerson border crossing office on the internet and called to make sure that they had the proper documentation. The documents they brought with them included their valid Canadian passports and the DS-2019 J-1 and J2-dependent forms issued by the U.S. Department of State as well as other identifying, civil documents. This advice was in line with the guidance they had received from the Harvard International Office. They arrived at the border around 3:30 pm and handed in all the required documents. Upon seeing that Dr. [redacted] was born in Iran, the CBP officer immediately asked Dr. [redacted] if he had his Iranian passport on his person. After handing over his Iranian passport, the officer asked Dr. [redacted] if he had completed his mandatory military service in Iran, to which Dr. [redacted] replied that he had. The officer then demanded to see Dr. [redacted] cell phone to which Dr. [redacted] replied that he had not brought the phone with him because it was issued by the Canadian government, and he was not allowed to take it outside of Canada. Even though Dr. [redacted] had

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

CBP also asked Dr. [redacted] 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. [redacted] 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. [redacted]

Dr. [redacted] was truthful and thorough in his responses. Dr. [redacted] 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. [redacted] 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. [redacted] describes as "older than Officer Hays." The officer asked about how Dr. [redacted] felt when Iranian General Qassem Soleimani was killed, whether he had worked for Qassem Soleimani, and when he had last been to Iran. Dr. [redacted] 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. [redacted] 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. [redacted] were omitted entirely.

At 10:00 pm, after around 8 hours of questioning without being offered food or water, the CBP officers informed Dr. [redacted] 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. [redacted] to withdraw his application for admission and issued him an expedited removal

order, charging Dr. [redacted] with inadmissibility under INA § 212(a)(7) as a presumptive immigrant, lacking an immigrant visa. However, as the Record of Sworn Statement reflects, this was a pretextual reason for barring him from entry, when he was in fact likely rejected because of his Iranian background and compulsory military service. Importantly, when Dr. [redacted] inquired as to why he was being denied entry to the United States, Officer Hays noted that he did not think that Dr. [redacted] was inadmissible, unlike his partner, who per Officer Hays was making the decision.

Dr. [redacted] documented and demonstrated his lack of immigrant intent, by making sure that he could resume work for [redacted] upon return and by demonstrating his significant assets in and strong ties to Canada. Additionally, Dr. [redacted] and Dr. [redacted] were issued visitor visas to the United States in 2014 after undergoing administrative processing and had traveled to the United States and back to Canada without violating the terms of their stay, further demonstrating their lack of immigrant intent.

During the 8 hours that CBP subjected Dr. [redacted] to questioning, his wife Dr. [redacted] was forced to wait in the adjacent waiting area with their young children. When her children started to cry, a CBP officer offered them some nutrition bars – food not suitable for her youngest child, who was only a year old. Although Dr. [redacted] was eventually allowed to retrieve baby formula from her car and prepare it, subjecting the children to 8 hours of waiting was inhumane. Around the time Dr. [redacted] interrogation concluded, CBP told Dr. [redacted] that she was also inadmissible because of immigrant intent under INA § 212(a)(7) and asked her to withdraw her application for admission. When asked why she had to withdraw, the officer told her that he could not provide any specifics. The officer then asked Dr. [redacted] to provide her DNA sample. Dr. [redacted] questioned why the collection of her DNA was necessary, to which the officer replied that "it was protocol"—even though it was not. When she withdrew her application for admission, Dr. [redacted] was told by a CBP officer that she could try to reenter the United States in two weeks, provided she went alone.

Dr. [redacted] and Dr. [redacted] were shocked and devastated and returned home to Canada. They later decided that Dr. [redacted] should pursue the fellowship at Harvard and travel alone as CBP had advised, that Dr. [redacted] would remain in Canada until his expedited removal matter was resolved, and that he would take care of their children. On April 18, 2021, Dr. [redacted] arrived at the Toronto Airport with a plane ticket to Boston. She handed her valid Canadian passport, her Harvard job offer letter, and the DS-2019 form for J-1 issued by the U.S. Department of State to a CBP officer. The CBP officer directed her to secondary inspection, questioned her, searched her luggage, and ultimately told her that she could not enter the United States. When she asked why she was not allowed to enter, a CBP officer told her that she had to wait until her husband's case was resolved.

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. [redacted] 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. [redacted] 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. [redacted] 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. [redacted] and Dr. [redacted] endured by CBP officers, we respectfully request that the Office of Civil Rights and Civil Liberties conduct an investigation.

1. **Dr. [redacted] and Dr. [redacted] lack immigrant intent and were not inadmissible under INA § 212(a)(7)(A)(i)(I)**

First, we ask that the Office of Civil Rights and Civil Liberties review the erroneous determination that Dr. [redacted] and Dr. [redacted] 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. [redacted] expedited removal order, demonstrates that Dr. [redacted] was coming to the United States to support Dr. [redacted] not to stay long-term. The evidence further shows that Dr. [redacted] does not and never had immigrant intent. At the time of the interrogation, Dr. [redacted] and Dr. [redacted] 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. [redacted] 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. [redacted] and Dr. [redacted] 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. [redacted] regarding his immigrant intent. However, none of Dr. [redacted] answers

indicate immigrant intent; in fact, they clearly show his nonimmigrant intent. Most questions focused on Dr. [redacted] compulsory military service and his Iranian background. Additionally, Dr. [redacted] was asked questions irrelevant to his intent to immigrate, like the unwarranted questions regarding his feelings towards Qassem Soleimani's death, which were not recorded in the sworn statement.

Neither Dr. [redacted] nor Dr. [redacted] intended to stay in the United States after the conclusion of Dr. [redacted] fellowship at Harvard. Evidence presented clearly demonstrates that the two-year fellowship was the only reason Dr. [redacted] and Dr. [redacted] intended to come to the United States. Both Dr. [redacted] and Dr. [redacted] consider Canada, where they have lived for 10 and 9 years, respectively, and where both of their daughters were born, to be their home. The family owns a house and a car in Canada. At that time, Dr. [redacted] also owned a boat in Canada. The family started Registered Education Saving Plans under the Canadian Scholarship Trust for their daughters upon their birth so they will have funds available for them to pursue their education in Canada. Importantly, the United States government has previously issued visitor visas to Dr. [redacted] and Dr. Babak, when they were permanent residents of Canada, not yet Canadian citizens, which they used to travel to various tourist destinations in the United States in December of 2014. Additionally, in June of 2018, Dr. [redacted] visited the United States to attend a conference. Both times, Dr. [redacted] and Dr. [redacted] returned to Canada without violating visa conditions, showing that they had no desire to remain in the United States.

Furthermore, Dr. [redacted] has stable and well-compensated employment with [redacted], and both are Canadian citizens. There is nothing that indicates that Dr. [redacted] and Dr. [redacted] suddenly gained immigrant intent, when all of their actions demonstrate a strong desire to remain in Canada. Additionally, Dr. [redacted] had no immigrant intent when trying to enter the United States at the Toronto Airport on April 18, 2021, when she was unaccompanied by her family. Dr. [redacted] husband and her two daughters were both in Canada, and Dr. [redacted] planned to stay in Canada for the duration of Dr. [redacted] fellowship, unless his expedited removal order was withdrawn. Nothing in their sworn statements indicates immigrant intent. These facts, if genuinely considered by CBP, would have been enough to overcome any presumption of immigrant intent.

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.[1]

[1] *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. [redacted] and Dr. [redacted] have not been the only individuals with Iranian backgrounds treated in this manner by CBP officers.[2]

2. CBP violated its own administrative regulations

It is well-established that a government agency must comply with its own administrative regulations.[3] 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."[4]

Here, CBP failed to accurately list all questions posed to Dr. [redacted] in his sworn statement. The questions omitted relate to Dr. [redacted] 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. [redacted] 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. [redacted] 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

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[2] '*Demeaned and Humiliated': What Happened to These Iranians at U.S. Airports*, N.Y. Times, Jan. 25, 2020, https://www.nytimes.com/2020/01/25/us/iran-students-deported-border html; *Iranian-Americans Questioned at the Border: 'My Kids Shouldn't Experience Such Things'*, N.Y. Times, Jan. 6, 2020, https://www.nytimes.com/2020/01/06/us/border-iranians-washington-patrol.html.

[3] *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").

[4] 8 C.F.R. § 235.3(b)(2).

did not ask her *any* questions prior to or after they demanded her DNA. Specifically, she was not asked any questions regarding her entry or her alleged intent to remain in the United States. This shows that Dr. [redacted] was not found inadmissible based on anything she had said or done, but simply because Dr. [redacted] was found inadmissible.

Furthermore, CBP's collection of Dr. [redacted] DNA violated 28 C.F.R. § 28.12, which requires agencies to, subject to exceptions, collect DNA samples of certain non-U.S. individuals, especially when detained or implicated in illegal activities. When the CBP officer demanded to collect Dr. [redacted] DNA, insisting that it was "protocol," Dr. [redacted] asked how the DNA would be stored and refused to provide her DNA when she did not receive an answer. However, the CBP officer told her that she could not leave unless she provided a DNA sample, asserting that "We'll be here all night if you don't provide the sample." Because Dr. [redacted] should not have been subjected to DNA collection under federal regulations, this constitutes a grave violation of CBP protocol and an unlawful detention of Dr. [redacted] Scared, Dr. [redacted] eventually complied with the request and provided her DNA. However, 28 C.F.R. § 28.12 clearly states that "[t]he DNA-sample collection requirements for the Department of Homeland Security in relation to non-arrestees do not include, except to the extent provided by the Secretary of Homeland Security, collecting DNA samples from: […] [Noncitizens] held at a port of entry during consideration of admissibility and not subject to further detention or proceedings."[5] Additionally, the Privacy Impact Assessment for CBP and ICE DNA Collection clearly states that CBP's DNA collection protocol does not include individuals like Dr. [redacted] who are "held at a POE during consideration of admissibility but not subject to further detention or proceedings" or "who withdraw their application for admission who are not subject to further enforcement action[.]"[6] This unlawful collection of Dr. [redacted] DNA is a clear violation of applicable law as well as CBP's own regulations.

3. Dr. [redacted] Order of Expedited Removal was issued in error

Not only was Dr. [redacted] Order of Expedited Removal issued in error, but it was issued on the basis of his Iranian background, compulsory military service, and purported political opinion rather than an immigrant intent, the ground indicated in the expedited removal order. This is supported by CBP's focus on questions about his military service and political opinion, as well as the omission of various questions from the sworn statement signed by Dr. [redacted]

Dr. [redacted] does not have and never had immigrant intent. Importantly, as is evident during the almost eight hours of questioning, and in the documents provided to Dr. [redacted] CBP's conclusion of immigrant intent is unsubstantiated. Instead, the evidence clearly indicates that CBP's

[5] 28 CFR § 28.12 - Collection of DNA Samples.
[6] 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.

questioning focused primarily on Dr. [redacted] compulsory military service, and not on his supposed immigrant intent. Although Dr. [redacted] had built a life in Canada for almost a decade, CBP questioned Dr. [redacted] extensively and almost exclusively regarding his past life in Iran and his compulsory military service almost 20 years earlier. Importantly, the CBP officers failed to make any connection between his life in Iran, his compulsory military service, and his alleged intent to immigrate to the United States. Towards the end of the interrogation, Officer Hays told Dr. [redacted] that he believed his partner was wrong regarding Dr. [redacted] immigrant intent. Despite the apparent disagreement between the two CBP officers, Dr. [redacted] was issued an expedited removal order.

Courts have expressed concern about the expedited removal process, noting that the "procedure is fraught with risk of arbitrary, mistaken, or discriminatory behavior[.]"[7] Dr. [redacted] case demonstrates the same arbitrary and discriminatory behavior that has troubled courts. Despite Dr. [redacted] clear answers, which cannot reasonably be read to indicate an immigrant intent (or any other ground of inadmissibility), and which show Dr. [redacted] significant ties to Canada, CBP found him to possess immigrant intent without ever attempting to prove it.

Furthermore, Dr. [redacted] should have been allowed by CBP to withdraw his application for admission. Given the "serious consequences" of an expedited removal order, the Inspector's Field Manual emphasizes that "the decision of whether to permit withdrawal should be based on a careful balancing of relevant favorable and unfavorable factors in order to reach an equitable decision."[8] However, Dr. [redacted] was never given the opportunity to withdraw his application for admission and his interactions with the CBP do not reflect the any balancing of favorable and unfavorable factors. Certainly, an arbitrary and unsubstantiated determination of immigrant intent followed by the inability to withdraw one's application is far from an "equitable decision."

In light of significant favorable factors, including his Canadian citizenship and strong ties to Canada, as well as the importance of preserving his ability to enter the United States in the future with his wife and his young Canadian-citizen children so the family would not be separated during Dr. [redacted] fellowship, Dr. [redacted] should have been allowed to withdraw his application.

[7] *See, e.g., Khan v. Holder*, 608 F.3d 325, 329 (7th Cir. 2010).
[8] IFM § l7.2(a), https://www.aila.org/File/Related/11120959E.pdf.

4. Dr. [redacted] treatment by CBP at the Toronto Airport on April 18, 2021, was discriminatory, demeaning, and constitutes a serious violation of her civil rights

Dr. [redacted] 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. [redacted] 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.

Dr. [redacted] 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. [redacted] "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. [redacted] I-213 Record of Deportable/Inadmissible Alien, dated April 2, 2021, states that Dr. [redacted] 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. [redacted] I-213 Record of Deportable/Inadmissible Alien, dated April 18, 2021, adds that Dr. [redacted] 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. [redacted] was not denied admission because of immigrant intent, but because of other reasons, including Dr. [redacted] 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. [redacted] to wait for her husband's case to be resolved, when her husband had no open case at that time. However, even if Dr. [redacted] 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. [redacted] "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. [redacted] 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.[9] When Dr. [redacted] explained that the ban had been revoked,[10] 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. [redacted] finding of inadmissibility was not because of immigrant intent, but rather because of her Iranian background.

Additionally, the CBP officer humiliated Dr. [redacted] 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. [redacted] 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. [redacted] father, asking if he was able to build a bomb. Dr. [redacted] was shocked and replied that he was a simple chemistry teacher. The harassment did not stop there. Next, Dr. [redacted] was presented with a document and asked to read it. Dr. [redacted] stated that she was unable to read it because it seemed to be written in Arabic, a language Dr. [redacted] 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. [redacted] repeated that she did not speak or read Arabic.

Dr. [redacted] 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. [redacted] 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. [redacted] 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. [redacted] 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

[9] Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017); Exec. Order No. 13,780, 82 Fed. Reg. 13209 (Mar. 6, 2017).
[10] 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. [redacted] 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. [redacted] "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. [redacted] 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. [redacted] 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. [redacted] compulsory military service. This is supported by the hateful, harassing, and discriminatory comments made to Dr. [redacted] by the CBP officer.

In sum, Dr. [redacted] and Dr. [redacted] 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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