

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 Shinnors, 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 Shinnors 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 Shinnors’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

A handwritten signature in black ink that reads "Noah J. Kaufman". The signature is written in a cursive style and is positioned above a horizontal line.

Noah J. Kaufman

Exhibit B

Ticket Travel Itinerary

Passenger

ASGARI/SAMIRAMS

Flight 1

Flight

LX52

From

Zurich (ZRH)

Zurich

To

Boston (BOS)

Logan Intl Arprt

Departure date

31 January 2017

Departure time

17:25

Latest check-in

16:45

Arrival date

31 January 2017

Arrival time

20:05

Check-in baggage

**1 piece, up to 50lb / 23kg
max size up to 62li / 158lcm
(width + depth + height)**

Hand baggage

**1 piece up to 18lb / 8kg ,
max size up to 46li / 118lcm
(width + depth + height)**

Travel class

Economy (V)

Booking / Ticket Status

Confirmed / Airport control

Flight operated by

Swiss International Air Lines

On behalf of

Not valid before

31 January

Not valid after

31 January

All times are local times

SWISS Choice / other services

Second Bag

Service center

Calling from Switzerland

0848 700 700

Calling from Zurich

+41 (0) 848 700 700

Document

Reservation number

24TBRL

Ticket number

7242304372371

Issued

30/1/2017

Issuer

SWISS.COM

Issue place

SWITZERLAND

Page

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Flight 2

Flight

LX53

From

Boston (BOS)

Logan Intl Arprt

To

Zurich (ZRH)

Zurich

Departure date

07 February 2017

Departure time

21:45

Terminal

E

Latest check-in

20:30

Arrival date

08 February 2017

Arrival time

11:00

You arrive on the next day

Check-in baggage

**1 piece, up to 50lb / 23kg
max size up to 62li / 158lcm
(width + depth + height)**

Hand baggage

**1 piece up to 18lb / 8kg ,
max size up to 46li / 118lcm
(width + depth + height)**

Travel class

Economy (K)

Booking / Ticket Status

Confirmed / Open for Use

Flight operated by

Swiss International Air Lines

On behalf of

Not valid before

07 February

Not valid after

07 February

All times are local times

SWISS Choice / other services

Receipt

Passenger

ASGARI/SAMIRAMS

Fare details

Item	CHF
Fare	302.00
Taxes	
International Surcharge (YQ)	356.00
Airport Passenger Security & Noise Charge (CH)	35.00
Customs User Fee (YC)	5.50
Transportation Tax (US)	18.00
Transportation Tax (US)	18.00
Aphis Passenger Fee (XA)	4.00
Immigration User Fee (XY)	7.00
Passenger Civil Aviation Security Fee (AY)	6.00
Passenger Facility Charge (XF)	4.50
Charges Fees*	43.00
Grand total	799.00

* The amount includes fees such as e.g. service fee, OPC, etc. For details please contact your nearest SWISS Service Center.

Form of payment

Ticket/Fees: Credit Card Master Card CA 799.00
XXXXXXXXXXXX3499

Endorsement/restrictions

NONREF/FL/CHG RESTRICTED CHECK FARE NOTE -BG LX

Service center

Calling from Switzerland 0848 700 700
Calling from Zurich +41 (0) 848 700 700

Document

Reservation number **24TBRL**
Ticket number **7242304372371**
Issued 30/1/2017
Issuer SWISS.COM
Issue place SWITZERLAND
Page 2 of 4

Baggage provisions

Service center

Calling from Switzerland	0848 700 700
Calling from Zurich	+41 (0) 848 700 700

Passenger

ASGARI/SAMIRAMS

Document

Reservation number	24TBRL
Ticket number	7242304372371
Issued	30/1/2017
Issuer	SWISS.COM
Issue place	SWITZERLAND
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1 Zurich (ZRH) → Boston (BOS)

Flight LX52

Economy (V)

	Quantity	Price	Weight	Size
Carry-on baggage	1 piece	n/a	up to 18lb / 8kg	up to 46li / 118cm
Baggage allowance	1 piece	n/a	up to 50lb / 23kg	up to 62li / 158cm
2nd baggage charge	1 piece	CHF 90.00	up to 50lb / 23kg	up to 62li / 158cm
Prepaid 2nd baggage charge	1 piece	CHF 75.00	up to 50lb / 23kg	up to 62li / 158cm

2 Boston (BOS) → Zurich (ZRH)

Flight LX53

Economy (K)

	Quantity	Price	Weight	Size
Carry-on baggage	1 piece	n/a	up to 18lb / 8kg	up to 46li / 118cm
Baggage allowance	1 piece	n/a	up to 50lb / 23kg	up to 62li / 158cm
2nd baggage charge	1 piece	CHF 90.00	up to 50lb / 23kg	up to 62li / 158cm
Prepaid 2nd baggage charge	1 piece	CHF 75.00	up to 50lb / 23kg	up to 62li / 158cm

General baggage provisions

Customer status	Destination	SWISS First	SWISS Business	SWISS Economy***
HON, SEN*, Star Gold**	to / from / via US / CA	+ 1 piece up to 32 kg	+ 1 piece up to 32 kg	+ 1 piece up to 23 kg
	worldwide (except to /from/via US/CA)	+ 1 piece up to 32 kg + 1 set of golf equipment	+ 1 piece up to 32 kg + 1 set of golf equipment	+ 1 piece up to 23 kg + 1 set of golf equipment
Frequent traveller*	worldwide	General allowance	General allowance	+ 1 piece up to 23 kg
Miles & More members	worldwide	no additional baggage allowance	no additional baggage allowance	no additional baggage allowance
SWISS Golf Traveller*	worldwide	+ 1 set of golf equipment	+ 1 set of golf equipment	+ 1 set of golf equipment

Members of other frequent flyer programme should contact the relevant operator

* Applies to flights operated by SWISS, Lufthansa and Edelweiss Air

** Applies to flights operated by Star Alliance member airlines

*** For SWISS Light fares no additional baggage allowance applies

Important information

Passenger

ASGARI/SAMIRAMS

General information

All times noted are local times. Please keep this receipt with you throughout your journey. Your ticket is stored in our reservations system. As with all airline tickets your ticket is not transferable to others.

Dangerous goods

No dangerous goods are allowed in either checked baggage or carry-on baggage. More information on swiss.com/dangerousgoods

Bringing liquids on board

In compliance with international security regulations, any liquid items (including gels, pastes and similar) which are carried into the aircraft cabin must be packed in individual containers with a capacity of not more than 100 ml (1 dl).

Air passenger rights

If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance. Regulation (EC) no. 261/2004.

Air transportation notice

For liability issues and other transport conditions, please refer to the SWISS general conditions of carriage available at any Swiss International Air Lines sales office, or on swiss.com.

Service center

Calling from Switzerland	0848 700 700
Calling from Zurich	+41 (0) 848 700 700

Document

Reservation number	24TBRL
Ticket number	7242304372371
Issued	30/1/2017
Issuer	SWISS.COM
Issue place	SWITZERLAND
Page	4 of 4

Important notice

The contract of carriage between you and SWISS is governed by applicable law and by our Conditions of Carriage, which you can consult on our swiss.com website. Please note that, in accordance with Article 3.3 of our Conditions of Carriage, this fare is only valid if the flights are taken in the booked sequence. Otherwise the fare will be recalculated based on the actual flight routing.

The liability of SWISS or other carriers is subject to the Montreal/Warsaw Convention and/or EC Regulation 2027/97. In the event of death or bodily injury, SWISS has waived the liability limits imposed by the Warsaw Convention, and has waived the defence that it has taken all necessary measures to avoid damage up to a liability of 113,100 special drawing rights (SDR) per passenger. In the event of death or bodily injury, SWISS will make an advance payment in accordance with EU law.

Additional baggage fees may apply.

The authorities of certain countries may require us to transfer specific travel data to them relating to your journey, for security and immigration purposes. You authorise us to transfer, for these purposes, so-called passenger name record (PNR) data such as your name, date of birth, home address, contact phone numbers, information on your travel partner, date of reservation, ticket issuance, payment information, travel itinerary, frequent flyer number, information concerning your baggage and/or changes to the PNR. You are aware that such data could be transferred to countries whose data protection provisions are not as strict as those provided under Swiss law.

More information online

Easy check-in by internet
swiss.com/webcheckin

Latest check-in time for your airport
swiss.com/ch/en/prepare/check-in/checkin-times

For complaints and compliments
swiss.com/customer-service

Your contact for further inquiries
swiss.com/contacts

SWISS wishes you a pleasant flight.

Boarding pass



Passenger name: **ASGARI/SAMIRAMS**
E-ticket number: **724 2304 372 371-1**

Y

Frequent flyer number:
Check-in sequence: 37

From **Zurich (ZRH)** to **Boston (BOS)**

Flight **LX52**

Date	Departure	Booking class	Gate	Boarding time	Seat
31 January, 2017	17:25	Economy Class (V)	N/A	16:25	39K

Please be at the departure gate at the boarding time stated. Otherwise, your seat may be re-assigned.

Baggage allowance

Baggage type	Quantity / Weight	Size
 Free checked baggage for flights operated by SWISS.	See E-Ticket terms and conditions for detailed baggage allowance. Additional baggage allowance may apply for Frequent Flyers or if purchased separately.	
 Carry-on baggage for flights operated by SWISS	max. 1 x 8 kg	An item of baggage must not exceed 55 x 40 x 23 cm

Travel information

Baggage drop-off



Please report with your baggage to the **Baggage drop-off** counter at Check-in 3 if arriving by train, otherwise to the **Baggage drop-off** counter in Check-in 1.

If you are travelling with hand baggage only, you may proceed directly to your departure gate.

Kindly consult our website for the latest check-in times of your departure airport: swiss.com/latest_checkin.

Dangerous goods

No dangerous goods are allowed in either checked baggage or carry-on-baggage. For detailed information check swiss.com/dangerousgoods.

Bringing liquids on board

In compliance with international security regulations, any liquid items (including gels, pastes and similar) which are carried into the aircraft cabin must be packed in individual containers with a capacity of not more than 100 ml (1 dl).

Air passenger rights

If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance. Regulation (EC) no. 261/2004.

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Exhibit C

Kaufman, Noah J.

From: Willett, P. Sabin
Sent: Tuesday, January 31, 2017 11:12 AM
To: rayford.farquhar@usdoj.gov; ellen.souris@usdoj.gov; keara.martin@usdoj.gov;
katherine.j.shinners@usdoj.gov
Cc: Matthew Segal; Frost-Davies, Julia; Kaufman, Noah J.; stationmanagerzrh@swiss.com;
sipo@swiss.com
Subject: MOST URGENT/Asgari//no. 17-cv-10154, Tootkaboni et al. v. Trump et al.

Dear counsel –

Our client Ms. Asgari, who holds a J-1 visa and is within the scope of Judge Burroughs' Sunday order, having been ticketed to Logan on Saturday and turned away at the Frankfurt gate, is now at the Swiss gate in Zurich, attempting to board a flight. Swiss needs your assurance that the flight has permission to land, and is advising us that, after the Court's order entered on Sunday, and in contravention of the order, it has been advised by CPB that she is not permitted to board. Please ASAP contact Swiss in Zurich to confirm that Ms. Asgari may board and the aircraft will be given permission to land at Logan without penalty.

Please confirm to the two Swiss CCs asap in writing that she has permission pursuant to paragraph D of Judge Burroughs' order issued Jan. 29, 2017, and that there will be no difficulties upon arrival.

Need asap, plane is now boarding.

Very truly yours,

SW

Exhibit D

Kaufman, Noah J.

From: Shinnars, Katherine J. (CIV) <Katherine.JShinnars@usdoj.gov>
Sent: Tuesday, January 31, 2017 3:58 PM
To: Willett, P. Sabin; Farquhar, Rayford (USAMA); Souris, Elen (USAMA); Martin, Keara (USAMA)8
Cc: Matthew Segal; Frost-Davies, Julia; Kaufman, Noah J.; stationmanager.zrh@swiss.com; sipo@swiss.com
Subject: RE: MOST URGENT/Asgari//no. 17-cv-10154, Tootkaboni et al. v. Trump et al.

Mr. Willett,

Thank you for your email. We do not read the Court's order to require such action, but we have passed the information along to CBP.

Katie Shinnars

Katherine Shinnars
Trial Attorney
United States Department of Justice
Office of Immigration Litigation – District Court Section
Post Office Box 868 | Ben Franklin Station | Washington, DC 20044
☎ 202-598-8259 | ☎ 202-305-7000 | ✉ katherine.j.shinnars@usdoj.gov



From: Willett, P. Sabin [<mailto:sabin.willett@morganlewis.com>]
Sent: Tuesday, January 31, 2017 11:17 AM
To: Farquhar, Rayford (USAMA) <Rayford.Farquhar@usdoj.gov>; Souris, Elen (USAMA) <Elen.Souris@usdoj.gov>; Martin, Keara (USAMA)8 <Keara.Martin@usdoj.gov>; Shinnars, Katherine J. (CIV) <kshinner@CIV.USDOJ.GOV>
Cc: Matthew Segal <MSegal@adum.org>; Frost-Davies, Julia <julia.frost-davies@morganlewis.com>; Kaufman, Noah J. <noah.kaufman@morganlewis.com>; stationmanager.zrh@swiss.com; sipo@swiss.com
Subject: RE: MOST URGENT/Asgari//no. 17-cv-10154, Tootkaboni et al. v. Trump et al.

I am resending with corrected stationmanager email address.

Sabin Willett
Morgan, Lewis & Bockius LLP
One Federal Street | Boston, MA 02110-1726
Direct: +1.617.951.8775 | Main: +1.617.951.8000 | Fax: +1.617.951.8736
sabin.willett@morganlewis.com | www.morganlewis.com
Assistant: Kristina M. Cherubin | +1.617.951.8432 | kristina.cherubin@morganlewis.com

From: Willett, P. Sabin
Sent: Tuesday, January 31, 2017 11:12 AM

To: 'rayford.farquhar@usdoj.gov'; 'ellen.souris@usdoj.gov'; 'keara.martin@usdoj.gov'; 'katherine.j.shinners@usdoj.gov'
Cc: 'Matthew Segal'; Frost-Davies, Julia; Kaufman, Noah J.; 'stationmanagerzrh@swiss.com'; 'sipo@swiss.com'
Subject: MOST URGENT/Asgari//no. 17-cv-10154, Tootkaboni et al. v. Trump et al.

Dear counsel –

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Please confirm to the two Swiss CCs asap in writing that she has permission pursuant to paragraph D of Judge Burroughs' order issued Jan. 29, 2017, and that there will be no difficulties upon arrival.

Need asap, plane is now boarding.

Very truly yours,

SW

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