

EXHIBIT 98

~~FILED UNDER SEAL~~

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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

RESPONSIVE 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:

1. My background and qualifications are set forth in my initial report, dated February 28, 2020, and my updated report, dated July 1, 2020, and therefore are not repeated here. A copy of my curriculum vitae is attached as Exhibit A to each of those reports.

10. My opinions here are based on my education, experience, and research.

11. Plaintiffs' counsel has asked me to provide my opinion about the conclusion in the amended report of Bernard Siskin that "the level of terrorist activity in a country" and "whether that country is a state sponsor of terrorism" explain why "a disproportionate percentage of applications from applicants born in majority Muslim countries are referred to CARRP," and his further conclusion that "the percentage of a country's population that is Muslim has only a small and statistically non-significant correlation with the number of CARRP referrals from a country." (Amended Report of Bernard Siskin, July 17, 2020 ("Siskin Report"), at 5.) The thrust

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of Dr. Siskin's argument is: Applicants born in countries that experience a high incidence of terrorist events, or that have been designated state sponsors of terrorism, are more likely to have personal connections linking them to national-security concerns; therefore, they are more likely to be referred to CARRP. According to Dr. Siskin, it is the relative density of national security concerns in those countries, not the countries themselves or the fact that the countries are majority-Muslim, that produces a high rate of referral to CARRP.

12. It is my opinion that the information Dr. Siskin relies upon to arrive at these conclusions is fundamentally flawed and cannot validly be used to support his conclusions. First, in assessing "the level of terrorist activity in a country," Dr. Siskin relies exclusively on the Global Terrorism Database (GTD).¹ The GTD is not a reliable source of information for these purposes. It conflates terrorism with acts associated with insurgency or civil war, lacks a consistent methodology for characterizing events as acts of terrorism, and is infected with political bias. Consequently, the GTD cannot accurately predict whether a person born in country X is more or less likely to have some personal tie warranting referral to CARRP.

13. Second, a country's designation as a "state sponsor of terrorism" is not a valid basis for assessing why applicants from such countries are subjected to CARRP at higher rates than applicants from other countries. Not only are such designations inherently political, but if anything, they speak only to actions by the *state* and hold no predictive or probabilistic value in assessing the propensity of *nationals* of those countries to carry out acts of terrorism. Consequently, that country X has been designated a "state sponsor of terrorism" cannot accurately predict whether a person born in country X is more or less likely to have some personal tie warranting referral to CARRP.

¹ <http://www.start.umd.edu/gtd/search/>.

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14. These flaws render unreliable the “regression analysis” that Dr. Siskin conducted in support of his conclusion that “the percent of a country’s population that is Muslim has only a small and statistically non-significant impact on the number of CARRP referrals from a country.” (Siskin Report at 109-130.)

15. I first address Dr. Siskin’s use of data from the GTD to assess “the extent of terrorist events in a country.” (*See id.* at 114.) To be clear, I used data from the GTD in my own report (*see* ¶¶ 62-63) to illustrate a point about the extreme rarity of terrorist events in the United States. In so doing, I noted that databases that purport to compile data on terrorist threats to the United States, including the GTD, are unreliable and flawed, in part because they include incidents where, but for the intervention of the FBI or other law enforcement, there was no real threat to the United States because the suspect lacked the capability to carry out a terrorist act independently. I also noted that the GTD’s data on acts of terrorism in the United States include numerous incidents carried out by people who had well-documented mental disorders and/or a very tenuous link to political organizations. I thus stated that databases such as the GTD greatly overinflate the actual threat of terrorism within the United States—a conclusion bolstered not only by years of terrorism research but also by the abundance of information sources available within the United States that can be used to gauge the extent of the GTD’s unreliability.

16. For illustrative purposes, I noted that, notwithstanding the clear overinclusiveness of the GTD, the base rate of violent terrorist attacks in the United States is still extraordinarily low, and any tool used to predict who will commit acts of terrorism would have to be extremely accurate to avoid a flood of false positives in attempting to identify terrorists—a degree of accuracy that CARRP and the federal watchlisting system cannot remotely achieve. (*Id.* ¶¶ 62-68.)

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17. This use of demonstrably overinclusive data from the GTD on terrorist attacks in the United States, for illustrative purposes only, differs fundamentally from Dr. Siskin's reliance on the GTD for data on the extent of terrorist incidents in other countries. Using the GTD data for that purpose is deeply flawed, for several reasons.

18. First, the GTD includes as "terrorism" acts carried out during an insurgency or civil war, such as in Afghanistan, Iraq, Syria, or Somalia (all Muslim-majority countries). Acts of war are not acts of terrorism, which are meaningful only outside the context of war or insurgency. Were that not the case, nearly any act of violence carried out during the course of a war or insurgency—which are nearly always motivated by politics, ideology, or religion—would qualify as an act of terrorism, rendering the term meaningless.

19. The incidents of violence in the GTD that occurred in the context of a war or insurgency, however, are so numerous that they drown out all other terrorism incidents. They distort the GTD's overall data on terrorism trends, rendering the GTD unusable as a gauge of terrorist activity in various regions or states.²

20. As Dr. Siskin notes, those who maintain the GTD have acknowledged this "limitation" in the GTD data, conceding that "[t]here is often definitional overlap between terrorism and other forms of crime and political violence, such as insurgency, hate crime, and organized crime." (Siskin Report at 118 (citing GTD "Codebook").) This euphemistic acknowledgement of "definitional overlap" does not capture the significant extent to which the GTD includes as terrorism acts that cannot validly be labeled as such.

² I sometimes review GTD data to obtain a picture of *global* trends, on the assumption that the pervasive flaws in the database are internally consistent. At a global level, the GTD may provide a rough depiction of whether a trend is up or down over time, meaning there are more or fewer insurgencies or civil wars at any given time. That (still flawed) global view, however, plainly differs from Dr. Siskin's reliance on GTD data for country-level analyses.

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21. Moreover, the GTD data on acts of terrorism in the United States gives further cause for concern about the database's characterization of events that occur abroad. As I note above, a range of information sources available within the United States enable us to "fact check" the GTD, in essence. I have conducted extensive research on Islamist terrorist attacks in the United States and have checked the results of my research against the GTD's data, which I found to be highly unreliable. As I note above, despite the richness of the available information about attacks in the United States, the GTD's data about those attacks is still highly overinclusive—in other words, the GTD gets is wrong even where it should be most likely to get it right. This range of information sources, however, is not available to nearly the same extent for acts that occur abroad, often in locations without neutral or independent sources of information and where state actors hold significant sway over reporting on, and information about, politically or ideologically driven violence. For this additional reason, the GTD's characterization of terrorist incidents abroad is highly unreliable.

22. A second major flaw in the GTD is that it is not a neutral instrument. It reflects the political orientation of the U.S. government as to what constitutes terrorism—an orientation that not only differs drastically from that of other governments but also shifts over time. Specifically, the GTD counts individuals and organizations that are not allied with the U.S. government as terrorists or insurgents to a far greater extent than those who are allied with the U.S. government. A very simple example illustrates this political bias: When I searched the database for terrorist incidents that occurred in Afghanistan during the ten-year period of the Afghan-Soviet War (a time when the U.S. government was allied with the Afghan mujahedeen against the Soviets), the result was 13 incidents, most of them committed by "unknowns," for the whole decade of this war. In contrast, when I searched for terrorist incidents that occurred in

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Syria—where the U.S. government was opposed to most of the warring factions—between 2011 (the start of the Syrian civil war) and 2018 (the last entry in the GTD), the result was thousands of incidents. The Soviet Afghan War was far more intense than the Syrian conflict, with more fighting and more victims, and the numbers should have resulted in more incidents in Afghanistan than Syria.

23. This kind of systemic bias against non-U.S. allies is unsurprising, given that the GTD is compiled in the United States and receives significant funding from the U.S. government. One can easily imagine a different GTD constructed by the Chinese, Russian, or Iranian governments that would look dramatically different from the University of Maryland’s GTD. Importantly, however, the mere fact that the U.S. government may not be aligned with another government or group located abroad is not a valid indicator that the constituents of that state or group are inclined to—let alone will—carry out violent attacks against the United States. Many Americans, of course, are vehemently opposed to their own government’s policies domestically and overseas, but as I explained in my original and updated reports in this matter, exceedingly few of them act on those views violently. The same is true of non-U.S. persons.

24. It is important to note that definitional and political bias that replicates U.S. government policy results in a tendency to include more “terrorist incidents” from Muslim-majority countries while excluding similar violent acts in non-Muslim majority countries. That is because since the September 11 attacks, primary the terrorist threat to the United States has been erroneously viewed as coming from Islamist “extremists.” An overwhelming amount of resources and government funds have been devoted to identifying and tracking such “extremists,” leading government personnel and academic researchers to focus primarily on

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Muslims and nationals of Muslim-majority countries, while deemphasizing similar violent acts from other individuals and groups, both internationally and domestically.

25. A third major defect in the GTD arises from characterization flaws. I repeatedly have found, based on actual collection of data in the field, that the GTD includes incidents about which there is insufficient information, and it lacks internal consistency in tracking and categorizing incidents for which information is available. For instance, I wrote a book on al Qaeda attacks in the United Kingdom from 2004 to 2006, using transcripts of the trials of the perpetrators.³ The book was peer-reviewed by two British anti-terrorist specialists. There were basically four al Qaeda attacks during that period: the ammonium nitrate truck bombing plot of March 2004; the London bombings of July 7, 2005; the copy-cat attempt of July 21, 2005; and the August 9, 2006 transatlantic airliner plot. Searching the GTD for attacks in the United Kingdom (it is not possible to search by city) between January 1, 2004 and December 31, 2006 yields 40 incidents, most of them occurring in Ireland. Half of the incidents are of “unknown” attribution. Of the remainder, twelve are attributed to protestant or catholic militants, and eight are attributed to al Qaeda. This significant number of “unknown” incidents should be deeply unsettling to any researcher. Without any attribution or information about the alleged perpetrator, there is no way to determine whether these incidents were terrorist incidents at all, or whether they are distinguishable from the other incidents in the database that occurred in Ireland during that period. Notably, incidents can be and are entered into the GTD based on initial sensational press reports that are rarely later corrected or later authenticated as terrorist incidents.

26. Looking specifically at the al Qaeda incidents, the GTD included eight incidents: one set of four incidents took place on July 7, 2005 and the other set of four incidents that took

³ Marc Sageman, *The London Bombings*, Philadelphia: University of Pennsylvania Press (2019).

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place on July 21, 2005. Those sets of incidents correspond to the two attacks of July 7, 2005 and its copy-cat of July 21, 2005, but instead of two terrorist attacks, the GTD lists eight terrorist incidents (completely ignoring the March 2004 and August 2006 attacks). This appears to be because the GTD counted the each of the conspirators as a separate “incident.”⁴ Thus, the GTD’s listing of eight terrorist incidents attributed to al Qaeda during that period has little basis in reality: the actual number of incidents or attacks by al Qaeda in the United Kingdom during this time period was four. If the GTD counted the number of convicted and dead conspirators in those four attacks, the number was 23, still quite different from the eight in the GTD database. In either case, the GTD number does not reflect reality.

27. I have found other pervasive flaws in the GTD through my own field research. At present, I am working on a book of global Islamist terrorist attacks in France (including attacks by the Front de Liberation National, Groupe Islamique Armé, al Qaeda, and the Islamic State) since World War II. My sources have included French legal documents and French counter-terrorism investigations. I checked the results of my research against the GTD and found it to be inaccurate and completely unusable. The GTD ignored significant attacks, listed phantom attacks that turned out not to be terrorism at all, and was entirely lacking in internal consistency as to how to characterize and track attacks that did occur.

28. Inconsistencies and gaps in the GTD data such as those I describe here render the GTD fundamentally unreliable. To my knowledge, stemming in part from my review of academic articles in my capacity as an arbiter on various terrorism-related journals, no one doing serious research on terrorist attacks in the West (where it is easier to check independently the

⁴ Even then, the GTD was still wrong. For the July 7 bombings, there were only four conspirators in London, and for the July 21 attacks, there were actually five bombers and another bomb maker, and all six were convicted at trial. So, even counting conspirators, if that is what the GTD data reflects, there were ten, not eight as identified in the GTD.

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GTD data) uses the GTD. Researchers who assemble reliable datasets all construct their own databases focused on the topic of their research. Those who do rely on GTD data tend not to be grounded substantively in terrorism research and are not aware of the various flaws in the database.

29. It is my opinion that the GTD is too flawed to be used in *any* study of terrorism. When checked against reliable information drawn from field research, the GTD numbers appear completely arbitrary. The data contained in the GTD is not grounded in valid science but rather reflects polemical claims under the guise of social science. It tells us nothing valid or reliable about “the extent of terrorist events in a country.” (*See* Siskin Report at 114.)

30. Even setting aside the pervasiveness of the flaws in the GTD, it is important to note that even an elevated base rate of “terrorist incidents” in a given country cannot validly be used as an indicator of the likelihood that any given national of that country is, or will be, a terrorist, for all the reasons set forth in my original and updated reports in this matter. Insurgencies and civil wars, moreover, typically generate large numbers of refugees who then settle elsewhere, including in the United States, and seek permanent residency or citizenship in their new home countries. Using GTD-derived data to label countries that experience civil war or insurgency as having a higher rate of “terrorist incidents,” then subjecting nationals of those countries to a CARRP process that penalizes them because they originated in those countries, is not only logically defective, but also simply unfair.

31. Dr. Siskin’s reliance on whether a country has been deemed a “state sponsor of terrorism” as a variable in his regression analysis fares no better than his reliance on the GTD as another such variable. (*See* Siskin Report at 126.) I note at the outset that nowhere in Dr. Siskin’s report does he identify his source(s) of information for this purported list of state sponsors of

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terrorism, nor does he explain his methodology for ensuring that incorporating any such information is statistically valid and reliable. The absence of any such explanation alone undercuts his use of this variable.

32. In any event, the use of this “state sponsors” variable is fundamentally flawed. The list of “state sponsors of terrorism” is compiled and maintained by the U.S. Department of State, and inclusion on the list results in the unilateral imposition of sanctions against the listed government by the U.S. government. To my knowledge, the State Department list of state sponsors of terrorism is not used in serious academic research because the list is devised in a political setting and is used for political purposes. Four countries are currently on this list: Syria, since 1979; Iran, since 1984; Sudan, since 1993; and North Korea, since 2017. The list is arbitrary, has vague criteria, and includes only countries that are deemed hostile to the United States. The list cannot validly be used for any academic research that seeks to analyze the phenomenon of terrorism from a neutral perspective.

33. An additional flaw with this approach is that the notion of state sponsorship of terrorism often means that the terrorists are not from the sponsoring state. For instance, Iran is viewed as the state sponsor of the Lebanese organization Hezbollah. This means that the terrorists are Lebanese, not Iranians, from Iran. Likewise, a wave of bombings in France in 1985–1986 was carried out on behalf of Iran to discourage France from arming Iraq in the Iraqi-Iranian War of the 1980s. This meant that the Iranians were funding and training Hezbollah in Lebanon to train other country nationals, in this case Tunisia, to carry out the bombings in France. Iran was clearly the state sponsor, but the terrorists were Tunisians, not Iranians. Focusing on the nationals of a state sponsor of terrorism ignores that the terrorists usually do not come from that country.

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34. The U.S. government, including the State Department, defines terrorism as “an activity that (i) involves a violent act or an act dangerous to human life, property, or infrastructure; and (ii) appears to be intended (A) to intimidate or coerce a civilian population; (B) to influence the policy of a government by intimidation or coercion; or (C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.”⁵ Applying this definition to states that have sponsored or supported groups that carried out such violence since 1979, when the State Department list originated, one immediately sees that the biggest “state sponsor of terrorism” has traditionally been the United States, which has armed, trained, and funded the Afghan resistance (which we called “freedom fighters” but the legitimate Afghan government labeled “terrorists”) against the Soviet Union in the 1980s, as well as the rebels against the governments of Angola, Cambodia, Nicaragua, and various other countries. Currently, the U.S. government’s support of the Kurdish rebels against the Bashar al-Assad regime would qualify under the State Department’s definition as state sponsorship of terrorism. While I personally support U.S. policy in many of these instances, analytically and from a neutral perspective, the U.S. government would plainly qualify as state sponsor of terrorism.

35. Because the State Department list is irretrievably political and does not account for various changes of governments over time (Sudan has ended its state sponsorship of terrorism in recent years, while North Korea has supported terrorism for at least five decades but was removed in 2008 and was not re-added to the list until 2017), no neutral academic research would take this list seriously.

36. Perhaps more fundamentally, it should be self-evident that whether a country has been designated a state sponsor of terrorism says nothing of predictive or probabilistic value

⁵ Executive Order 13224, available at <https://www.state.gov/executive-order-13224/>.

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about the propensity of nationals of that country to carry out acts of terrorism. By definition, such a designation focuses on alleged support for terrorism by the *state*, not nationals of that state. Thus, it is wholly illogical to use a state sponsorship of terrorism designation as a basis by which to explain or justify the disproportionate referral of nationals of that country for CARRP processing.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of August 2020 in Rockville, Maryland.


MARC SAGEMAN