

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

REIHANA EMAMI ARANDI, )  
 )  
 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; MICHAEL S. DENNING, )  
 Director, Field Operations, Boston Field Office, )  
 U.S. Customs and Border Protection, in )  
 his official capacity; )  
 DEPARTMENT OF HOMELAND SECURITY; )  
 CHAD WOLF, Acting Secretary, )  
 Department of Homeland Security, )  
 in his official capacity, )  
 )  
 Defendants. )

Case No.: 19-cv-12351

FIRST AMENDED COMPLAINT  
FOR DECLARATORY  
AND INJUNCTIVE RELIEF  
FOR VIOLATION OF THE  
ADMINISTRATIVE  
PROCEDURES ACT

1. Plaintiff, Ms. Emami Arandi, through undersigned counsel, is seeking an order from this Court declaring that Defendant U.S. Customs and Border Protection (“CBP”) unlawfully failed to provide a reason for denying her motion to rescind an expedited removal order and ordering the Court to compel CBP to provide a reason.
2. Plaintiff filed a timely motion to rescind an expedited removal order on October 18, 2019, requesting that CBP adjudicate it by October 25, 2019. Given CBP’s delay in deciding the motion, Plaintiff filed this mandamus petition on November 14, 2019. Plaintiff requested that the Court instruct CBP to expeditiously adjudicate the motion in order to allow her to commence her Master’s degree in Theological Studies at Harvard Divinity School this academic year.

9. 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. Defendants Linda Brown and Michael Denning are located in this District. CBP at Boston Logan issued the expedited removal order, and that office is responsible for adjudicating the motion to rescind at issue here and for providing a reasoned explanation for that decision. 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**

10. Ms. Reihana Emami Arandi is a citizen and national of Iran.
11. 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), to rescind such orders, and to give a reasoned explanation for the basis for any denial.
12. 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 and to give a reasoned explanation for the basis for any denial.

13. Defendant Michael S. Denning is sued in his official capacity as Director of Field Operations for the Boston Field Office of CBP. In this capacity, Defendant Denning has the authority to adjudicate a motion to rescind an expedited removal order and to give a reasoned explanation for the basis for any denial.
14. 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 and to give a reasoned explanation for the basis for any denial.
15. 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).
16. 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). He has the authority to adjudicate a motion to rescind an expedited removal order and to give a reasoned explanation for the basis for any denial.

**FACTUAL ALLEGATIONS**

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

17. Plaintiff Reihana Emami Arandi is a 35-year-old Iranian citizen and national.
18. She was admitted to the Master of Theological Studies program at the Harvard Divinity School for the 2019–2020 academic year.
19. The program is highly competitive. In 2019, for the third year in a row, Harvard Divinity School was ranked #1 out of 100 institutions around the world.
20. Plaintiff was also accepted into a Master's degree program in Europe with full funding. However, Plaintiff chose to pursue her Master's degree at Harvard Divinity School because she hopes to obtain her doctorate and pursue a career in research and teaching in the Middle East and North Africa. A degree from Harvard Divinity School would launch her on that path.
21. Following her acceptance, Harvard University issued Plaintiff a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, which allowed her to apply for a student visa from the U.S. Department of State.
22. Plaintiff submitted her application for a student visa in May 2019.
23. As part of the visa adjudication process, Plaintiff attended an in-person interview at the U.S. Consulate in Dubai on May 23, 2019.
24. In addition, the State Department subjected Plaintiff's application to full review, screening, and security checks.
25. The State Department issued Plaintiff a student visa on September 11, 2019, after approximately 90 days of administrative processing.

26. Approximately one week after receiving her visa, Plaintiff traveled to the United States on September 18, 2019.
27. Plaintiff arrived at Boston Logan Airport at approximately 2:00 pm and presented her passport for inspection to a male CBP officer.
28. The CBP officer asked Plaintiff what country she was from and reviewed her Iranian passport with her F-1 student visa.
29. A CBP officer then took Plaintiff to another room for additional questioning.
30. Plaintiff voluntarily answered extensive questions posed by a CBP officer concerning whether she had family and friends in the U.S., her past employment, her siblings and their military service, as well as questions about her past travels and volunteer activities.
31. Many of the questions the CBP officer asked, and Plaintiff answered, were similar to questions she had answered during her visa interview at the U.S. Consulate in Dubai in May.
32. This questioning by CBP officers lasted over eight hours.
33. Throughout this time, Plaintiff repeatedly explained that she had no family ties or close friends here in the United States and that she was seeking to enter the United States to pursue her Master's degree at Harvard.
34. After over eight hours of intensive questioning, CBP refused to admit Plaintiff to enter into the United States and revoked Plaintiff's student visa.
35. CBP officers then issued Plaintiff an expedited removal order pursuant to 8 U.S.C. § 1225(b) based on their finding that she was inadmissible to the United States under 8 U.S.C. § 1182(a)(7) for having immigrant intent.
36. The expedited removal order renders Plaintiff inadmissible to the United States for a period of five years. 8 U.S.C. § 1182(a).

37. On or about 10:00pm, CBP officers placed Plaintiff on a flight to Doha thereby executing the expedited removal order.
38. On October 18, 2019, Plaintiff, through counsel, delivered by hand a motion to reopen and rescind the expedited removal order to CBP, Logan Airport, Port of Entry and CBP, Boston, MA, Port of Entry.
39. On Monday, October 21, 2019, Linda Brown, Boston Area Port Director and Michael Manning for CBP confirmed receipt of the motion in a telephone conversation in which Vice Provost for International Affairs Mark Elliott participated.
40. As a result of the expedited removal order, Plaintiff forfeited the opportunity to pursue her planned studies at Harvard Divinity School during the fall semester.
41. In addition, Plaintiff's life and career were left in limbo due to the expedited removal order, since she had given up her employment, at great expense, to pursue her studies at Harvard University.

**CBP's Duty to Adjudicate the Motion to Reopen and Rescind and  
CBP's November 26, 2019 Denial Letter**

42. 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).
43. Defendants have the legal authority to grant or deny the motion to reopen and rescind under 8 C.F.R. § 103.5(a).
44. Plaintiff, through counsel, timely filed the motion within 30 days of the September 18, 2019 expedited removal order with the appropriate CBP officials. 8 C.F.R. § 103.5(a)(1)(i).
45. As the motion to reopen and rescind attached hereto as Exhibit A sets forth, the expedited removal order was unlawful.

46. Yet, by letter dated November 26, 2019, attached hereto as Exhibit B, Michael S. Denning, CBP, Director Field Operations, Boston Field Office, denied the motion to rescind the expedited removal order—without any explanation or reason.
47. CBP has a duty to explain its basis for denying Plaintiff's motion to rescind. 5 U.S.C. § 706(2); *see, e.g., Halo v. Gonzales*, 419 F.3d 15, 18–19 (1st Cir. 2005) (noting that administrative agencies must set forth the basis for their decisions “with such clarity as to be understandable” (internal quotations omitted)).
48. Plaintiff will be applying for a new student visa in conjunction with an I-212 waiver of the expedited removal order to pursue her Master's at the Harvard Divinity School as planned. 8 U.S.C. § 1182(a)(9)(A)(i), (iii); I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, <https://www.uscis.gov/i-212>.
49. The U.S. State Department consular officer has authority to recommend that the waiver be granted by DHS, 9 FAM 302.11-2(B)(5), and knowing the basis of the denial will inform the preparation of the waiver.
50. Given that CBP ultimately decides whether to grant or deny the waiver, Plaintiff will need to adequately address any concerns the State Department or CBP may have. She cannot do so without some explanation as to why she received the expedited removal order in the first place and why the motion to rescind was denied.

## CAUSES OF ACTION

### COUNT ONE

#### Administrative Procedures Act Review (Violation of the Administrative Procedures Act)

51. Petitioner hereby incorporates paragraphs 1 through 50 by reference.

52. The Administrative Procedure Act (“APA”) (5 U.S.C. §§ 551, et seq.) authorizes suits by “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action.” 5 U.S.C. § 702.
53. Section 706(2) mandates that a court can “hold unlawful and set aside agency actions, findings and conclusions” where, as here, those agency actions are “[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A); see *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 414 (1971) (“In all cases agency action must be set aside if the action was ‘arbitrary, capricious, an abuse of discretion or otherwise no in accordance with law’ or if the action failed to meet statutory, procedural, or constitutional requirements.”).
54. Agency action includes “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act[.]” 5 U.S.C. § 551(13). The definition of “agency action” thus encompasses denial of the motion to rescind the expedited removal order.
55. An agency abuses its discretion in denying a motion to reopen, where the agency “commit[s] an error of law or exercise[s] its judgment in an arbitrary, capricious, or irrational way[.]” See *Bolieiro v. Holder*, 731 F.3d 32, 36 (1st Cir. 2013) (internal quotations omitted). For purposes of a motion to reconsider, an agency abuses its discretion where “the denial was made without a rational explanation.” *Id.* (internal quotations omitted). Moreover, “a reviewing court . . . must judge the propriety of [administrative] action solely by the grounds invoked by the agency, and that basis must be set forth with such clarity as to be understandable.” *Id.* (internal quotations and citations omitted). See also *Sihotang v. Sessions*, 900 F.3d 46, 51 (1st Cir. 2018) (noting that the administrative



appeals body “cannot turn a blind eye to salient facts” or arguments); *Onwuamaegbu v. Gonzales*, 470 F.3d 405, 412–13 (1st Cir. 2006) (finding it “extremely problematic for appeals courts to assess an exercise of the BIA’s discretion absent a reasonably clear signal as to the precise rationale for its exercise of discretion” and vacating and remanding for written clarification); *Song Jin Wu v. INS*, 436 F.3d 157, 164 (2d Cir. 2006) (“It is not the function of a reviewing court in an immigration case to scour the record to find reasons why a BIA decision should be affirmed.”).

56. Notwithstanding the discretionary nature of a motion to reopen and rescind an expedited removal order, this Court has authority to review CBP’s decision, where, as here, “the refusal was based on legal error.” See *Bonilla v. Lynch*, 840 F.3d 575, 579 (9th Cir. 2016) (“[W]e hold that we have authority to review refusals to reopen *sua sponte* to the limited degree that the refusal was based on legal error.”); see also *Mahmood v. Holder*, 570 F.3d 466, 469 (2d Cir. 2009) (“[W]here the Agency may have declined to exercise its *sua sponte* authority because it misperceived the legal background and thought, incorrectly, that a reopening would necessarily fail, remand to the Agency for reconsideration in view of the correct law is appropriate.”). CBP’s failure to provide any reason for its denial of the motion to rescind constitutes legal error, which under the APA, it must correct by setting forth reasons for its decision.

57. CBP’s failure to provide a reason for its denial of the motion is thus arbitrary and capricious and contrary to law and violates Plaintiff’s statutory and regulatory rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court to:

- a. Assume jurisdiction over this matter;
- b. Declare arbitrary and capricious and contrary to law CBP's failure to provide a reason for its denial of Plaintiff's motion to reopen and rescind;
- c. Order Defendants to provide a reason for their denial of Plaintiff's motion;
- 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: December 13, 2019

Respectfully submitted,

/s/ Susan Church

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