

THE HONORABLE RICHARD A. JONES

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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.

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

Defendants.

No. 2:17-cv-00094-RAJ

**MOTION TO EXCLUDE OPINIONS OF  
BERNARD SISKIN**

NOTE FOR MOTION CALENDAR:  
Friday, April 9, 2021

## I. INTRODUCTION

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

Three distinct portions of Dr. Siskin's opinions fall short of the standard for admissibility. First, Dr. Siskin cannot validly opine on [REDACTED] because those matters are outside his knowledge and expertise. Second, Dr. Siskin's opinion regarding [REDACTED] is beyond his knowledge and rests on a false premise: that USCIS lacks the means or obligation [REDACTED]. Third, [REDACTED] and the opinions derived from it, are unreliable. Through his [REDACTED] [REDACTED]. But the data and information he relied on [REDACTED] are fundamentally flawed, biased, and illogical. These defects render Dr. Siskin's [REDACTED] opinions inadmissible.

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

## II. BACKGROUND

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

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

10 Dr. Siskin’s Amended Report differs in key respects from his Original Report and goes  
 11 far beyond incorporating and analyzing the revised USCIS data. At 137 pages, the Amended  
 12 Report is significantly longer than the Original Report, and it includes [REDACTED]  
 13 [REDACTED] that are entirely new and were not included in his Original Report. Ex.  
 14 B at 5, 23-28, 30-31, 105-130, 134 ¶ 12. Dr. Siskin acknowledged at his deposition that he could  
 15 have included [REDACTED] in his Original Report. Handeyside Decl., Ex. C at 61:16-  
 16 62:7. He testified that he added [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED] *Id.* at 60:11-61:8.

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

### 23 III. ARGUMENT

#### 24 A. Standard for Admissibility of Expert Testimony

25 For expert testimony to be admissible, the expert must be qualified to offer it, and the  
 26 testimony must be helpful to the trier of fact, “based on sufficient facts or data,” and “the product  
 27 of reliable principles and methods.” Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharm.*,  
 28

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

8 **B. Dr. Siskin Cannot Opine on [REDACTED]**

9 Dr. Siskin repeatedly opines on [REDACTED]

10 [REDACTED] He lacks the expertise and knowledge required to offer such opinions. He is not an  
11 expert in [REDACTED]

12 [REDACTED] Ex. C at 20:8-21:11. Indeed, Dr. Siskin himself conceded that [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 *Id.* at 164:19-165:8.

16 In both his Original and Amended Reports, Dr. Siskin states that [REDACTED]

17 [REDACTED]  
18 [REDACTED] Ex. B at 15; Ex. A at 12. Yet when  
19 deposed, Dr. Siskin disavowed any knowledge of the purportedly [REDACTED]

20 [REDACTED] *Id.*; Ex. C at 143:4-145:13.<sup>1</sup> He clarified  
21 that [REDACTED]

22 [REDACTED] Ex. C at 144:21-24 (emphasis added). Dr. Siskin’s assessment of [REDACTED]

23 [REDACTED] is similarly off base: he considers only [REDACTED]  
24  
25

26 <sup>1</sup> Dr. Siskin also states in his report that [REDACTED]

27 [REDACTED] Ex. B at 13. But

28 [REDACTED] Ex. C at 104:5-14.

1 [REDACTED]

2 [REDACTED]. Ex. B at 13-15; Ex. C at 109:3-114:8.

3 In his Responsive Report, Dr. Siskin couches this baseless opinion in conditional

4 language, stating [REDACTED]

5 [REDACTED]

6 [REDACTED] Ex. E at 45

7 (emphasis added). But Dr. Siskin knows nothing about [REDACTED] He assumes that

8 [REDACTED] but he has no

9 specific information as to whether that assumption is correct. Ex. C at 158:18-159:12. For

10 instance, he testified that [REDACTED]

11 [REDACTED]

12 [REDACTED] *Id.* at 73:22-74:11.

13 Because of these flaws, Dr. Siskin’s opinions on [REDACTED] reduce

14 to a truism: if [REDACTED] Such opinions

15 will not “help the trier of fact . . . to determine a fact in issue.” Fed. R. Evid. 702(a). As Dr.

16 Siskin himself admits, [REDACTED]

17 [REDACTED] *See also* Ex. C at 397:13-398:8.

18 **C. Dr. Siskin’s Opinions Regarding [REDACTED] Are**  
19 **Unreliable and Unhelpful.**

20 Dr. Siskin opines on the significance of [REDACTED]

21 [REDACTED]. He concludes that [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] Ex. B at 3. Similarly, he states that [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]  
2 *Id.* at 93-94; *see also id.* at 86-87.

3 These opinions fail to meet the standard for admissibility under Rule 702. First, Dr.  
4 Siskin knows virtually nothing about [REDACTED]  
5 [REDACTED]. He testified that he [REDACTED] Ex. C at  
6 91:3-15, and he disavowed knowledge of [REDACTED], *id.* at  
7 93:13-16, 94:7-23, 120:14-19, 130:4-23. He does not know what form the [REDACTED]  
8 [REDACTED] nor does he have an understanding of [REDACTED]  
9 [REDACTED] *Id.* at  
10 65:22-66:11, 70:22-71:13, 181:19-22, 182:8-13. Without any relevant knowledge as to how  
11 [REDACTED] Dr. Siskin cannot validly opine that [REDACTED]  
12 [REDACTED] *See United States v. Chang*, 207 F.3d 1169, 1172 (9th Cir.  
13 2000) (an expert witness “must have knowledge . . . relevant to such evidence or fact in issue.”)

14 Second, Dr. Siskin’s opinions regarding [REDACTED] rest on a false premise:  
15 tha [REDACTED]  
16 Ex. C at 73:6-7. Not so. USCIS [REDACTED], including  
17 whether [REDACTED] This is true even when it comes to [REDACTED]  
18 [REDACTED]  
19 [REDACTED] *See id.* at 73:9-10. Indeed, Dr. Siskin acknowledged his  
20 understanding that [REDACTED]<sup>2</sup> *Id.*  
21 at 75:7-21, 186:2-13.

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

27 <sup>2</sup> As set forth in Plaintiffs’ motion for summary judgment, USCIS’s failure, *inter alia*, to  
28 ensure that [REDACTED] is reliable and unbiased demonstrates that  
CARRP is arbitrary and capricious in violation of the APA.

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

11 [REDACTED] simply because information [REDACTED]

12 [REDACTED]  
13 Because Dr. Siskin lacks any knowledge of [REDACTED]  
14 [REDACTED] and because his opinions as to [REDACTED] rest on the false  
15 premise that [REDACTED] those opinions are inadmissible.

16 **D. Dr. Siskin’s [REDACTED] and the Opinions Derived Therefrom Are**  
17 **Unreliable and Illogical.**

18 Dr. Siskin concedes, as he must, that [REDACTED]  
19 [REDACTED] Ex. B at 74; *see also* Ex. C at  
20 372:13-373:5 [REDACTED]

21 According to Dr. Siskin, the purpose of [REDACTED]  
22 [REDACTED]

23 [REDACTED] Ex. B at 5. Based on the results of [REDACTED], Dr. Siskin concludes that  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

28 [REDACTED] *Id.* at 30. He further concludes that [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] *Id.*

4 Dr. Siskin's [REDACTED] and related conclusions are flawed and misleading.

5 1. The [REDACTED] relies on deeply flawed data on [REDACTED]  
6 [REDACTED].

7 In attempting to quantify [REDACTED] Dr. Siskin relies  
8 exclusively on [REDACTED] which is maintained by [REDACTED]  
9 [REDACTED] primarily through funding from the U.S. government.<sup>3</sup> Ex. B at 114. But as Dr.  
10 Sageman explains, [REDACTED] Ex. D  
11 ¶ 12. Notably, Dr. Sageman is a scholar and political sociologist with decades of experience in  
12 counterterrorism and terrorism research, including extensive experience examining and parsing  
13 [REDACTED]. Ex. D ¶¶ 15-30; *see also* Expert Report of Marc Sageman ¶¶ 1-9,  
14 Handeyside Decl., Ex. F. Dr. Siskin, by contrast, had no experience with [REDACTED] prior to the  
15 preparation of his Amended Report. Ex. C at 291:15-19.

16 Dr. Sageman states that [REDACTED]  
17 [REDACTED] Ex. D ¶ 29. Thus, [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 [REDACTED] *Id.* ¶ 28. [REDACTED] therefore does not provide data “of a type reasonably relied upon  
22 by experts in the particular field.” *See* Fed. R. Evid. 703.

23 Specifically, Dr. Sageman [REDACTED]  
24 [REDACTED]  
25 [REDACTED] Ex. D ¶¶ 18-  
26 19. Through his research, Dr. Sageman [REDACTED]  
27 [REDACTED]

28 <sup>3</sup> *See* [REDACTED]



1 [REDACTED]

2 [REDACTED]

3 [REDACTED] *Id.* ¶ 21. Thus, according to Dr. Sageman, [REDACTED]

4 [REDACTED] *Id.* And while [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] *Id.* ¶ 20.

8 Second, Dr. Sageman has found that [REDACTED] *Id.*

9 ¶ 25. The [REDACTED]

10 [REDACTED]

11 *Id.* [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] *Id.* During the course of his own field

16 research, Dr. Sageman has checked [REDACTED]

17 [REDACTED] *Id.* ¶¶ 26-27; *cf.* Ex. C at

18 294:2-11 [REDACTED]).

19 Third, [REDACTED] exhibits another inherent flaw: [REDACTED] Ex. D

20 ¶ 22. It [REDACTED]

21 [REDACTED]

22 [REDACTED] *Id.* Dr. Sageman has found that [REDACTED]

23 [REDACTED]

24 [REDACTED] *Id.*

25 While this kind of [REDACTED]

26 [REDACTED]

27 [REDACTED] *Id.* ¶ 23; *see also, e.g., In re Baycol*

28

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

3 In his report, Dr. Siskin erroneously minimizes the potential for errors [REDACTED]  
4 He concludes that [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] Ex. B at 116-17. But that conclusion is nothing more  
9 than Dr. Siskin’s subjective assessment, made without reference to any research or  
10 documentation—he simply notes, [REDACTED]  
11 [REDACTED] Ex. C at 314:14-315:15. He further asserts that  
12 [REDACTED]  
13 [REDACTED] *Id.* at 317:15-318:9. Without any foreign policy or national security  
14 expertise, much less research-based findings, Dr. Siskin is plainly unqualified to make such  
15 sweeping statements.

16 Because [REDACTED] Ex. D ¶ 29, it cannot serve as a  
17 basis for assessing [REDACTED], *see* Ex. B  
18 at 27.

19 **2. Using [REDACTED]  
20 makes no sense.**

21 Also among the [REDACTED] in Dr. Siskin’s [REDACTED] is [REDACTED]  
22 [REDACTED] Ex. B at 27. Nowhere in Dr. Siskin’s report is there an  
23 explanation of the source he used for such a designation, but he clarified in his deposition that [REDACTED]  
24 [REDACTED] and that he does not know how or  
25 according to what standard [REDACTED] Ex. C at 364:3-12.<sup>4</sup>

26  
27  
28 <sup>4</sup> [REDACTED]

1 Dr. Siskin’s use of [REDACTED]  
 2 [REDACTED] is illogical and unhelpful. As an initial matter, as of the date of the  
 3 Amended Report, [REDACTED] *id.* at 363:12-16—a glaringly  
 4 inadequate [REDACTED] countries across  
 5 the entire globe. Additionally, [REDACTED]  
 6 [REDACTED] Ex. D ¶ 33. As Dr. Sageman observes, [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED] *Id.* And as a matter of simple logic, [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED] *Id.* ¶ 36.

12 More fundamentally, [REDACTED] is  
 13 undeniably political. [REDACTED]  
 14 [REDACTED] *Id.* ¶ 32. [REDACTED]  
 15 [REDACTED] means of exerting diplomatic leverage. For instance, the State Department [REDACTED]  
 16 [REDACTED] as part of the restoration of diplomatic relations with that country,  
 17 but the Trump administration [REDACTED] without any clear precipitating event,  
 18 [REDACTED] immediately prior to the turnover in administrations.<sup>5</sup> After the date of the  
 19 Amended Report, the State Department [REDACTED]  
 20 [REDACTED]<sup>6</sup> For these reasons, [REDACTED] cannot be used  
 21 [REDACTED] Ex. D ¶ 32. Thus, as Dr.  
 22 Sageman concludes, [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED] *Id.* ¶ 36.

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26 § [REDACTED]  
 27 [REDACTED] x. C at 364:22-365:22.  
 28 [REDACTED]

1           **3. The [REDACTED] is speculative and untethered from reality.**

2           Setting aside the unreliability of the individual [REDACTED] Dr. Siskin used, [REDACTED]  
3 [REDACTED] suffers from a broader problem: it reflects bald speculation about [REDACTED]  
4 [REDACTED], without any basis in verifiable facts or information.

5           In formulating the analysis, Dr. Siskin simply conjured [REDACTED] based on his own  
6 theorizing about factors that might correlate with [REDACTED]. In explaining why he chose  
7 [REDACTED] Dr. Siskin stated that [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] Ex. B at 24; *see also* Ex. C at 257:12-258:2 [REDACTED]  
12 [REDACTED]. Similarly, he selected [REDACTED]  
13 [REDACTED] because [REDACTED]  
14 [REDACTED] Ex. C  
15 at 276:17-277:11.

16           But Dr. Siskin offers no reason to believe that his theories actually correspond to reality.  
17 In formulating the parameters of [REDACTED], he did not consider the [REDACTED] that  
18 USCIS actually uses for CARRP [REDACTED], *id.* at 272:1-10, and he did not attempt a study of [REDACTED]  
19 [REDACTED] by USCIS officers, *id.* at 252:1-8. He conceded  
20 that he does not know whether or how often [REDACTED]  
21 [REDACTED], as  
22 opposed to some other basis. *Id.* at 250:18-251:2. He further acknowledged that nothing about  
23 his findings [REDACTED]  
24 [REDACTED]. 259:16-263:5. He agreed that it would have been  
25 [REDACTED] if he had been able to assess the nature of the information that actually  
26 [REDACTED] but he was told such information [REDACTED] *Id.* at  
27 263:7-265:4. Dr. Siskin's theories are simply guesses unmoored from facts.

1 Dr. Siskin took pains in his deposition to emphasize that [REDACTED]

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] *Id.* at 251:16-20, 258:11-22, 350:9-351:3. But  
5 those statements are at loggerheads with his report, in which he opines, [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] Ex. B at 130. Either way— [REDACTED]  
9 [REDACTED] is impermissibly  
10 speculative and divorced from fact. *See Cooper*, 510 F.3d at 942-43 (“Rule 702 demands that  
11 expert testimony relate to scientific, technical or other specialized knowledge, which does not  
12 include unsubstantiated speculation and subjective beliefs.”).

13 Finally, Dr. Siskin fails to consider whether [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]. For nearly two decades, the U.S. government’s  
17 national security apparatus has focused overwhelmingly on Muslims and nationals of Muslim-  
18 majority countries. [REDACTED]

19 [REDACTED]  
20 [REDACTED]. *See* Ex. D ¶ 24. Dr. Siskin’s [REDACTED] inextricably bound  
21 up in the U.S. government’s targeting of Muslims and nationals of Muslim-majority countries.  
22 *See Reed Const. Data Inc. v. McGraw-Hill Cos., Inc.*, 49 F. Supp. 3d 385, 401-07 (S.D.N.Y.  
23 2014), *aff’d*, 638 F. App’x 43 (2d Cir. 2016) (expert’s [REDACTED] inadmissible due to,  
24 *inter alia*, [REDACTED]). For this additional reason, his [REDACTED] is unreliable.

25 **IV. CONCLUSION**

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

DATED: March 25, 2021

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