EXHIBIT F

~~FILED UNDER SEAL~~

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of themselves and others similarly situated, Plaintiffs, v. DONALD TRUMP, President of the United States, *et al.*, Defendants.	No. 2:17-cv-00094-RAJ

EXPERT REPORT OF MARC SAGEMAN

I, Marc Sageman, hereby declare:

I make this declaration based on my own personal knowledge, and if called to testify, I could and would do so competently as follows:

Background

1. I graduated from Harvard University in 1973 with an A.B. in social relations, and I then attended New York University, where I earned M.A. and Ph.D. degrees in political sociology in 1977 and 1982, respectively, and an M.D. degree in 1979. After serving as a flight surgeon in the U.S. Navy, I joined the Central Intelligence Agency as a case officer in 1984. Nearly three years of my seven-year career there were devoted to helping run an insurgency against the Soviet occupation of Afghanistan and its Communist government. In 1991, I returned to medicine. I held an active license to practice medicine in several states until I retired in 2017. I have held Top Secret/Sensitive Compartmented Information clearances from about 1984 to 1991 from the CIA and again from about 2005 from the CIA, the U.S. Secret Service, and the U.S.

Army respectively until 2017 when they expired. In addition, I held a Q clearance from Sandia National Laboratories from 2005 until it expired around 2010.

2. I have taught law and psychiatry, as well as the social psychology of political conflict focusing on genocide and terrorism, at the University of Pennsylvania. I have written five books, *Understanding Terror Networks* (2004) and *Leaderless Jihad* (2008), *Misunderstanding Terrorism* (2016), *Turning to Political Violence* (2017), and *The London Bombings* (2019), all peer-reviewed and published by the University of Pennsylvania Press. I am also on the editorial boards of two journals in the field of terrorism research, *Terrorism and Political Violence* and *Dynamics of Asymmetrical Conflict*, and regularly peer review submissions to them as well as other scientific journals.

3. In 2006-2007, I worked as a consultant for the U.S. Secret Service, where I tracked the terrorist threat to the United States based on daily threat assessments. I spent the following year as the scholar in residence at the New York Police Department, providing my scientific expertise to them. During that year, I also taught a graduate seminar on terrorism at Columbia University.

4. Starting in 2006, I worked on a four-year project on violent terrorism for the U.S. Air Force Research Laboratory. I presented my findings from this research to the faculty of the FBI Academy in Quantico, VA in April 2010.

5. I also spent three and a half years as a special advisor to the U.S. Army Deputy Chief of Staff (Intelligence) for the Insider Threat. In that role, I reviewed all cases of suspected terrorists and spies in the U.S. Army since World War II. In conjunction with the FBI, I investigated and interviewed several of the suspects during my tenure. During that time, I was also dispatched to Kabul, Afghanistan as the Political Officer for the International Security

Assistance Forces to help mitigate the "green on blue" violence—the killing of coalition troops by Afghan forces—that was threatening to split up the coalition.

6. I have been qualified as an expert witness on terrorism for both the prosecution and defense in criminal cases, and the defense in civil cases. In the past four years, I have testified as an expert at trial or written a report in the following cases:

a. *U.S. v. Sinmyah Amera Ceasar*, E.D.N.Y., No. 17-CR-48 and 19-CR-117 (JBW)
b. *U.S. v. Joseph Jones & Edward Schimenti*, N.D. Ill., ED, No. 17 CR 236 (ARW)
c. *U.S. v. Amer Alhaggagi*, N.D. Cal., SF Division, No. CR-17-0387 CRB
d. *Ikram Khan v. U.S.C.I.S.*, S.D. Fla., Miami, No. 15-CV-23406-DPG
e. *U.S. v. Adam Shafi*, N.D. Cal., SF Division, No. 15-CR-582-WHO
f. *U.S. v. Bakhtiyor Jumaev*, D. Col. No. 12-cr-00033-JLK
g. *U.S. v. Mohamed Elshinawy*, D. Md., No. ELH-16-0009
h. *U.S. v. Keonna Thomas*, E.D. Penn., No. 0313 2:15CR00171-001 (MMB)
i. *U.S. v. Munir Abdulkader*, S.D. Ohio, No. 1:16CR00019-001 (MRB)
j. Dept. of Defense, Periodic Review Board, Guantanamo Detainee MR-760, Mohamedou Ould Slahi
k. *U.S. v. Abdul Malik Abdul Kareem*, D. Ariz., CR-15-707-PHX-SRB (MHB)
l. *Latif et al. v. Holder et al.*, D. Or., No. 3:10-cv-00750-BR

7. I have interviewed about 50 convicted terrorists, mostly in prison, and numerous other individuals suspected or accused of terrorism in various countries, including the United States, in connection with my work as an expert or in support of my research.

8. In the past 10 years, I have authored many publications, apart from the books I mentioned above, which are included in my curriculum vitae.

9. A copy of my curriculum vitae is attached as Exhibit A.

10. I am not receiving any compensation for my services as an expert witness in this case. I have agreed to serve as an expert on a pro bono basis for all work in this matter, including deposition and trial testimony. I will be reimbursed for all reasonable expenses incurred in the

course of my work on this case, if any, such as travel expenses, including the actual costs of transportation, meals, and lodging.

Opinions

10. Plaintiffs' counsel has asked me to provide my opinion about the Controlled Application Review and Resolution Program (CARRP), including (1) its reliance on information from the Terrorist Screening Database (TSDB), the federal government's master terrorism-related watchlist, to make determinations about whether applicants for immigration benefits are "national security concerns," as well as (2) the other methods and processes used to flag an applicant as a national security concern and subject them to CARRP. The opinions here are based on my experience and research, along with my review of publicly available documents and documents produced in discovery in this lawsuit, a list of which is attached as Exhibit B.

11. It is my opinion that the CARRP misuses and misapplies TSDB information. Placement in the TSDB is not a reliable indication that a person poses any national security risk, nor is it validly predictive that a person will become a threat to national security. As I explain further below, the TSDB is unreliable and invalid as a predictive tool for various reasons. These reasons include: the lack of reliable indicators that a person will engage in political violence in the future; the very low standard federal agencies use to nominate and place someone in the TSDB—a standard from which agencies derogate for the purpose of immigration screening; and structural weaknesses within the watchlisting process. USCIS's CARRP program thus vastly misunderstands and misuses this information, to the significant detriment of the thousands of applicants subject to the program.

12. Similar factors compel the conclusion that USCIS's own assessments that applicants pose national security concerns are likely even less reliable than the judgments

underlying placement in the TSDB. That unreliability is a function of the extremely low threshold that USCIS uses for identifying "national security concerns," coupled with the vague and subjective indicators it relies upon in doing so. Thus, there is a very high risk of error in USCIS's determinations regarding which applicants are subjected to CARRP.

13. It is also my opinion that this program serves little or no legitimate national security purpose, given that the class members at issue here are all residents of the United States, many of them having lived in the United States for years prior to being subjected to CARRP. Whether or not these people are permitted to become lawful permanent residents or naturalized citizens does not, of itself, make them more or less likely to commit a terrorist act or engage in conduct threatening to national security. Subjecting these residents to a more stringent application process or denying their applications based on low-quality information or speculative inferences, without affording them the opportunity to address and resolve such concerns, serves no legitimate national security purpose.

14. Additionally, it is my opinion that CARRP allows information from intelligence and law enforcement agencies to unduly influence its decision making about immigration benefits. USCIS is not an intelligence agency, nor is it equipped to properly interpret and understand intelligence information. To the contrary, USCIS gives intelligence information far too much significance and influence over its adjudicative outcomes.

Overview of the Controlled Application Review and Resolution Program

15. I have reviewed documents produced by the defendants in the *Wagafe* case. Based on that review, I understand that in April 2008, U.S. Citizenship and Immigration Services (USCIS) established CARRP, which USCIS describes as a "process for identifying, recording, vetting, and adjudicating applications and petitions with national security (NS) concerns." (DEF-

94371.) According to USCIS, "a national security concern arises when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the INA [Immigration and Nationality Act]." Defendants' Answer ¶ 62. I understand that those sections of the INA generally make any individual who has engaged in terrorist activity or is a member of a terrorist organization inadmissible to, or removable from, the United States.

16. CARRP review proceeds in four steps: 1) identifying a national security concern; 2) assessing eligibility for the sought-after immigration benefit in cases with national security concerns; 3) vetting those cases with entities external to USCIS; and 4) adjudicating the applications. (DEF-4494.) My report focuses largely on the methods and standards federal agencies use for identifying a national security concern, and the implications of those methods and standards for the reliability and validity of CARRP.

17. For the purpose of identifying whether a national security concern exists, CARRP distinguishes between individuals labeled "Known or Suspected Terrorists" (KSTs) and those labeled non-KSTs. KSTs are a defined category of individuals who have been nominated (by certain federal agencies and foreign governments) and accepted for placement in the Terrorist Screening Database (TSDB), also known as the master watchlist, which is maintained by the Terrorist Screening Center (TSC) within the Federal Bureau of Investigation (FBI). (DEF-3730.) USCIS officers conduct database checks of applicants for immigration benefits, and when those database checks indicate, and the TSC confirms, that an individual has been placed on the master watchlist, no further analysis is necessary—the individual is automatically considered a KST and therefore a national security concern. (DEF-35038, 95123.)

18. Non-KSTs are people who have not been placed on the master watchlist but who, according to the CARRP criteria, nonetheless may raise national security concerns. USCIS further divides non-KSTs into two categories: national security concern "Confirmed" and national security concern "Not Confirmed." (DEF-26375.) Some people who do not meet the standard for placement on the master watchlist, but are nonetheless included in the TSDB under exceptions to that standard, are automatically considered non-KST Confirmed cases. (DEF-91359.) For those people, as with KSTs, the determination that they represent national security concerns is automatic, and USCIS officers do not conduct any further analysis of whether those people have an articulable link to a national security concern. (DEF-64212.)

19. Therefore, according to information the defendants have provided, anyone who is seeking an immigration benefit and who is included in the TSDB—either because it was determined that they met the standard for placement on the master watchlist (*i.e.*, those USCIS labels KSTs) or because they fell within an exception to that standard (and USCIS then labels non-KST Confirmed cases)—is automatically subjected to CARRP. The decision to place someone on the master watchlist or to include someone in the TSDB under an exception to the watchlisting standard is a function of the watchlisting process and is made by federal agencies outside USCIS. (DEF-64212.)

20. Where referral for CARRP processing is not automatic in this way, USCIS officers assess whether applicants have an articulable link to a national security concern that could render them Non-KSTs. An articulable link, however, is not a prerequisite for a case to be subjected to the CARRP process. Rather, training and guidance materials make clear that the CARRP process should be used to *build* the articulable link. (DEF-64636, DEF-142913 ("If a case is identified as a potential NS concern, even if it does not rise to the level of an articulable

link, CARRP can provide additional time and resources beyond what would be possible through routine handling.”), DEF-26375 (“Is it really NS? Or do we just not know enough to decide yet?”).)

21. Cases lacking an articulable link to a national security concern at the outset are labeled Non-KST Not Confirmed. Because officers need not identify an articulable link between the applicant and an indicator of a national security concern, USCIS itself recognizes that “most cases will probably be entered initially as Not Confirmed until more vetting is done.” (DEF-26399.) Indeed, according to data produced by the defendants, such cases make up the majority of Non-KST cases. (DEF-50754 (65% of non-KST cases were Not Confirmed and 22.3% were Confirmed).) These data demonstrate that applicants can be, and often are, referred for CARRP processing based on the presence of a potential national security concern to which they may or may not be linked. A CARRP training presentation makes this point explicitly, asking, “Can you refer a case to CARRP just based on indicators?” and answering, “YES – we do it all the time.” (CAR1075.)

22. USCIS openly urges officers to cast a wide net in deciding whether to refer an applicant for CARRP processing. Training materials from 2017 state that “it is better to over-refer and resolve than not refer at all…The connection between a subject and the NS [national security] ground is something that you can leverage the greater resources of CARRP to determine. You can over-refer because you need more info, or time, or systems access; but a CARRP case always requires a subject and an NS ground.” (DEF-24989.) Another training presentation states that [REDACTED]

[REDACTED]

[REDACTED] (DEF-21406.) Similarly, “[REDACTED]

Id.

23. USCIS also defines "articulable link" broadly. It trains immigration officers that "[a]n articulable link exists when you can describe, in a few simple sentences, a clear connection between a person (on the one hand), and an activity that threatens the safety and integrity of the United States or another nation (on the other). That connection may be criminal activity, belonging to or speaking for a particular organization, providing money or material support, or many other forms of association with threats to national security." (DEF-89772.) USCIS explains that "[a]n articulable link requires more than a 'gut feeling'; The key is whether you can define the nature of the connection." (DEF-26410.) Indirect links can suffice, "regardless of the number of links involved," if the officer can draw a line from the applicant to the national security activity. (DEF-26418.) Officers are instructed that they "may have to 'link' together a bunch of disparate things." (DEF-94497.) According to USCIS training, "[i]t is impossible to list all of the ways that an individual might have an 'articulable link' to a national security concern." (DEF-26410.)

24. USCIS uses a broad range of "indicators" of national security concerns to which an articulable link may exist. USCIS divides these indicators into three broad categories: 1) "Employment, Training, or Government Affiliations"; 2) "Other Suspicious Activities"; and 3) "Family Member or Close Associate." (DEF-35040-41.)

25. For the first category—"Employment, Training, or Government Affiliations"—USCIS's Guidance for Identifying National Security Concerns states that "[c]ertain types of employment, training, government affiliation, and/or behavior may (or may not) be indicators of a NS concern, depending on the circumstances of the case, and require additional scrutiny to

determine whether a NS concern exists." (DEF-35040.) As examples, the guidance cites employment "by a foreign government to engage in espionage or intelligence gathering" and serving "as an official or diplomat in a hostile foreign government." *Id.* In addition to these examples, it states that "[o]fficers may also need to consider proficiency in particular technical skills gained through formal education, training, employment, or military service, including foreign language or linguistic expertise, as well as knowledge of radio, cryptology, weapons, nuclear physics, chemistry, biology, pharmaceuticals, and computer systems." *Id.*

26. A USCIS instructor guide poses a series of expansive questions relevant to an applicants' employment and training:

(DEF-00010864_0016-17.) The guide then provides a definitive response: "If the answer to these questions would be yes, then there is a national security concern." *Id.*

27. The second category—"Other Suspicious Activities"—is a catch-all grouping of types of conduct that USCIS deems potentially suspicious. It includes "[u]nusual travel patterns and travel through or residence in areas of known terrorist activity,"

(DEF-00044548.0096.) Similarly, USCIS identifies that may be indicators of a national security concern. (CAR1908.) USCIS also includes (DEF-36342-46.)

28. In addition to these activities, USCIS guidance includes Training materials from December 2017 suggest that national security indicators can arise from an individual reporting that (CAR1908.) Guidance encourages officers to (DEF-24313.0183), and instructs officers to (DEF-76056, 76059.) In response to a November 2017 query from a congressman about whether USCIS has a system for querying applicants about ideological affinity, the response from USCIS was: (DEF-109058.)

29. The final category—"Family Member or Close Associate"—specifies that where a relative or associate of the applicant has a national security concern, "[s]uch information may impact the [applicant's] eligibility for the benefit sought and/or may indicate a NS concern with respect to the individual," depending on whether the concern relates to the applicant. (DEF-35041.) A "close associate" includes but is not limited to a roommate, co-worker, employee, owner, partner, affiliate, or friend. *Id.*

30. USCIS recognizes that the judgments underlying the determination that someone poses a national security concern are subjective. A CARRP training document describes the CARRP process as "a subjective assessment that the individual is a threat" and states that CARRP requires a "subjective connection" to one of the relevant INA sections. (DEF-45893.)

31. A person who is identified as a national security concern and subjected to the CARRP process faces a more difficult path to approval of their application, as USCIS instructs officers to look for ways to delay adjudication or deny the application. Training materials describe the vetting process as "not just for collecting information, but towards the specific end of not approving an NS concern." (DEF-63663.) Other training documents show a preference for denying unresolved CARRP cases that would otherwise be approvable. A December 2015 presentation states, "[t]he challenge comes when the individual seems eligible, but we've done enough vetting to know that we're probably not going to be able to resolve the concern" because, for example, "the person isn't coming off the watchlist" or "it's impossible to refute that they're connected" to the area of national security concern. (CAR1273, CAR1289 ("If we've confirmed our NS concern, we don't really want to approve."))

32. Because USCIS does not disclose the basis for national security concerns to applicants, it instructs officers to build an alternate path to denying applications where national security concerns are unresolved:

> Towards the end of the vetting process, we know we have a person [a]nd we know we would like to not approve them because they are an unresolved NS concern[.] And we also know that whatever facts lay in between – we probably can't use in a decision[.] So we use parallel construction to build a new path from the starting point (our person) to the ending point (we need to deny them)…Now we're going to try to find a way to deny that using only facts that we can disclose / leverage in a decision.

(CAR1291.)

Overview of the Federal Watchlisting System

33. As explained above, CARRP relies heavily on the federal government's watchlisting system: People who are on the master watchlist and/or included in the TSDB are automatically subjected to CARRP. I therefore briefly describe the standards and procedures for watchlisting before assessing the validity and reliability of the watchlisting system.

34. For publicly available information on the watchlisting system, I have reviewed declarations and court filings from government personnel in two cases that implicate the watchlisting system: *Elhady, et al. v. Kable, et al.*, ED Virginia, No. 1:16-cv-375 ("*Elhady*") and *Latif, et al. v. Holder, et al.*, D Oregon, 3:10-cv-00750-BR ("*Latif*").[1] What follows is therefore based on what the federal government itself has disclosed about the watchlisting system.

35. As stated above, the Terrorist Screening Database is the federal government's consolidated terrorist watchlist. It contains names and other identifying information of the individuals who are listed in it but does not contain the underlying information or intelligence—what the federal government calls "derogatory information"—that is the basis for the individuals' inclusion in the database. (Declaration of Timothy P. Groh, April 27, 2018, *Elhady*, Document 196-5 at ¶ 5 ("Groh Declaration").)

36. In order to be placed on the watchlist, an individual must be "nominated." A range of federal agencies and foreign governments can submit nominations for placement on the watchlist. According to a document titled "Overview of the U.S. Government's Watchlisting Process and Procedures as of January 2018," *Elhady*, Document 196-16 ("Overview"), "[i]nclusion on the watchlist results from an assessment based on analysis of available intelligence and investigative information that the individual meets the applicable criteria for

[1] I served as an expert on behalf of the plaintiffs in *Latif*.

inclusion on the watchlist." *Id.* at 3. The FBI is responsible for submitting nominations of people suspected of links to domestic terrorism for placement on the watchlist. (Groh Declaration at ¶ 7.) Nominations of people suspected of links to international terrorism are handled by the National Counterterrorism Center (NCTC). *Id.* The Terrorist Screening Center, a multi-agency center administered by the FBI, is responsible for maintaining the watchlist. *Id.*

37. The general standard for placement on the master watchlist is reasonable suspicion. The Overview document states that reasonable suspicion means:

> [T]he nominator must rely upon articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities.

(Overview at 4.)

38. Subsets of the TSDB include the Selectee List, which contains people who are subjected to additional screening before being permitted to board an airplane, and the No Fly List, a list of those who are prohibited from boarding flights to, from, or over U.S. airspace. (Groh Declaration at ¶¶ 9-10.) The Selectee List and No Fly List each require that a person meet criteria in addition to the standard for placement in the TSDB. *Id.*

39. When federal or foreign government agencies submit nominations for placement on the watchlist to the FBI or NCTC, those entities are supposed to review the nominations to verify that they include the required amount of identifying information about the nominated individuals and "enough information to establish a reasonable suspicion that the individual is a known or suspected terrorist." (Overview at 3.)

40. Not everyone in the TSDB meets the reasonable suspicion standard, however. The TSDB also includes the identifying information of some people for whom the government lacks

reasonable suspicion but who are nonetheless included in the TSDB for "the limited purpose of supporting specific screening functions of the Department of Homeland Security and the Department of State (such as determining eligibility for immigration to the United States)." (Groh Declaration at ¶ 24.) Those individuals "are not considered known or suspected terrorists," but their identifying information is "exported to those agencies" for "enhanced visa and immigration screening." (*Id.*; *The Terrorist Screening Center: An Overview*, Ex. 9, *Elhady*, Document 253-6 at 5, 28.) Falling within this exception are relatives and associates of people who are included on the watchlist. (Privacy Impact Assessment Update for the Watchlist Service, DHS/ALL-027(d), March 4, 2016, at 3.)

41. As of June 2017, the TSDB contained approximately 1,160,000 people, a total that reflected significant and steady growth since June 2013, when there were approximately 680,000 people in the TSDB. (Declaration of Timothy P. Groh, July 5, 2018, *Elhady*, Document 253-2 at ¶ 4.)

42. The government characterizes the master watchlist as preventive. Michael Steinbach, formerly the Assistant Director of the FBI's Counterterrorism Division, stated in a declaration that the TSDB and its subsets such as the No Fly List are "preventive measures" that "differ in fundamental respects from the FBI's role in the criminal process, because the overriding goal in using the TSDB is to protect the United States from harm, not to collect evidence of a crime already committed for purposes of prosecution." (Declaration of Michael Steinbach, May 28, 2015, *Latif*, Document 254 at ¶ 7.) "Inclusion in the TSDB," Mr. Steinbach declared, "is based on an assessment of the threat of terrorist activity posed by a particular individual." *Id.* Mr. Groh, who is the TSC's Deputy Director for Operations, testified at a deposition that "[t]he TSDB's purpose is to consolidate what once were…disparate watchlists to

provide a common operating picture for the intelligence community screeners and the law enforcement community in order to better prevent terrorism." (Transcript of Timothy P. Groh, Designated Representative, March 1, 2018, *Elhady*, Document 137-1 at 81-82 ("Groh Deposition").)

43. These "assessments" of the threats individuals pose, for the purpose of preventing terrorism, are essentially attempts to predict who might commit acts of terrorism in the future. That is, other than "known" terrorists (and setting aside those who are included in the TSDB under exceptions to the reasonable suspicion standard), the watchlist consists of individuals whom the government suspects may someday engage in or support terrorist activities.

44. A "known terrorist," according to deposition testimony from the designated representative of the FBI, is someone who has already committed or has been convicted of a terrorism offense. (Transcript of Matthew J. DeSarno, April 8, 2018, *Elhady*, Document 196-19 at 241.) My analysis here assumes that if the U.S. government knows that a U.S. citizen or lawful resident has already committed an act of terrorism, that individual generally either has been charged with or convicted of a terrorism-related crime, or is closely monitored prior to arrest, or is abroad beyond the reach of the law. I make that assumption because in my experience, the U.S. government would aggressively react to such information about a person. In all my years of experience, I do not recall the federal government ever having allowed an individual to remain at large within the United States for any significant length of time once the government possessed probable cause that the individual had engaged or was engaged in terrorist activity. For these categories of people, the criminal justice system normally serves as the basis to assess the validity of the government's judgment and evidence. In this analysis, I therefore focus on the government's assessments of the threat of future acts of terrorism by individuals who are not

"known terrorists," but who the government suspects of "conduct constituting in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities," as set forth above (see paragraph 37).

Endemic Problems with the Federal Watchlisting System

Lack of Reliable Indicators that an Individual Will Engage in Political Violence

45. The TSDB is fundamentally overbroad and unreliable as a source of information about people who may present threats to our country. A central problem with attempting to predict who might commit acts of terrorism in the future is that we lack reliable indicators by which to make such predictions or assess the "threat" an individual may pose. Nearly all terrorism researchers agree that acts of terrorism are fundamentally acts of political violence.[2] Decades of terrorism research, however, have not yielded a terrorist "profile" or a reliable model of behavior that leads people to engage in political violence. In fact, there remains major disagreement within the academic community as to the nature of the process of turning politically violent.

46. Because of my security clearances and contract work in government agencies, I am also aware that the intelligence community has failed to employ the methodological techniques necessary to analyze that process meaningfully and in accordance with scientific standards in the context of rigorous peer review. This failure to incorporate bedrock research methods (discussed below) undermines the accuracy of the assessments the intelligence community makes.

[2] There is no single agreed-upon definition of "terrorism" and "terrorist activity." For the purposes of this declaration, I do not take issue with the definitions of terrorism under 18 U.S.C. § 2331, which references violent acts intended to intimidate or coerce a civilian population or influence the policy of a government. That definition encompasses violence that is political in nature.

47. Terrorism research has made clear, however, that a decision to engage in political violence is context-specific and particular to any given individual. It is therefore very difficult to identify indicators that could be used to assess the likelihood that an individual will actually commit an act of political violence. I have sought through my own work for government agencies to identify factors that might lead a person to turn to political violence, as well as any behavioral indicators of that process that are specific enough to help in the effective detection and prevention of terrorist threats. My research has concluded that aside from a narrow band of behaviors in the immediate period before a violent act is committed—acquisition of explosives, for instance—behavioral indicators cannot reliably be used to predict whether an individual will carry out an act of terrorism.

48. Ultimately, to my knowledge, no one inside or outside the government has yet devised a "profile" or model that can, with any accuracy and reliability, predict the likelihood that a given individual will commit an act of terrorism. Nor has any such "profile" or model ever been subjected to validity testing to determine its rate of error.

Relevant methodology and likelihood of error

49. As set forth above, government declarations and filings describe generally the process for nomination to the TSDB, but they gloss over the actual decision-making process that leads to the nominations themselves. That process is internal to the nominating agencies and, according to the government's overview of the watchlisting process, consists of "an assessment based on analysis of available intelligence and investigative information that the individual meets the applicable criteria for inclusion on the watchlist." (Overview at 3.) As explained above (see paras. 42-44), such assessments are basically predictions about what people may or may not do in the future.

50. While predicting human behavior is never an exact exercise, scientists and practitioners from numerous disciplines have devised methods that, depending on their rigor, allow for prediction *with an estimated rate of error*. Such a rate of error is important to calculate because it constitutes a rough indicator of the validity and reliability of the predictive tool and enables better decision making about the appropriate consequences of the predictions. However, there is no indication that the government has assessed the scientific validity and reliability of its predictive assessments or the information that leads to those assessments, nor has it used a scientifically valid model for predicting, and accounting for, the rate of error that might arise from those assessments. Due to these failures alone, the government's predictive assessments cannot be considered reliable. Absent a scientifically validated process for attempting to make such predictive assessments, they amount to little more than the "guesses or 'hunches'" that the government says are not sufficient to meet the criteria for watchlisting. (*See* Overview at 4.)

51. I have observed a repeated failure within the government to employ basic scientific principles to test the specificity and sensitivity of terrorism-related measures. Most fundamentally, the government's predictive assessments of the threat an individual pose of committing political violence are necessarily unreliable, and the risk of error associated with them is extremely high, because the events they attempt to predict—violent acts of terrorism—are exceedingly rare. To explain why this is important, we must turn to basic methods for assessing conditional probability. Bayes' Theorem (named for the eighteenth-century English statistician Thomas Bayes) is one of the most commonly used such methods. In short, Bayes' Theorem describes the probability of an event based on conditions that might be related to the event. For example, if we establish that rain and humidity are related, the theorem could be used to calculate the likelihood of rain given a particular level of humidity.

52. Critical to Bayes' Theorem and any exercise in conditional prediction—and to the errors that predictions often entail—is the base rate of the phenomenon in question: in essence, the relative frequency of some event or outcome in some general population of events. If one out of every 100 people in the United States is a student, the base rate for students is one percent. This means that if one chooses a person at random from the population in the United States, the likelihood that he is a student is the base rate, or just one percent. To assume that a person in the United States is a student would generate a very large rate of error. Establishing the base rate of a phenomenon is critical to any attempt to predict whether the phenomenon will occur.

53. Even though it is critically important to establish a base rate for any predictive model, it is very common for people not trained in scientific methods to disregard the base rate, resulting in judgment errors. That is because in the ordinary course of making lay judgments about likely or unlikely events, it is counter-intuitive for lay people to start with a base rate. To ignore the base rate is a common flaw in reasoning known as "base rate neglect."[3]

54. Base rate neglect is one example of what Daniel Kahneman and Amos Tversky, in their Nobel Prize-winning work, call heuristics, or cognitive shortcuts, which lead people to

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[3] An example of the importance of the base rate in making an assessment—and why establishing a base rate can be counter-intuitive—is illustrated in a classic problem posed by Daniel Kahneman and Amos Tversky, psychologists who specialized in prediction and probability judgment, and whose work won a Nobel Prize. "A cab was involved in a hit and run accident at night. Two cab companies, the Green and the Blue, operate in the city… 85% of the cabs in the city are Green and 15% are Blue. A witness identified the cab as Blue. The court tested the reliability of the witness under the same circumstances that existed on the night of the accident and concluded that the witness correctly identified each one of the two colors 80 percent of the time and failed 20 percent of the time. What is the probability that the cab involved in the accident was Blue rather than Green?" Most people to whom Kahneman and Tversky posed this problem answered 80 percent, which was the tested accuracy of the witness. However, the correct answer is actually 41 percent. This can be determined by a simple calculation using Bayes' Theorem: what is the probability that a cab is actually Blue given the condition that the witness said it was Blue? Given the witness's 80 percent accuracy rate, he would correctly identify 12 of the Blue cabs (out of 15) and 68 of the Green cabs (out of 85), but he would misidentify 17 (85 – 68) Green cabs as Blue. So, the probability that a cab involved in the accident was Blue rather than Green is the proportion the witness correctly identified as Blue (12) over the total number he identified as Blue (12 + 17 or 29), which is only 12/29 or about 41 percent—the correct answer. Thus, taking into account the different base rates of the cabs is critical to determining that the hit-and-run cab is more likely to be Green than Blue despite the witness's generally accurate identification of the colors, because the base rate of Green cabs (85 percent) is greater than the witness's accuracy (80 percent). (*See* Kahneman, Slovic & Tversky, eds., 1982, *Judgment under Uncertainty: Heuristics and biases*, Cambridge: Cambridge University Press: 156-57.)

make predictable errors when assessing the likelihood of future events based on current information. Developments in cognitive science have revealed that such heuristics underlie many seemingly intuitive, but nevertheless logically flawed, thought processes.[4] I have seen no indication that nominators or TSC reviewers take into account, or are even aware of, heuristics or cognitive biases in making the assessments that underlie placement on the watchlist.

55. Also important to the validity of a conditional prediction are the sensitivity and specificity of the indicators used to make the prediction. I will discuss these concepts by using a medical example because such indicators or tests are easily understood when we think about physicians making diagnoses. The sensitivity of an indicator is the ratio of the number of true positives (for instance, people who are actually sick and are correctly diagnosed as sick) over the number of true positives plus the number of false negatives (or, the total number of actually sick people, correctly diagnosed or not). The specificity of an indicator is the ratio of the number of true negatives (people who are actually healthy and are correctly identified as healthy) over the number of true negatives plus the number of false positives (or, the total number of healthy individuals, correctly diagnosed or not). A predictive tool that is highly sensitive—i.e., one that is highly accurate in identifying people who are actually sick—may nonetheless be of little value if it also has low specificity—*i.e.*, it also identifies many healthy people as sick, resulting in numerous false positives.

56. Now, to illustrate how these concepts work together, and how base rate neglect can easily skew predictions, let's imagine that the government has developed a tool to identify

[4] See Daniel Kahneman, Paul Slovic & Amos Tversky, eds., 1982, *Judgment under Uncertainty: Heuristics and biases*, Cambridge: Cambridge University Press; Daniel Kahneman & Amos Tversky, 2000, *Choices, Values and Frames*, Cambridge: Cambridge University Press; Thomas Gilovich, Dale Griffin & Daniel Kahneman, 2002, *Heuristics and Biases: The Psychology of Intuitive Judgment*, Cambridge: Cambridge University Press. See also Daniel Kahneman's best seller, 2011, *Thinking, Fast and Slow*, New York: Farrar, Straus and Giroux.

potential terrorists based on "derogatory information." Let's further imagine that the particular derogatory information is 100 percent sensitive, meaning it is associated with, and can be used to catch, all potential terrorists who will actually carry out violent acts. However, let's also imagine that the tool is only near-perfect (say, 99 percent perfect) in terms of specificity, meaning it would lead to one error—*i.e.*, one false positive—in 100 predictions (to be clear, such near-perfect accuracy is basically unheard of in the social sciences).

57. Given such a hypothetical, near-perfect tool to assess the probability of a person committing a violent terrorist act, what is the rate of error of this tool? The actual rate of error depends on the base rate of terrorists in the population. Let's assume a total population of a million people, in which there are 100 terrorists (for a base rate of 1/10,000). The predictive tool would identify all 100 terrorists, for 100 percent sensitivity. However, because it is only 99 percent specific, it would make one error in every one hundred evaluations and falsely identify another 10,000 people as terrorists. Despite the fact that this instrument is near-"perfect," the probability that a person is a terrorist, given that she has been identified as such by this instrument, is less than 1 percent (100 correctly identified terrorists divided by the total population identified as terrorists by this instrument [100 + 10,000; that is, 10,100], or 100 divided by 10,100, which is a little less than 1 percent).

58. What this example illustrates is that the lower the base rate of actual terrorists, the greater the error—or, in other words, the rate of error is inversely proportional to the base rate. For instance, if we modify this hypothetical so that there is only 1 terrorist in one million people, the probability that a person identified as a terrorist using this tool is actually a terrorist decreases to about 0.01 percent. (The lone terrorist is correctly identified by the instrument, which also

incorrectly identifies 10,000 others as terrorists. The probability of a person on the list being a terrorist is therefore 1 divided by 10,001 or about 0.01 percent.)

59. The reason that the tool is so misleading, despite the fact that it is near-"perfect," is because there are so many more non-terrorists than terrorists in the population. In this way, base rate neglect—not taking the base rate of a phenomenon in a general population into account—can lead to an enormous number of false positives for rare events.

Invalidity of assessments of future conduct underlying placement on the watchlist

60. The foregoing discussion makes clear the overriding importance of taking into account the base rate of a phenomenon, and the sensitivity and specificity of indicators used to predict that phenomenon, when attempting to make predictions based on current information. However, I am not aware of anyone within the government who has applied these principles in terrorism-related assessments, and there is no indication that the government has attempted to apply them to the predictive assessments underlying placement on the watchlist. As explained above, that failure alone renders the government's assessments unreliable.

61. It is nonetheless possible to arrive at some additional, general conclusions about the validity of watchlist assessments based on available information. The relevant base rate for the purposes of the watchlist is the base rate of the events that the government is trying to predict and prevent: future acts of violent terrorism.

62. By any measure, the base rate of violent terrorist attacks is extremely low. Unfortunately, databases that purport to compile data on terrorist threats to the United States are unreliable and flawed because most include incidents involving sting operations, where, but for the intervention of the FBI, there was no real threat to the United States because the suspect lacked the capability to carry out a terrorist act. The databases therefore greatly overinflate the

actual threat. For the sole purpose of illustrating my point, however, I will use one of the most popular of these flawed databases, the Global Terrorism Database (GTD),[5] which continuously lists terrorism-related incidents in the world since 1970. Focusing on the United States for a twenty-year period, from January 1, 1999 to December 31, 2018, there were 32 terrorist incidents, involving 45 individuals.[6] Since the GTD list overlooked two important cases, I added them to the list, giving a total of 34 terrorist incidents involving 49 Islamist terrorists[7] over a twenty-year period. That figure includes numerous incidents carried out by people with well-documented mental disorders with a very tenuous link to political organizations.

63. Nevertheless, even if we use this number of terrorism-related incidents, it yields a base rate of 49 terrorists in 20 years in a country of about 330 million people, which amounts to 1 terrorist per 134.7 million people per year, or in a more standard rate, 0.00074 per 100,000 per year.[8]

64. With such a low base rate, a tool used to predict who will commit acts of terrorism would have to be extremely accurate, especially in terms of specificity, for government agencies not to be flooded with false positives or false alarms in attempting to identify terrorists.

65. We can say with a high degree of confidence that watchlist assessments are not remotely accurate enough to guard against an extremely high risk of error. Regarding the sensitivity of these assessments, to my knowledge none of the terrorists involved had been

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[5] http://www.start.umd.edu/gtd/search/.

[6] I counted all cases coded as "al Qaeda, Islamic State of Iraq and the Levant (ISIL or ISIS), Tahreek e-Taliban e-Pakistan, al Qaeda in the Arabic Peninsula, Jihadi Inspired Extremists, and Muslim Extremists." Surprisingly, the GTD list did not involve two notorious cases, the Sayfullo Saipov October 31, 2017 attack in Manhattan and the plot to bomb the New York City subway in September 2009 by three individuals, led by Najibullah Zazi.

[7] This number includes the 19 terrorists who carried out the 9/11/01 attacks. This large number (39 percent of the total number of terrorists) skews the average. Nevertheless, they were not U.S. persons, but since they were temporarily living in the United States, they could have been detected and arrested before the attacks.

[8] To appreciate how low this base rate of terrorists is, compare it to the corresponding U.S. rates for homicides and suicides, which themselves are exceedingly rare events. The 2018 U.S. homicide rate was 5 per 100,000 while the 2017 suicide rate was 13 per 100,000. In other words, the homicide base rate is about 6,757 times greater and the suicide base rate is 17,568 times greater than the terrorist base rate in the United States.

watchlisted.[9]

66. As for the specificity of the assessments leading to inclusion on the watchlist—the correct identification of non-terrorists, or, conversely, the number of "false positives"—we can say with confidence that the watchlist cannot achieve anything close to the kind of near-perfect specificity that would be required in order to minimize the number of false positives. As explained above, no valid profile exists for predicting who will engage in political violence, so any purported "indicators," alone or in combination, of future terrorist violence, even about a week prior to a terrorist attack, will necessarily lack high specificity. Like the weather, scientists are better at accurately predicting an outcome the closer the prediction is to the event. Moreover, in order to evaluate the specificity of an indicator, one needs to compile a control group—such as a database of individuals who are not terrorists but who nonetheless share the indicators, or "derogatory information," that the government associates with terrorists. That is because specificity measures the proportion of non-terrorists who are correctly identified as such. To my knowledge, the government has never done this with respect to its watchlisting enterprise. In other words, the government has not tested the validity of any of its indicators, or derogatory information, and has not estimated the rate of error resulting from them.

67. Another reason for the low specificity of watchlist assessments is that the standard for inclusion on the watchlist is "reasonable suspicion," a low threshold that, under the government's definition, requires that nominators have an articulable basis, under the totality of the circumstances and considering rational inferences, to suspect that a person meets the criteria. (Overview at 4.) The "reasonable suspicion" standard does not even require the nominator (or

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[9] Of course, since the watchlists were ramped up after the 9/11 attacks, it would be unfair to expect the 19 9/11 perpetrators to have been watchlisted. But even if they are substracted from the total, none of the other 30 terrorists had been watchlisted, showing that the watchlist had very poor sensitivity.

the reviewer) to assess that it is more probable than not that the individual meets the criteria. That means individuals can be watchlisted if nominators think they *might* meet the criteria, even if the nominators think they *probably do not*. If nominators are adhering to the "reasonable suspicion" standard—and I have no reason to believe that they do not—it virtually guarantees that the specificity of watchlist assessments will be quite low, and that numerous false positives will result.

68. In arriving at my conclusions, I have taken into account that government analysts undergo training before being permitted to review nominations for inclusion on the watchlist. To my knowledge, nominators' determinations and their training do not include critically important instruction in conditional probability analysis and science-based safeguards against error. The inevitable result is base rate neglect in their assessments and a high number of false positives.

Additional factors undermining the reliability of watchlisting system

69. Additional factors negatively affect the reliability of the assessments underlying placement on the watchlist.

70. *First, quality control over the origin of watchlist nominations is weak.* As explained above (see para. 36), numerous federal agencies and foreign government "partners" can submit nominations for placement on the watchlist. Thus, whether watchlist nominations are accurate and reliable depends in large part on how rigorous the nominating entities are in submitting nominations.

71. The U.S. government has revealed little information about whether these nominators employ safeguards and processes to minimize the likelihood that inaccuracy, error, or non-credible information forms the basis for watchlist nominations, but it is clear that intelligence agencies—including foreign intelligence agencies—are a significant source of

nominations. (Groh Deposition at 370 (Mr. Groh testified that the TSDB "is bigger based on the intelligence that we have").) Intelligence personnel, however, are not well-versed in standards like "reasonable suspicion," and I have seen no indication that such personnel receive meaningful training in how to apply that standard rigorously for the purpose of watchlist nominations. Intelligence agencies, moreover, frequently rely on fragmentary information and speculative inferences in order to drive further intelligence collection, which can come through "encounters" with watchlisted individuals in what Mr. Groh labels the "intelligence cycle." (*Id.* at 124.) In this way, information that is speculative, subjective, or otherwise lacking credibility can prompt a nomination to the watchlist—indeed, the standard for placement on the watchlist calls for nominators to rely on "inferences" (see para. 37 above). Placement on the watchlist then fuels further collection of information through watchlist "encounters," which can prompt updates to or additional watchlist nominations in a self-reinforcing process.

72. Concerns about the quality of the information underlying watchlist nominations are all the more acute for nominations from foreign entities. Such nominations are highly susceptible to political influence—a significant risk, given how politicized and context-specific the concept of terrorism is. For instance, nominations from the Turkish government are likely to be skewed heavily by Turkey's longstanding persecution of its Kurdish population. This kind of politicization of what constitutes "terrorism" affects virtually every foreign "partner" from which the U.S. government receives watchlisting nominations.

73. *Second and relatedly, assessments leading to placement on the watchlist suffer from longstanding structural problems and cognitive errors within the intelligence community.* As I discussed above, it is now widely accepted in the field of terrorism research that becoming a terrorist at a given time is a process, and that most people could engage in political violence if

driven to do so. One's potential to become politically violent is contextual and not dependent on personal predisposition (or personal indicators of violence). There is a window of circumstances and opportunities during which someone will engage in what are called acts of terrorism and a much larger period of time when he or she will not. The desire to commit terrorist acts is therefore dependent on a fluid mixture of personal experiences and environmental factors, which are constantly changing.

74. Labeling an individual as a terrorist, however, takes on a kind of cognitive inertia. Psychological research shows that once we label a person in a particular way and others accept the label, it acquires a power of its own and frames the way we think about that person. Removing that label becomes difficult; it requires much effort because it becomes the default conception about the person. Applied in the watchlisting context, this inertia only exacerbates the failure to appreciate changing contextual circumstances.

75. I also have observed firsthand how incentives affecting individuals in the intelligence community encourage the reporting of threats but discourage the reporting of information inconsistent with those threats. Politicians and policy makers—and indeed all of us—understandably want to prevent terrorist violence. But in pursuing this goal, they have created an environment that demands near-total elimination of the threat of terrorism—an impossible scientific or law enforcement standard to achieve, and one that results in a system of incentives that encourages the generation of false positives.

76. In my years monitoring the daily threat traffic in various capacities within the government, I noted that "derogatory information" usually flooded the communication traffic, while retraction or correction of such derogatory information was relatively rare by comparison. Indeed, the imperatives working within the intelligence system encourage reporting potentially

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derogatory information but discourage reporting disconfirming information. Searching for disconfirming evidence—trying to prove oneself wrong and, failing that, temporarily adopting a given hypothesis—is the essence of the scientific process, but I have seen few indications that intelligence analysts consistently search for disconfirming evidence.

77. In my experience, these incentive structures operated with respect to the FBI. FBI special agents are promoted and rewarded—even with monetary bonuses—based on providing potentially inculpating information, while admission of error or new information that exonerates someone from suspicion tends not to be rewarded. In other words, the incentive in the system is to report suspicious activity but not correct the information when it turns out to have been a false alarm. My experience with the FBI in the investigation of terrorist suspects in the United States is that the FBI is very reluctant to close a case. In effect, it employs a low threshold for opening a preliminary field investigation but employs a high standard for closing a case or recommending deletion from a watchlist. Again, these impulses and incentives may be understandable, but the result is that many false positives are never corrected, which, combined with the presumption of static predisposition to violence, contributes to a high error rate when attempting to predict political violence.

78. The combined effect of these incentives and cognitive biases is that the watchlist nomination process is structured plainly toward overinclusion. Since the terrorist threat in the United States is viewed as coming from Islamist extremists, investigators will naturally focus on Muslims, making Muslims, especially recent immigrants, vulnerable to investigators' natural biases, resulting in their being swept up in CARRP and labeled as national security concerns.

79. *Third, NCTC and the TSC have little ability to assess the reliability of watchlist nominations*. As explained above (see paras. 36, 39), those entities review nominations to verify

that they include the required amount of identifying information about the nominated individuals and sufficient "derogatory information" for inclusion on the watchlist. But NCTC and TSC typically lack direct knowledge of that underlying information. That means that they cannot assess whether, for instance, a source providing the information is tainted by bias, motivated to provide the information for personal gain, or simply lying for any number of possible reasons. Ultimately, NCTC and TSC have little or no reason to question or challenge the validity of a nomination, so the review they conduct does little to weed out improper or baseless nominations. Watchlist data bear this out: From 2008 through 2017 (inclusive), TSC added a total of 1,137,254 people to the TSDB, but during that period, it rejected only 16,987 nominations—a rejection rate of only 1.4%. (Defendants' Objections to Plaintiffs' First Interrogatories to TSC, Feb. 21, 2018, *Elhady*, Document Number 196-21 at No. 7.)

80. *Fourth, ongoing review of watchlisting records, particularly for non-U.S. persons, is weak*. According to the Overview document, the watchlist is subject to periodic "quality assurance reviews." (Overview at 6.) These reviews, however, suffer from the same quality control and structural problems as the nominations themselves. The reviews are primarily the responsibility of the nominator—the entity or person who originally wanted the person watchlisted—meaning there is little or no incentive to conduct a searching review of the basis for the watchlisting or challenge the assumptions and inferences that drove the original nomination, particularly when continuing to include a person on the watchlist means that additional intelligence will be collected on that person through watchlist "encounters." And while nominating agencies are supposed to conduct annual reviews of watchlist information for U.S. persons (citizens and lawful permanent residents), they less frequently review nominations for non-U.S. persons. *Id.*

81. *Fifth, the lack of notice or accountability in available redress processes exacerbates problems arising from inaccuracy in watchlist information and assessments*. When people suspect that they have been placed on a watchlist (because, for instance, they are repeatedly subjected to heightened screening at the border or airports), they can submit a petition for redress through the Department of Homeland Security's Traveler Redress Inquiry Program (TRIP). According to the Overview document, when a TRIP petition comes from a person who is watchlisted, TSC reviews "whether or not the identity in the TSDB continues to satisfy the criteria for inclusion or should be removed or have its status otherwise modified," and, if changes are warranted, "ensures such corrections are made." (Overview at 8-9.)

82. The DHS TRIP process, however, does not provide watchlisted individuals with any notice of whether they are watchlisted (other than for U.S. citizens or lawful residents on the No Fly List), nor does it disclose any of the reasons or underlying information that prompted placement on the watchlist. Thus, while TSC may consider information submitted by a watchlisted individual in a petition, that individual cannot rebut reasons or correct mistaken information unless she can guess the reasons why she has been watchlisted. Similarly, the process does not involve a hearing at which a watchlisted person can appeal to a neutral decisionmaker, leaving the decision about whether to keep a person on the watchlist in the hands of the very people who decided to place the person on the watchlist originally. And since watchlisted individuals are never informed whether the redress process has resulted in any change in their status, they don't know whether to further challenge the outcome of the process in federal court. That means that the watchlisting system is very rarely forced by an outside entity to maintain accuracy, remove erroneous information, and remove people from the watchlist.

83. This lack of accountability is an overarching problem affecting the reliability of the watchlisting system—one that exacerbates the factors driving up the likelihood that the watchlist contains an overwhelming number of false positives.

Deficiencies in the Validity and Reliability of Determinations Underlying CARRP

84. The above-described problems with the federal watchlisting system directly affect the validity and reliability of USCIS's decisions to subject individuals to CARRP automatically based on the watchlisting system. Similarly, USCIS's determinations regarding what constitutes a "national security concern" that do not rely on the watchlisting system suffer from the above-described problems with any attempt to predict who may commit an act of political violence in the future.

KSTs and others automatically subjected to CARRP based on the watchlisting system

85. As explained above (see paras. 17-19), USCIS automatically subjects anyone who is included in the TSDB to CARRP. In this way, CARRP incorporates the predictive aspects of the watchlisting system and the high risk of error that comes with such predictions.

86. By designating anyone on the watchlist as per se a KST, CARRP imports wholesale the very high risk of error associated with the watchlist, for all the reasons set forth above.

87. USCIS similarly designates anyone in the TSDB under exceptions to the watchlisting standard as per se non-KSTs who are also automatically subjected to CARRP (see paras. 17-19.) The risk of error associated with these non-KSTs is even greater than for KSTs, because the government derogates from the already-low "reasonable suspicion" standard for non-citizens for the purpose of immigration screening. That is, the likelihood that people who do not meet the reasonable suspicion standard are false positives is even higher than for those who

do meet that standard. By labeling non-citizens in the TSDB under exceptions to the reasonable suspicion standard as non-KSTs and subjecting them to CARRP automatically, USCIS further increases the likelihood of error associated with those individuals. The fact that relatives and associates of people who are already watchlisted can be included in the TSDB under such exceptions, as explained above (see para. 40), demonstrates why this is so: the federal government has little or no reason to believe these people pose any risk to national security but nonetheless penalizes them solely because of a relationship or association to a watchlisted individual.

88. Here, it is important to note that the relevant base rate is exceptionally low. As discussed above (see paras. 62-68), the base rate of acts of political violence in the United States is so low that any attempt to predict who is likely to carry out such violence would have to rely on extremely accurate indicators—which for political or terrorist violence simply do not exist—in order to avoid a flood of false positives.

89. Additionally, by withholding underlying information from applicants and instructing officers to build an alternate path to denying applications where unresolved national security concerns exist (see para. 32), USCIS replicates the problems associated with the watchlisting system's redress process—problems which further elevate the risk of error. Unless applicants can guess the nature of the underlying information that caused them to be subjected to CARRP, they cannot correct inaccuracies in that information or provide necessary mitigating context.

<u>Non-KSTs designated national security concerns without reference to the TSDB</u>

90. USCIS states that the overall goal of CARRP is to "minimiz[e] the risk to public safety and national security posed by individuals who remain in the United States awaiting

adjudication of their applications." (DEF-5022.) Therefore, in labeling people as non-KST national security concerns, USCIS is making predictive assessments of the likelihood that those people will commit acts of political violence—just as U.S. and foreign agencies undertake predictive assessments in nominating people for inclusion on the watchlist.

91. The predictive assessments that prompt someone to be subjected to CARRP are no more reliable, and in fact are likely much *less* reliable, than the assessments that lead to watchlisting. That conclusion is compelled by logic and the standards and criteria that USCIS uses for non-KST national security concerns.

92. A fundamental reason why the predictive assessments underlying inclusion in CARRP are likely to be unreliable is that the standard for identifying national security concerns is remarkably low. As described above (see para. 23), USCIS instructs officers that an articulable link to a national security concern exists "when you can describe, in a few simple sentences, a clear connection between a person (on the one hand), and an activity that threatens the safety and integrity of the United States or another nation (on the other)." (DEF-89772.) Under this standard, indirect links can suffice, "regardless of the number of links involved" (DEF-26418), and officers "may have to 'link' together a bunch of disparate things." (DEF-94497.) Indeed, "[i]t is impossible to list all of the ways that an individual might have an 'articulable link' to a national security concern." (DEF-26410.)

93. This standard scarcely places any meaningful limit on what constitutes an articulable link, merely requiring that a link can be put to words. Because the standard requires little more than a link—even if highly attenuated—it encompasses people who have some incidental, indirect, or unknowing connection to possible terrorist activity. It therefore sets a threshold for inclusion in CARRP that is appreciably lower than the threshold for inclusion in the

TSDB, thereby casting a much wider net and further elevating the very high risk that people identified as national security concerns are false positives—*i.e.*, people who pose no risk to national security at all and will not engage in any act of political violence.

94. Yet, USCIS does not even require such a link for an applicant to be subjected to CARRP and its vetting process. Because officers need not initially identify an articulable link between the applicant and an indicator of a national security concern (see paras. 20-21), the CARRP standard is functionally even lower: in the majority of non-KST cases, applicants are referred for CARRP processing based on the presence of a potential national security concern even where there are no identified "articulable links," only the presence of one or more indicators—a category known as non-KST "not confirmed" applicants. (DEF-26399, DEF-50754.) That further expands the population to which CARRP extends and significantly elevates the already very high likelihood that people subjected to CARRP in the absence of even a minimal "articulable link" are false positives.

95. A second fundamental reason why the predictive assessments underlying inclusion in CARRP are likely to be unreliable is that the "indicators" that USCIS associates with national security concerns are extremely broad and vague. As explained above (see paras. 45-48), terrorism research has not yielded a terrorist "profile" or a reliable set of behaviors that can, with any acceptable degree of validity, enable predictions about whether someone will engage in political violence. Rather, research to date broadly supports the conclusion that a turn to political violence depends on factors specific to an individual and is highly context-dependent.

96. I see no indication that USCIS has taken account of these research-driven conclusions in devising "indicators" of national security concerns. Instead, USCIS permits referral for CARRP processing based on an extremely broad array of indicators (see paras. 24-

29), many of which—*e.g.*, proficiency in certain technical skills, foreign language expertise, scientific or technological know-how—are wholly consistent with innocent conduct and imply no wrongdoing whatsoever. Other "indicators" potentially penalize applicants for familial associations or the policies of political or religious leaders that are beyond the applicants' control. Still others fall within a residual category ("other suspicious activities") that is undefined and virtually boundless.

97. USCIS acknowledges that these indicators, and the judgments that an applicant may be linked to them, are subjective. (DEF-45893.) Additionally, USCIS openly encourages officers to over-refer for CARRP processing as a means of gaining access to more information or extending the time during which an application is pending (see above para. 22). The breadth of these indicators, their subjective nature, and the preference for over-referring significantly raise the risk that CARRP processing is a function of officers' arbitrary suspicions and biases, not of valid science or any attempt to assess risk objectively with an estimated rate of error. This compounds the cognitive errors from nominators to the watchlists (see above paras. 73-78) and the absence of any testing of the validity of these watchlists (see above paras. 51, 66), and further increases the rate of error in the overall CARRP processing.

Conclusions

98. The very low base rate of acts of terrorism or political violence, combined with the lack of reliable indicators by which to predict who might commit acts of terrorism in the future (or to assess the "threat" an individual may pose of carrying out such acts), make such predictions and assessments error-prone and unreliable. The federal government's watchlisting system suffers from this unreliability, and a person's inclusion on the master watchlist should not be considered a valid predictive assessment that a person presents a threat to national security.

99. Numerous factors exacerbate the unreliability and overbreadth of the watchlisting system. Those factors include the very low "reasonable suspicion" standard for placement on the master watchlist, the use of exceptions to that standard for the purpose of immigration screening, weak quality control over nominations to the watchlist, longstanding structural problems and cognitive errors within the intelligence community that lead to watchlist nominations, and the lack of notice or accountability in available redress procedures for watchlisted individuals. The combined result of these factors is an extremely high likelihood of error in the assessments prompting placement on the watchlist. From a scientific standpoint, it is highly likely that the watchlist contains an overwhelming number of false positives: people who are not, and will not be, threats to national security but are nonetheless designated as such and included on the watchlist.

100. By automatically designating anyone on the watchlist as a KST who is subjected to CARRP, USCIS incorporates the unreliability and very high risk of error associated with the watchlist. USCIS also labels non-citizens in the TSDB under exceptions to the reasonable suspicion standard as non-KSTs and automatically subjects them to CARRP. The risk of error associated with those individuals, and the likelihood that they are false positives, is at least as high as—and likely much higher than—those designated as KSTs, because they do not meet the already-low standard for watchlisting and may simply be a relative or associate of someone who is already watchlisted.

101. USCIS also uses its own assessments, independent of watchlisting status, to decide whether an applicant for naturalization or adjustment of status to lawful permanent residence presents a "national security concern" and should be subjected to CARRP. Those assessments are likely even less reliable than the assessments that lead to placement on the

watchlist. There are several reasons why that is the case. First, the standard for identifying national security concerns is remarkably low. In concept, it requires little more than a link—even if highly attenuated, incidental, indirect, or unknowing—to possible terrorist activity. USCIS, however, does not even require such a link for a case to be subjected to the CARRP process and instead permits officers to use the CARRP process to *build* an articulable link. The threshold for subjecting an applicant to CARRP could scarcely be lower.

102. Second, the "indicators" that USCIS associates with national security concerns are extremely broad, vague, and subjective. Combined with USCIS's guidance that officers should over-refer applicants for CARRP processing, these indicators significantly raise the risk that applicants are subjected to CARRP because of officers' arbitrary suspicions and biases, not of valid science or any attempt to assess risk objectively with an estimated rate of error.

103. Third, there is no indication that USCIS officers have adequate training either in intelligence information or in the kinds of science-based concepts that can help safeguard against erroneous assessments.

104. In sum, the procedures, criteria, and standards that USCIS uses to determine which applicants may pose a "national security concern" are highly unreliable, and the CARRP process entails an extremely high risk of error.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of June 2020 in Rockville, Maryland.

MARC SAGEMAN

Exhibit A

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PROFESSIONAL QUALIFICATIONS AND ASSOCIATIONS:

Unrestricted Medical License – Maryland, New Jersey, New York and Pennsylvania (1981- 2017)
Diplomate, American Board of Psychiatry and Neurology (1996 - 2006)
Diplomate, American Board of Forensic Psychiatry (1998 - 2008)
American Academy of Psychiatry and the Law
American Psychiatric Association (Fellow)
College of Physicians of Philadelphia (Fellow)
Foreign Policy Research Institute (Senior Fellow)
Center for Strategic and International Studies (Senior Advisor)
George Washington University Homeland Security Policy Institute (Senior Fellow)

AREAS OF SPECIAL EXPERTISE:

Political Science: Terrorism, Political Violence, Middle East, South Asia, Europe
Sociology: Large Scale Organizations, Political Sociology, Social Movement
Psychiatry: Forensic psychiatry, intercultural adaptation, social psychology, and trauma

PROFESSIONAL EXPERIENCE:

Consultant on Political Violence
2013-present Independent scholar on political violence, expert witness on terrorism
2003-2013 Consulting with various U.S. government agencies, including the National Security Council, DHS, FBI, Department of Justice, Department of State, many branches of Department of Defense and

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the intelligence community, Sandia National Laboratories, and over twenty foreign governments. I have been qualified as an expert witness on terrorism and testified in federal court.

Private practice of psychiatry
1994-2017 Forensic psychiatry, including trial expert testimony (about 20)

Hospital of the University of Pennsylvania
1992-95 Residency in Psychiatry
1991-92 Internship (Medicine)

New York University Medical Center
1979-81 Residency in Anatomic Pathology

GOVERNMENT EXPERIENCE:

U.S. Army
2010-13 Special Adviser to the Deputy Chief of Staff of the Army (Intelligence) on the Insider Threat
2012-13 Special Adviser to the Deputy Chief of Staff of the International Security Assistance Forces (Intelligence) in Afghanistan on Insider Attacks

New York Police Department
2008-09 Scholar-in-Residence

U.S. Secret Service
2006-07 Consultant at the National Threat Assessment Center on terrorism

Central Intelligence Agency
1984-91 Assignments in Washington, DC; Islamabad, Pakistan; and New Delhi, India

United States Navy (retired as Commander)
1981-84 Flight Surgeon, with tours in Pensacola, Florida; MCAS Futemna, Okinawa, Japan; and NADC in Warminster, Pennsylvania

TEACHING AND RESEARCH EXPERIENCE:

Columbia University, School of International and Public Affairs, New York, New York
2008-09 Adjunct Associate Professor

University of Pennsylvania, Philadelphia, PA
2003-07 Clinical Assistant Professor, Department of Psychiatry
1998-2005 Faculty member, Solomon Asch Center for the Study of Ethno-political Conflict & lecturer, Department of Psychology
1995-97 Clinical associate, teaching medical students, psychiatric residents and law students
1991-95 Clinical assistant

New York University School of Medicine, New York, New York
1979-81 Clinical assistant

Institute for Cancer Research, Fox Chase, PA
1972 Research Assistant in Biochemistry

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Harvard University, Cambridge, MA
1971-73 Teaching Assistant in Physics

Semester long courses

Forensic Psychiatry (yearlong graduate seminar for senior resident physicians)
Law and Psychology (graduate seminar)
Psychology of Genocide
Psychology of Trauma
Moral Psychology of Holocaust Perpetrators
Social Psychology of Terrorism
Urban Terrorism

Invited lectures on terrorism delivered at Harvard University, University of Chicago, University of Maryland, University of Michigan, University of Pennsylvania, Syracuse University, University of California at Berkeley, Duke University, University of North Carolina, University of Texas, Northwestern University, University of Arizona, Principia College, U.S. Naval Academy, Johns Hopkins University, George Washington University, American University, Massachusetts Institute of Technology, University of Southern California, National Defense University, Naval Postgraduate School at Monterey and various universities in Germany, England, Canada, Netherlands, France, Italy, Singapore, Belgium, Turkey, Denmark, Switzerland, Austria, Malta, Ireland, Saudi Arabia, Spain, Russia, Israel, Iraq and Australia

Invited presentations at numerous professional meetings
Testimony before the 9/11 Commission, Washington, D.C., 2003
Testimony before the Beslan Commission, Moscow, Russia, 2005

HONORS:

1970-73	Harvard National Scholar
1973-79	MD-PhD Medical Scientist Training Fellow
1993-94	Sol Ginsburg Fellow (Group for the Advancement of Psychiatry)
1997-01	Trustee, The Balch Institute for Ethnic Studies
1999	Fellow, The College of Physicians of Philadelphia
2002	Councilor, The Historical Society of Pennsylvania

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Fischhoff, Baruch; Atran, Scott; and Sageman, Marc, 2008, "Mutually Assured Support: A Security Doctrine for Terrorist Nuclear Weapons Threats," *The Annals of the American Academy of Political and Social Science*, July 2008, 618: 160 – 167

Sageman, Marc, 2008, "The next Generation of Terror," *Foreign Policy*, March/April, 36 – 42

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Sageman, Marc, 2007, "Al Qaeda," in Jocelyne Cesari, ed., *Encyclopedia of Islam in the United States*, Westport, Connecticut: Greenwood Press: 37 – 40

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Exhibit B – Documents Considered

Pleadings and Docket Materials – *Wagafe v. Trump*

Plaintiffs' Second Amended Complaint, ECF No. 47, April 4, 2017

Order, ECF No. 69, June 21, 2017

Defendants' Answer to Plaintiffs' Second Amended Complaint, ECF No. 74, July 12, 2017

Pleadings and Docket Materials – Other Cases

Memorandum Opinion and Order, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Sept. 4, 2019), ECF No. 323

Opinion, Kashem v. Barr, No. 17-35634 (9th Cir. Oct. 21, 2019), Dkt. No. 85-1

Supplemental Briefing Regarding Redacted Documents, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Sept. 11, 2018), ECF No. 253-6

Decl. of Timothy P. Groh, dated July 5, 2018, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Sept. 11, 2018), ECF No. 253-2.

Overview of the U.S. Government's Watchlisting Process and Procedures as of: January 2018, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Apr. 27, 2018), ECF No. 196-16.

Defs.' Objections to Pls.' First Set of Interrogatories to TSC, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Apr. 27, 2018), ECF No. 196-21.

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Decl. of Timothy P. Groh, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Apr. 27, 2018), ECF No. 196-5.

Decl. of Randy Howe, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Apr. 27, 2018), ECF No. 196-7.

Additional Excerpts from the Deposition of the Federal Bureau of Investigation by its Designated Representative (Matthew DeSarno), Apr. 9, 2018, 2018, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Apr. 27, 2018), ECF No. 196-19.

Excerpts from the Deposition of the Federal Bureau of Investigation by its Designated Representative (Matthew DeSarno), Apr. 9, 2018, 2018, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Apr. 16, 2018), ECF No. 170-2.

Excerpts from the Deposition of U.S. Customs & Border Protection by its Designated Representative (Randy Howe), Mar. 22, 2018, Elhady v.Kable, No. 1:16-cv-00375 (E.D. Va. Apr. 13, 2018), ECF No. 169-1.

Deposition of Terrorist Screening Center by its Designated Representative (Timothy Groh), Mar. 1, 2018, Elhady v. Kable, No. 1:16-cv-00375 (E.D. Va. Mar. 14, 2018), ECF No. 137-1.

Decl. of Michael Steinbach in Supp. of Defs.' Second Suppl. Mem. In Supp. of Their Mot. For Summ. J., Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. May 5, 2016), ECF No. 327.

Decl. of John Giacalone in Supp. of Defs.' Reply in Supp. of Their Cross-Mot. For Partial Summ. J., Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. Oct. 19, 2015), ECF No. 304-1.

Decl. of Marc Sageman in Opp'n to Defs.' Cross-Mot. for Summ. J., Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. August 7, 2015), ECF No. 268.

Decl. of G. Clayton Grigg in Supp. of Defs.' Cross-Mot. for Summ. J., Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. May 28, 2015), ECF No. 253.

Exhibit A, Decl. of G. Clayton Grigg in Supp. of Defs.' Cross-Mot. for Summ. J., Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. May 28, 2015), ECF No. 253-1.

Decl. of Michael Steinbach, Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. May 28, 2015), ECF No. 254.

Exhibit A in Supp. of Decl. of Michael Steinbach, Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. May 28, 2015), ECF No. 254-1.

Documents and Materials Produced by the Defendants in *Wagafe v. Trump*

Documents beginning with Bates numbers:

CAR751, CAR926, CAR1140, CAR1857

DEF-57, DEF-984, DEF-3593, DEF-4494, DEF-4991, DEF-9765, DEF-10488, DEF-10864, DEF-17542, DEF-18887, DEF-19379, DEF-19401, DEF-21397, DEF-24313, DEF-24989, DEF-26371, DEF-27462, DEF-28120, DEF-35038, DEF-35176, DEF-35445, DEF-36314, DEF-38284, DEF-38667, DEF-38830, DEF-44548, DEF-45893, DEF-50754, DEF-62878, DEF-63447, DEF-63649, DEF-64035, DEF-64607, DEF-66528, DEF-75968, DEF-86695, DEF-86696, DEF-89772, DEF-91281, DEF-94351, DEF-94979, DEF-95123, DEF-95963, DEF-99854, DEF-109058, DEF-131930, DEF-134331, DEF-142913, DEF-147440, DEF-166909

Class List as of 4/12/18
Class List as of 6/30/18
Class List as of 9/30/18
Class List as of 9/30/19

2020-06_Wagafe_Internal_Data_FY2013-2019_(Confidential_Pursuant_to_Protective_Order)

Defendants Responses and Objections to Plaintiffs' Fifth Request for Production of Documents and Third Interrogatory, 10/16/18

Other Materials

Plaintiffs-FOIA 649-883

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Plaintiffs-FOIA 2666-2696

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2013 Watchlisting Guidance, available at https://www.aclu.org/sites/default/files/field_document/March%202013%20Watchlist%20Guidance.pdf