

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MOHAMMAD SHAHAB DEHGHANI)	
HOSSEIN,)	
)	
Plaintiff,)	
v.)	
)	
U.S. CUSTOMS AND BORDER PROTECTION;)	
MARK A. MORGAN,)	
Acting Commissioner, U.S. Customs and)	
Border Protection, in his official capacity;)	
LINDA BROWN, Port Director, Boston Area,)	
U.S. Customs and Border Protection, in)	
her official capacity;)	
DEPARTMENT OF HOMELAND SECURITY;)	
CHAD WOLF, Acting Secretary,)	
Department of Homeland Security,)	
in his official capacity,)	
)	
<u>Defendants.</u>)	

Case No.: ____

EMERGENCY
PETITION FOR
DECLARATORY AND
INJUNCTIVE RELIEF IN
THE NATURE OF
MANDAMUS AND
HABEAS CORPUS

1. Plaintiff, Mr. Mohammad Shahab Dehghani Hossein, is a student admitted to Northeastern University who is currently detained at Logan Airport and facing immediate removal from the United States.

2. Plaintiff, through undersigned counsel, petitions this Court for declaratory and injunctive relief in the nature of mandamus and habeas corpus to compel Defendant U.S. Customs and Border Protection (“CBP”) to adjudicate his pending motion to rescind an expedited removal order. Plaintiff, through counsel, has filed a request to rescind that order today. Plaintiff seeks an order from this Court compelling CBP to expeditiously adjudicate the motion to prevent his departure today and allow him to start his studies at Northeastern.

3. Without an order from this Court compelling CBP to adjudicate the motion, Plaintiff’s ability to start his Bachelor’s degree remains uncertain. Furthermore,

unless the adjudication occurs immediately, he will be sent back to Iran. Further delay by CBP in adjudicating the motion to rescind will foreclose him from starting his studies at Northeastern in the spring semester.

4. Expeditious adjudication is necessary because, if CBP grants the motion, Plaintiff may continue his studies instead of being removed. If he is removed, he must go through the process of applying for and obtaining a new F-1 student visa, a process which takes approximately 100 days and could take much longer. An immediate decision on the motion to reopen and rescind is necessary to afford Plaintiff the ability to start his studies at Northeastern.
5. CBP is insisting that he must leave the United States on the next available flight. Plaintiff respectfully requests that this Court order Defendants to adjudicate his motion.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question), 1361 (mandamus), and 2201 *et seq.* (declaratory relief); 5 U.S.C. §§ 555(b), 701-708 (Administrative Procedure Act); and the Fifth and Fourteenth Amendments of the U.S. Constitution. Further jurisdiction lies under 28 U.S.C. § 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the United States Constitution.
7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in the District of Massachusetts. Plaintiff is currently being detained at Logan Airport under color of the authority of the United States, in violation of the Constitution, laws or treaties thereof. 28 U.S.C. §§ 1391, 2241. Defendant Linda Brown is located in this District. CBP at Boston Logan issued the

expedited removal order, and that office is responsible for adjudicating the pending motion to rescind at issue here. This is a civil action in which Defendants are officers of the United States, acting in their official capacity, and there is no real property involved.

PARTIES

8. Mr. Mohammad Shahab Dehghani Hossein is a citizen and national of Iran.
9. Defendant CBP is the federal government agency responsible for the initial processing and detention of noncitizens who are apprehended at or near the border and placed in expedited removal proceedings. CBP is a component agency within the U.S. Department of Homeland Security. CBP officers are authorized to issue expedited removal orders under 8 U.S.C. § 1225(b)(1), and to rescind such orders.
10. Defendant Linda Brown is sued in her official capacity as Boston Port Director for CBP. In this capacity, Defendant Brown has the authority to adjudicate a motion to rescind an expedited removal order.
11. Defendant Mark A. Morgan is sued in his official capacity as Acting Commissioner of CBP, the agency responsible for the processing and detention of noncitizens who are apprehended at or near the border and placed in expedited removal proceedings. In this capacity, Defendant Morgan has the authority to adjudicate a motion to rescind an expedited removal order.
12. Defendant U.S. Department of Homeland Security (“DHS”) is the federal government agency that enforces the immigration laws of the United States. DHS’s responsibilities include determining whether an individual is subject to expedited removal pursuant to 8 U.S.C. § 1225(b)(1).
13. Defendant Chad Wolf is sued in his official capacity as Acting Secretary of the

DHS. In this capacity, he directs each of the component agencies within DHS, including United States Immigration and Customs Enforcement (“ICE”), United States Citizenship and Immigration Services (“USCIS”), and United States Customs and Border Protection (“CBP”). In his official capacity, Defendant Wolf is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) and has the authority to adjudicate a motion to rescind an expedited removal order.

FACTUAL ALLEGATIONS

Plaintiff's Expedited Removal Order and Motion to Reopen and Rescind

14. Plaintiff Mohammad Shahab Dehghani Hossein is a 24-year-old Iranian citizen and national.
15. He was admitted to the Bachelor's program at Northeastern University to start in the 2018-2019 academic year.
16. The program is highly competitive. In 2019, Northeastern University was ranked in the top fifty universities in the United States.
17. Following his acceptance, Northeastern University issued Plaintiff a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, which allowed him to apply for a student visa from the U.S. Department of State.
18. Plaintiff submitted his application for a student visa in 2018.
19. As part of the visa adjudication process, Plaintiff attended an in-person interview at a U.S. Consulate.
20. In addition, the State Department subjected Plaintiff's application to full review, screening, and security checks.
21. After nearly one year of "administrative processing," the State Department issued Plaintiff a student visa approximately one week ago.
22. Upon information and belief, Plaintiff does not pose any threat of terrorist activity and has no criminal record in any country.

23. Plaintiff attempted to enter the United States yesterday, January 19, 2020. However, at the airport, Defendants took him into secondary inspection, detained him, and refused to admit him to the United States on his student visa. Instead, Defendants revoked Plaintiff's student visa and issued him an expedited removal order pursuant to 8 U.S.C. § 1225(b)(1).
24. It is unclear why Defendants would now decide, after conducting a full visa issuance process, that Plaintiff's student visa should be revoked.
25. Rather than being based in legitimate concerns over Plaintiff's admissibility to the United States, this revocation and expedited removal is a result of additional scrutiny targeting Iranian citizens. As such, it violates equal protection guarantees against discrimination based on national origin, constitutional due process guarantees, and the Administrative Procedure Act.
26. Since his plane landed, Defendants have kept Plaintiff in detention and have not allowed him to contact counsel or any other person in the United States.
27. This afternoon, Plaintiff's counsel submitted a letter to Defendants asking them to reopen and rescind his expedited removal order.
28. Despite this request, Defendants have not released Plaintiff. Without the intervention of this Court, Plaintiff will continue to be unlawfully detained.

CBP's Duty to Adjudicate the Motion to Reopen and Rescind

29. The regulations provide that "[t]he official having jurisdiction [over the motion to reopen and rescind] is the official who made the latest decision in the proceeding[.]" 8 C.F.R. § 103.5(a)(1)(ii).
30. Defendants have the legal authority to grant or deny the motion to reopen and rescind under 8 C.F.R. § 103.5(a).

31. Plaintiff, through counsel, timely filed a motion today with the appropriate CBP officials. 8 C.F.R. § 103.5(a)(1)(i).
32. As the motion to reopen and rescind attached hereto as **Exhibit A** sets forth, the expedited removal order was unlawful, arbitrary, and capricious.
33. CBP has a duty to adjudicate the motion to rescind within a reasonable time. 5 U.S.C. § 706(1).
34. A reasonable time in Plaintiff's situation is immediately because he is facing imminent removal. Applying for another student visa from Iran could take at least 90 days and, if the initial visa is any indication, would take much longer.
35. As a result of the expedited removal order, Plaintiff has already forfeited the opportunity to pursue his planned studies during the spring semester. He was admitted to start in 2019, but was unable to do so because the student visa process took so long.
36. Without an immediate decision on his motion to rescind, Plaintiff's life and career remain in limbo.
37. Without an immediate decision, Plaintiff will be forced to forfeit the opportunity to start work on his Bachelor's degree, as the term is already underway.

CAUSES OF ACTION

COUNT ONE (Petition for Mandamus, 28 U.S.C. § 1361)

38. Plaintiff hereby incorporates paragraphs 1 through **45** by reference.
39. Mandamus is available to compel a federal official or agency to perform an action where the official has a clear, non-discretionary duty to act. *See* 28 U.S.C. § 1361 (“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency

thereof to perform a duty owed to the plaintiff.”); *see also Dep't of Navy v. Fed. Labor Relations Auth.*, 835 F.2d 921, 923 (1st Cir. 1987) (noting that mandamus is “appropriate if there are ‘no other adequate means to obtain the relief’ desired, and where the lower court or agency has ‘violated a non-discretionary command or so abused [its] discretion’ that its action constitutes a disregard of the court’s mandate” (internal citations omitted)); *Litvin v. Chertoff*, 586 F. Supp. 2d 9, 11 (D. Mass. 2008) (holding that “the government has a nondiscretionary duty to act on [naturalization] applications by processing them”); *Tang v. Chertoff*, 493 F. Supp. 2d 148, 154–55 (D. Mass. 2007) (noting that “[a] grant of adjustment of status is not “legally required,” but adjudication of the application one way or the other certainly is. Plaintiffs do not seek to compel the former, only the latter.” (citing *inter alia Dabone v. Thornburgh*, 734 F. Supp. 195, 200 (E.D. Pa. 1990) (holding the Board of Immigration Appeals owed plaintiff a duty to adjudicate his motion to reopen an exclusion proceeding)).

40. To date, CBP has failed to make a decision on the motion to rescind. Given that Plaintiff has exhausted all other available remedies and has “no other adequate means to attain the relief he desires,” his right to mandamus relief is therefore “clear and indisputable.” *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980).

COUNT II
Administrative Procedures Act Review
(Violation of the Administrative Procedures Act)

41. Plaintiff hereby incorporates paragraphs 1 through 48 by reference.

42. Section 706(1) of Title 5 of the U.S. Code provides that a reviewing court shall compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1); *see*

also 5 U.S.C. § 702 (“[A] person suffering legal wrong because of agency action . . . is entitled to judicial review thereof.”).

43. An agency’s failure to act constitutes “agency action” subject to judicial review. *See Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 62 (2004).
44. Pursuant to 5 U.S.C. § 555(b) of the APA, “[w]ith due regard for the convenience and necessity of the parties or their representatives and *within a reasonable time*, each agency shall proceed to conclude a matter presented to it.” (emphasis added).
45. In order to allow Plaintiff to start the spring semester at Northeastern, CBP must adjudicate the motion to reopen and rescind as soon as possible.
46. CBP’s failure to adjudicate the motion constitutes an unreasonable delay of an agency action in violation of the Administrative Procedures Act, given Plaintiff’s need to start school in the spring semester. *See Litvin*, 586 F. Supp. 2d at 11–13 (noting that government does not have discretion to delay adjudication of visa for unreasonable amount of time); *see also Tang*, 493 F. Supp. 2d at 148 (finding court had subject matter jurisdiction to compel USCIS to adjudicate application for adjustment of status after lengthy delay).
47. Defendants’ failure to act is arbitrary and capricious and violates Plaintiff’s statutory and regulatory rights.

COUNT III

Due Process Clause of the Fifth Amendment

48. Plaintiff hereby incorporates paragraphs 1 through 48 by reference.
49. The Due Process Clause of the Fifth Amendment prohibits government deprivation of any person’s liberty “without due process of law.” U.S. Const. amend. V.

50. All non-citizens entering the United States are entitled to the protections of the Due Process Clause of the Fifth Amendment. *See, e.g., Dia v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003) (arriving non-citizens must be accorded statutory rights granted by Congress and “[m]inimum due process rights attach to statutory rights”).
51. Defendants are violating Plaintiff’s right to due process of law by failing to allow him contact with counsel or any other person.
52. Plaintiff has suffered, and continues to suffer, injury.

COUNT IV

Equal Protection Clause of the Fifth Amendment

53. Plaintiff hereby incorporates paragraphs 1 through 48 by reference.
54. The Equal Protection Clause of the Fifth Amendment prohibits national origin discrimination, unless it is narrowly tailored to serve a compelling government interest.
55. Iranians, including U.S. citizens and lawful permanent residents of Iranian heritage, have recently been singled out for extended border screening based solely on their national origin. *See, e.g., “U.S. Stops Dozens of Iranian-Americans Returning from Canada,”* New York Times, January 5, 2020, available at <https://www.nytimes.com/2020/01/05/us/politics/iranian-americans-border.html>.
56. Iran is also one of the seven countries named in Presidential Proclamation 9645. (colloquially, the “travel ban”). Although student visas are not affected by the Proclamation, it is part of the President’s stated intention to implement a “total and complete shutdown of Muslims entering the United States.” Donald J. Trump, Donald J. Trump Statement On Preventing Muslim Immigration (Dec. 7, 2015),

www.donaldjtrump.com/press-releases/donald-j.-trumpstatement-on-preventing-muslim-immigration.

57. This disparate treatment is not narrowly tailored to serve a compelling interest, or in fact any legitimate government interest. Consequently, Defendants are violating Plaintiff's equal protection right to be free from and national origin discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court to:

- a. Assume jurisdiction over this matter;
- b. issuing a Writ of Habeas Corpus requiring defendants to release Plaintiff;
- c. Order Defendants to adjudicate Plaintiff's motion to reopen and rescind forthwith;
- d. Award reasonable costs and attorneys' fees under the Equal Access to Justice Act and any other applicable statute or regulation; and
- e. Grant such further relief as the Court deems just and proper.

Dated: January 20, 2020

Respectfully submitted,

— /s/ Kerry Doyle
Kerry Doyle
Graves & Doyle
Attorneys at Law
100 State St., 9th Floor
Boston, MA 02109
(ph) 617-542-6400
(f) 617-542-6411