The Honorable Richard A. Jones

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

ABDIQAFAR WAGAFE, *et al., on behalf of himself and other similarly situated*,

Plaintiffs,

v.

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

Defendants.[1]

CASE NO. 2:17-cv-00094-RAJ

DEFENDANTS' NOTICE OF MOTION AND MOTION TO EXCLUDE THE TESTIMONY AND REPORTS OF PLAINTIFFS' EXPERTS DR. NERMEEN ARASTU, MR. JAY GAIRSON, AND MR. THOMAS RAGLAND; MEMORANDUM OF SUPPORTING POINTS AND AUTHORITIES

(Note On Motion Calendar for: April 9, 2021)

Defendants, through their attorneys of record, hereby move this Court pursuant Fed. R. Evid. 104(a) and 702, and pursuant to the Court's gatekeeping requirements to screen expert evidence for relevancy and reliability, to exclude the evidence offered by Dr. Nermeen Arastu, Mr. Jay Gairson, and Mr. Thomas Ragland, whom Plaintiffs have designated as their expert witnesses.

This Motion is based upon the papers filed herein, including the following Memorandum, and Exhibits contemporaneously filed under seal. A proposed order is submitted for consideration by the Court.

[1] Plaintiffs sued all individual defendants only in their official capacities. *See* Dkt. No. 47 at 8-9. Pursuant to Fed. R. Civ. P. 24(d), the offices' incumbents are substituted for their predecessors.

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Dated: March 25, 2021

Respectfully Submitted,

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I. INTRODUCTION

Based mainly on *Daubert* principles, Defendants seek exclusion of the evidence provided by Plaintiffs' experts Dr. Nermeen Arastu, Mr. Jay Gairson, and Mr. Thomas Ragland.

II. BACKGROUND

Dr. Arastu claims expertise (without claiming CARRP expertise or any other area or field of expertise) based on her academic research related to naturalization, representation of individuals applying for naturalization and adjustment of status, and interactions with American Muslim communities. *See* Sealed Ex. A (Arastu Report, July 1, 2021) p. 6, ¶18. Mr. Gairson and Mr. Ragland claim to be "legal" experts based on their representation of individuals "from countries with significant Muslim populations" in applying for naturalization and adjustment of status. *See* Sealed Ex. B (Gairson Report) pp. 1-5, ¶¶3-16; Sealed Ex. C (Ragland Report) pp. 1-5, ¶¶3-14. Defendants deposed all three in September 2020. *See* Ex. D (Arastu Dep. Excerpts); Sealed Ex. E (Gairson Dep. Excerpts); Sealed Ex. F (Ragland Dep. Excerpts).

III. LEGAL STANDARDS

The testimony and opinions of an expert witness must satisfy the requirements of Federal Rule of Evidence 702, which governs the admissibility of expert testimony. Rule 702 provides:

> If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 702 requires trial judges to ensure "that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993). The basic purpose of this "gatekeeping requirement" is to ensure that the expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an

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expert in the relevant field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). This gatekeeping requirement applies not only to scientific knowledge, but also to testimony based on technical and specialized knowledge. *Id.* at 141. A proponent of expert testimony must "explain the methodology the experts followed to reach their conclusions [and] point to any external source to validate that methodology." *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1319 (9th Cir. 1995). Although the inquiry is "a flexible one," the Supreme Court has suggested specific factors likely to help trial courts evaluate whether expert testimony is reliable, including testing, peer review, error rates, and acceptance in the relevant scientific community. *Daubert*, 509 U.S. at 593-94.

The requirement of specialized knowledge means "more than subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590. Thus, "the opinions of [expert] witnesses on the intent, motives or states of mind of corporations, regulatory agencies and others" should be excluded because these opinions "have no basis in any relevant body of knowledge or expertise." *In re Rezulin Prod. Liab. Lit.*, 309 F. Supp. 2d 531, 546 (S.D.N.Y. 2004). An expert should also not "supplant the role of counsel in making argument at trial, and the role of the [decision maker] in interpreting the evidence." *Id.; see also Moses v. Payne,* 555 F.3d 742, 756 (9th Cir. 2009) ("Under Rule 702, expert testimony is helpful . . . if it concerns matters beyond the common knowledge of the average layperson and is not misleading."); *United States v. Hanna,* 293 F.3d 1080, 1086 (9th Cir. 2002); *United States v. Morales,* 108 F.3d 1031, 1039 (9th Cir. 1997) (*en banc*)). Likewise, expert testimony on questions of law are inappropriate, as interpreting the law is the province of the court. *See Nationnwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058-59 (9th Cir. 2008); *United States v. Unruh*, 855 F.2d 1363, 1376 (9th Cir. 1987) ("We have condemned the practice of attempting to introduce law as evidence."). As another Circuit explained:

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> "A witness cannot be allowed to give an opinion on a question of law . . . . In order to justify having courts resolve disputes between litigants, it must be posited as an *a priori* assumption that there is one, but only one, legal answer for every cognizable dispute. There being only one applicable legal rule for each dispute or issue, it requires only one spokesman of the law, who of course is the judge . . . . To allow anyone other than the judge to state the law would violate the basic concept."

Sprecht v. Jensen, 853 F.2d 805, 807 (10th Cir. 1988)

IV. ARGUMENT

A. The legal conclusions of plaintiffs' experts should be excluded

The central point of all of the expert reports are the witnesses' opinions on the legality and constitutionality of CARRP. *See, e.g.*, Sealed Ex. A at 36-37 ¶¶121-126; Sealed Ex. B at 9-13 ¶¶33-41; Sealed Ex. C at 18-23 ¶¶53-66, 48-49 ¶¶145-47. An expert witness, however, "cannot give an opinion as to a *legal conclusion*, *i.e.,* an opinion on an ultimate issue of law." *Nationwide Transport Finance*, 523 F.3d at 1058 (quoting *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004) (emphasis in original). Rather, determining an ultimate issue of law is left to the Court. *See id.*; *Sprecht* 853 F.2d at 807. The Court should thus exclude testimony consisting of conclusions regarding the legality and constitutionality of CARRP.

B. The Gairson and Ragland testimony and reports should be excluded under *Daubert.*

1. The Gairson and Ragland factual narratives, including of plaintiffs or public notice responders that they personally represent, should be excluded.

Mr. Gairson and Mr. Ragland provide "case studies" regarding clients they represented and individuals they have not represented. *See* Sealed Ex. B at 33-66 ¶¶106-253; Sealed Ex. C at 26-35 ¶¶74-103. Their "case studies" primarily consist of narratives regarding these individuals' experiences filing applications for adjustment and naturalization, coupled with their suppositions of CARRP processing. *See id.* Such factual recitations, where admissible, should be "properly presented through percipient witnesses and documentary evidence" rather than through experts. *In*

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re Rezulin Prod. Liab. Lit., 309 F. Supp. 2d at 551; *see also Highland Capital Management, L.P. v. Schneider*, 379 F. Supp.2d 461, 468 (S.D.N.Y. 2005). Moreover, to the extent experts put their own gloss on facts regarding the behavior of applicants and the government, *see, e.g.*, Sealed Ex. B at 40 ¶137; Sealed Ex. C at 35 ¶103, this is more properly the role of Plaintiffs' counsel at argument rather than an expert "opinion." *See Highland Capital Management*, 379 F. Supp.2d at 468; *In re rezulin Prod. Liab. Lit*, 309 F. Supp. at 551. This is compounded by the fact that both Mr. Gairson and Mr. Ragland have represented or continue to represent individuals with interests in this case. *See* Sealed Ex. B at 33-37 ¶¶109-24 (prior representation of named plaintiff Abdiqafar Wagafe), 41-44 ¶¶138-54 (prior representation of named plaintiff Mustaq Jihad), 45-48 ¶¶155-73 (prior representation of named plaintiff Sajeel Manzoor); Sealed Ex. C at 26-34 ¶¶74-100 (prior and current representation of notice responders Dr. Bilal Siddiqui and Bushra Siddiqui). Indeed, statements by Gairson and Ragland regarding the merits of their own clients' applications, *see, e.g.*, Sealed Ex. B – at 40 ¶137; Sealed Ex. C at 35 ¶103; Sealed Ex. F at 297 line 1 to 302 line 19, and the utility of the CARRP policy, position them as advocates, not expert witnesses. *See Highland Capital Management*, 379 F. Supp.2d at 468; *In re Rezulin Prod. Liab. Lit*, 309 F. Supp. at 546; see also *Stencel v. Fairchild Corp.*, 174 F. Supp.2d 1080, 1085-86 (C.D. Cal. 2001) ("Attorneys are advocates, charged with selflessly serving their client's interests. Expert witnesses, on the other hand, are employed to assist the parties in their pretrial preparation, and if called to testify, to give their unbiased opinion in order to assist the trier of fact in understanding *1086 the relevant evidence.")

2. Mr. Gairson and Mr. Ragland lack expertise to make statistical analyses.

Both Mr. Gairson and Mr. Ragland purport to provide statistical analyses. *See* Sealed Ex. B at ¶104; Sealed Ex. C at ¶105, 108. However, they state that their expertise is in immigration law and claim no expertise in statistical analysis. *See* Sealed Ex. B at ¶¶3-16; Sealed Ex. C at ¶¶3-14. They fail to establish that they are qualified to provide statistical analyses as expert witnesses. *See*

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Kumho Tire Co., 526 U.S. at 148-49 (the court has an obligation to act as a gatekeeper to expert testimony when expert's knowledge and experience is sufficiently called into question). Moreover, their statistical analyses are unsound. *See* Sealed Ex. G (Responsive Report of Dr. Bernard R. Siskin) at 52-62. Mr. Ragland's assertion that there was an increase in the number and rate of applications adjudicated pursuant to the CARRP policy after the filing of this lawsuit is not supported by the evidence, and is indeed, as Dr. Siskin indicates, contradicted by Plaintiffs' proffered statistical expert. *See id.* at 53-55. As Dr. Siskin observed:

> [L]ooking at the same data as Mr. Ragland, Mr. Kruskol came to the exact opposite conclusion as Mr. Ragland. Mr. Ragland's conclusion that the data shows that USCIS shortened the processing time of CARRP application in response to the filing of this lawsuit is simply wrong.

Id. at 54-55.

Mr. Gairson's claim that USCIS will be able to find an articulable link to virtually anyone is likewise based on flawed assumptions that undercut the validity of his attempted statistical analysis. *See* Sealed Ex. G at 58-60. As Dr. Siskin observed, Mr. Gairson makes the flawed assumptions that "personal network size does not vary among individuals," and "that all persons are equally likely to be connected to another person in the world." *Id.* at 59. Dr. Siskin concluded that Gairson's theory "is fundamentally flawed as a statistical matter because it is premised on assumptions that do not reflect reality." *Id.* at 61.

3. The testimony and reports by Gairson and Ragland are not based on a reliable methodology.

Neither Mr. Gairson nor Mr. Ragland provide a sound methodological basis for their conclusions. *See Daubert*, 509 U.S. at 590. Gairson opines that CARRP uses "tenuous indicators that derogatory national security information may exist" to unnecessarily delay applications, Sealed Ex. B at 10 ¶35, "unduly escalates the standard of proof" to deny applications, Sealed Ex. B at 11 ¶37, and targets "Muslims and individuals from countries with significant Muslim populations," *id.*

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at 32 ¶105. Ragland likewise contends that cases processed in CARRP experience long delays before interviews are scheduled, Sealed Ex. C at 6 ¶20, 10, ¶31, 48 ¶145, that CARRP processed applications are denied on "pretextual" bases in spite of an applicant's eligibility, *id.* at 8 ¶24, 10 ¶31, 21 ¶61, 23-26 ¶67-73, 48 ¶145, and that CARRP discriminates against Muslims or applicants from Muslim-majority countries, *id.* at 10-11 ¶31, 43 ¶132, 44 ¶134, 48 ¶146.

Both Gairson and Ragland rely on limited data to make their conclusions regarding the CARRP process. They rely primarily on cases they handled in forming their opinions regarding the application of CARRP – hardly the dispassionate or clinical posture of an "expert." *See* Sealed Ex. B at 42; Sealed Ex. C at 32; Sealed Ex. E at pp. 38 lines 7-13, 54 line 16 to 55 line 8; Sealed Ex. F at pp. 45 lines 13-19, 70 lines 2-6. Since USCIS does not disclose to applicants or their counsel if a given case is a CARRP case, plaintiffs' experts have no basis for estimating the number of CARRP cases they have handled, or the percent of their caseload that is in CARRP. Mr. Gairson testified that he believes he has handled about 750 to 900 cases involving adjustment of status and naturalization (including also his non-CARRP cases), Sealed Ex. E at pp. 59 line 24 to 61 line 22, that a majority are in the Seattle, Washington region, *id.* at 142 lines 7-10, and that he thinks his "practice involves more CARRP and TRIG cases than most immigration attorneys," *id.* at 80 lines 16-18. Mr. Ragland similarly testified that he believes he has handled approximately 500 cases involving adjustment of status and naturalization (including also his non-CARRP cases), Sealed Ex. F at 81 lines 16-19, that his experience is primarily regional, with the majority in the Washington, DC and Baltimore area, *id.* at 66 lines 19-22, and that he thinks he "handles a lot more cases involving national security matters than most" immigration lawyers he knows, *id.* at 233 line 17 to 234 line 5. Thus, both experts base their opinions on their comparatively small and localized subsets of the millions of naturalization and adjustment of status cases nationwide, subsets they conjecture have a disproportionately high percentage of national security related cases. Based on this limited

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data and their unconfirmed speculations that many of their cases were in CARRP, both Gairson and Ragland guesstimate how many naturalization and adjustment of status cases they have handled were processed under CARRP. *See* Sealed Ex. B at 3, ¶11 (about 300 cases, 33-45 % of his caseload); Sealed Ex. F at 232 line 9 to 233 line 12 (about 25 cases, 5% of his caseload).

Both Mr. Gairson and Mr. Ragland admit, however, that they conducted no review of their case files to reach their estimates, thus creating no basis to evaluate those estimates. *See* Sealed Ex. E at 79 line 24 to 80 line 14; Sealed Ex. F at 46 lines 11-13. They also admit that they do not know whether any particular case is subject to CARRP. Sealed Ex. B at 3 par 11; Ex. C at 6 ¶18. Rather, they rely on other factors or supposed "tell-tale signs" to determine if a case was subject to CARRP, which they contend can include delays in adjudicating applications, descheduling interviews, questioning by law enforcement, secondary screening during air travel, the presence of multiple officers at interviews, "unusual" questioning at interviews, and applications denied on "pretextual" grounds. *See* Sealed Ex. C at 6-9, ¶¶16-28; Sealed Ex. E at 69 line 17 to 71 line 19, 128 line 20 to 129 line 11, 131 line 16 to 132 line 21. They do not explain why they believe such factors or signs are present only, or even largely, in CARRP cases, such that they would be useful in predicting whether a given case has been processed under CARRP. For instance, although Mr. Ragland indicated that being subject to secondary screening during air travel is a "tell-tale sign" an individual's application may be subject to CARRP, *see* Sealed Ex. C at 8 ¶26, he is unaware whether there are other bases to subject an individual to secondary screening, *see* Sealed Ex. F at 215 line 7 to 216 line 2, 218 line 18 to 220 line 1. Likewise, Mr. Gairson admitted that multiple officers might be present at interviews in cases not subject to CARRP. Sealed Ex. E at 133 lines 16-25, 134 lines 1-6. Neither Gairson nor Ragland account for alternative explanations for the presence of their factors. *See, e.g.*, *Hirchak v. W.W. Grainger, Inc.*, 980 F.3d 605, 608 (8th Cir. 2020); *Claar v. Burlington N. R.R.*, 29 F.3d 499, 502-03 (9th Cir. 1994). Their experience as immigration attorneys

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is no substitute for failing to provide a reliable foundation for their conclusions. *See Daubert*, 509 U.S. at 590; *see also Hangarter*, 373 F.3d at 1017-18.

The problem with the Gairson and Ragland *ad hoc* methodology for speculating which cases have been referred to CARRP and what portion of their cases have been CARRP cases is further illustrated in Dr. Siskin's responsive expert report analyzing the time track for processing and adjudicating CARRP cases. *See* Sealed Ex. G at 55-57. As Dr. Siskin states, the fact that these factors or signs are not unique to persons in CARRP, coupled with the fact that only a relatively small percent of the applications are processed under CARRP, means that relying on these factors is likely to result in a "high false positive rate." *Id.* at 55-57. Even if such factors were more likely to be present in a case subject to CARRP than in one not referred to CARRP, the total number of cases not subject to CARRP is so vastly larger (by several hundred fold) that a higher percentage of cases containing these factors are non-CARRP. *Id.* at 57. Or, to put it more simply, "a large percent of a small number is often much less than a small percent of a large number." *Id.*

As a result of their methodological flaws, neither Mr. Gairson nor Mr. Ragland can offer reliable testimony based on their personal knowledge or experience. *See Kumho-Tire*, 526 U.S. at 150. Both rely on a largely localized pool of cases not representative of CARRP's application nationally, or even in a typical case. Moreover, both lack knowledge regarding how applications for naturalization and adjustment of status are processed once submitted or how they are referred to CARRP. *See, e.g.*, Sealed Ex. E at 113 line 3 to 115 line 22; Sealed Ex. F at 72 line 6 to 74 line 11; 320 at lines 5-12. Both Gairson and Ragland also acknowledge that they did not rely on or consider the USCIS statistical data[2] regarding CARRP in forming their opinions on CARRP referral rates for their own cases. *See* Sealed Ex. E at 79 lines 24-25, 80 lines 1-14; Sealed Ex. F at 227 lines 15-22,

[2] Internal USCIS data regarding CARRP referral and grant rates, among other data points, provided by Defendants as part of their initial disclosures.

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228 lines 1-9, 233 lines 13-22, 234 lines 1-5. Their estimates of the percentages of their caseloads they believe are subject to CARRP are up to or more than one *hundred* times higher than the actual 0.266% rate (about one of every 375 applications) at which adjustment and naturalization applications were referred to CARRP in FY2013-2019, underscoring the unreliability of factors they use to divine whether a case is in CARRP. *See* Sealed Ex. H (Amended Report of Dr. Bernard R. Siskin) at 2; *compare See* Sealed Ex. B at 3, ¶11 (Gairson estimate that approximately 33-45 % of his caseload is processed under CARRP); Sealed Ex. F at 232 lines 9-22, 233 lines 1-12 (Ragland estimate that approximately 5% of his total caseload is processed under CARRP) *with* Sealed Ex. G at 13 (only 0.266% of aggregate applications subject to CARRP in FY2013-2019), 67 (data on countries with highest CARRP referral rates).

In summary, neither Mr. Gairson nor Mr. Ragland present evidence meeting Fed. R. Evid. 702 and *Daubert* standards. They provide only "subjective belief" and "unsupported speculation." *Daubert*, 509 U.S. at 590. Their reports and testimony should be excluded since they are not founded on a reliable methodology, provide improper legal conclusions, and contain percipient testimony that must be properly presented through fact witnesses and documentary evidence.

C. Dr. Arastu's testimony and report of should be excluded under *Daubert*

The Court should exclude evidence from Dr. Arastu because it is not based on a reliable foundation, as *Daubert* requires. Her report satisfies none of the criteria contemplated in Rule 702 to qualify as an expert report. It is based heavily on her 2019 UCLA Law Review article, *Aspiring Americans Thrown Out in the Cold: The Discriminatory Use of False Testimony to Deny Naturalization*. In this article, Dr. Arastu purportedly examined 158 federal court cases involving review of naturalization applications that were denied, at least in part, on false testimony grounds. *See* Sealed Ex. A at 7 ¶23. Based on this sample, she found that a greater number of federal court cases involved denials of naturalization applications on false testimony grounds after September 11,

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2001, and that approximately 46 percent "involved a naturalization applicant from a Muslim-majority nation." *See id.* at 79-80. On that basis alone, she concluded that the government disproportionately used allegations of false testimony against "aspiring American Muslims." Ex. A at 80. Her expert report further asserts that because the top twelve countries with the highest number of applications referred to CARRP have a Muslim-majority or a large Muslim population, the CARRP policy is used to disproportionately target Muslims. *Id.* at 20 ¶ 67.

Dr. Arastu's conclusions based on her *Aspiring Americans* article are flawed. *See* Sealed Ex. A at 7-11 ¶¶20-34, 23-27 ¶¶77-91. As an initial matter, her case sampling is not representative of all naturalization applications denied on false testimony grounds, much less denials of cases subject to CARRP. The sampling only includes naturalization applicants who sought review of the denial in a federal court – a self-selected criterion for sampling that she fails to confront. Dr. Arastu acknowledges that the vast majority of immigration cases do not proceed to federal court, and that there are myriad reasons why applicants might not seek judicial review of a denial. *See id.* at 7-8, ¶23. More fundamentally, she admits that she does not know whether any cases in her sampling were processed under the CARRP policy. *See* Ex. D at 236, lns 16-20. Despite not knowing whether any of those cases were impacted by CARRP, she asserts without explanation that her sampling is representative of cases denied in CARRP processing. *See* Sealed Ex. A at 7-8, ¶23.

There are several errors in this analysis. The first is circular reasoning. Dr. Arastu proceeds from the outset on the assumption that USCIS pretextually denies applications on false testimony grounds and then concludes that naturalization denials based on false testimony are therefore pretextual, providing no basis to support her initial supposition. *See* Sealed Ex. A at 8-9 ¶¶24-27; Sealed Ex. G at 70. Dr. Arastu also assumes that her sample of federal cases is representative of the total population of naturalization denials without accounting for any of the reasons unsuccessful applicants might not seek judicial review. Sealed Ex. G at 70-71. Another critical error is her

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failure to establish that the sample is representative of CARRP denials, as she has no basis for knowing which cases she examined, if any, were processed under CARRP, and no basis to assume that any particular case was processed under CARRP. *Id.* at 70-71, 73-74. As Dr. Siskin observes, Dr. Arastu's sample is neither a random sample of all naturalization denials based on false testimony, nor was it conceived as a representative sample. *Id.* G at 71. Rather, it was a "convenience sample" based on the most ready information available, with no assurances that the sample is representative of denials of naturalization applications subject to CARRP. *Id.* at 71; *see Daubert*, 509 U.S. at 597 ("an expert's testimony [must] rest[] on a reliable foundation and [be] relevant to the task at hand.").

Moreover, even assuming that the sample is representative, it fails to support Dr. Arastu's narrative regarding CARRP. She asserts that the number of naturalization denials based on false testimony grew after September 11, 2001, and again after CARRP's implementation, but her own data indicates that the percentage of such cases where the applicant was from a Muslim-majority country has remained relatively consistent over those periods.[3] *See* Sealed Ex. A at 79-81; Sealed Ex. G at 73.

In addition, Dr. Arastu's conclusion that Muslim naturalization applications face discrimination is based on a cherry-picked and unscientific methodology. She fails to acknowledge that many countries with the highest Muslim-majorities, such as Indonesia, Nigeria, and Bangladesh, are not among the countries with the highest referrals to CARRP. Sealed Ex. G at 67. Nor does she

[3] Although Dr. Arastu purports to sort the cases she examined into different time periods, most notably those decided before the 2008 implementation of CARRP and those decided after, it is not clear from her article (covering periods before and after 9/11/01) or testimony whether she sorted cases based on USCIS' initial denial of the naturalization application, dates of filing in federal court, or court decision dates. *See* Ex. D at 238 line 24 to 244 line 17. It is thus not clear whether her article and report accurately reflect whether USCIS decided any individual application within the time periods, and thus whether certain applications were decided after CARRP's implementation.

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acknowledge that Cuba and Canada, which do not have sizeable Muslim populations, are among the nations with the highest number of CARRP referrals, or that two of her listed countries, Russia and China, have much larger Christian populations than Muslim populations. *Id.* at 67. Critically, Dr. Arastu seems to assume that if an individual is from a country with a majority Muslim population, or even a sizeable Muslim population, and their application is subject to CARRP, they must be Muslim, despite having no data to make that conclusion on an individual basis. *Id.* G at 68. Adding to that the relative low rate of denials of applications referred to CARRP even from Muslim majority countries, *see* Sealed Ex. H at 97, Dr. Arastu presents no methodologically sound basis to establish that CARRP disproportionally affects Muslims. Sealed Ex. G at 67-69.

In sum, Dr. Arastu presents no testimony meeting the standard of Fed. R. Evid. 702 and *Daubert*. Since she shows no expertise relevant to the facts of this case and her report lacks a reliable methodological foundation, this Court should exclude her testimony and report.

V. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant the motion to strike the reports and exclude the testimony of Plaintiffs' designated experts Dr. Nermeen Arastu, Mr. Jay Gairson, and Mr. Thomas Ragland.

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/s/ *Jesse L. Busen*
JESSE L. BUSEN
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Office of Immigration Litigation

ANTONIA KONKOLY
Trial Attorney
Federal Programs Branch

Counsel for Defendants

CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that counsel for both parties met and conferred on March 22, 2021, during which time I notified Plaintiffs' counsel of our intention to file the foregoing motion to exclude experts. Plaintiffs' counsel indicated that they did not agree with the relief sought.

Dated: March 25, 2021

/s/ *Jesse Busen*
JESSE BUSEN
U.S. Department of Justice

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION, OFFICE OF IMMIGRATION LITIGATION
Ben Franklin Station, P.O. Box 878
Washington, D.C. 20044
(202) 616-4900

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ *Jesse Busen*
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