Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

- - -

ABDIQAFAR WAGAFE, et   :   NO.
al,   :

                          :   2:17-cv-00094-
        Plaintiffs,   :   RAJ
                          :

         v.   :   CONFIDENTIAL
                          :

DONALD TRUMP, President :
of the United States,   :
et al.,   :

                          :

        Defendants.   :

- - -

Friday, October 30, 2020
- - -

WebEx videotaped deposition of
BERNARD SISKIN, Ph.D., pursuant to
notice, was held beginning at 10:09 AM,
on the above date, taken stenographically
before Constance S. Kent, a Certified
Court Reporter, Registered Professional
Reporter and Notary Public.

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 1       ALSO APPEARING:

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 4       Sameer Ahmed

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 8       Brendan Moore

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10       Jacob Uscinowicz, Video Specialist

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 1                       -  -  -
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 3   Testimony of: BERNARD SISKIN, Ph.D.
 4   By Mr. Handeyside                   7
     By Mr. Taranto                     425
 5   By Mr. Handeyside                  427
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 9
     Exhibit       Supplemental Expert       96
10   Siskin-1      Report of Sean M.
                   Kruskol
11
     Exhibit       Amended Report by         97
12   Siskin-2      Bernard R. Siskin,
                   Ph.D., dated 7/17/20
13
     Exhibit       Document Label External  120
14   Siskin-3      Vetting, Bates
                   DEF-429774 through
15                 429777
16   Exhibit       Responsive Report by     353
     Siskin-4      Bernard R. Siskin,
17                 Ph.D., dated 10/13/20
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 5   Direction to Witness Not to Answer

 6   Page Line       Page Line      Page Line

 7   None

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15   Stipulations

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20   Question Marked

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22   None

23

24              THE VIDEOGRAPHER:   Good
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 1        morning.  We are now the record.

 2             This begins Videotape No. 1

 3        in the deposition of Dr. Bernard

 4        Siskin in the matter of Abdiqafar

 5        Wagafe v. Donald Trump, President

 6        of the United States, et al.

 7             Today is Friday,

 8        October 30th, 2020, and the time

 9        is now approximately 10:09 AM

10        eastern time.

11             This deposition is being

12        taken at WebEx virtual location.

13             The videographer is Jacob

14        Uscinowicz of Magna Legal

15        Services, and the court reporter

16        is Constance S. Kent of Magna

17        Legal Services.

18             Will counsel and all parties

19        present state their appearances

20        and whom they represent.

21             MR. HANDEYSIDE:  Hugh

22        Handeyside, American Civil

23        Liberties Union on behalf of the

24        plaintiff.
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 1              MR. TARANTO:  Leon Taranto,
 2       Department of Justice, Civil
 3       Division, on behalf of the
 4       defendants.
 5              MR. HOGLE:  And this is
 6       Charlie Hogle, American Civil
 7       Liberties Union on behalf of
 8       plaintiffs.
 9              MS. BRAGA:  Victoria Braga,
10       Department of Justice, on behalf
11       of defendants.
12              THE VIDEOGRAPHER:  Will the
13       court reporter please swear in the
14       witness.
15              BERNARD SISKIN, having been
16       first duly sworn, was examined and
17       testified as follows:
18                 -  -  -
19         E X A M I N A T I O N
20                 -  -  -
21   BY MR. HANDEYSIDE:
22       Q.   Good morning, Dr. Siskin.
23   My name is Hugh Handeyside.
24       A.   Good morning.
```

1   Yeah, most of my -- most of

2   work in all litigation is -- is in

3   applied statistical analysis, what you

4   can or cannot determine from the data,

5   and it's typically analyzing the patterns

6   of data and what the patterns will tell

7   you or not tell you.

8   Q.   Okay. And then just to be

9   clear, do you consider yourself an expert

10   in national security?

11   A.   No.

12   Q.   Terrorism or counter-

13   terrorism?

14   A.   No.

15   Q.   Intelligence?

16   A.   Well, are you asking about

17   my intelligence or an expert in

18   intelligence?

19   No, my specialty area and

20   the expertise I have is applying data and

21   I apply it various areas from healthcare,

22   patent to employment to fair lending,

23   analyzing what the data says about a

24   particular topic, but I'm typically not

Page 21

1   the subject matter expert in those

2   topics.

3   Q.   That makes sense.

4   So just to be clear, you

5   also don't hold yourself out as an expert

6   in foreign policy?

7   A.   That's correct.

8   Q.   Immigration?

9   A.   That's correct.

10   Q.   Or USCIS procedures?

11   A.   That's correct.

12   Q.   And have you ever testified

13   or consulted in a case involving

14   immigration issues?

15   A.   Yes, case involving -- it

16   was part of an employment case and it was

17   involving the use of H1 visas.

18   Q.   Do you recall the case name?

19   A.   Somebody versus Info

20   Systems.

21   Q.   And were you testifying or

22   consulting on behalf of Info System?

23   A.   That's correct.

24   Q.   Do you remember the time

1   information and to comment on whether or

2   not the statistics were being used

3   appropriately or whether they were not.

4   Q.   Okay. And on your original

5   report, which was dated February 28,

6   2020, you didn't include the regression

7   analysis that you included in your

8   amended report of July 17, 2020; is that

9   correct?

10   A.   That's correct.

11   Q.   Why didn't you include the

12   regression analysis in your original

13   report?

14   A.   Well, as -- after that

15   report, the discussion became clear that

16   there was a big -- you know, big issue as

17   to what was and was not said and what can

18   or cannot be concluded from the fact that

19   there was a disparate impact in the

20   likelihood of being sent to -- referred

21   to CARRP given that you were from a --

22   born in a country which is predominantly

23   Muslim population.

24   As a result, I really

1   started thinking about it, and that what

2   would be useful data, a more detailed

3   explanation of the difference between

4   causation and correlation and to test to

5   see whether or not there was any -- to

6   the extent there was evidence that the

7   disparate impact implied disparate

8   treatment.

9   Q.   Could you have included the

10   regression analysis in your original

11   report if you had wanted to?

12   MR. TARANTO: Objection,

13   calls for speculation and lack of

14   foundation.

15   BY MR. HANDEYSIDE:

16   Q.   Let me rephrase it this way:

17   Did you have all the data necessary to

18   include it at the time you compiled your

19   February 28th report?

20   A.   I did not include it because

21   I had not thought that was the

22   significant major issue at the time. If

23   I thought it was a significant major

24   issue at the time, if it had been raised,

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1   I could have included it.

2   Q.   Because you had all the data

3   that went into the regression analysis at

4   the time of your February 28th report; is

5   that right?

6   A.   It existed at that point.   I

7   didn't -- did not look for it.

8   Q.   I see.

9   Is there anywhere in your

10   original, amended or responsive reports

11   where you state the specific facts, data

12   or documents that you considered in

13   coming to your opinion?

14   A.   Not -- basically most of it,

15   no, is based on the data which was

16   supplied and it says that in the report.

17   And then I tried to, and I thought I did,

18   any data or specifics that I was relying

19   upon I put in the footnotes and cited.

20   Q.   I see.

21   So to the extent that you

22   considered anything aside from the data

23   that you received from USCIS, you're

24   saying that you cited it in the footnotes

1   security concern or institutions which

2   are abetting, aiding national security

3   issues.

4   It is -- that information

5   can be generated from parties outside

6   USCIS which they label third party, it

7   could be generated from USCIS

8   investigations themselves or some joint

9   combination thereof to refer, and that if

10   you're referred to the CARRP, they have a

11   series and methodology of -- of more

12   thorough investigations to verify that

13   somebody is or is not really a national

14   security concern and coordinations that

15   are necessary if they are a national

16   security concern.

17   Q.   Okay. And I -- I think I

18   heard you reference KSTs and -- and

19   that's a known or suspected terrorist,

20   correct?

21   A.   Right.

22   Q.   What -- what is your

23   understanding of what a KST is?

24   A.   There's a government process

1   identifying such people. That's about

2   it.

3   Q.   And do you have any

4   understanding of the role of the federal

5   watch listing system in USCIS's

6   identification of applicants who may pose

7   a national security concern?

8   A.   It was explained to me once

9   and I didn't really understand it and I

10   don't really have an ex -- a real

11   understanding of it.

12   Q.   And when you say it was

13   explained to you, was that in the context

14   of this lawsuit?

15   A.   In a conversation outside

16   this lawsuit with my daughter.

17   Q.   I see. And so you mentioned

18   KSTs, known or suspected terrorists. Do

19   you have any sense for within that

20   designation how many of those people are

21   known terrorists versus how many are

22   suspended terrorists?

23   A.   No idea.

24   Q.   And so it doesn't sound like

1   Q.   Okay.

2   A.   And that's it. I'm not

3   making any conclusions as to whether

4   somebody was to -- if somebody was

5   denied, whether he should have been

6   denied, whether he wasn't denied. I make

7   no statistical studies of anything of

8   that level which would require

9   potentially that type of information.

10   Q.   Okay. But you do understand

11   that people who are on the terrorist

12   watch list are automatically applicants

13   who are seeking either adjustment of

14   status for citizenship and who are on the

15   watch list are automatically considered

16   KSTs and subject to CARRP, correct?

17   A.   That's correct.

18   Q.   Do you have any knowledge of

19   the process for contesting placement on

20   the watch list?

21   A.   No.

22   Q.   Do you have any

23   understanding of the role of the FBI name

24   check process in USCIS's identification

1   of applicants who may pose national

2   security concerns?

3   A.   As I said, it's irrelevant

4   to my analysis.   No.

5   Q.   And you haven't reviewed any

6   documents describing how that name check

7   process works?

8   A.   That's correct.

9   Q.   And defendants didn't supply

10   you with any information about the role

11   of the name check process for use in your

12   analysis?

13   A.   No, and to point out in my

14   report, the information that I needed,

15   which they didn't supply me initially,

16   was the question of what was the source

17   of why somebody is going to be referred

18   to so you can determine whether that

19   source was from a third party, whether

20   that source was USCIS because they wanted

21   information with that.

22   So I did ask them to

23   determine that for me and they went and

24   designed a study to help determine that

1   Muslims -- applications from Muslim --

2   predominantly Muslim countries were sent

3   to CARRP was the result of USCIS's anti-

4   Muslim bias.

5   If the process of being sent

6   to CARRP to a certain extent is outside

7   of USCIS's discretion, and you pointed

8   out, for example, if you're on the KST

9   list -- KST list, you're automatically

10   sent to CARRP, it's not a discretionary

11   decision. So therefore, I wanted to know

12   what percentage of the discretionary

13   decisions were made by USCIS, how much

14   were really made by third-party agencies

15   outside their handling, and if they were

16   made by USCIS, did they

17   disproportionately appear to occur among

18   applicants from Muslim countries as

19   compared to applicants who are from

20   countries which are not predominantly

21   Muslim populations.

22   I wasn't judging whether and

23   I would be an inappropriate expert, it

24   would be inappropriate for me to draw any

1   conclusion as to whether because someone

2   is in the -- on the KST list is he likely

3   to be a national security concern and

4   therefore be vetted, are -- I have no

5   idea whether that's the case. I

6   wouldn't -- I have some personal opinion

7   on that, but it's clearly not an expert

8   opinion. And it would be inappropriate

9   for me, therefore, to give an opinion or

10   produce statistics which purport to

11   support or not support that.

12   Q.   So you deem it relevant

13   whether the source of the information is

14   internal or external to USCIS --

15   A.   Because of what -- the issue

16   that's being addressed. The issue being

17   addressed is that -- the claim is that

18   there is disparate impact on Muslims and

19   was that because of anti-Muslim bias as

20   people born in countries which were

21   predominantly Muslim. There were -- that

22   would answer and help address that

23   question.

24   Q.   Okay. And we'll get to that

1   in a little bit.

2   But if it's relevant where

3   the information comes from, I just want

4   to understand why it's not relevant how

5   that information is generated if it's

6   external to USCIS?

7   A.   You have a rule that says if

8   somebody is on the KST he's going to be

9   put in CARRP.   That's a policy decision.

10   Q.   And -- and whose policy

11   issues is that?

12   A.   USCIS.

13   Q.   Okay.

14   A.   USCIS, okay? Policy experts

15   can debate whether that's a good decision

16   or not. Okay? And that issue might be

17   to point out, you know, is it reasonable

18   to do that, is it reasonable to rely on

19   KST, why are you doing that, why that's

20   your rule. Okay? It's not

21   discretionary.

22   We know that impact it has

23   from the data, so what is there to study?

24   It's a policy. So there's nothing I can

1   still be determined to be a national

2   security concern.

3   Q.   What's your understanding of

4   USCIS's criteria for identifying people

5   who may be non-KST, national security

6   concerns?

7   MR. TARANTO: Objection,

8   lack of foundation.

9   THE WITNESS: That's what

10   CARRP investigations are supposed

11   to determine.   I don't -- and I'm

12   not an expert on the CARRP

13   policies.   I'm the wrong person to

14   be asking.   I don't -- it's not

15   relevant to what I'm doing.

16   BY MR. HANDEYSIDE:

17   Q.   Okay.

18   A.   In terms of, you know, my

19   analysis.

20   Q.   Okay.   Earlier in describing

21   the CARRP process, I think you did

22   mention indicators that USCIS uses.

23   A.   Right.

24   Q.   Do you have any

1   whether he really is, in which case he

2   then would be non-KST, national security

3   determined you didn't articulate the

4   linkage or you may conclude that I was

5   wrong and when we really get the

6   investigation, this person is not who I

7   thought he was and he really wasn't a KST

8   or he really wasn't a non-security

9   concern and he becomes a non-security

10   concern and gets referred back to the

11   normal vetting process and taken out of

12   CARRP and adjudicated outside of CARRP.

13   Q.   Okay. Do you have any

14   understanding what of those indicators

15   are specifically?

16   A.   No.

17   MR. TARANTO: Objection,

18   lack of foundation.

19   BY MR. HANDEYSIDE:

20   Q.   Have you reviewed any

21   documents describing USCIS's criteria for

22   identifying people who may be non-KST

23   national security concerns?

24   MR. TARANTO: Objection,

1   lack of foundation.

2   THE WITNESS: If it was in

3   the deposition that I read, I

4   would have skimmed right past it

5   because it wasn't relevant.

6   BY MR. HANDEYSIDE:

7   Q.   Okay. And do you have an

8   understanding how USCIS attempts to

9   resolve whether someone is or is not a

10   national security concern?

11   MR. TARANTO: Objection,

12   lack of foundation.

13   THE WITNESS: Other than

14   that's what the CARRP program is

15   supposed to do.

16   BY MR. HANDEYSIDE:

17   Q.   Specifically what steps

18   USCIS takes in doing that?

19   A.   No, I wouldn't the person to

20   ever analyze that from a -- that's a

21   policy issue, procedure issue. That's --

22   subject matter experts in that area would

23   be relevant, not me.

24   Q.   Okay. Let -- let's look at

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 1          adverse consequences to their

 2          investigation."

 3               Did I read that correctly?

 4       A.    Yes.

 5       Q.    What are the adverse

 6   consequences that you're referring to

 7   there?

 8       A.    That's simply what I was

 9   told, that it could affect their --

10   adversely affect their investigation.

11       Q.    You don't have any further

12   details about what those adverse

13   consequences might be?

14       A.    Correct.

15       Q.    And you -- you didn't rely

16   on any documents in making that

17   statement?

18       A.    No, I relied on the

19   information that I was supplied meeting

20   with people who are knowledgeable in the

21   process, and if that is an issue, you

22   would have to be defended and explained

23   by people who are knowledgeable in the

24   process and subject matter experts, not
```

 1   referring to, Counsel.

 2   BY MR. HANDEYSIDE:

 3   Q.   Well, let me rephrase.

 4   It seems that under both

 5   types, the error results when an

 6   application is approved, and I understand

 7   that you're -- we're talking not about an

 8   adjudicative error, we're talking about,

 9   you know, for -- for the purpose of this

10   analysis what constitutes an outcome

11   error, but in both scenarios it's an

12   approval.

13   I'm wondering, can a denial

14   also constitute an outcome error under

15   your typology?

16   A.   No.

17   Q.   And why is that?

18   A.   Because in this simple model

19   of an outcome, if you're sent as a

20   national security concern, the outcome

21   should be -- the outcome would be

22   negative. So if you're approved, the

23   assumption would have been you would have

24   been approved if you had been sent

1   through the other way. Okay?

2   If you're denied, you would

3   have been denied in either case, and if

4   you were denied because you were a

5   national security concern, then you were

6   denied. If you're denied in error, you

7   would have been denied in the error in

8   the other.

9   So the error is that you

10   would have been approved, but you could

11   have been approved faster. So the error

12   being sent to CARRP is that it takes

13   longer to get approved. Okay?

14   The error sending somebody

15   not to CARRP, okay, is they get approved.

16   That's the error there because he should

17   have been denied. Okay? So -- and these

18   errors are really two different types of

19   errors. The error relating to the

20   outcome of being sent to CARRP is you get

21   approved so that the problem -- the error

22   is it took too long to be approved.

23   The error occurring when you

24   send somebody in the routine process who

1   has national security concerns is he

2   should have been denied but you approve.

3   Okay? If you're trying to get to a

4   different type of error, okay, we would

5   have no way of knowing that because we

6   don't know who is actually a national

7   security concern that should have been

8   approved, should have been denied and who

9   was sent to -- who was not sent to CARRP

10 who was actually a national security

11 concern and should have been denied.

12   So we're -- we're

13 approximating the delay on one side that

14 shouldn't have taken place because he was

15 accepted anyhow, to the error -- the

16 error, which is the unmeasurable on the

17 other side of that being approved when he

18 should be denied.

19   Q.   Okay. I think I understand

20 that.

21   I -- I guess I -- in order

22 to make sure I understand, let me just

23 ask this: Does this -- does this

24 typology that you've selected assume that

1   if someone is denied through CARRP, that

2   the denial is warranted?

3   A.   Yes.

4   MR. TARANTO: Objection to

5   the question as vague.

6   THE WITNESS: Yeah, the

7   assumption here is if you're

8   denied benefits, the decision is

9   correct.

10   BY MR. HANDEYSIDE:

11   Q.   Okay.   And -- I don't want

12   to cut you off.   Go ahead.

13   A.   Okay.   The assumption is if

14   you're denied in CARRP, the decision is

15   correct.

16   Q.   Okay.   And so the -- the

17   typology does not account for the

18   possibility of an inappropriate denial

19   through CARRP?

20   MR. TARANTO: Objection,

21   vague as to what is meant by

22   inappropriate.

23   THE WITNESS: The assumption

24   is that the denial that takes

1   place in CARRP is -- nothing is

2   ever always 100 percent perfect,

3   but it's correct. There's a basis

4   and it's correct.

5   BY MR. HANDEYSIDE:

6   Q.   Okay. And so there isn't

7   room in that typology to characterize an

8   instance where someone is eligible for a

9   benefit, is not a national security

10 concern, is nonetheless referred to CARRP

11 and is denied?

12   A.   Well, if he was -- he would

13 have been denied in the routine process,

14 you're correct. Your assumption would

15 have been he was correctly denied in the

16 routine. Because if he was not a

17 national security concern, they know that

18 he's supposed to be sent back to the

19 routine process.

20   Q.   Okay. So --

21   A.   But he's -- but he's denied.

22 The assumption is that that's a correct

23 decision.

24   Q.   Okay. So it would have --

1   so if somebody would have been granted --

2   under the routine process is eligible, is

3   referred to CARRP and is denied, do you

4   have a means of accommodating or

5   characterizing that through your

6   typology?

7   A.   In the typology it's not an

8   outcome error.

9   Q.   It's not an outcome error.

10   A.   And again, as I said in the

11   report, we're not talking about here is

12   the process right, was the ultimate

13   decision correct. That's beyond the --

14   the decision.

15   Q.   I'm just trying to

16   understand what the assumptions are in --

17   in coming to that --

18   A.   Okay.

19   Q.   -- dichotomy.

20   On page 13, just above

21   that -- that bottom paragraph that you

22   read earlier, I note that you say:

23   "The purpose of CARRP is to

24   review" -- sorry.

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 1          this an exhibit?

 2               MR. HANDEYSIDE:  It is.

 3          We'll mark this as Exhibit 3.

 4               (Exhibit No. Siskin-3,

 5          Document Label External Vetting,

 6          Bates DEF-429774 through 429777,

 7          was marked for identification.)

 8  BY MR. HANDEYSIDE:

 9          Q.   Dr. Siskin, are you familiar

10  with this document as far as you can

11  tell?

12          A.   No, I'm not familiar with

13  it.

14          Q.   Are you familiar with what

15  USCIS calls external vetting?

16          A.   Not specifically, no.

17          Q.   Are you familiar with the

18  term lead vetting?

19          A.   No, not specifically.

20          Q.   All right.  And if -- if we

21  can just take a moment and scroll through

22  so that you can familiarize yourself with

23  this document.  It's not very long, and

24  just let -- let us know if you're ready
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 1          is not -- doesn't -- in my opinion

 2          does not make that an error.

 3    BY MR. HANDEYSIDE:

 4          Q.    Okay.  Is it your

 5    understanding that it's okay to deny

 6    someone who is a national security

 7    concern?

 8                MR. TARANTO:  Objection,

 9          lack of foundation, calls for

10          speculation and calls for legal

11          opinion.

12                THE WITNESS:  I do not have

13          an opinion on that directly, but I

14          think as a layperson, and my

15          understanding is if somebody is a

16          national security concern, that

17          may be a reason why you would not

18          give him citizenship or not give

19          him a benefit.  I would be

20          surprised if it isn't, but it -- I

21          don't -- as I said, that's not my

22          expertise area.  I can't really

23          answer that question.

24    BY MR. HANDEYSIDE:
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1   I'm not the expert that could say, hey,

2   this is this cost, and this is the cost

3   of Type 1 and this is the cost of Type 2.

4   Q.   Okay.   So for the purpose of

5   this cross benefit analysis that you've

6   done here, the assumption is that there

7   is a very serious cost of failing to

8   refer an applicant who is a national

9   security concern?

10   A.   Well, there's two questions

11   that you're asking.

12   When I say "if," I'm saying,

13   yeah, the cross benefit assumes that

14   otherwise you wouldn't have done this

15   decision.   You wouldn't have this program

16   ever set up if that were not the case,

17   somebody didn't make that decision.   But

18   I'm not the one that made that decision

19   or I'm not the one who studied whether

20   that decision is on what the basis for

21   that decision was made.

22   Q.   That's fair.

23   Did the defendants provide

24   you with any information relevant to that

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1   statement?

2   MR. TARANTO: Objection,

3   Counsel, vague.   I'm not sure

4   exactly which statement you're

5   referring to here.

6   MR. HANDEYSIDE: I'm talking

7   about the statement that there is

8   a very serious cost of failing to

9   refer an applicant who is a

10   national security concern.

11   MR. TARANTO: Thank you.

12   THE WITNESS: Let me answer

13   that two ways: One is, no.   The

14   direct answer to your question,

15   no, they did not.   Nor would I ask

16   them for it or expect them to say

17   it.

18   The statement that I make

19   that it is a high cost is based on

20   the fact that the program exists,

21   so therefore, my assumption is

22   that the program would not have

23   been developed without there being

24   that kind of cost.   There would

1   have been no reason for it. But

2   the actual assessment and so forth

3   is not something that I did nor

4   would I be the appropriate person

5   to do that, and I make -- I

6   generally put "if," but I let it

7   slide sometimes because my -- I

8   think given the fact that the

9   program exists and was set up that

10   somebody obviously believes

11   there's a high cost to it, and if

12   there wasn't, they would never

13   have set up this program.

14   BY MR. HANDEYSIDE:

15   Q.   Okay. Thank you.

16   And similarly on --

17   referring here again to page 15 at the

18   bottom, the last sentence on the bottom

19   there, if you could just read that.

20   Is it fair to say for the

21   purpose of your report, you assume that

22   the relative costs of failing to identify

23   national security concerns is vastly

24   greater than the cost of delaying

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 1          But I would assume, and I'm the

 2          wrong person to ask, I would

 3          assume when they say national

 4          security concern, it means that

 5          there are indications that there's

 6          a finite probability, more than

 7          zero probability, that that person

 8          might be involved in a future or

 9          is now might be aiding, abetting

10          or involved in -- in fraudulent

11          activities or terrorist

12          activities.

13   BY MR. HANDEYSIDE:

14          Q.    So but a possibility?

15          A.    Yeah.

16          Q.    That somebody has or will do

17   something in the future?

18          A.    Right.   And -- and the

19   assumption is that the people that are

20   considered national security concerns

21   have a -- the average probability of

22   those people likelihood occurring is

23   going to be much higher, significantly

24   higher than if I just randomly selected
```

1   ten people off the list and said, these

2   people, what's their likelihood.

3   Q.   And again, you -- you have

4   no specific information one way or the

5   other as to whether or not that

6   assumption is -- is true or not?

7   A.   No, and -- and as I said in

8   my report, I said that's the assumption

9   which statistically says the CARRP

10   program may be valid, not that it is

11   because it depends on what those numbers

12   are and the policy, et cetera. But

13   that's -- that's a requirement. That's

14   the -- if that's not true, then you --

15   then you have a problem and a lot of --

16   most of what I read in a lot of the

17   complaints about the CARRP program is the

18   high falsehood terrorist rate, which has

19   nothing to do with that statement as to

20   what the likelihood of the screening

21   device is and how good the screening

22   device is.

23   So those arguments which

24   seem to be consistently made as to why

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1   it, and that depends on the frequencies,

2   what you're trying to screen for.

3   Q.   And --

4   A.   That benchmark helps you but

5   not necessary.

6   Q.   Okay. Can you -- can you

7   assess the, you know, the -- the -- I

8   don't -- I know reliability is a term of

9   art, the validity of these tests without

10 an estimation of how frequently COVID

11 occurs in the population?

12   A.   You have to make some sort

13 of estimate when you're trying -- the

14 question is twofold: For the purpose of

15 determining could this test work, is the

16 screening device working, the answer is

17 no, as long as it separates the screening

18 device works to some extent.

19   Whether the screening device

20 is worth it or not involves really a lot

21 of assessments of the policy in terms of

22 the costs associated with each error, the

23 frequency of making the errors because

24 you're trying to make a cost benefit

1   unless whether the program is worth it.

2   That's a difficult question. That

3   requires a lot more information or

4   assumptions about what's going on, what

5   you're doing.

6   Q.   Okay.

7   A.   That's really well beyond my

8   expertise. That's really the question

9   which requires the people that are

10   developing this process, what they --

11   what they were thinking, how they were

12   assessing it, does what they were doing

13   make sense.

14   Q.   Okay. So if you have -- if

15   you have reason to believe that COVID is

16   an extremely rare disease, is that

17   relevant to assessing the validity and

18   reliability of the tests for COVID?

19   A.   Sure.

20   MR. TARANTO: Objection,

21   vague.

22   THE WITNESS: Think -- think

23   of New Zealand. They got it down

24   to zero but they recognize the

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 1          would have had less of an impact.
 2     BY MR. HANDEYSIDE:
 3          Q.    Okay.  All right.  Now, just
 4     moving on to some of your statements on
 5     page 3 there where you state that one of
 6     the bases for your opinion that CARRP is
 7     not biased against applicants from Muslim
 8     majority countries is that, and here I'm
 9     quoting:
10               "The vast majority, over
11           95 percent, of referrals to CARRP
12           for applicants who are born in a
13           majority Muslim country are based,
14           at least in part, on third agency
15           information."
16               Is that a correct statement
17     of your opinion?
18          A.    Correct.
19          Q.    And do you know what form
20     this third agency information takes?
21          A.    No, it's just information.
22     All I got was an indication.
23          Q.    Okay.  And we --
24          A.    You didn't mention as to
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1   what the course was, whether it was a

2   sole source, and whether there was more

3   than one source, whether it was the first

4   source.

5   Q.   I see. Yeah. And we did

6   talk about this earlier and -- and I

7   don't want to repeat anything that we did

8   earlier, I just, you know, I want to make

9   sure I understand that defendants didn't

10   provide you with any information about

11   the form that that third agency

12   information takes?

13   A.   Right.

14   Q.   Okay. What is the

15   significance in your opinion, excuse me,

16   of USCIS basing referrals to CARRP on

17   third agency information?

18   MR. TARANTO: Objection,

19   vague.

20   THE WITNESS: If the source,

21   and particularly if the primary

22   sole source, the first source is

23   coming from a third agency, then

24   the source of the data is not

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1   being specific enough.

2   It -- it's not your

3   understanding that some other agency is

4   telling USCIS what to do with these KST

5   applicants, correct?

6   MR. TARANTO: Objection,

7   lack of foundation, calls for

8   speculation.

9   THE WITNESS: I have no idea

10   how the policy is set up.   I would

11   assume that USCIS, it's their

12   policy, so they're the decision

13   maker in that respect.

14   BY MR. HANDEYSIDE:

15   Q.   Okay.

16   A.   It's -- what I'm saying is

17   the instructions are that the operation

18   of that is nonjudgmental. If you're on

19   the list, you're in CARRP.

20   Q.   Okay. And the decision

21   about -- about making that non-

22   judgmental, that was USCIS's decision,

23   right?

24   MR. TARANTO: Objection,

1   Q.   Okay. And I want to -- I do

2   want to come back to the -- the

3   correlation, and you know, the -- your

4   selection of the variables for your

5   regression analysis. But I -- I want to

6   go back to what we just read, the theory

7   underlying your selection of this

8   variable for the regression analysis,

9   which, as you said, is the theory that

10   the more terrorist events that occur in a

11   country, the more likely it is that an

12   applicant from that country will have

13   some association with terrorist actors

14   and activities, thereby increasing the

15   likelihood that the applicant would be

16   identified as a national security

17   concern.

18   And -- and what I wanted to

19   sort of get to initially as the threshold

20   matter is, do you know whether CARRP

21   referrals are, in fact, based on some

22   association with terrorist actors or

23   activities in the applicant's home

24   country as to some -- as opposed to some

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 1    other basis?

 2         A.    Oh, no.

 3              MR. TARANTO:  Objection,

 4         calls for speculation, lack of

 5         foundation.

 6              But you may answer if you

 7         can.

 8              THE WITNESS:  No, this could

 9         be the same thing that we were

10         observing strongly and more

11         predictive than the correlation

12         with the percent Muslim.  It may

13         be that these are -- I mean, these

14         factors predict.  That's not a

15         theory, that's -- that's science,

16         okay?  They do predict.  The

17         question is:  Is it causal or is

18         it correlation?

19              I am not saying that this

20         causal.  I picked this variable

21         because I thought it might be

22         correlated better with factors

23         which really matter than actually

24         the percent Muslim.  Okay?
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1   I don't have and I have not

2   done the type of study that one

3   might want to do, which is getting

4   information on all the factors

5   that actually were being reviewed,

6   I'm not sure I can get that data

7   or that data exists, okay, to

8   build a causal model. Okay?

9   And -- and that's a problem

10   that people have, and it's always

11   an issue that can't always be

12   solved. We can build models and

13   we build predictive models all the

14   time, and it's easy to build

15   predictive models, it's much

16   harder to build causal models.

17   The kind of metrics -- you know, I

18   guess typically you need a lot of

19   data -- a lot of the data which

20   causes things aren't available.

21   Causal models are better,

22   actually more reliable predictors

23   over time because they're actually

24   measuring the process, but

1   because I assumed I couldn't really get

2   those. I mean, I would have said, give

3   me the racial mix of the country of

4   origin for everybody on the terrorist

5   list, KST. Okay? I couldn't find that

6   in the data anywhere and I looked online

7   and I couldn't get that. You know,

8   there's -- there's some things you might

9   think about as causation, which I assume

10   is not going to be available at all, at

11   least I don't have access to it. Okay?

12   So then I think what type of

13   variables are more likely, just like

14   percent Muslim, to be correlated to show

15   that, you know, I could find another

16   variable that's correlated that's not

17   really Muslim population, and this is one

18   that popped into mind because of my

19   feeling that it might be correlated. So

20   this was a theory that it might be

21   correlated because of this -- there may

22   be a link, the real factors may be

23   correlated with this factor and they may

24   be more strongly correlated with this

1   factor than simply the percent Muslim in

2   the population.   Okay?

3   And it turns out I was

4   right, okay? But I do not conclude, and

5   I not concluding, and this study would be

6   as invalid as the study which is --

7   relies on the fact that there's a

8   correlation between Muslim and percent

9   Muslim, saying, ah, that's what causing

10   it. I'm not saying that.

11   I'm just saying that this is

12   a factor which is correlated to the

13   outcome, not necessarily causal, I'm not

14   making that statement, I'm not

15   necessarily even inferring that. I think

16   it's unlikely that it is directly causal,

17   though it may be correlated with it, and

18   that it illustrates that this is a factor

19   which is more significantly correlated,

20   much more significantly correlated, much

21   more predictive than the percent Muslim

22   that the country is. And in fact, once

23   you know this, the percent Muslim is not

24   predictive at all.

1   And that goes to just simply

2   the evidence, which I think it's pretty

3   impressive evidence, that -- that there's

4   not -- the data that exists doesn't

5   really show a pattern that the percent

6   Muslim of a country is the factor that's

7   being considered. Okay? Not it that it

8   doesn't have a disparate impact, but it's

9   not a disparate treatment issue. There's

10   no -- the data is inconsistent with the

11   concept that that's the factor that's

12   causing the referrals, because if it was,

13   then it wouldn't disappear when and I

14   would control for another factor, which

15   is not the population Muslim.

16   Q.   Okay. Again I want to make

17   sure I understand the scope of what

18   you're opining on.

19   Let's -- let's imagine that

20   100 percent of referrals to CARRP are, in

21   fact, based on, say, FBI letterhead

22   memorandum that it has to do with

23   applicants', you know, conduct inside the

24   United States. Is that scenario still

1   possible according to your analysis?

2   MR. TARANTO: Objection,

3   lack of foundation, and object as

4   vague.

5   THE WITNESS: Let me make

6   sure I understand your question.

7   It's an interesting question.

8   Is it saying suppose it

9   was -- suppose the only crucial

10   factor, the factor which

11   determines whether you're going to

12   be sent to CARRP is this FBI

13   message, okay, and everybody that,

14   quote, fails this investigation

15   goes to CARRP, if you don't fail

16   the investigation, you're not sent

17   to CARRP.   That's the hypothetical

18   you're giving me?

19   BY MR. HANDEYSIDE:

20   Q.   Right.   In other words, it

21   has nothing to do with -- with one's

22   activities back in the home country.   As

23   a hypothetical.

24   A.   What I would say is that --

1   these type of statistical results could

2   still occur, would occur under the

3   condition that the decisions made by the

4   FBI in doing this investigation, okay,

5   resulted in results which were correlated

6   with and would be correlated with both

7   percent Muslim of the country the

8   person's from, because we know there's a

9   correlation, and it would be correlated

10   with the percent of reported incidents of

11   terror in the home country.

12   And I would tell you -- I

13   can also tell you that it's more -- more

14   greatly correlated with the -- the number

15   of incidents in the home country than it

16   is with percent population, and while the

17   investigation may have nothing to do with

18   either of these variables, it does, in

19   fact, have a correlation.

20   Q.   Okay.

21   A.   So there's got to be some

22   indirect link to be that other

23   correlation. In other words, when rain

24   effected both, you can link, well, rain

1 affects the game being canceled, rain

2 affects some links. So there's some link

3 to the percent Muslim, more realistically

4 there's a -- there's some link to the

5 degree of -- of terrorist activities in

6 the country, but the investigation may

7 not in any sense measure that directly or

8 even in -- it may be picked up indirectly

9 because, you know, A causes B which

10 causes C, and they're looking at C and B

11 but not A. A's affecting B which in turn

12 affects C. So you can get all these

13 different causal links, and that's why,

14 as I told you, as a common, it's much

15 more harder to build a causal model.

16   Q.   Yeah.

17   A.   You have to -- but you've

18 got to be much more careful in trying

19 to -- in what you interpret when you see

20 a predictive model.

21   Q.   Okay. And so nothing about

22 your findings forecloses the scenario

23 that I put forth; is that right?

24   MR. TARANTO: Objection,

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1   vague.

2   THE WITNESS: No, your

3   scenario could -- could be true

4   and the data would be -- would not

5   disprove that.

6   BY MR. HANDEYSIDE:

7   Q.   Okay.   In -- in running your

8   analysis on -- particularly using this

9   variable, would it have been helpful to

10   have information about the extent to

11   which or the -- let me rephrase -- the

12   nature of the information that does, in

13   fact, prompt referrals to CARRP?

14   MR. TARANTO: Objection,

15   vague.

16   THE WITNESS: What I think

17   you're saying, what I actually

18   said, if I could get the data on

19   all the actual processes, yes, it

20   would be more informative.   I

21   could build a causal model as to

22   what's causing the disparate

23   impact.

24   BY MR. HANDEYSIDE:

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1   Q.   Okay.

2   A.   And if you're -- and more

3   importantly, typically what happens in

4   these circumstances, somebody says this

5   is the practice that's causing it,

6   causing this disparity, and then I try

7   and get information on that practice and

8   then we can determine whether that

9   statement is true or not.

10   So if you narrowed it down

11   further and then, you know, it would help

12   to do that type of study.

13   Q.   Okay. And then did the

14   defendants provide you with any

15   information about the nature of the

16   information prompting the referrals?

17   A.   Well, back up. I'm not

18   sure. The -- I asked them if they're

19   challenging any specific practice and

20   they said no. And I think that's a

21   footnote in my report that I was not -- I

22   didn't find or anybody told me there's

23   any specific practice being challenged.

24   I think I did ask about

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1   whether -- what type of data could -- you

2   can get on KST and I think I was told,

3   you know, that type of data that I was

4   asking for was not readily available.

5   Q.   And then what about the

6   rest, for referrals that are not based on

7   KST status?

8   MR. TARANTO: Objection,

9   vague. Question is incomplete to

10   the extent that you may be asking

11   about information provided by

12   counsel. What you're allowed to

13   inquire into is strictly limited

14   by Rule 26. If it's material that

15   he reviewed or relied upon for his

16   report, you're entitled to know

17   that. But if it's not, then

18   you're on a fishing expedition and

19   seeking what you're not entitled

20   to.

21   MR. HANDEYSIDE: Why

22   don't -- why don't I just

23   rephrase?

24   BY MR. HANDEYSIDE:

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1   And just to close out this

2   issue, I'm also wondering if in

3   formulating the parameters for the

4   regression analysis or in executing the

5   analysis, you reviewed the non-KST

6   indicators that we discussed earlier that

7   USCIS uses for CARRP referrals in

8   designing that analysis?

9   A.   No. It wouldn't be

10   relevant.

11   Q.   Okay. And is it -- is it an

12   assumption that's built into your

13   regression analysis that some referrals

14   are indeed based on applicant's potential

15   association with terrorist actors or

16   activities in your -- in their home

17   countries or -- or is that not an

18   assumption?

19   A.   Again, it was an assumption

20   that I used to try and pick this variable

21   as an illustration. Okay? I was trying

22   to find a variable which I thought would

23   have predictive correlation, not causal,

24   but predictive correlation. And the

1   A.   I think I asked somebody is

2   the terrorist watch list information

3   public information, can we get the names

4   and addresses, you know, country of

5   origin of people on that list, and I

6   think I was told no, it's not public

7   information. It may have been -- you

8   never remember in today's world.

9   Q.   Sure. Okay. And then in

10   terms of the second variable, the number

11   of applications from persons born in that

12   country, is that just a variable that

13   seemed a natural choice?

14   A.   Yeah, that's a variable you

15   have and it seems obvious it can be

16   correlated.

17   Q.   Okay. And then the third

18   variable we already discussed, and then

19   the fourth is whether that country was

20   deemed a state-sponsored terror --

21   terrorism. How did you arrive at the

22   decision to use that variable?

23   A.   I looked at the data and

24   being the first, I thought I saw that I

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1 ███████████████████████████████

2 ███████████████████████████████

3   thinking, and you know, why, you know, so

4   I thought maybe -- that's a variable we

5   might want to put in to explain it, and

6   actually, as I pointed out when it was

7   raised, the question, I put it in because

8   it lowered the correlation, I didn't want

9   to confound it with terrorist events into

10   percent Muslim. It seemed that it might

11   be an issue in its own right and it was.

12   Q.   Okay. So in -- aside from

13   the content of the terrorist watch list,

14   did you consider using any other

15   variables aside from these four?

16   A.   No. There was another

17   public -- if I remember right, there was

18   another public list on terrorism, and I

19   decided it was -- it wasn't really

20   valuable for the illustration to put both

21   in. It wasn't clear that that was -- it

22   wasn't clear -- I remember it was clearly

23   not as well documented as the University

24   of Maryland list. But other than that, I

1   very few degrees of freedom for

2   the other variables.

3   BY MR. HANDEYSIDE:

4   Q.   Is that something that you

5   considered doing?

6   A.   No.

7   Q.   Why not?

8   A.   I wasn't interested in age

9   and sex in this case, I was interested in

10   determining what the effect is of the

11   predictive ability of percent Muslims

12   when you control for another factor which

13   you think is going to be predictive and

14   correlated to both outcomes.

15   Q.   Prior to the -- prior to

16   your preparation of this report, did you

17   have any experience with the global

18   terrorist database?

19   A.   No.

20   Q.   And just for the purposes of

21   discussion I'm going to refer to it as

22   the GTD if that's okay.

23   A.   That's fine.

24   Q.   And in your report, starting

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1   database presents -- gives them.

2   Q.   Right. So what I'm asking

3   is then did you -- did you enter in

4   search parameters into the GTD, check the

5   results and determine whether or not

6   incidents that were categorized as

7   incidents of terrorism were, in fact,

8   incident of terrorism and not incidents

9   of genocide, insurrection, insurgency or

10   civil unrest?

11   A.   No, of course not.

12   Q.   Why not?

13   A.   That might be relevant if

14   you're trying to make this a causal

15   model. It's not a causal model, it's a

16   predictive model. I never viewed this as

17   a causal model. So my concerns of this

18   database of inaccuracy focused really

19   on -- only on one issue, and this is an

20   issue which I guess if you think about

21   building a model for predictive purposes,

22   okay, if there's errors in the data and

23   they are unreliable, random, mixing

24   people with other people, if what -- if

 1   third line up, you say:

 2   "One would expect that since

 3   the countries with the largest

 4   numbers of CARRP referrals tend to

 5   be more authoritarian and less

 6   developed, the data for countries

 7   with many referrals to CARRP

 8   should show an undercount of

 9   the" -- "of the number of attacks

10   which would likely understate the

11   reporting of terrorist events."

12   Is that right?

13   A.   Correct.

14   Q.   Okay. And so I'm just going

15   to start with the first part of that, the

16   statement that the countries with the

17   largest number of CARRP referrals tend to

18   be more authoritarian and less developed.

19   How did you assess the

20   extent to which certain countries are

21   authoritarian and less developed?

22   A.   I didn't do a scientific

23   study of that, I just looked at them

24   saying, look at the countries that they

1   tend to be, not -- they're not first-

2   world countries, they tended to be third-

3   world countries, they're also be

4   countries that I'm familiar with that

5   often have dictatorships.

6   Q.   Okay. So this is your

7   subjective assessment of --

8   A.   Right.

9   Q.   -- the extent to which

10   they're authoritarian or less developed?

11   A.   Right.

12   Q.   And was there anything --

13   any -- any material or documentation that

14   you relied on for that assessment?

15   A.   No.

16   Q.   Which countries fall in this

17   category, do you recall?

18   A.   ███████████████████

19   ████████████████████████████████

20   ██████   ████████████████████   ███

21   there was -- it a lot of the major

22   countries that were either dictatorships

23   or not -- not highly developed countries.

24   Q.   Okay. Well, let's talk --

1   A.   Footnote 65.

2   Q.   So the GTD includes in its

3   limitations the statement or a statement

4   along the lines of what you've included

5   here in Footnote 71?

6   A.   Yeah, they talk about the

7   problem of the lack of reporting because

8   of the countries being underdeveloped and

9   not having good news coverage, media

10   coverage, because this is -- they get

11   their data from public sources, and the

12   problems with authoritarian countries

13   which will suppress the news and

14   incidents.

15   Q.   Do you know which countries

16   fall into this category such that

17   terrorist events are less likely to be

18   reported there?

19   A.   No, I don't think they were

20   making this as a blanket statement that

21   that occurs in ever circumstance in every

22   country. They're just saying -- their

23   statement was this is a tendency. And

24   I'm saying, if it is a tendency, I would

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1   think that if you look at the countries,

2   and this country is auth -- which are

3   dictators, I have trouble with that word

4   for some reason, and which are

5   underdeveloped countries, I think you'll

6   find that they are probably less likely,

7   clearly not all, but less likely to be

8   predominantly majority Muslim countries.

9   I mean they're more likely.

10   To the extent that they're

11   equally likely to be Muslim and non-

12   Muslim, it has no effect. The effect

13   would be to lower it in the same

14   direction either. The only way it would

15   go in the other direction is if -- if in

16   fact the disproportionate number of

17   developed countries in this con -- world

18   and the ones run by dictators are

19   disproportioning countries that are

20   predominantly not Muslim, and I don't

21   think that's the case.

22   Q.   Do you know if the GTD or

23   the folks that run the GTD consider the

24   role of social media in the reporting

1   impact in referral?

2   A.   No, we know the disparate

3   impact --

4   MR. TARANTO: Objection,

5   argumentative. Objection,

6   argumentative.

7   I'm -- I'm sorry to speak

8   over you. Go ahead.

9   THE WITNESS: No, and I'm

10   saying the converse, I'm saying I

11   found the disparate impact, I

12   agree with the disparate impact.

13   I'm trying to determine from the

14   limited data we have whether

15   there's any reason to believe that

16   that is causal. And I'm saying

17   this database, and I listed all

18   the characteristics of this

19   database, the most certain thing

20   is this doesn't support the

21   argument that that impact is

22   causal. It supports only the

23   argument that there's an impact

24   being caused by other factors

1   which are correlated with both

2   being sent to CARRP and being from

3   a Muslim country.

4   BY MR. HANDEYSIDE:

5   Q.   I -- okay. I appreciate

6   that clarification.

7   Did you perform a regression

8   with any other specifications than the

9   version indicated in your amended report?

10   A.   I know the first one was

11   messed up, but that's because the

12   specification was messed up. It made no

13   sense. It was -- it was a coding error.

14   But other than that, no, I

15   just started with a very simple model and

16   showed what I needed to show. I wasn't

17   trying to get to a causal model. I knew

18   that was a waste of time.

19   I mean, I did run the

20   separate models and I ran the model as a

21   rank model as I pointed out.

22   Q.   Okay.

23   A.   I did run it with and

24   without -- I did run it with and without

1   Q.   Okay.

2   A.   I left it in because the

3   question is there's a logical reason to

4   test it.

5   Q.   Okay. And that --

6   A.   And you let the data decide

7   what the answer is.

8   Q.   Okay. That's what I wanted

9   to know, the logical reason. That's --

10   that -- it was your own logic, right?

11   A.   Correct.

12   Q.   Okay. And do you -- how

13   many countries were designated as state

14   sponsors of terror at the time you wrote

15   your amended report?

16   A.   Four.

17   Q.   Do you know if that number

18   is still the same?

19   A.   I think they removed one.

20   Q.   In the intervening period?

21   A.   Yeah, they're requesting

22   removing one now I think. I read

23   something about that.

24   Q.   I'll represent that that's

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```
 1    Sudan?

 2          A.    Sudan.

 3          Q.    What's your understanding of

 4    how a country comes to be designated as a

 5    state sponsor of terrorism?

 6          A.    The State Department does

 7    it.  Don't ask me how.

 8          Q.    Okay.  And I won't ask

 9    because I understand you won't know.

10    Okay.  Correct?  You don't know anything

11    specific about the process?

12          A.    No, correct, I do not.

13          Q.    And do you have anything --

14    any understanding of how a country ceases

15    to be designated as a state sponsor of

16    terrorism?

17          A.    No.

18          Q.    And you don't know anything

19    about how Sudan recently came to an

20    agreement for its removal from the list?

21          A.    No.

22          Q.    Do you know if any countries

23    were added to or removed from the list of

24    state sponsors during the period of
```

1   your -- that your analysis covered?

2   A.   There was some -- I did look

3   and I forget, but I think the answer is

4   no, they were removed before, right --

5   one country was removed before -- before

6   the period, but during the period, I

7   don't think they added or -- or increased

8   one.   Added or added (sic).

9   There's also North Korea

10   which is on the list, but there's no --

11   there's no applications removed.

12   Q.   Okay.   And what -- what

13   was -- just to be clear, what was the

14   period of your analysis?

15   A.   2013 to 2019.

16   Q.   Okay.   Now, if a country or

17   more than one country had been removed or

18   added to the list, in other words, if the

19   content of the list had changed during

20   that period, could you have tested the

21   effects of that removal or addition?

22   A.   Sure.

23   Q.   Does a country's designation

24   as a state sponsor of terrorism speak to

1   presents when he does not control for the

2   percent when the application was applied,

3   okay, which he ultimately does, but

4   originally he doesn't, okay, wouldn't

5   change any of what I concluded because I

6   didn't use that data that way. But other

7   people have, I think Mr. Ragland points

8   to it as -- as an example of -- of the

9   response to the litigation, which is

10   wrong and it's a misinterpretation of

11   that table and exactly what I was

12   concerned about.

13   Ultimately I think, in terms

14   of the findings that we ultimately get, I

15   think there really is agreement here.

16   There's no disagreement that there's a

17   disparate impact in terms of being

18   referred to CARRP from countries with

19   dis -- which are predominantly Muslim

20   population countries. Okay? There

21   really is no difference in our

22   conclusions that given you're in CARRP or

23   going to be referred to CARRP, it is

24   going to take longer for you to be

1   processed whether you're going to be

2   approved or denied and to be adjudicated,

3   and given you're in CARRP, you're more

4   likely to wind up being denied than if

5   you're not referred to CARRP. Okay?

6   We disagree whether that is

7   a treatment or impact and in terms of

8   impact, what Dr. -- excuse me,

9   Mr. Kruskol does not go to is the fact

10   that given you're in CARRP, there's no

11   difference in outcomes, there's no

12   difference in being referred -- being

13   kept pending, there's no difference in

14   being denied, there's no difference in --

15   in source of referral, there's no

16   difference in -- in likelihood of being

17   approved and so forth, the speed in which

18   you're approved and so on.

19   But the basic three findings

20   that we are in agreement with, and its

21   problems don't -- don't -- ultimately

22   when its puts in the controls, agree is

23   that there's a disparate impact, CARRP

24   takes longer to be approved or denied,

1   does that influence the -- the decision

2   on whether the -- the instrument is worth

3   using?

4   A.   Sure.   If you're going to

5   judge it, you've got to consider what are

6   the costs, A, to the individual, what's

7   the cost to the agency in doing it?   I

8   mean CARRP is more expensive than the

9   normal vetting process I would assume,

10   more mass -- time intensive, mass person

11   intensive, staffing intensive, so there's

12   a cost to the agency as well.

13   But then there's a gain,

14   okay?   And that's the gain if it's

15   working that you're going to minimize the

16   goal of CARRP, which I don't believe, as

17   I said, is to find the terrorists, but to

18   be able to identify people who are

19   actually national security concerns so

20   they can be handled properly.   And

21   somebody has got to be making a judgement

22   of the weighting of those costs, no

23   question.

24   Q.   Okay.

1   A.   That's going to tell you

2   whether this program is good or bad, not

3   simply the false positives.

4   Q.   And I understand that

5   that -- that you are not that person,

6   right?

7   A.   You are correct, I am not

8   that person.

9   Q.   Is it possible for an

10   instrument to reduce the false positive

11   rate while still leaving the false

12   positive rate so high that the process is

13   not useful?

14   A.   If you lower the false --

15   it's a little tricky because if you lower

16   the false positive and false negative

17   rate, which you can do if you have a

18   better device and better information.

19   Okay? If they're both better, you can

20   lower both, that would be a better

21   device. That doesn't mean either one of

22   them on a cost -- cost basis is -- is

23   effective. Okay? Clearly the one with

24   the lower error rates is going to be more

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 1
 2                         CERTIFICATE
 3
 4
 5              I HEREBY CERTIFY that the
 6    witness was duly sworn by me and that the
 7    within deposition is a true and accurate
 8    transcript of the stenographic notes of
 9    the testimony given by the witness.
10
11
12
13
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21    of this transcript does not apply to any
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1   ACKNOWLEDGMENT OF DEPONENT

2
I, __Bernard Siskin__, do
3   hereby certify that I have read the
foregoing pages, 1 - PGS, and that the
4   same is a correct transcription of the
answers given by me to the questions
5   therein propounded, except for the
corrections or changes in form or
6   substance, if any, noted in the attached
Errata Sheet.

7

8   _Bernard R Siskin_   **12/9/2020**
WITNESS NAME   DATE

9

10
Subscribed and sworn
11   to before me this
__9th__ day of __December__, 20__20__.
12
My commission expires: __May 10, 2023__
13

14   _Eric Siskin_
Notary Public
15

16
┌──┐
│ Commonwealth of Pennsylvania - Notary Seal │
17 │   ERIC SISKIN - Notary Public   │
│   Philadelphia County   │
│   My Commission Expires May 10, 2023   │
18 │   Commission Number 1262372   │
└──┘

19

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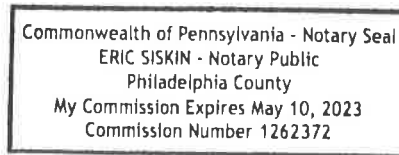
1   - - - - - -
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2   - - - - - -

3

4 PAGE   LINE   CHANGE FROM   CHANGE TO   REASON

5   See Attached
___   ___   _____   _____   _____

6   ___   ___   _____   _____   _____

7   ___   ___   _____   _____   _____

8   ___   ___   _____   _____   _____

9   ___   ___   _____   _____   _____

10   ___   ___   _____   _____   _____

11   ___   ___   _____   _____   _____

12   ___   ___   _____   _____   _____

13   ___   ___   _____   _____   _____

14   ___   ___   _____   _____   _____

15   ___   ___   _____   _____   _____

16   ___   ___   _____   _____   _____

17   ___   ___   _____   _____   _____

18   ___   ___   _____   _____   _____

19   ___   ___   _____   _____   _____

20   ___   ___   _____   _____   _____

21   ___   ___   _____   _____   _____

22   ___   ___   _____   _____   _____

23   ___   ___   _____   _____   _____

24   ___   ___   _____   _____   _____

Errata -- Testimony of Bernard R. Siskin, dated October 30, 2020

Case: Abdiqafar Wagafe et al. v Donald Trump, et al.

Page	Line	Now reads	Should read	Reason for change
20	22	patent to employment	patent infringement to employment	clarity
22	12	whether or not motions were denied	whether or not promotions were denied	typo
35	22	I-45	I-485	misspoke
36	9	I-45	I-485	misspoke
47	11	transcends	translates	misspoke
50	2	so incomplete or so meaningless	so incomplete it is meaningless	clarity
50	14	that it would be useful	that it would not be useful	misspoke
53	24	two are and you're adding.	two things are, and you're adding	clarity
54	22	out, it is, and if you do it	out, it is, if you do it	clarity
54	24	can control for low long they	can control for how long ago they	clarity
55	7	and it's	and it's not	clarity
56	6	you're left open	you've left it open	clarity
56	7	either misconstrued, where they're saying	misconstrued. If you're saying	clarity
56	13	can say that.	should say that.	clarity
56	18	think you should be doing that. It's an	think you should be doing that, as an	clarity
68	16	CSR	CRS	misspoke
70	6	denied, whether he wasn't denied.	denied or whether he shouldn't have been	clarity
71	21	information with that.	information about that.	clarity
71	23	determine that for me and they went	determine that for me and they did and I	clarity
72	10	would have been relevant	would not have been relevant	clarity
74	19	bias as	bias against	clarity
92	17	articulate and link	articulate a link	clarity
92	23	might be, and as part	might be. And, as part	clarity
93	4	or you may	or if you may	clarity
93	4	conclude that I was	conclude that it was	clarity
93	6	is not who I	is not who you	misspoke
100	3	an ENY manual	an FDNS manual	misspoke
132	12	shows any most bias,	shows any Muslim bias,	typo
134	11	if that occurred,	if that did not occur,	clarity
143	13	cross benefit	cost/benefit	clarity

Errata -- Testimony of Bernard R. Siskin, dated October 30, 2020

Case: Abdiqafar Wagafe et al. v Donald Trump, et al.

Page	Line	Now reads	Should read	Reason for change
20	22	patent to employment	patent infringement to employment	clarity
143	17	somebody didn't make that decision.	somebody did make that decision.	clarity
143	20	decision is on what	decision is correct, or what	clarity
148	12	expertise	expert	typo
150	9	time there's no	time they are saying there is no	clarity
151	7	it's	it could be	clarity
151	11	you can't say it's not justifiable.	you can't simply say it's not justifiable.	clarity
153	7	statistic	statistically significant	clarity
153	8	statistic	statistically significant	clarity
154	10	terrorist	terrorists	clarity
162	3	that screens them out, obviously,	that screens false positives out better,	clarity
162	7	that's really good. If you're	that's really good with respect to false positives. If you're	clarity
162	11	The first test	This test if indicates positive	clarity
162	17	disease. If	disease (false negatives). If	clarity
162	18	can still have a high probability	can still have	misspoke
162	19	if you have it and therefore it	it and therefore it	misspoke
162	22	processes focusing only on the	screening tests focusing only on the	misspoke
170	9	better screening.	better screening device.	typo
177	21	their	they're	typo
177	24	to be referred.	to be referred from that country.	clarity
179	10	judgmentally	judgment	clarity
182	1	course	source	typo
192	24	day	processing	clarity
202	18	very questionable practical	practical significance	clarity
206	9	favorite group, and the favorite group	favored group, and the favored group	clarity
206	10	favorite group	favored group	clarity
212	21	9 -- countries	countries	clarity
219	18	subsequent	in subsequent	clarity
220	16	inherit	inherent	typo
230	19	to	do	typo

Errata -- Testimony of Bernard R. Siskin, dated October 30, 2020

Case: Abdiqafar Wagafe et al. v Donald Trump, et al.

Page	Line	Now reads	Should read	Reason for change
20	22	patent to employment	patent infringement to employment	clarity
231	1	to test that which	to test that, which	clarity
231	10	median	mean	misspoke
233	12	20 time -- point time 2,	20 times -- point times 2,	clarity
246	7	is that a correlation?	is what causes that correlation?	clarity
246	8	they come together	they move together	clarity
246	19	it's not being	effect. The correlation is not measuring	misspoke
246	20	caused by the correlation, but it's being	a causal link between the variables. The correlation is being	misspoke
247	6	correlation between	causal link between	clarity
247	21	but really	but higher academic salary	clarity
247	23	But truly is a correlation	A correlation	misspoke
247	24	but true, is one that I did as -- with	that I did with	misspoke
248	23	obviously rain.	obvious causal factor - rain.	clarity
251	18	it correlation.	it predictive correlation	clarity
251	23	which really matters than actually	which causally matter more than	clarity
252	12	We can build models and	We can build causal models and	clarity
253	2	better over time because you can't	better because you can't	clarity
253	16	of	of being from a Muslim country.	misspoke
253	19	that's clearly a type of problem	that's clearly that type of a problem	clarity
258	15	inferring	implying	clarity
258	17	with it, and	with a causal factor, and	clarity
259	6	is the factor that's	is the causal factor that's	clarity
259	13	when and I	when I	clarity
259	15	is not that population Muslim	is not that percent of population that is	clarity
261	22	indirect link to be that other	indirect link other than causal	clarity
261	24	effected	affected	typo
262	2	affects some links. So there's some link	affects corn crops. So there's some causal link	clarity
262	4	some link to the	some causal link to the	clarity
262	6	but the investigation may	but the correlation may	misspoke

Errata -- Testimony of Bernard R. Siskin, dated October 30, 2020

Case: Abdiqafar Wagafe et al. v Donald Trump, et al.

Page	Line	Now reads	Should read	Reason for change
20	22	patent to employment	patent infringement to employment	clarity
262	8	even in -- it may be picked up indirectly	causally. The effect on referral to CARRP may be picked up indirectly	misspoke
262	9	causes B which	causes B	clarity
262	11	which in turn	which also	clarity
262	13	different causal links, and that's why,	different links, but we really want to know the causal links, but	clarity
262	14	as I told you, as a common, it's much	as I told you, it's much	clarity
279	9	parcel	partial	typo
285	2	two	to	typo
295	5	correctional effect,	directional effect,	typo
301	16	on the terrorist list	high on the GTD incidents	misspoke
303	7	home to data	HMDA	typo
303	8	home to data	HMDA	typo
307	8	would work against finding	would work in favor of finding	misspoke
307	11	underestimate its	overestimate its	misspoke
308	7	the data for the data	the data	misspoke
308	8	and the	and	clarity
308	9	coefficient -- and they're random, and	they're random than	misspoke
308	11	with terrorists incidents is overstated	with terrorist incidents	misspoke
317	21	ever	every	typo
318	19	disproportioning	disproportionately	clarity
321	15	report, since I can't get a database and	report, since I can't get a perfect database and have	misspoke
324	4	liking	likely	clarity
325	20-23	error. Okay? It's a correct--it's correct measurement, so just measuring what's correlated to that variable	error. Okay? The variable is correctly being measured. It's just including in its measurement the factor that's correlated with	clarity
329	4	account, but could	count, but could	typo
330	16	unprobable	improbable	clarity
332	5	bias	biased	typo

Errata -- Testimony of Bernard R. Siskin, dated October 30, 2020

Case: Abdiqafar Wagafe et al. v Donald Trump, et al.

Page	Line	Now reads	Should read	Reason for change
20	22	patent to employment	patent infringement to employment	clarity
332	5	that a	that had a	clarity
332	24	Is it possible?	Is it probable?	clarity
333	4	going to	not going to	clarity
333	19	persuasive	pervasive	typo
333	22	date. I don't think	data. I don't think	typo
360	18	can anything	can think anything	clarity
361	12	███████	███████	clarity
361	14	███████	███████	clarity
365	8	one. Added or added (sic).	one.	clarity
384	5	that pole, whether	that poll, whether	typo
384	6	illegal	likely	clarity
384	13	interrupted	interpreted	misspoke or typo
387	22	conclusions	conditions	clarity
388	6	or do know the really affect	or do not in reality affect	clarity
394	23	they could that	they could be a	typo
396	18	statements we said,	statements he said	typo
397	15	to minimize the	to meet the	typo
401	1	it saves you the thing, but	it saves you resources, but	typo
401	6	know the instance	know the incidence	typo
414	21	appropriate	inappropriate	misspoke