

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**MOTION TO EXCLUDE OPINIONS OF
BERNARD SISKIN**

NOTE FOR MOTION CALENDAR:
Friday, April 9, 2021

FILED UNDER SEAL

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I. INTRODUCTION

In this class action, Plaintiffs challenge the Controlled Application Review and Resolution Program (CARRP) on various grounds, including that it violates the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA), denies applicants due process, and discriminates against applicants from Muslim-majority countries. Defendants have provided expert reports from Dr. Bernard Siskin, a statistician whose experience is primarily in employment discrimination and fair lending. Dr. Siskin analyzed data disclosed by U.S. Citizenship and Immigration Services (USCIS) related to the processing and adjudication of applications for naturalization and adjustment of status, including those referred to CARRP, and offered a series of opinions related to CARRP and Plaintiffs' allegations.

Three distinct portions of Dr. Siskin's opinions fall short of the standard for admissibility. First, Dr. Siskin cannot validly opine on the costs and benefits of CARRP, or its overall value as a program, because those matters are outside his knowledge and expertise. Second, Dr. Siskin's opinion regarding the significance of USCIS's reliance on third-agency information is beyond his knowledge and rests on a false premise: that USCIS lacks the means or obligation to assess such information independently when using it to adjudicate immigration benefits applications. Third, the regression analysis Dr. Siskin performed, and the opinions derived from it, are unreliable. Through his regression analysis, Dr. Siskin attempted to identify factors that might explain CARRP's undisputed disparate impact on applicants from Muslim-majority countries. But the data and information he relied on for the analysis are fundamentally flawed, biased, and illogical. These defects render Dr. Siskin's regression analysis and resulting opinions inadmissible.

Plaintiffs do not seek to exclude Dr. Siskin's opinions in their entirety. The specific opinions at issue in this motion, however, are not the product of reliable data, principles, and methods. They should be excluded.

II. BACKGROUND

The parties initially exchanged expert disclosures on February 28, 2020. On that date, Defendants served an 89-page report from Dr. Siskin. Declaration of Hugh Handeyside

1 (“Handeyside Decl.”), Ex. A (“Original Report”). On May 15, 2020, Defendants notified
2 Plaintiffs of an error they had discovered in the USCIS data they had previously provided to Dr.
3 Siskin and to Plaintiffs’ statistical expert. *See* ECF No. 424 at 4-5. Because of that error,
4 Defendants produced revised USCIS data on June 12, 2020, and the parties agreed that the
5 statistical experts and any other of Plaintiffs’ experts who had considered the erroneous data in
6 their reports would issue updated reports in light of the revised data. ECF No. 359 at 4-5.
7 Plaintiffs served updated reports from their non-statistical experts on July 1, 2020, and
8 Defendants provided an updated report from Dr. Siskin on July 17, 2020. Handeyside Decl., Ex.
9 B (“Amended Report”).

10 Dr. Siskin’s Amended Report differs in key respects from his Original Report and goes
11 far beyond incorporating and analyzing the revised USCIS data. At 137 pages, the Amended
12 Report is significantly longer than the Original Report, and it includes a regression analysis and
13 related set of conclusions that are entirely new and were not included in his Original Report. Ex.
14 B at 5, 23-28, 30-31, 105-130, 134 ¶ 12. Dr. Siskin acknowledged at his deposition that he could
15 have included a regression analysis in his Original Report. Handeyside Decl., Ex. C at 61:16-
16 62:7. He testified that he added the regression analysis because, after the February 2020
17 exchange of expert disclosures, it “became clear that there was a big issue” regarding “what can
18 or cannot be concluded from the fact that there was a disparate impact” in CARRP referrals for
19 nationals of Muslim-majority countries. *Id.* at 60:11-61:8.

20 On August 7, 2020, Plaintiffs served a report by Dr. Marc Sageman responding to aspects
21 of Dr. Siskin’s Amended Report. Handeyside Decl., Ex. D. Defendants issued another responsive
22 report from Dr. Siskin on October 13, 2020. Handeyside Decl., Ex. E (“Responsive Report”).

23 III. ARGUMENT

24 A. Standard for Admissibility of Expert Testimony

25 For expert testimony to be admissible, the expert must be qualified to offer it, and the
26 testimony must be helpful to the trier of fact, “based on sufficient facts or data,” and “the product
27 of reliable principles and methods.” Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharm.*,

1 *Inc.*, 509 U.S. 579 (1993). “Rule 702 demands that expert testimony relate to scientific, technical
 2 or other specialized knowledge, which does not include unsubstantiated speculation and
 3 subjective beliefs.” *Cooper v. Brown*, 510 F.3d 870, 942 (9th Cir. 2007) (citing *Daubert*, 509
 4 U.S. at 590). Nor do courts permit expert testimony that supplants the role of the trier of fact or
 5 “invades the province . . . of the court to make ultimate legal conclusions.” *Sundance, Inc. v.*
 6 *Demonte Fabricating Ltd.*, 550 F.3d 1356, 1364 (Fed. Cir. 2009). The proponent of expert
 7 testimony bears the burden of proving admissibility under Rule 702. *Cooper*, 510 F.3d at 942.

8 **B. Dr. Siskin Cannot Opine on CARRP’s Overall Value or Legitimacy.**

9 Dr. Siskin repeatedly opines on the overall utility of CARRP, including its costs and
 10 benefits. He lacks the expertise and knowledge required to offer such opinions. He is not an
 11 expert in national security, terrorism or counterterrorism, intelligence, immigration, or USCIS
 12 procedures. Ex. C at 20:8-21:11. Indeed, Dr. Siskin himself conceded that whether CARRP is
 13 “worth it or not involves really a lot of assessments of the policy in terms of the costs associated
 14 with each error, the frequency of making the errors That’s really well beyond my expertise.”
 15 *Id.* at 164:19-165:8.

16 In both his Original and Amended Reports, Dr. Siskin states that “the cost of delay to the
 17 applicant while he is processed in CARRP . . . does not outweigh the very serious cost of failing
 18 to refer an applicant who is a national security concern.” Ex. B at 15; Ex. A at 12. Yet when
 19 deposed, Dr. Siskin disavowed any knowledge of the purportedly “very serious cost of failing to
 20 refer an applicant who is a national security concern.” *Id.*; Ex. C at 143:4-145:13.¹ He clarified
 21 that “my *assumption* is that the program would not have been developed without there being that
 22 kind of cost.” Ex. C at 144:21-24 (emphasis added). Dr. Siskin’s assessment of the costs that
 23 CARRP imposes on applicants is similarly off base: he considers only delay in the adjudication
 24
 25

26 ¹ Dr. Siskin also states in his report that “failure to alert [a] Third Agency that a person-
 27 of-interest is requesting an immigration benefit could have adverse consequences to their
 28 investigation.” Ex. B at 13. But when asked to support that statement, he could identify no such
 consequences and testified, “That’s simply what I was told, that it could . . . adversely affect their
 investigation.” Ex. C at 104:5-14.

1 of their applications, discounting all other harms—including the potential for applications to be
2 wrongfully denied as a result of referral to CARRP. Ex. B at 13-15; Ex. C at 109:3-114:8.

3 In his Responsive Report, Dr. Siskin couches this baseless opinion in conditional
4 language, stating that “if the probability of being a national security ‘threat’ . . . is higher among
5 those in CARRP than among those not in CARRP, and if the expected cost of false negatives
6 outweighs the cost of false positives, then the CARRP program is statistically valid.” Ex. E at 45
7 (emphasis added). But Dr. Siskin knows nothing about either of those “ifs.” He assumes that
8 people referred to CARRP are more likely to be national security concerns, but he has no
9 specific information as to whether that assumption is correct. Ex. C at 158:18-159:12. For
10 instance, he testified that he has “no idea” and “would be an inappropriate expert” to assess
11 whether someone on the government’s terrorism watchlist is “likely to be a national security
12 concern.” *Id.* at 73:22-74:11.

13 Because of these flaws, Dr. Siskin’s opinions on CARRP’s costs and overall value reduce
14 to a truism: if the upsides of a program outweigh its downsides, it is worthwhile. Such opinions
15 will not “help the trier of fact . . . to determine a fact in issue.” Fed. R. Evid. 702(a). As Dr.
16 Siskin himself admits, “somebody has got to be making a judgment of the weighing of those
17 costs,” but “I am not that person.” *See also* Ex. C at 397:13-398:8.

18 **C. Dr. Siskin’s Opinions Regarding the Significance of Third-Agency Information Are**
19 **Unreliable and Unhelpful.**

20 Dr. Siskin opines on the significance of USCIS’s reliance on third-agency information for
21 CARRP referrals. He concludes that over 95 percent of referrals were based at least in part on
22 third-agency information—a level that, according to Dr. Siskin, “contradicts the allegation that
23 the reason that individuals from majority Muslim countries are more likely to be referred to
24 CARRP is based on USCIS developing information for referring them to CARRP or because of
25 an anti-Muslim bias on the part of USCIS.” Ex. B at 3. Similarly, he states that “a Third Agency
26 (not USCIS) was the first or only agency source supplying information that the applicant may be
27 a national security concern in 9 out of 10 cases. . . . This stands in direct contradiction of
28 Plaintiffs’ allegation that the Executive Orders under the current administration resulted in

1 ‘extreme vetting’ aimed at Muslim applicants and any anti-Muslim bias on the part of USCIS.”

2 *Id.* at 93-94; *see also id.* at 86-87.

3 These opinions fail to meet the standard for admissibility under Rule 702. First, Dr.
4 Siskin knows virtually nothing about the CARRP process or the nature or use of the third-agency
5 information at issue. He testified that he is “not an expert on the CARRP policies,” Ex. C at
6 91:3-15, and he disavowed knowledge of CARRP’s criteria, indicators, or vetting process, *id.* at
7 93:13-16, 94:7-23, 120:14-19, 130:4-23. He does not know what form the third-agency
8 information takes, nor does he have an understanding of the role of the FBI Name Check Process
9 or the federal watchlisting system in USCIS’s identification of national security concerns. *Id.* at
10 65:22-66:11, 70:22-71:13, 181:19-22, 182:8-13. Without any relevant knowledge as to how
11 third-agency information factors into the CARRP process, Dr. Siskin cannot validly opine that its
12 use does not reflect anti-Muslim bias. *See United States v. Chang*, 207 F.3d 1169, 1172 (9th Cir.
13 2000) (an expert witness “must have knowledge . . . relevant to such evidence or fact in issue.”)

14 Second, Dr. Siskin’s opinions regarding third-agency information rest on a false premise:
15 that referrals to CARRP based on third-agency information are “outside of USCIS’s discretion.”
16 Ex. C at 73:6-7. Not so. USCIS alone determines the criteria for referral to CARRP, including
17 whether third-agency information warrants referral. This is true even when it comes to KSTs—a
18 subset of applicants who are “automatically” referred to CARRP based on their placement on the
19 government’s master watchlist. *See id.* at 73:9-10. Indeed, Dr. Siskin acknowledged his
20 understanding that USCIS made the policy decision to automatically refer KSTs to CARRP.² *Id.*
21 at 75:7-21, 186:2-13.

22 Dr. Siskin’s premise is not only false, but legally insupportable. USCIS has an
23 independent obligation to assess and evaluate information relevant to adjustment or
24 naturalization, and to make its own determination of how to adjudicate applications. *See* 8 U.S.C.
25 §§ 1421 (sole authority to naturalize vested in USCIS), 1446(b) (examinations and consideration
26

27 ² As set forth in Plaintiffs’ motion for summary judgment, USCIS’s failure, *inter alia*, to
28 ensure that the third-agency information it considers is reliable and unbiased demonstrates that
CARRP is arbitrary and capricious in violation of the APA.

1 of information by USCIS), 1255(a) (authority to adjust status of applicant is within discretion of
 2 USCIS); 8 C.F.R. §§ 332.1 (designating USCIS officers “to conduct the examination for
 3 naturalization required under” the INA), 335.1 (USCIS investigation of applicants), 335.2
 4 (examination of applicants). Where USCIS has failed to exercise that independent judgment or
 5 has allowed another agency to operate as a proxy for USCIS, courts have found its conduct
 6 unlawful. *See, e.g., Nio v. Dep’t of Homeland Sec.*, 385 F. Supp. 3d 44, 49 (D.D.C. 2019)
 7 (USCIS policy on military naturalization was arbitrary and capricious in violation of APA
 8 because it obviated the need “for USCIS to conduct its own investigations of eligible
 9 applicants”); *Hong Wang v. Chertoff*, 550 F. Supp. 2d 1253, 1258 (W.D. Wash. 2008) (USCIS,
 10 not FBI, has mandatory duty to act on immigration benefits applications). USCIS is not absolved
 11 of responsibility for anti-Muslim bias in referrals to CARRP simply because information on
 12 which it relies for such referrals originates elsewhere.

13 Because Dr. Siskin lacks any knowledge of the third-agency information or how USCIS
 14 uses it, and because his opinions as to the significance of that information rest on the false
 15 premise that its use is nondiscretionary, those opinions are inadmissible.

16 **D. Dr. Siskin’s Regression Analysis and the Opinions Derived Therefrom Are**
 17 **Unreliable and Illogical.**

18 Dr. Siskin concedes, as he must, that “[i]n aggregate and over all the years, the CARRP
 19 policy has a disproportionate impact on Muslim applicants.” Ex. B at 74; *see also* Ex. C at
 20 372:13-373:5 (“There’s no disagreement that there’s a disparate impact in terms of being
 21 referred to CARRP from countries . . . which are predominantly Muslim-population countries.”).
 22 According to Dr. Siskin, the purpose of his regression analysis was to identify factors—other
 23 than applicants’ origin in a Muslim-majority country—that might explain CARRP’s disparate
 24 impact. Ex. B at 5. Based on the results of his regression analysis, Dr. Siskin concludes that
 25 “[t]here is strong statistical evidence that the level of terrorist events in a country and other
 26 factors, such as the magnitude of applications from a country and whether that country is a state
 27 sponsor of terrorism, explain a significant amount (two-thirds) of the variance in CARRP
 28 referrals[.]” *Id.* at 30. He further concludes that “[t]hese results mean that the disproportionate

1 share of referrals to CARRP of applications from applicants born in countries whose population
 2 is majority Muslim is not caused by anti-Muslim bias, but is a result of a high level of terrorist
 3 events in those countries.” *Id.*

4 Dr. Siskin’s regression analysis and related conclusions are flawed and misleading.

5 **1. The regression analysis relies on deeply flawed data on the level of terrorist**
 6 **events associated with countries.**

7 In attempting to quantify “the extent of terrorist events in a country,” Dr. Siskin relies
 8 exclusively on the Global Terrorism Database (GTD), which is maintained by the University of
 9 Maryland primarily through funding from the U.S. government.³ Ex. B at 114. But as Dr.
 10 Sageman explains, “[t]he GTD is not a reliable source of information for these purposes.” Ex. D
 11 ¶ 12. Notably, Dr. Sageman is a scholar and political sociologist with decades of experience in
 12 counterterrorism and terrorism research, including extensive experience examining and parsing
 13 the data in the GTD. Ex. D ¶¶ 15-30; *see also* Expert Report of Marc Sageman ¶¶ 1-9,
 14 Handeyside Decl., Ex. F. Dr. Siskin, by contrast, had no experience with the GTD prior to the
 15 preparation of his Amended Report. Ex. C at 291:15-19.

16 Dr. Sageman states that the numbers drawn from the GTD “appear completely arbitrary”
 17 when compared to “reliable information drawn from field research.” Ex. D ¶ 29. Thus, scholars
 18 focused on terrorism and political violence “who assemble reliable datasets all construct their
 19 own databases focused on the topic of their research. Those who do rely on GTD data tend not to
 20 be grounded substantively in terrorism research and are not aware of the various flaws in the
 21 database.” *Id.* ¶ 28. The GTD therefore does not provide data “of a type reasonably relied upon
 22 by experts in the particular field.” *See* Fed. R. Evid. 703.

23 Specifically, Dr. Sageman lays out three major flaws with the GTD. First, the GTD
 24 counts as “terrorism” conduct that occurred during insurgencies or civil wars—acts that differ
 25 fundamentally from terrorism but that, in the GTD, “are so numerous that they drown out all
 26 other terrorism incidents” and “distort the GTD’s overall data on terrorism trends.” Ex. D ¶¶ 18-
 27 19. Through his research, Dr. Sageman has “fact checked” the GTD against his own findings and

28 ³ *See* <https://www.start.umd.edu/data-tools/global-terrorism-database-gtd>.

1 has found it consistently overinclusive—including with respect to the United States, where the
2 richness of data makes it relatively easy for analysts to differentiate terrorism from other crimes
3 or acts of political violence. *Id.* ¶ 21. Thus, according to Dr. Sageman, “the GTD gets it wrong
4 even where it should be most likely to get it right.” *Id.* And while the GTD itself acknowledges
5 potential “definitional overlap” between terrorism and other forms of crime and political
6 violence, that acknowledgment “does not capture the significant extent to which the GTD
7 includes as terrorism acts that cannot validly be labeled as such.” *Id.* ¶ 20.

8 Second, Dr. Sageman has found that the GTD is plagued by “characterization flaws.” *Id.*
9 ¶ 25. The database “includes incidents about which there is insufficient information, and it lacks
10 internal consistency in tracking and categorizing incidents for which information is available.”
11 *Id.* Significant numbers of events are of unknown attribution, which “should be deeply unsettling
12 to any researcher,” because the lack of information about the alleged perpetrator precludes
13 further investigation and confirmation of “whether these incidents were terrorist incidents at all”
14 or were “entered into the GTD based on initial sensational press reports that are rarely later
15 corrected or later authenticated as terrorist incidents.” *Id.* During the course of his own field
16 research, Dr. Sageman has checked his findings against the GTD and has found “pervasive
17 flaws” in the GTD that render it “inaccurate and completely unusable.” *Id.* ¶¶ 26-27; *cf.* Ex. C at
18 294:2-11 (Dr. Siskin did not test search parameters in GTD against available data).

19 Third, the GTD exhibits another inherent flaw: “[I]t is not a neutral instrument.” Ex. D
20 ¶ 22. It “reflects the political orientation of the U.S. government as to what constitutes
21 terrorism—an orientation that not only differs drastically from that of other governments but also
22 shifts over time.” *Id.* Dr. Sageman has found that the GTD characterizes as terrorists or
23 insurgents those individuals or groups whose political views are not allied with the U.S.
24 government “to a far greater extent than those who are allied with the U.S. government.” *Id.*
25 While this kind of “systemic bias against non-U.S. allies” may be “unsurprising,” given that the
26 GTD is primarily funded through grants from the U.S. government, it places the GTD outside
27 what is reasonable for quantitative or statistical analysis. *Id.* ¶ 23; *see also, e.g., In re Baycol*
28

1 *Prods. Litig.*, 532 F. Supp. 2d 1029, 1040-42 (D. Minn. 2007) (inconsistent, non-neutral
2 underlying dataset necessitated exclusion of expert testimony, citing related cases).

3 In his report, Dr. Siskin erroneously minimizes the potential for errors in the GTD data.
4 He concludes that “one would expect that since the countries with the largest number of CARRP
5 referrals tend to be more authoritarian and less developed, the data for countries with many
6 referrals to CARRP should show an undercount of the number of attacks, which would likely
7 understate the reporting of terrorist events” because of purportedly greater controls on
8 information reporting in those countries. Ex. B at 116-17. But that conclusion is nothing more
9 than Dr. Siskin’s subjective assessment, made without reference to any research or
10 documentation—he simply notes, “they’re not first-world countries, they tended to be third-
11 world countries . . . that often have dictatorships.” Ex. C at 314:14-315:15. He further asserts that
12 “the countries . . . which are underdeveloped” are “more likely” to be “predominantly majority
13 Muslim countries.” *Id.* at 317:15-318:9. Without any foreign policy or national security
14 expertise, much less research-based findings, Dr. Siskin is plainly unqualified to make such
15 sweeping statements.

16 Because the GTD “is not grounded in valid science,” Ex. D ¶ 29, it cannot serve as a
17 basis for assessing the number of “terrorist events” associated with any given country, *see* Ex. B
18 at 27.

19 **2. Using a country’s designation as a state sponsor of terrorism as a variable**
20 **makes no sense.**

21 Also among the variables in Dr. Siskin’s regression analysis is “whether [a] country was
22 deemed a state sponsor of terrorism.” Ex. B at 27. Nowhere in Dr. Siskin’s report is there an
23 explanation of the source he used for such a designation, but he clarified in his deposition that he
24 had consulted the list compiled by the U.S. State Department, and that he does not know how or
25 according to what standard the State Department compiles the list. Ex. C at 364:3-12.⁴

26
27
28 ⁴ U.S. Dep’t of State, State Sponsors of Terrorism, <https://www.state.gov/state-sponsors-of-terrorism/>.

1 Dr. Siskin’s use of the State Department’s list of state sponsors of terrorism as a variable
 2 in his regression analysis is illogical and unhelpful. As an initial matter, as of the date of the
 3 Amended Report, the list consisted of only four countries, *id.* at 363:12-16—a glaringly
 4 inadequate variable for the purpose of analyzing data related to applicants from countries across
 5 the entire globe. Additionally, “the notion of state sponsorship of terrorism often means that the
 6 terrorists are not from the sponsoring state.” Ex. D ¶ 33. As Dr. Sageman observes, state
 7 sponsors typically support groups or individuals engaged in political violence in other countries,
 8 such that “[f]ocusing on the nationals of a state sponsor of terrorism ignores that the terrorists
 9 usually do not come from that country.” *Id.* And as a matter of simple logic, sponsorship of
 10 terrorism by a *state* says “nothing of predictive or probabilistic value” about whether *nationals of*
 11 that state are potentially involved in terrorism. *Id.* ¶ 36.

12 More fundamentally, the State Department’s list of state sponsors of terrorism is
 13 undeniably political. The criteria for inclusion in the list are vague, but a prerequisite appears to
 14 be that a state is deemed hostile to the United States. *Id.* ¶ 32. Placement on, or removal from, the
 15 list is often a means of exerting diplomatic leverage. For instance, the State Department removed
 16 Cuba from list in May 2015 as part of the restoration of diplomatic relations with that country,
 17 but the Trump administration placed Cuba back on the list, without any clear precipitating event,
 18 on January 12, 2021, immediately prior to the turnover in administrations.⁵ After the date of the
 19 Amended Report, the State Department removed Sudan from the list following negotiations that
 20 “bore all the hallmarks of transactional diplomacy.”⁶ For these reasons, the list cannot be used
 21 “to analyze the phenomenon of terrorism from a neutral perspective.” Ex. D ¶ 32. Thus, as Dr.
 22 Sageman concludes, “it is wholly illogical to use a state sponsorship of terrorism as a basis by
 23 which to explain or justify the disproportionate referral of nationals from that country for
 24 CARRP processing.” *Id.* ¶ 36.

26 ⁵ Dep’t of State, *supra* note 4. Dr. Siskin did not test the effect of the removal of Cuba
 27 during the period of his analysis. Ex. C at 364:22-365:22.

28 ⁶ Max Bearak & Naba Mohieddin, *U.S. lifts Sudan’s designation as a state sponsor of terrorism*, Wash. Post (Dec. 14, 2020), https://www.washingtonpost.com/world/africa/sudan-remove-state-terror-list/2020/12/14/7f119482-3d10-11eb-aad9-8959227280c4_story.html.

1 **3. The regression analysis is speculative and untethered from reality.**

2 Setting aside the unreliability of the individual variables Dr. Siskin used, the regression
3 analysis suffers from a broader problem: it reflects bald speculation about what may be driving
4 CARRP referrals, without any basis in verifiable facts or information.

5 In formulating the analysis, Dr. Siskin simply conjured variables based on his own
6 theorizing about factors that might correlate with CARRP referrals. In explaining why he chose
7 the number of terrorist events in a given country as a variable, Dr. Siskin stated that “the theory
8 is that the more terrorist events that occur in a country, the more likely it is that an applicant from
9 that country will have some association with terrorist actors and/or activities, thereby increasing
10 the likelihood that the applicant would be identified as a potential national security concern and
11 processed in CARRP.” Ex. B at 24; *see also* Ex. C at 257:12-258:2 (the variable “popped into
12 my mind because of my feeling that it might be correlated”). Similarly, he selected state
13 sponsorship of terrorism as a variable because “Iran stuck out as being an outlier in the data, and
14 then I started thinking . . . maybe—that’s a variable we might want to put in to explain it.” Ex. C
15 at 276:17-277:11.

16 But Dr. Siskin offers no reason to believe that his theories actually correspond to reality.
17 In formulating the parameters of the regression analysis, he did not consider the “indicators” that
18 USCIS actually uses for CARRP referrals, *id.* at 272:1-10, and he did not attempt a study of “all
19 of the factors that actually were being reviewed” by USCIS officers, *id.* at 252:1-8. He conceded
20 that he does not know whether or how often CARRP referrals are, in fact, based on some
21 association with suspected terrorist actors or activities in an applicant’s home country, as
22 opposed to some other basis. *Id.* at 250:18-251:2. He further acknowledged that nothing about
23 his findings would foreclose a scenario in which all CARRP referrals originated with the FBI
24 and had nothing to do with conduct overseas, 259:16-263:5. He agreed that it would have been
25 “more informative” if he had been able to assess the nature of the information that actually
26 prompts referrals to CARRP, but he was told such information “was not readily available.” *Id.* at
27 263:7-265:4. Dr. Siskin’s theories are simply guesses unmoored from facts.

1 Dr. Siskin took pains in his deposition to emphasize that his regression analysis was not
 2 meant to assess causality or identify the true reason for the disproportionate referral to CARRP
 3 of applicants from Muslim-majority countries—only to demonstrate that the variables he
 4 selected were correlated with CARRP referrals. *Id.* at 251:16-20, 258:11-22, 350:9-351:3. But
 5 those statements are at loggerheads with his report, in which he opines, “These results mean that
 6 the disproportionate share of referrals to CARRP of applications from applicants born in
 7 countries whose population is majority Muslim is not caused by anti-Muslim bias, but is a result
 8 of a high level of terrorist events in those countries.” Ex. B at 130. Either way—as a theory of
 9 correlation or an attempt to assess causation—the regression analysis is impermissibly
 10 speculative and divorced from fact. *See Cooper*, 510 F.3d at 942-43 (“Rule 702 demands that
 11 expert testimony relate to scientific, technical or other specialized knowledge, which does not
 12 include unsubstantiated speculation and subjective beliefs.”).

13 Finally, Dr. Siskin fails to consider whether a unitary factor drives multiple variables in
 14 his analysis: (1) the number of “terrorist events” as reported in the GTD, (2) whether a country
 15 has been designated a state sponsor of terrorism, and (3) the number of referrals to CARRP of
 16 applicants from Muslim-majority countries. For nearly two decades, the U.S. government’s
 17 national security apparatus has focused overwhelmingly on Muslims and nationals of Muslim-
 18 majority countries. Government agencies have expended vast sums conditioning their own
 19 officers and outside academic researchers to erroneously view Muslim “extremists” as the
 20 primary threat to the United States. *See* Ex. D ¶ 24. Dr. Siskin’s variables are inextricably bound
 21 up in the U.S. government’s targeting of Muslims and nationals of Muslim-majority countries.
 22 *See Reed Const. Data Inc. v. McGraw-Hill Cos., Inc.*, 49 F. Supp. 3d 385, 401-07 (S.D.N.Y.
 23 2014), *aff’d*, 638 F. App’x 43 (2d Cir. 2016) (expert’s regression analysis inadmissible due to,
 24 *inter alia*, multicollinearity). For this additional reason, his regression analysis is unreliable.

25 IV. CONCLUSION

26 For the foregoing reasons, Plaintiffs respectfully request that the Court exclude the
 27 opinions of Dr. Siskin as set forth above.

DATED: March 25, 2021

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