UNHCR and International Human Rights Law

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The UN Refugee Agency

Training Objectives

- 1) Learn about current dynamics in forced displacement worldwide, and what solutions are possible
- 2) Understand UNHCR's history and mandate, and its partnership with the United States
- 3) Examine key sources of international law, and the relationship between international and domestic refugee law

UNHCR & the United States

Key funder

Key partner

Key leader in refugee protection

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Global Trends

Forced Displacement Worldwide

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Populations of Concern:

70.8 million displaced

- **25.9 million** refugees
- **3.5 million** asylum-seekers
- **41.3 million** internally displaced persons

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Who do we protect?

- **Refugees**: *"owing to well-founded fear of being persecuted for reasons of **race, religion, nationality, membership of a particular social group or political opinion**, is outside the country of his (or her) nationality and is unable or, owing to such fear, is unwilling to avail himself (or herself) of the protection of that country…"*
- **Asylum-seekers**
- **Internally displaced people:** "remains within his or her country's borders."
- **Stateless people:** "not considered as a national by any state under the operation of its law."
- **Returnees**
- **Others of concern**

Population of Concern:

70.8 million forcibly displaced people worldwide

Internally Displaced People
41.3 million

Refugees
25.9 million
20.4 million under UNHCR's mandate
5.5 million Palestinian refugees under UNRWA's mandate

Asylum-seekers
3.5 million

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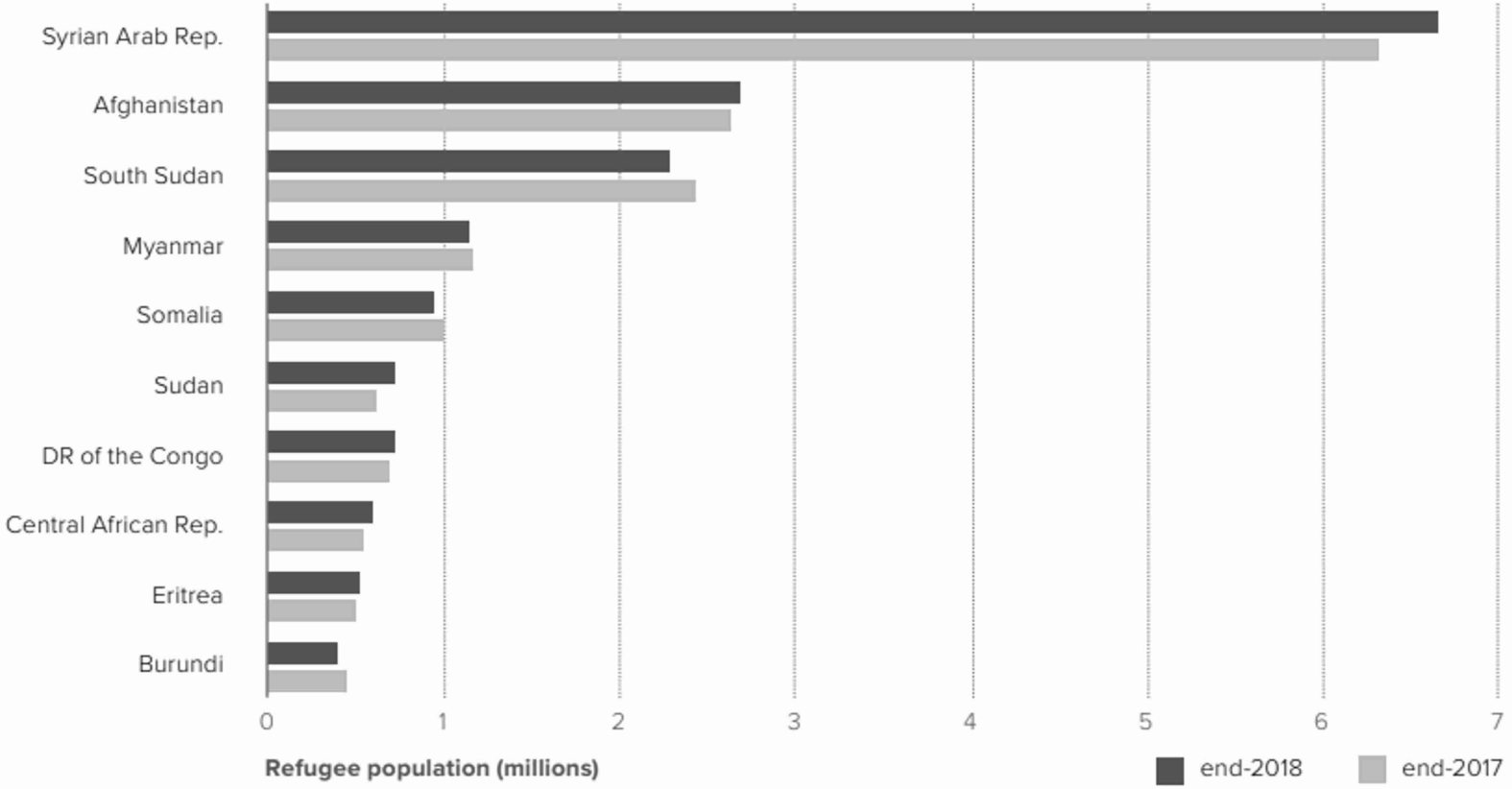
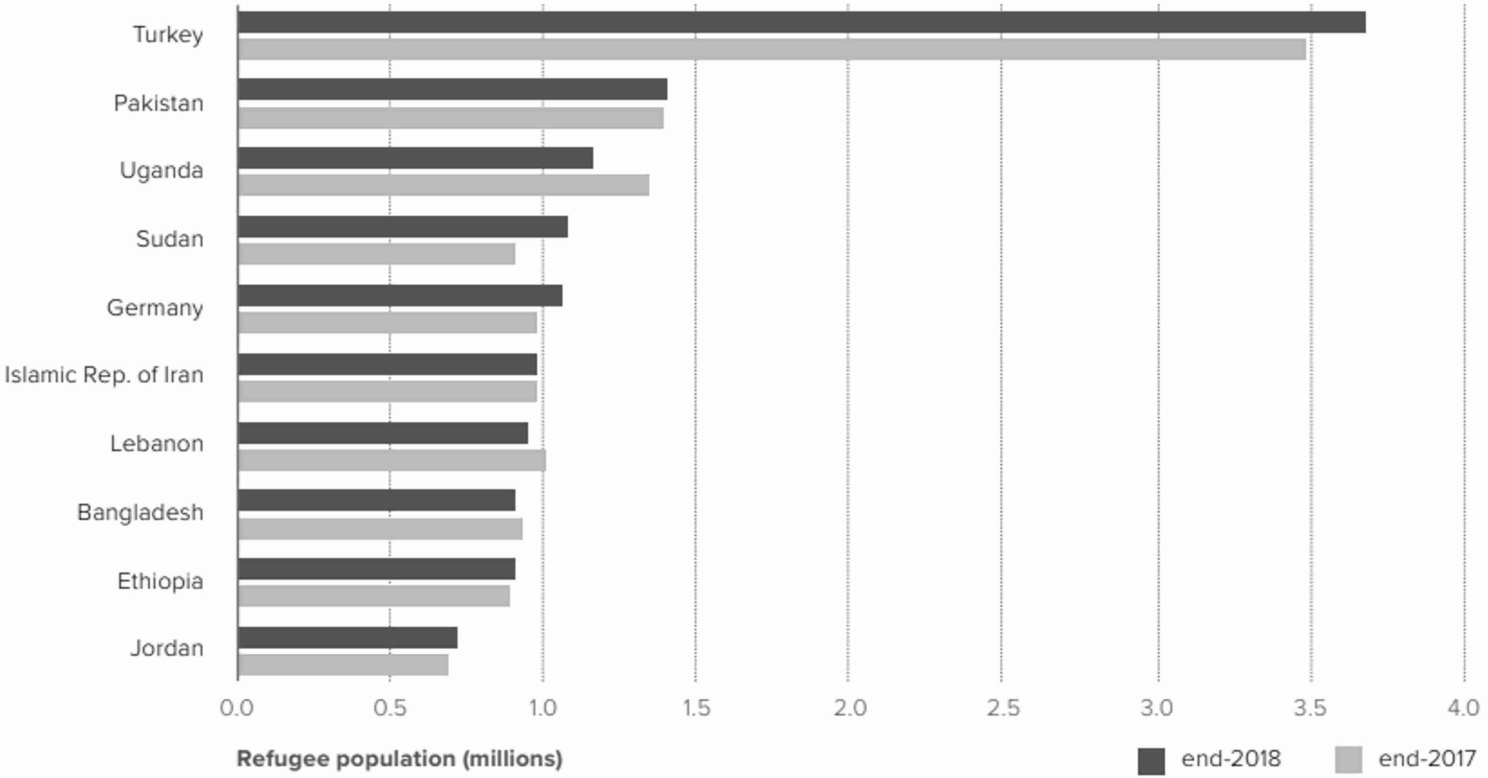
Where are refugees from?



57% of UNHCR refugees came from three countries

Syria Afghanistan South Sudan

Who is hosting the world's refugees?



Where the world's displaced people are being hosted

About 80 per cent of refugees live in countries neighbouring their countries of origin

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Refugees in the Americas

- Venezuela
- Northern Central America
  - Honduras
  - El Salvador
  - Guatemala

- For more:
- https://www.youtube.com/watch?v=ax5f9KsGfv8

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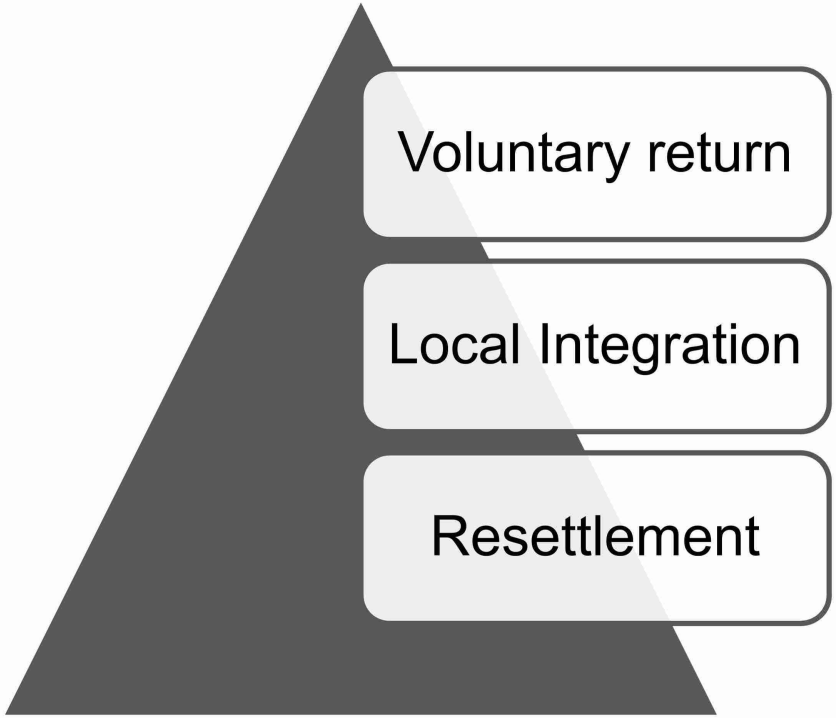
What are durable solutions?



Resettlement

- Need outstrips available places
- Factors to consider when identifying refugees who need resettlement:
  - Feasibility (or lack thereof) of other durable solutions
  - Vulnerabilities, e.g.:
    - Inability to meet medical needs in first country of asylum
    - Indefinite detention
    - Risk of harm in first country of asylum

About UNHCR

- Established by the UN General Assembly in 1950
- Provides protection and assistance to the world's refugees and other populations uprooted by war, conflict and persecution
- Currently works in 134 countries, with a staff of 16,803 (90% of whom work in the field)
- Has helped more than 59 million people restart their lives, earning two Nobel Peace Prizes in the process (1954, 1981)

UNHCR's Statute (1950)

"… assume the function of providing international protection to refugees … and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities."

UNHCR's Mandate

- Provide international protection & assistance to refugees
- Seek permanent, durable solutions for refugees
- Prevent and reduce statelessness around the world and protect the rights of stateless people

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UNHCR Funding

- 3% from UN member dues
- 87% from governments
- 10% from the private sector
- $8.22 billion = 2018 Budget Request
- $4.2 billion = 2018 Contributions

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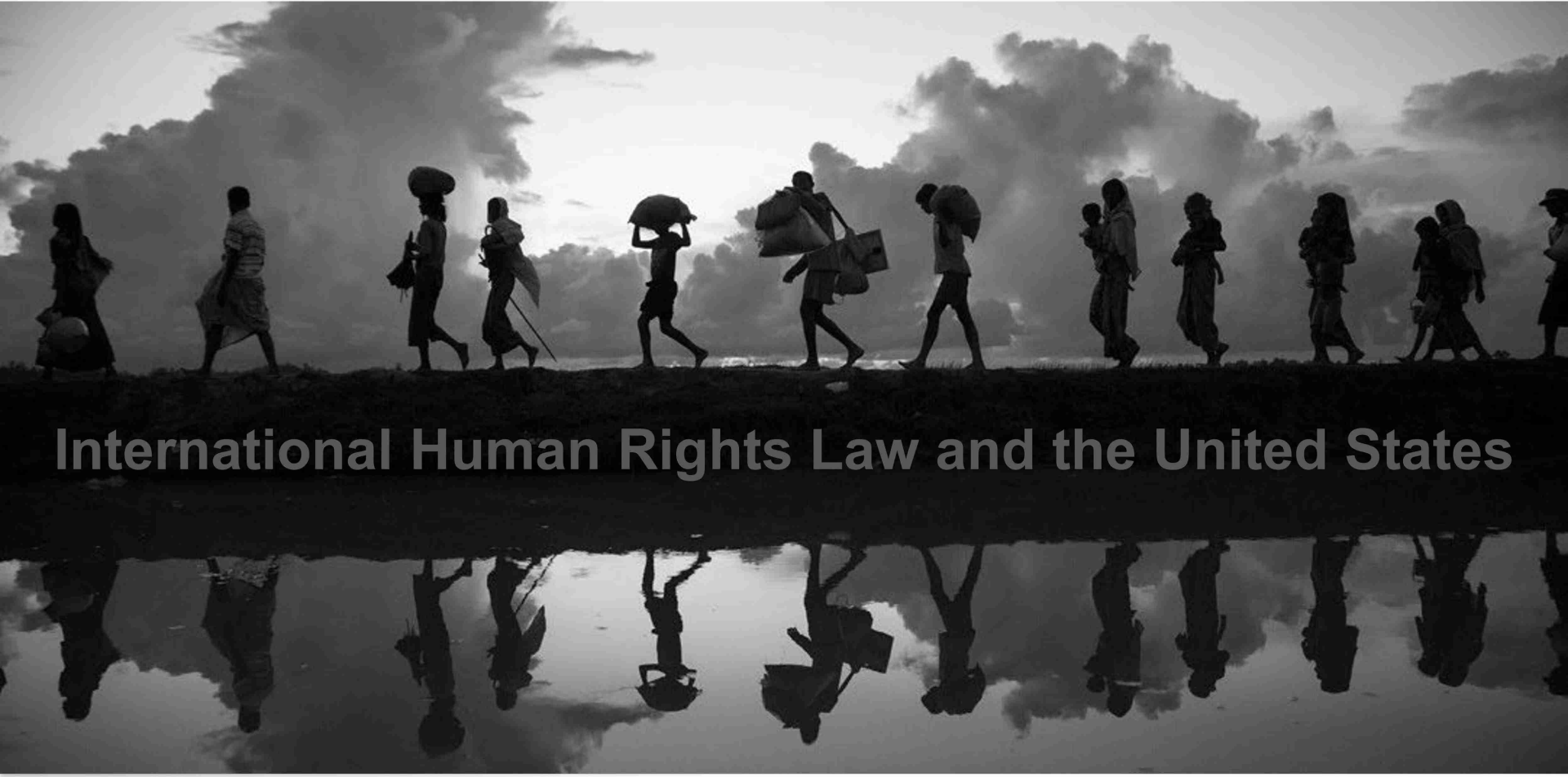

International Human Rights Law and the United States

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Learning Objectives

- Describe sources of international law
- Identify core human rights
- Summarize relationship between international law and US domestic law
- Describe role of international human rights in adjudications

Key Documents

- 1951 Convention Relating to the Status of Refugees
- 1967 Protocol Relating to the Status of Refugees
- 1980 Refugee Act

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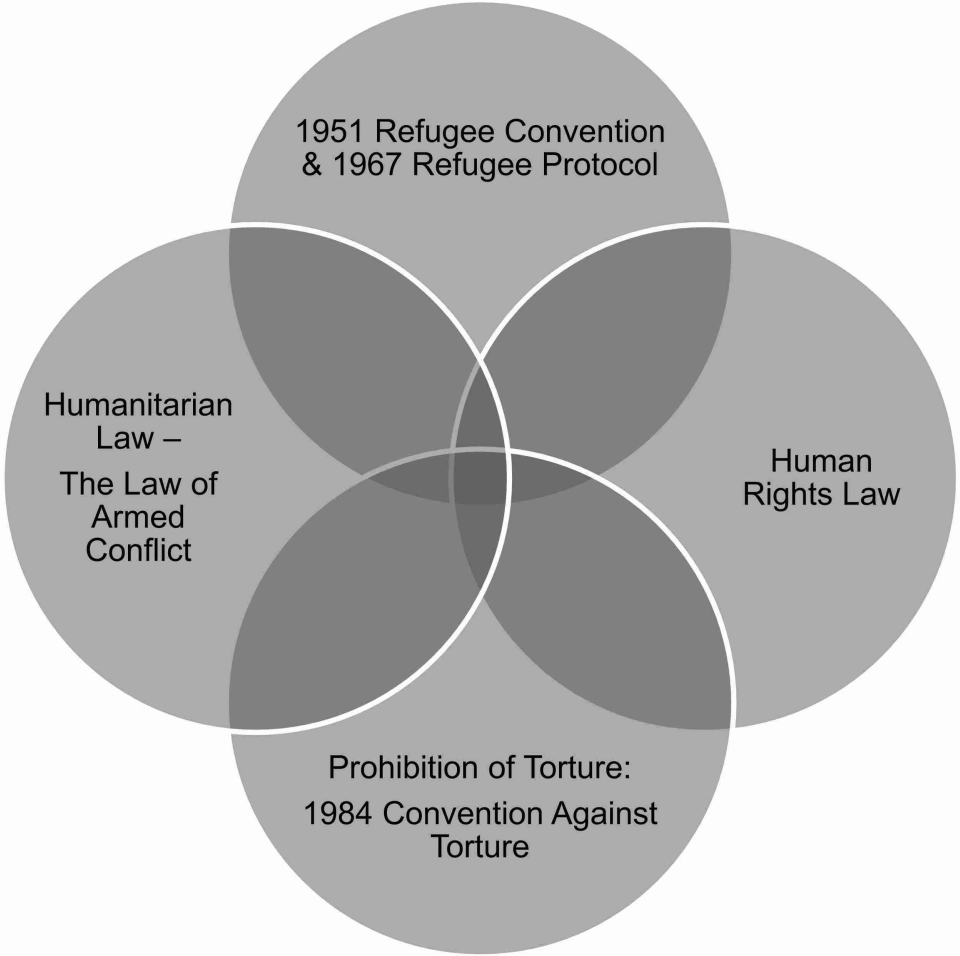
What are sources of international law?

- Treaties, Conventions, Covenants & Protocols
- Customary Law
- Declarations and Resolutions


1951 Refugee Convention & 1967 Refugee Protocol
Humanitarian Law – The Law of Armed Conflict
Human Rights Law
Prohibition of Torture: 1984 Convention Against Torture

1951 Refugee Convention / 1967 Protocol

The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states.

The 1967 Protocol removed geographical and temporal restrictions from the 1951 Convention.

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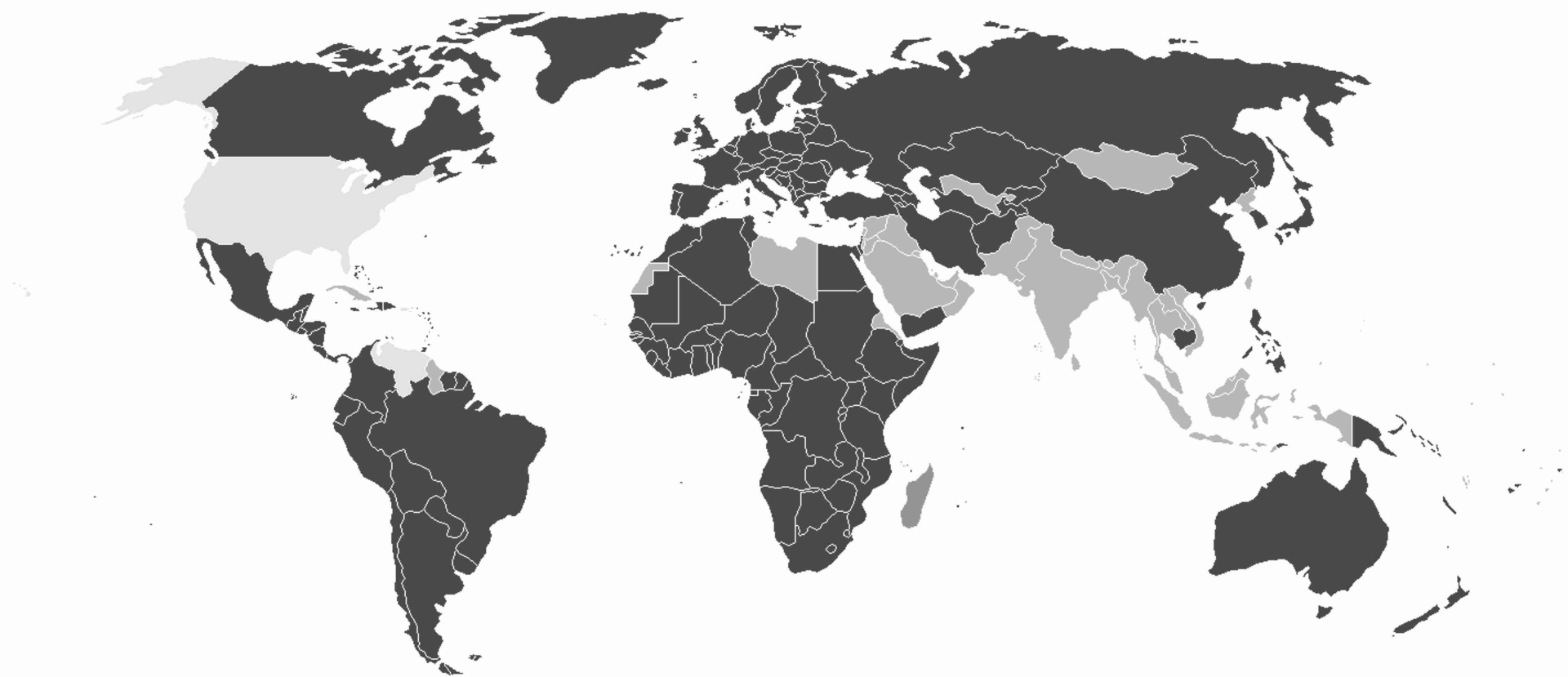
Signatories to the Refugee Conventions
Both 1951 Convention and 1967 Protocol
Only 1967 Protocol
Only 1951 Convention

Principle of Non-Refoulemont

All Signatories to the 1951 Convention or the 1967 Protocol are bound to uphold the principle of Non-Refoulemont:

"States may not return a refugee to a country where his or her life or freedom would be threatened."

- 1951 Refugee Convention, Article 33

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Universal Declaration of Human Rights

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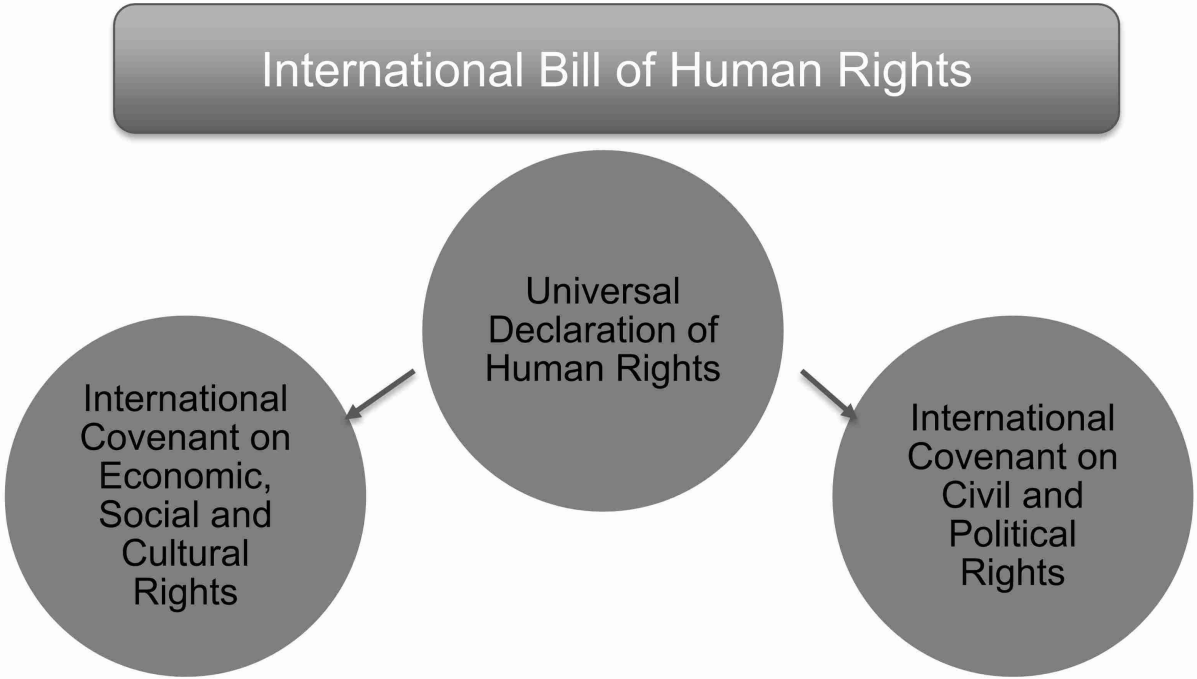
Human Rights Law: What are human rights?

- The rights everyone has simply because they are a human being.
- A set of standards that protect the dignity and freedom of individuals.
- Guaranteed to everyone without distinction as to race, color, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status.

- Intro Video (5:48)
  http://www.youtube.com/watch?v=kbul3hxYGNU

Core Human Rights Instruments



Convention Against Torture

Article 3 (1): No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

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Other Human Rights Treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (21 Dec 1965)
- Convention on the Prevention and Punishment of the Crime of Genocide (9 Dec 1948)
- Convention on the Elimination of All Forms of Discrimination Against Women (1980)
- Convention on the Rights of the Child (2 Sept 1990)

International Humanitarian Law

- Geneva Conventions of 1949

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How does this relate to the United States?

- Party to the 1967 Protocol
- Implementing legislation through the 1980 Refugee Act
- Codification of *non-refoulement*

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Conclusion: what did we cover?

- ***Takeaways: Look to international human rights law as an indicator of serious harm***
- ***The US has used the 1980 Refugee Act to implement international refugee law***
- ***So the international framework is directly relevant to asylum adjudication***
- ***UNHCR has a Handbook with standards for refugee status determination:*** https://www.unhcr.org/en-us/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html

Questions?

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HUMAN TRAFFICKING

ADOTP DISTANCE TRAINING

GOALS

- Identify trafficking-related concerns that arise in the asylum context and know how to address them.
- Analyze asylum eligibility for trafficking victims.
- Aware of trafficking resources.

TRAFFICKING VS. SMUGGLING

	SMUGGLING	TRAFFICKING
CRIME	Crime against a country's borders / immigration law	Crime against a person
TRANSPORTATION	Required	Not required (denial of liberty not movement)
CONSENT	Individual usually consents to be smuggled (b)(6)	Individual did not consent or initially consented to a smuggling or work arrangement, but their consent was rendered meaningless by coercive or abusive actions of the traffickers
RESULT	Arrival into the United States (across international border)	**Exploitation of Individual** (past or ongoing)

HUMAN TRAFFICKING

- Involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act
- Note that for minors exploited for commercial sex, force, fraud, or coercion is not required

TRAFFICKING AND ASYLUM

- Traffickers want asylum for those they control
  - Legal status
  - Applicant may or may not know the process they are in
- Asylum is an opportune intervention point
  - Length, nature, and timing of asylum interview
  - Travel, family relationships, residence, working locations
  - Identity and harm experienced

TRAFFICKING AND ASYLUM

- When do these issues arise?
  - Pre-interview file review
  - During interview
  - Post adjudication review
  - Third party contact

PRE-INTERVIEW INDICATORS

- I-589
  - Minor principals not attending school
  - Unaccompanied minor with uncertain ties in U.S.
  - Employment history
- Supporting documents

(b)(7)(e)

PRE-INTERVIEW INDICATORS (CONT.)

(b)(7)(e)

- Security checks

- Other documents

INDICATORS IN INTERVIEW

- Lack of control over identity or travel documents
- Lack of knowledge of address/personal facts
- Experience with abuse/neglect by family or non-relative third party
- Salary garnished to pay smuggling fee

See Indicators in RAIO Trafficking Lesson Plan pp. 42-52

INDICATORS IN INTERVIEW (CONT.)

- No freedom of movement / Prevented from socializing
- Living with employer or at workplace
- Interaction between applicant and interpreter/attorney/others
- Heightened sense of fear or confusion

ASYLUM OFFICE RESPONSIBILITIES

Five Step Process

- Detection (AO documents in notes)
- Notification (AO to SAO/SAO Trafficking POC)
- Referral (POC/FDNS to ICE)
- Information Providing (AO or SAO to Applicant)
- Tracking (POC)

ROLE OF TRAFFICKING POC

- Helps determine action, liaison between asylum field office and ICE POC
- Principal liaison between asylum field office and HQ Asylum
- Maintains record of each case through collection of memos to file

WHEN YOU ENCOUNTER A POSSIBLE VICTIM

- Use suggested lines of inquiry: elicit testimony
- Immediately notify SAO/Trafficking POC
- Determine if applicant is in a safe place
- Any signs interpreter/attorney are involved?
- If safe, provide applicant with three resources
  - Brochure, hotline, victims of crime list – see next slide
- Trafficking memo

INFORMATIONAL PAMPHLETS MAY BE PROVIDED TO FULFILL TVPRA MANDATE

1. USCIS "Immigration Remedies for Victims of Violence Brochure"

2. The DOJ Office for Victims of Crime list of NGOs (online directory)

3. National Human Trafficking Resource Center (NHTRC) Hotline **(888) 373-7888**

Documents found on the Human Trafficking ECN: (b)(7)(e)

TRAFFICKING VICTIMS IN APSO

- Be aware of indicators during APSO interviews as well
- Follow similar procedures to affirmative cases
- Will have opportunity to question interviewee alone and may be able to elicit more information without compromising victim's safety

SENSITIVITY AND AWARENESS

- Employ trauma-sensitive interviewing techniques
- Understand applicant may not give full story about trafficking, extent of exploitation
- Applicant likely won't self identify as victim of a crime
- Applicant won't know about eligibility for protection
- Be aware of suspicious and biased third parties present
- Applicant may be reluctant to speak in front of individual of same background (interpreter/monitor)

SENSITIVITY AND AWARENESS

- Display non-judgment in demeanor and be selective about language (“prostitute”)
- Applicant can be in any stage
- Determine level of danger, extent of intervention without putting applicant at greater risk
- Trafficked individuals must be identified irrespective of asylum adjudication outcome

SCENARIO #1

(b)(7)(e)

SCENARIO #2

(b)(7)(e)

ASYLUM ELIGIBILITY

Can an applicant receive asylum based on his/her status as a trafficking victim or a fear of future trafficking?

(b)(7)(e)

PAST PERSECUTION & NEXUS

PARTICULAR SOCIAL GROUP (b)(7)(e)

PSG: "*formerly-trafficked (Country) females*"

NEXUS – WELL-FOUNDED FEAR

- Who does applicant fear?
- What does applicant fear?
- Is there evidence that the feared persecutor knows applicant was trafficked? (awareness)
- How does government respond to trafficking victims? (state protection/capability)
- Is applicant aware of human trafficking victims who have been returned to their country? Have they had any problems? (inclination)

RESOURCES FOR ASYLUM OFFICERS

- RAIO Trafficking Module (Lesson Plan)
- Affirmative Asylum Procedures Manual
  - Section III.B.14
- Human Trafficking page on Asylum ECN
- SAO Trafficking Point of Contact at Asylum Office
- HQ Operations and Quality Assurance Branches

RESOURCES (CONT.)

- US Department of State, *Trafficking in Persons Report*
- UN and UNHCR http://www.unhcr.org/refworld/docid/443679fa4.html
- National Human Trafficking Resource Center

EXERCISES – IDENTIFY INDICATORS AND COMPLETE MEMO

- Trafficking memo found in Human Trafficking page on Asylum ECN under templates

U.S. Citizenship and Immigration Services

Affirmative Asylum Process and Procedures

Mission

- The mission of the Asylum Program encompasses the management of four main programs:
  - Affirmative asylum
  - Suspension of deportation or cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act (NACARA 203)
  - Credible fear screenings
  - Reasonable fear screenings

What is Asylum?

- Asylum is the legal protection afforded by the United States government to a person in the United States who can demonstrate a "well-founded fear of persecution" based on race, religion, nationality, membership in a particular social group, or political opinion. *See* INA § 208.
- Refugee status is the legal protection afforded by the United States government to a person overseas who can demonstrate a "well-founded fear of persecution" based on race, religion, nationality, membership in a particular social group, or political opinion. *See* INA § 207.

Who Can Apply for Asylum with USCIS?

- Any individual who is physically present in the United States or who arrives in the United States irrespective of status (whether here legally or illegally)
- Except:
  - Individuals who fail to apply within 1 year after the date of the individual's arrival in the United States (unless the individual can show changed or extraordinary circumstances)
  - Individuals who have been previously denied asylum in the United States by an immigration judge or the Board of Immigration Appeals (unless the individual can demonstrate that there are changed circumstances which materially affect his or her eligibility for asylum)

Who May Be Granted Asylum?

- Any individual who has properly applied for asylum and is determined to be a refugee under section 101(a)(42)(A) of the Immigration and Nationality Act
- Definition of a refugee in section 101(a)(42)(A) of the INA:
  - An individual who is unable or unwilling to return to his or her country of nationality, or country of last habitual residence if stateless, because of
    - Past persecution or a well founded fear of future persecution
    - On account of race, nationality, religion, political opinion or membership in a particular social group

Affirmative vs. Defensive Asylum

- ***Affirmative***: USCIS Asylum Officers adjudicate asylum claims submitted to USCIS by aliens who are in the United States and not in removal proceedings with the Executive Office for Immigration Review (EOIR).
  - Applicants receive a non-adversarial interview with an Asylum Officer.
- ***Defensive****:* Aliens in removal proceedings with EOIR may request asylum or other protection as a defense against removal.
  - U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) arrest and place alien in removal proceedings
    - or the Asylum Office places the alien in removal proceedings after a credible fear screening.
  - An Immigration Judge conducts an adversarial hearing, hears arguments from DHS ICE attorneys, and makes a decision on removability and eligibility.

The Affirmative Asylum Process

- **STEP ONE: Asylum-Seeker Arrives in the United States**
- **STEP TWO: Asylum-Seeker Applies for Asylum**
- Asylum-seeker files Form I-589, *Application for Asylum and for Withholding of Removal*, with the appropriate USCIS Service Center within one year of last arrival in the United States (unless an exception applies).
  - The principal applicant may include a spouse and any children (unmarried and under age 21) present in the United States as dependents.
  - **(a) Data entry and Acknowledgment of Receipt:** Once the Service Center has received the completed application, the applicant will receive a notice acknowledging receipt of the application.
  - The Service Center enters I-589 information into the Asylum case management system.

The Affirmative Asylum Process

- **STEP TWO: Asylum-Seeker Applies for Asylum**
  - **(b) Initiation of Background and Security Checks**
  - The Service Center generates an appointment notice for all applicants to appear at a USCIS Application Support Center (ASC) for biometrics collection.
  - The Asylum case management system initiates:
    - an FBI name check on the primary name and date of birth of the applicant and dependents aged 14 to 79 years.
    - A check of the Alien number against EARM (ENFORCE Alien Removal Module). Now checked using PCQS.
    - An SQ11 TECS/NCIC check on the primary name and date of birth of the applicant and dependents aged 14 and older.

The Affirmative Asylum Process

- **STEP THREE: Applicant Is Fingerprinted and Background Security Checks Are Conducted**
- All applicants report to the USCIS ASC for collection of their photo, right index finger press-print, and signature. Applicants 12 years and 9 months of age and older also submit 10-prints.
  - The 10-prints are sent to the Federal Bureau of Investigation (FBI) for a check against a criminal database. Results are returned to the Asylum case management system.
  - The 10-prints are electronically submitted to the CPMS-IVT/IDENT database, where they are enrolled and associated with matching fingerprint records. Nightly, CPMS-IVT/IDENT records are uploaded to the Asylum case management system as a Search and Enrollment (SE) record or Derogatory Promotion or Wrap-back records (DR) received following the inclusion of new derogatory notifications in the CPMS-IVT/IDENT database from another source.
- Fingerprints must be taken before USCIS can interview on an application, and USCIS must receive the results of these checks before an asylum application can be approved.

The Affirmative Asylum Process

- **STEP FOUR: Applicant Receives Interview Notice**
- The applicant is then scheduled for an interview with an Asylum Officer at an asylum office or at a USCIS field office, depending on the applicant's residence.
- In most cases, an applicant receives a notice with the date, location, and time of the interview within 21 days after the applicant mailed a complete Form I-589 to the Service Center. Applicants who are scheduled to be interviewed at a USCIS field office may receive their interview notices later.

The Affirmative Asylum Process

- **STEP FIVE: Applicant Is Interviewed by an Asylum Officer**
- The applicant is interviewed within 43 days of filing.
- The Asylum Office performs a 1-to-1 verification of the applicant and dependents using IVT.
- An applicant must bring:
  - any spouse and/or children who are seeking derivative asylum benefits
  - an interpreter if the applicant cannot proceed with the interview in English (if available, a contract interpreter monitors the interview).
- The applicant may also bring:
  - an attorney or accredited representative
  - witnesses to testify in support of the applicant.
- The interview will generally last about 90 minutes, although the time may vary depending on the case.

The Affirmative Asylum Process

- **STEP SIX: Asylum Officer Makes Determination on Eligibility and Supervisory Asylum Officer Reviews the Decision**
- The Asylum Officer will determine whether the applicant:
  - Is eligible to apply for asylum;
  - Meets the definition of a refugee in INA § 101(a)(42)(A); and
  - Is barred from being granted asylum under INA § 208(b)(2).
- The Asylum Officer completes background and security checks.
- A Supervisory Asylum Officer reviews the Asylum Officer's decision to ensure it is consistent with the law.
  - Depending on the case, the Supervisory Asylum Officer may refer the decision to Asylum Division Headquarters staff for additional review.

The Affirmative Asylum Process

- **STEP SEVEN: Applicant Receives Decision**
- In most cases, the applicant returns to the asylum office to pick up the decision two weeks after the interview was conducted.
- The applicant will generally receive a decision no later than 60 days after he or she filed the asylum application.
  - The total time allowed for administrative adjudication (not including appeal) is 180 days.
- Longer processing times may be required for an applicant who is currently in valid status, was interviewed at a USCIS field office, where security checks remaining pending, or whose case is being reviewed by Asylum Division Headquarters staff. The decision is generally mailed to the applicant in these situations.

Types of Asylum Decisions

- **Grant of Asylum**
- **Recommended Approval**
  - The applicant is eligible for asylum, but USCIS has not received the results of certain required security checks.
- **Referral to an Immigration Court**
  - USCIS is unable to approve the asylum application, and the applicant does not have valid immigration status in the United States.
  - The applicant enters the “defensive” asylum process.
- **Notice of Intent to Deny**
  - The applicant has valid immigration status in the United States but is found ineligible for asylum.
  - The applicant has 16 days to respond by submitting a rebuttal or new evidence to address the reasons for ineligibility.
- **Final Denial**
  - An applicant who received a Notice of Intent to Deny (NOID) will be sent a Final Denial letter if the applicant failed to submit a rebuttal or new evidence within 16 days or if the applicant submitted a rebuttal or new evidence but the new information failed to overcome the grounds for denial as stated in the NOID.

Reasons Why Individuals Can Be Barred from Receiving Asylum

- Persecution of others on account of a protected characteristic
- Conviction of a particularly serious crime
  - Filed after 11/29/1990 – includes aggravated felonies
  - Filed after 4/1/1997 – conviction inside or outside US
- Commission of a serious nonpolitical crime outside the US prior to arrival
  - Filed after 4/1/1997
- Firm resettlement in another country prior to arrival
  - Entered into another country with, or while in that nation received an offer of permanent residence, citizenship or other type of permanent residence
- Danger to national security and/or terrorist activity

Benefits of Asylum

- Can remain in the United States indefinitely, unless asylum is terminated
- Can apply for Lawful Permanent Resident status 1 year after receiving asylum
  - The effective date of LPR status is rolled back 1 year from the date of I-485 approval.
- Family reunification (spouse and unmarried children under 21)
  - File an I-730 within 2 years for each family member; interviewed overseas and enter the United States as asylees
- Assistance and services run by state and private, non-profit agencies through the Office of Refugee Resettlement
- Unrestricted Social Security card
- Work authorization incident to status

Termination of Asylum

- The Asylum Division may receive adverse information from the I-730 process, adjustment process, snitch letters, or CBP or ICE that may warrant examining a case for initiating termination of asylum.
- I-589 filed on or after 4/1/1997:
  - Fraud, such that applicant was not eligible at time granted
  - No longer refugee because of fundamental change in circumstances
  - Meets the definition of one of the bars to asylum
    - Persecutor, danger to security of United States, TRIG, firm resettlement, PSC, serious non-political crime outside United States, safe third country
  - Voluntarily re-availed self of protection of country of feared persecution
  - Acquired a new nationality

Confidentiality

- 1) the fact that the applicant has applied for asylum;
- 2) specific facts or allegations pertaining to the individual asylum claim contained in an asylum application; or
- 3) facts or allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum

Confidentiality

- Authorization to disclose can be obtained through written consent of the asylum applicant or specific authorization from the Secretary of Homeland Security.
- Disclosure may also be made to U.S. officials or contractors and U.S. federal or state courts on a need to know basis related to certain administrative, law enforcement, and civil actions.
- See Fact Sheet.

Questions?

U.S. Citizenship and Immigration Services

Credibility

Part 1: Introduction and Legal Framework

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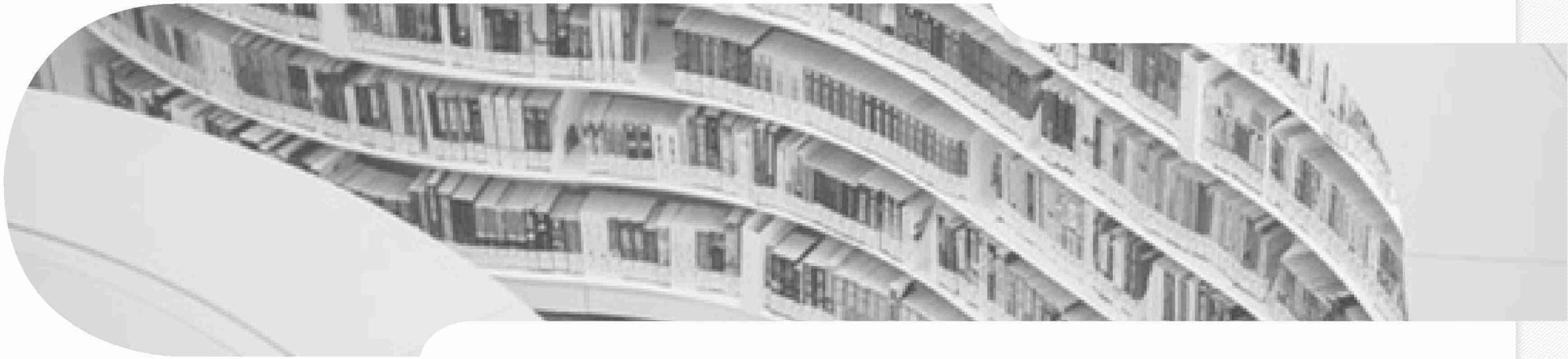
Asylum Division

Adjudications Officer
RAIO Training Branch

What is Credibility?

U.S. Citizenship and Immigration Services



Overview

U.S. Citizenship and Immigration Services

- General Considerations
- Legal Framework
- REAL ID Act
- Totality of the Circumstances
- Special Topics
  - Using Sensitive Systems
  - Credibility vs…

General Considerations

U.S. Citizenship and Immigration Services

Interview must be non-adversarial

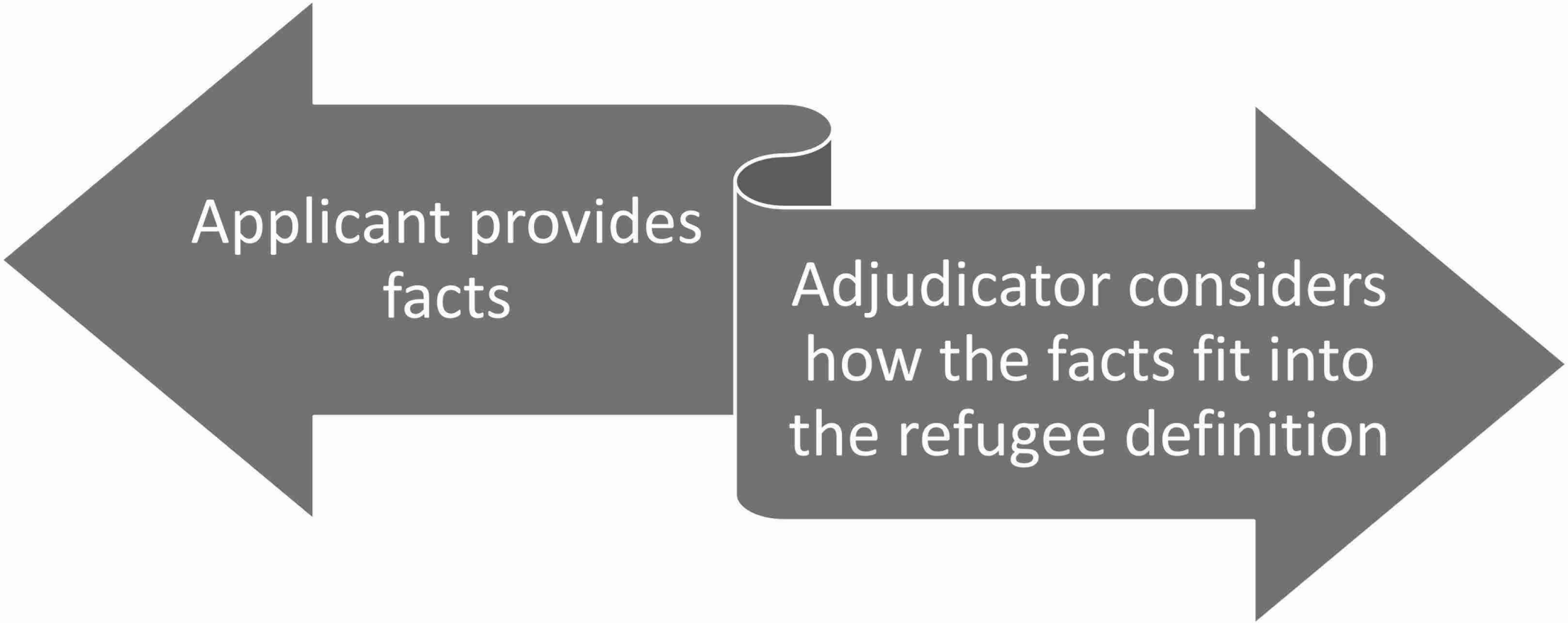
- Applicant has burden of proof
- AO must elicit all relevant and useful information

No presumption of credibility

Credibility concerns must be documented in the record

Eliciting “all relevant and useful information”

U.S. Citizenship and Immigration Services



Legal Framework

U.S. Citizenship and Immigration Services

Burden of Proof

- On the applicant

Standard of Proof

- Preponderance of the evidence

U.S. Citizenship and Immigration Services

REAL ID Act

Enacted May 11, 2005

Only Applies to Asylum applications filed *on or after* this date

3 Main Changes

1. **Nexus**
   - INA§ 208(b)(1)(B)**(i)**
2. **Corroborating Evidence**
   - INA§ 208 (b)(1)(B)**(ii)**
3. **Credibility**
   - INA§ 208(b)(1)(B)**(iii)**

REAL ID Act

Highlights

1. **No longer need to "go to the heart of the claim"**
2. **Listing of factors an adjudicator may consider**
3. **Totality of the Circumstances & All relevant factors**
4. **Testimony alone may be sufficient w/o corroboration if "credible, persuasive, and refers to specific fact"**

What is “relevant”?

U.S. Citizenship and Immigration Services

Do not have to go to the heart of the claim;

But still must be logically connected;

Tend to either prove or disprove a matter at issue (i.e. moves the needle one direction or the other)

U.S. Citizenship and Immigration Services

What factors may we consider?

Types of Credibility Concerns

U.S. Citizenship and Immigration Services

Inconsistency (External and Internal)

Lack of Detail*

Implausibility

Demeanor

Candor or Responsiveness

Inaccuracies or Falsehoods

Any other relevant factor

Inconsistencies

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U.S. Citizenship and Immigration Services

Contradictions found within the testimony or in other evidence, security checks, or COI

Lack of Detail

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U.S. Citizenship and Immigration Services

The inability to provide detailed testimony about the events that form of the basis of the claim.

Implausibility

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U.S. Citizenship and Immigration Services

Evidence which does not conform to generally known facts and reliable COI.

Demeanor

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U.S. Citizenship and Immigration Services

Outward manner of expression or behavior, including an individuals tone, facial expressions, and gestures.

Candor or Responsiveness

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Ability and willingness to respond to questions asked in an honest, direct, and forthright manner.

Inaccuracies or Other Falsehoods

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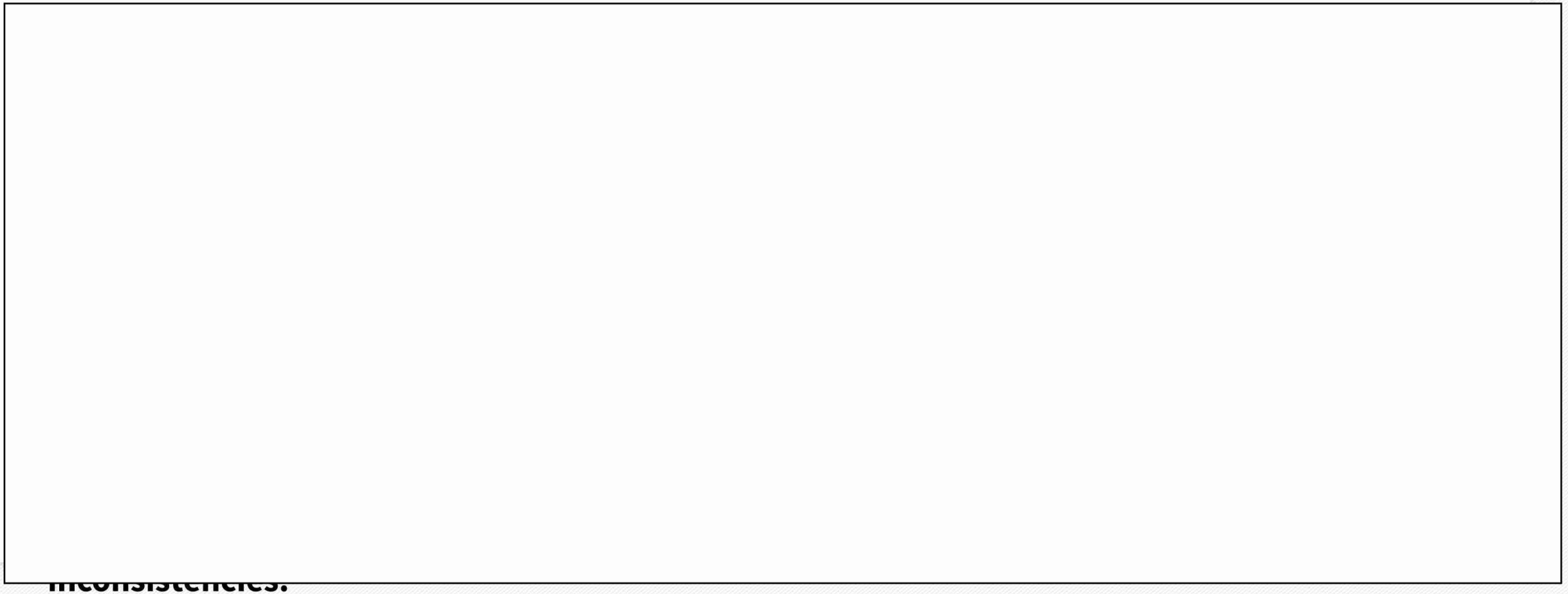
False statements or fraudulent documents



inconsistencies.

These factors should be considered under the totality of circumstances

U.S. Citizenship and Immigration Services

Each credibility concern should be considered and then afforded the appropriate probative weight given the totality of the circumstances

How do we do this?

“The Entire Record”

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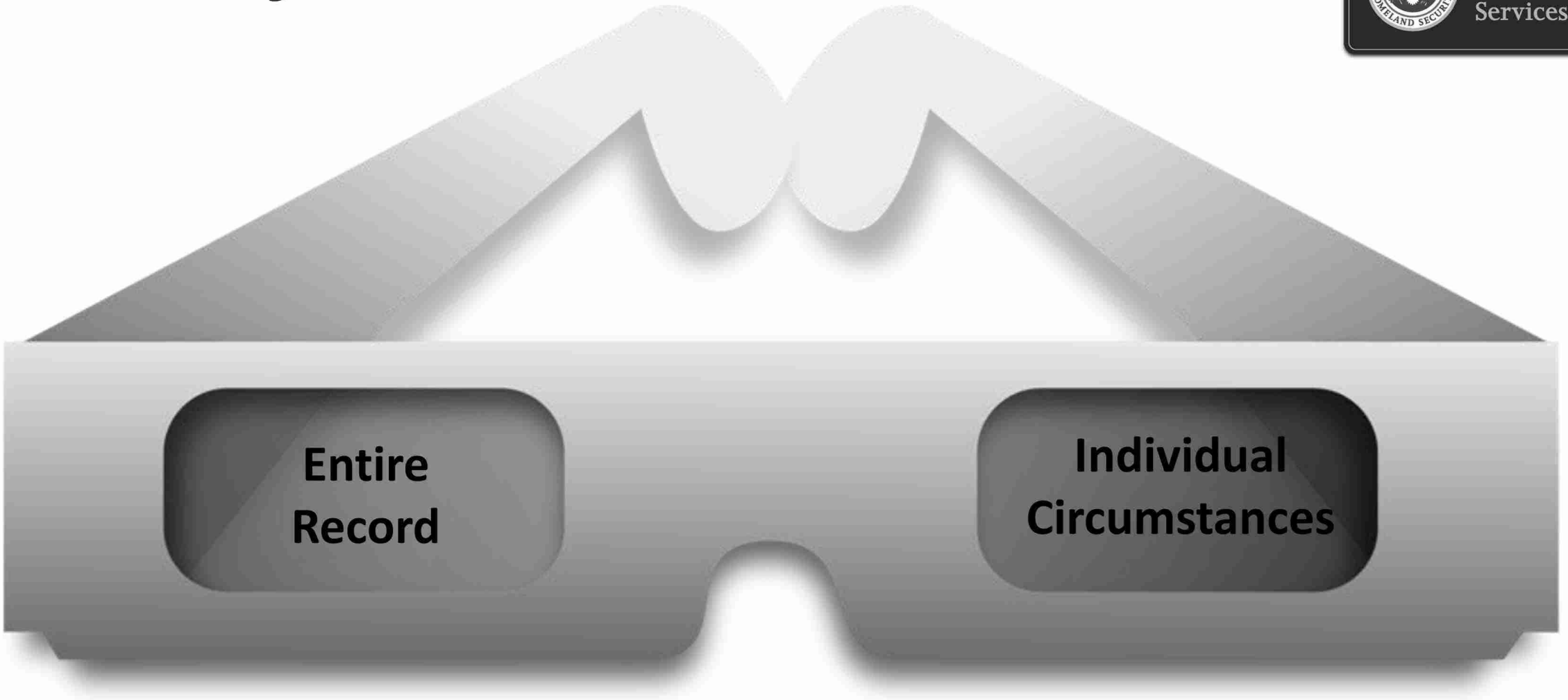
U.S. Citizenship and Immigration Services

Totality of the Circumstances

U.S. Citizenship and Immigration Services



Totality of the Circumstances

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U.S. Citizenship and Immigration Services

Totality of the Circumstances

(b)(7)(e)

U.S. Citizenship and Immigration Services

Applicant's Individual Circumstances

U.S. Citizenship and Immigration Services

(b)(7)(e)

Consider the applicant's particular circumstances:

Totality of the Circumstances (b)(7)(e)

U.S. Citizenship and Immigration Services

Totality of the Circumstances

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Reasonableness of Explanation

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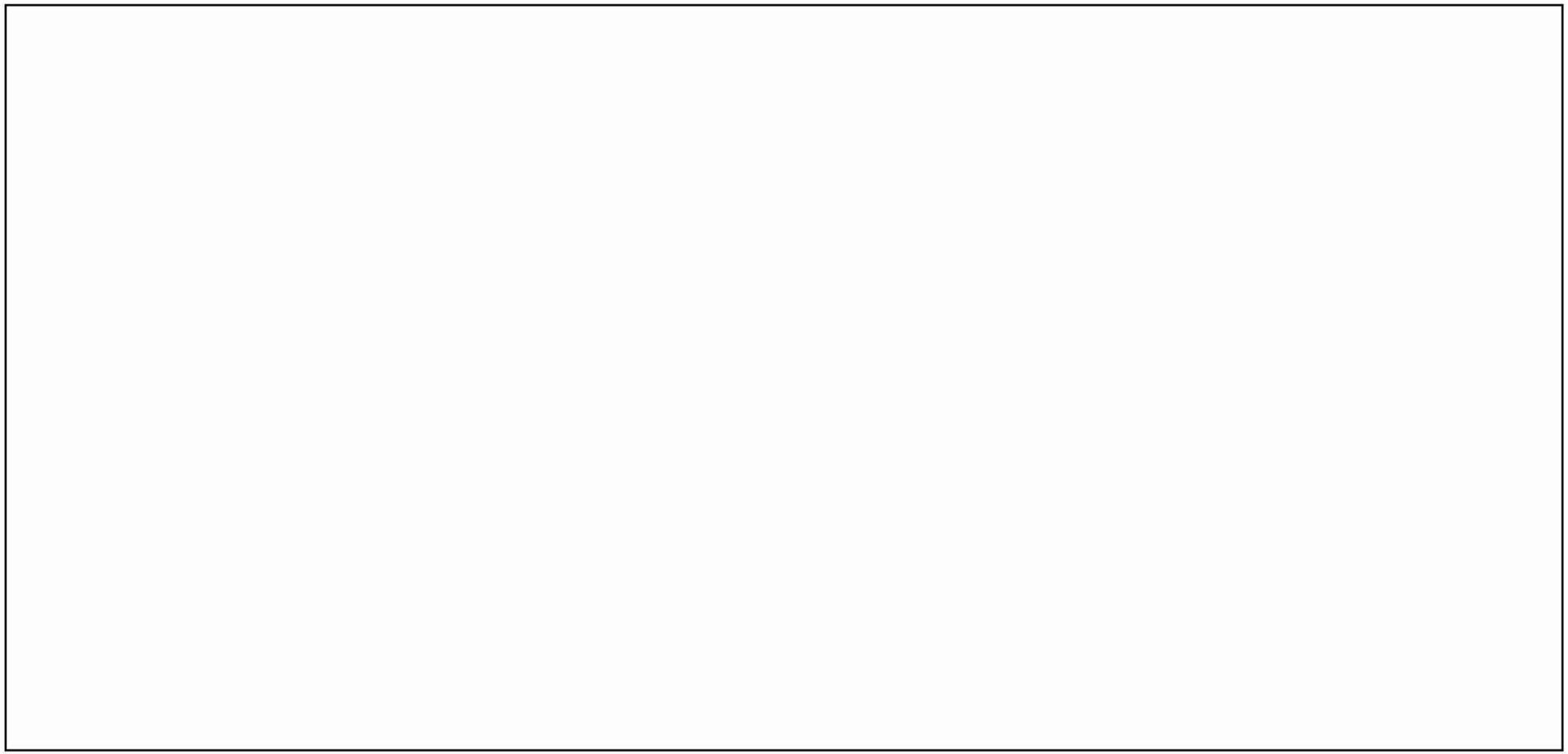

Assessing the reasonableness of the explanation

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Totality of the Circumstances

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U.S. Citizenship and Immigration Services

U.S. Citizenship and Immigration Services

Cumulative Effect of Credibility Concerns

Special Considerations

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Credibility should not be conflated with…

U.S. Citizenship and Immigration Services

…Other Evidence issues

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Credibility should not be conflated with…

(b)(7)(e)

…Other Eligibility issues

Credibility and Evidence

U.S. Citizenship and Immigration Services

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About this Presentation

U.S. Citizenship and Immigration Services

- Authors: Asylum Division, USCIS
- Date of last revision: September 20, 2019
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Adjudicating Children's Claims

RAIO CTP

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Adjudications Officer,
RAIO Training Team

Homeland Security Investigations

Child Refugees

Testimony: Adult v Child

Topics

- International Guidance
- Cultural & Developmental Factors
- Building Rapport
- Interview Considerations
- Legal Analysis for RAIO Adjudications

International Guidance

- Universal Declaration of Human Rights
- Convention on the Rights of the Child
- UNHCR ExCom Conclusions # 47, 59, and 107
- UNHCR Policies and Guidelines.

"Best interests of the child" principle in international guidance

Forensic Interviews

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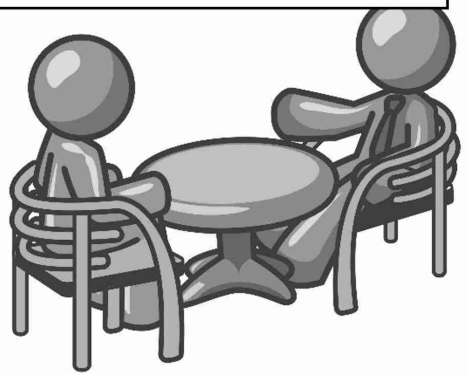

Homeland Security Investigations

Phased interview protocols

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The National Children's Advocacy Center

- [redacted]
- [redacted]
- [redacted]ng
- [redacted]ic
- [redacted]
- [redacted]

Homeland Security Investigations

What is the goal of your interview?

Tell me what really happened, in your own words, with as much detail as possible.

Child Friendly Interview Space

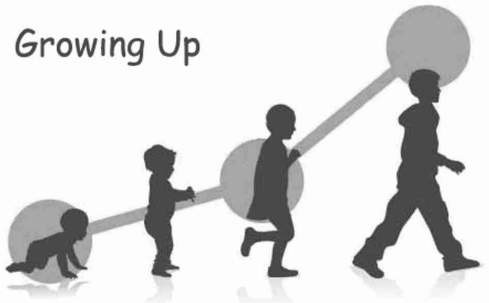
Do what you can to make your interview space more child friendly

Influential Factors in Child Development

- Chronological age
- Physical and emotional health
- Psychological development
- Societal status and cultural background
- Cognitive processes
- Language ability

Normal Child Development

- Trauma can significantly impact child development.
- Children & adolescents may not be functioning at the level expected for their chronological age.
- How could this be discerned early in the interview?



Factors that Accelerate or Stunt Development

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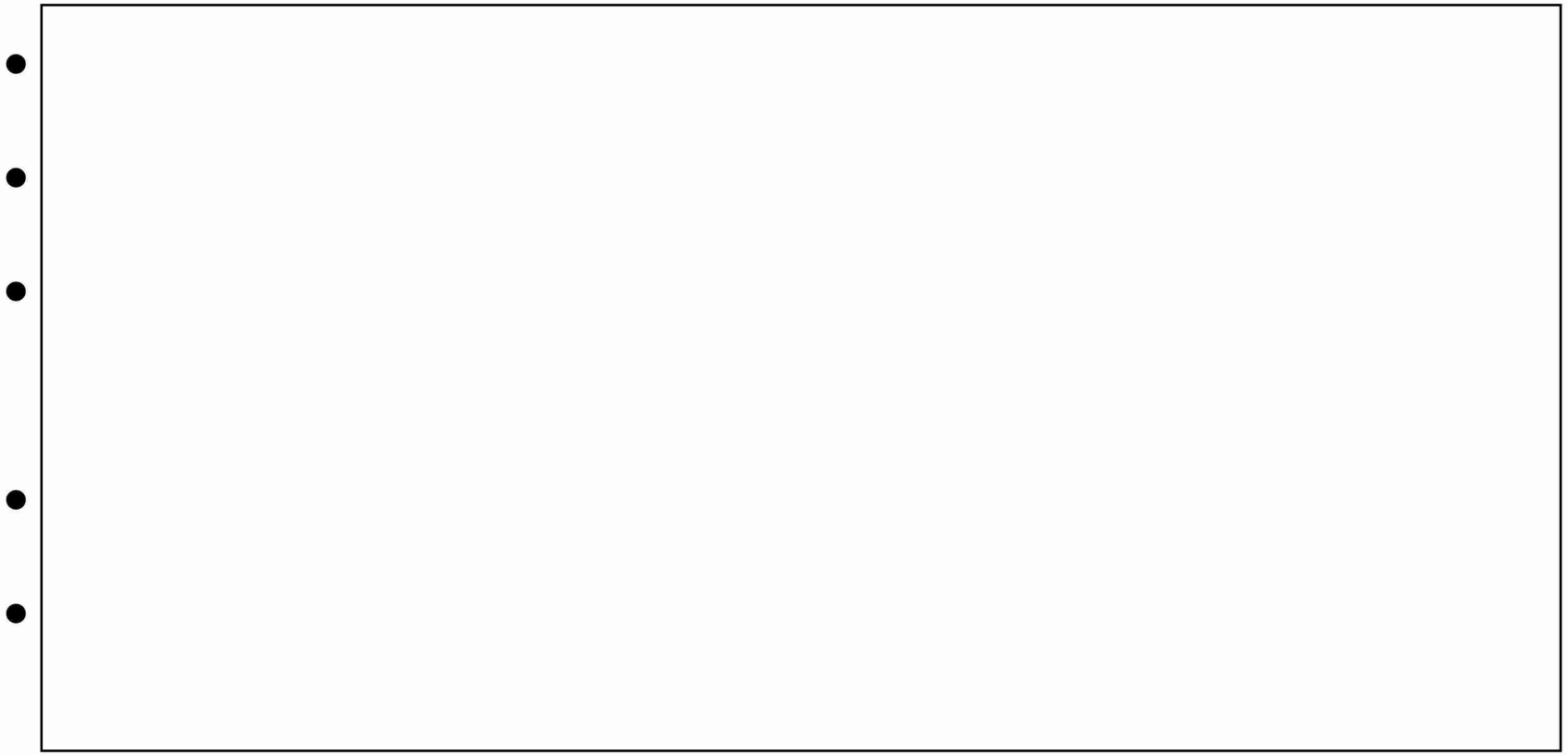

Developmental Factors Impacting Interview

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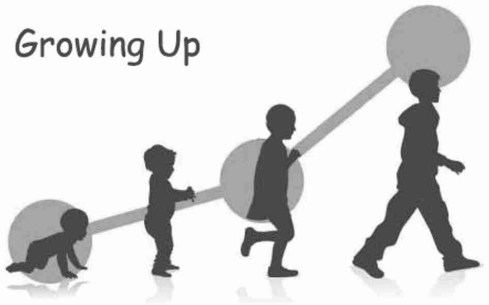

Children's Preconceptions

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Homeland Security Investigations

Children's Beliefs

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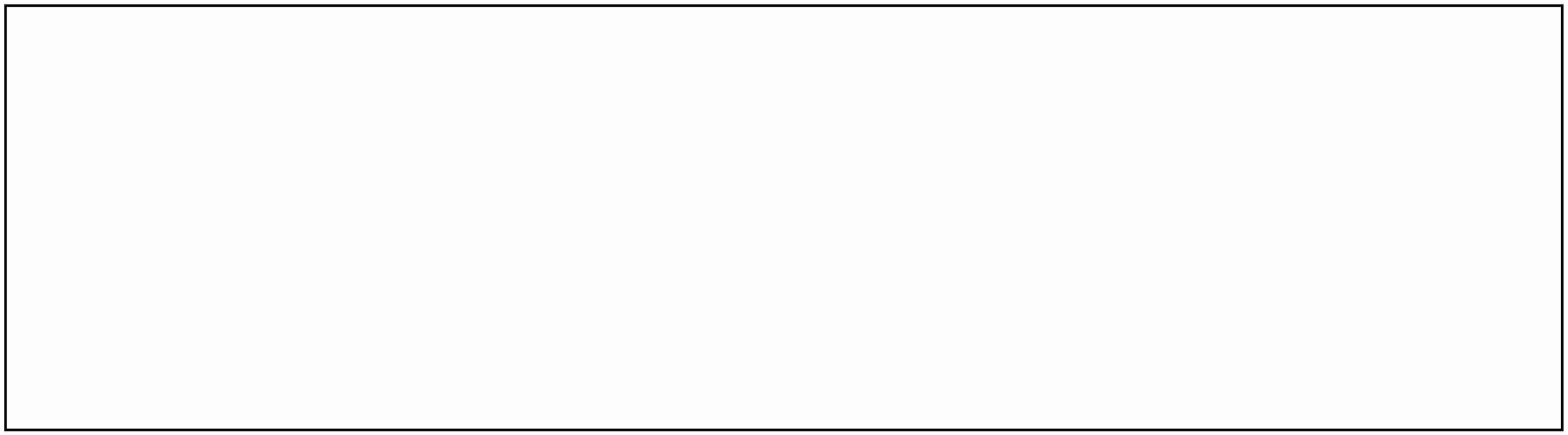
Children's perceptions of adults:

Helpful statements:

Procedural Considerations

- Determining capacity to apply (b)(7)(e)



Presence of a Trusted Adult or Child Advocate

- Familiar and trusted source of comfort
- Not a substitute for an attorney or representative
- Not a coach, but may be allowed to help the child explain things

Rapport Building

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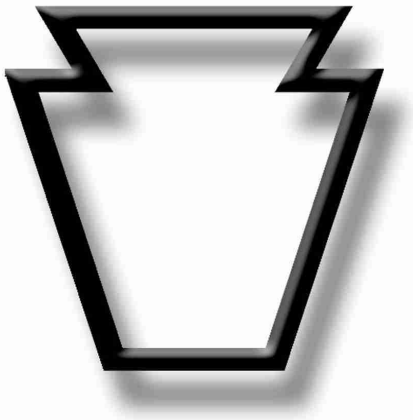

Homeland Security Investigations

Introduction

- Given once child appears comfortable
- Should explain roles of persons present
- Should reassure child that embarrassing or traumatic experiences will not be shared with others
- Should reassure child that it's okay to say "I don't understand" or "I don't know"
- Should reassure child that it's okay for him or her to ask questions

Introduction

In addition to your legal obligations, what is the purpose of delineating the ground rules?

- Shift the power dynamic of this interaction

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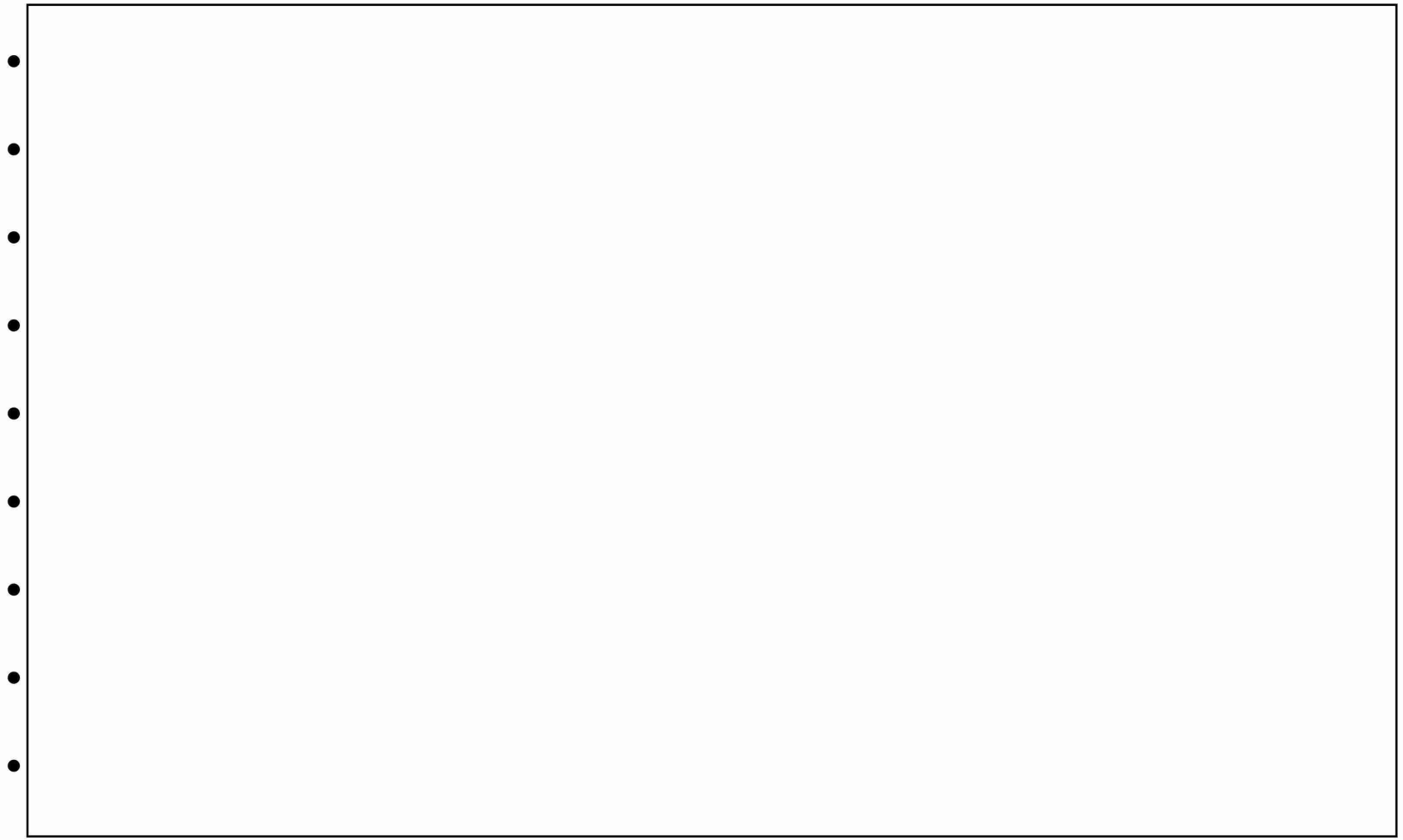
- Help children understand the purpose of the interview
-
-

Introduction



Introduction

If you weave at least some of the rules into the rapport building phase, you have the opportunity to model and reinforce:

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General Interview Considerations

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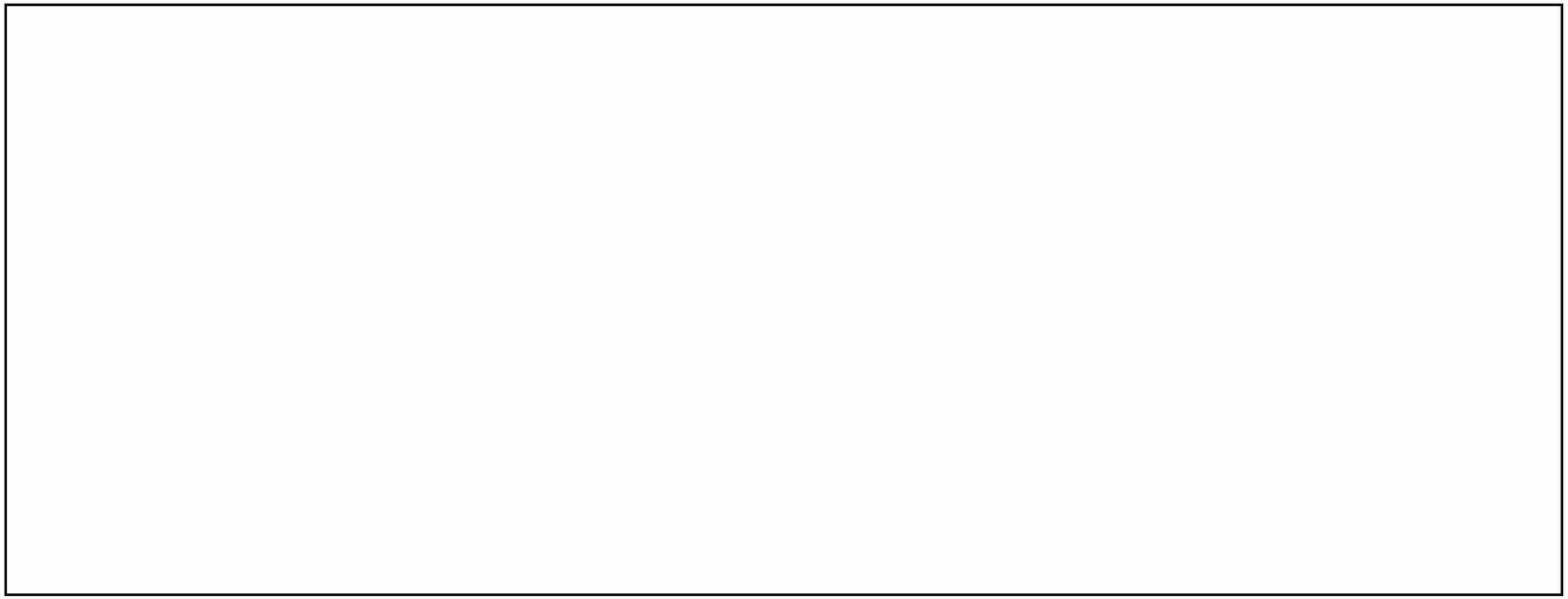

Linguistic Considerations
Keep it short! Keep it simple!

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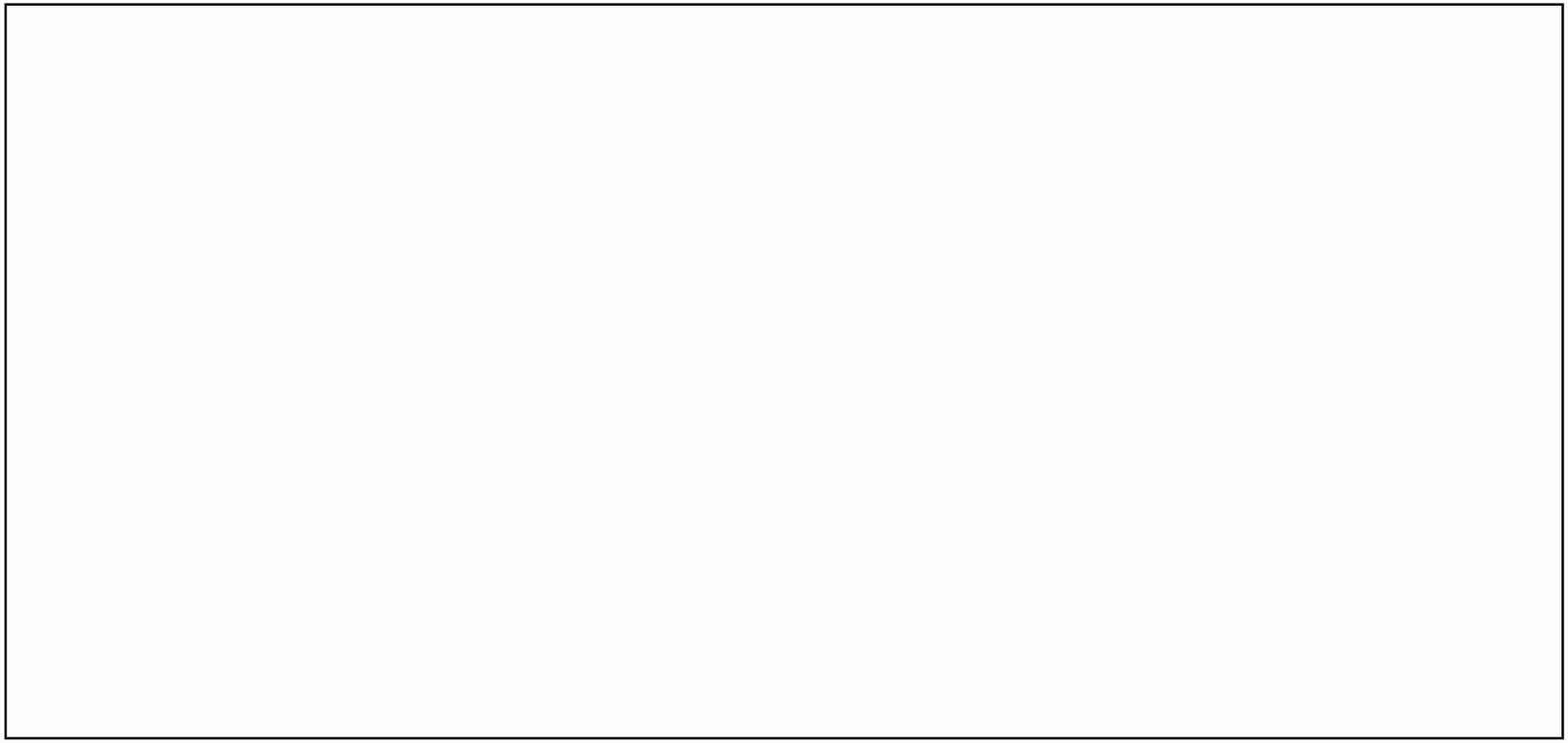

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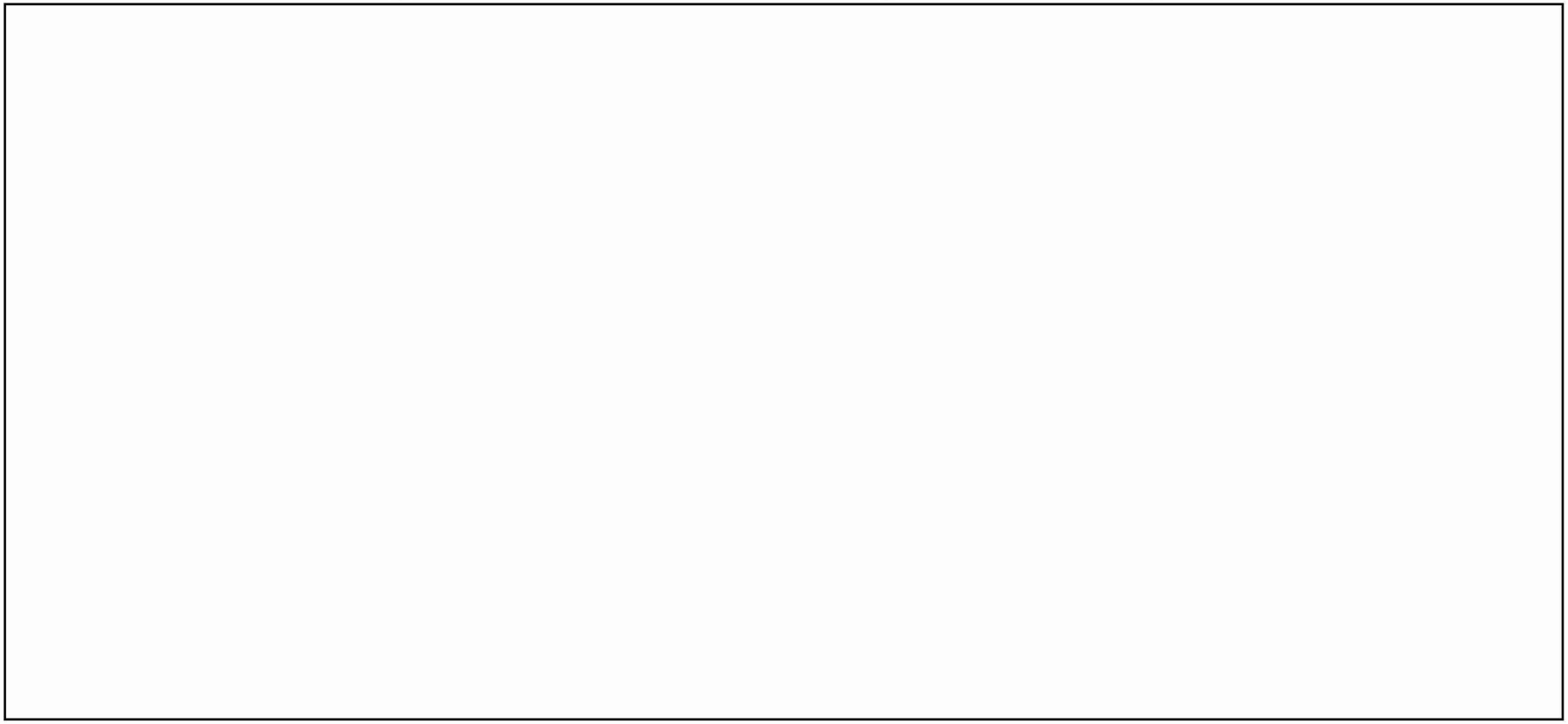

Suggestibility

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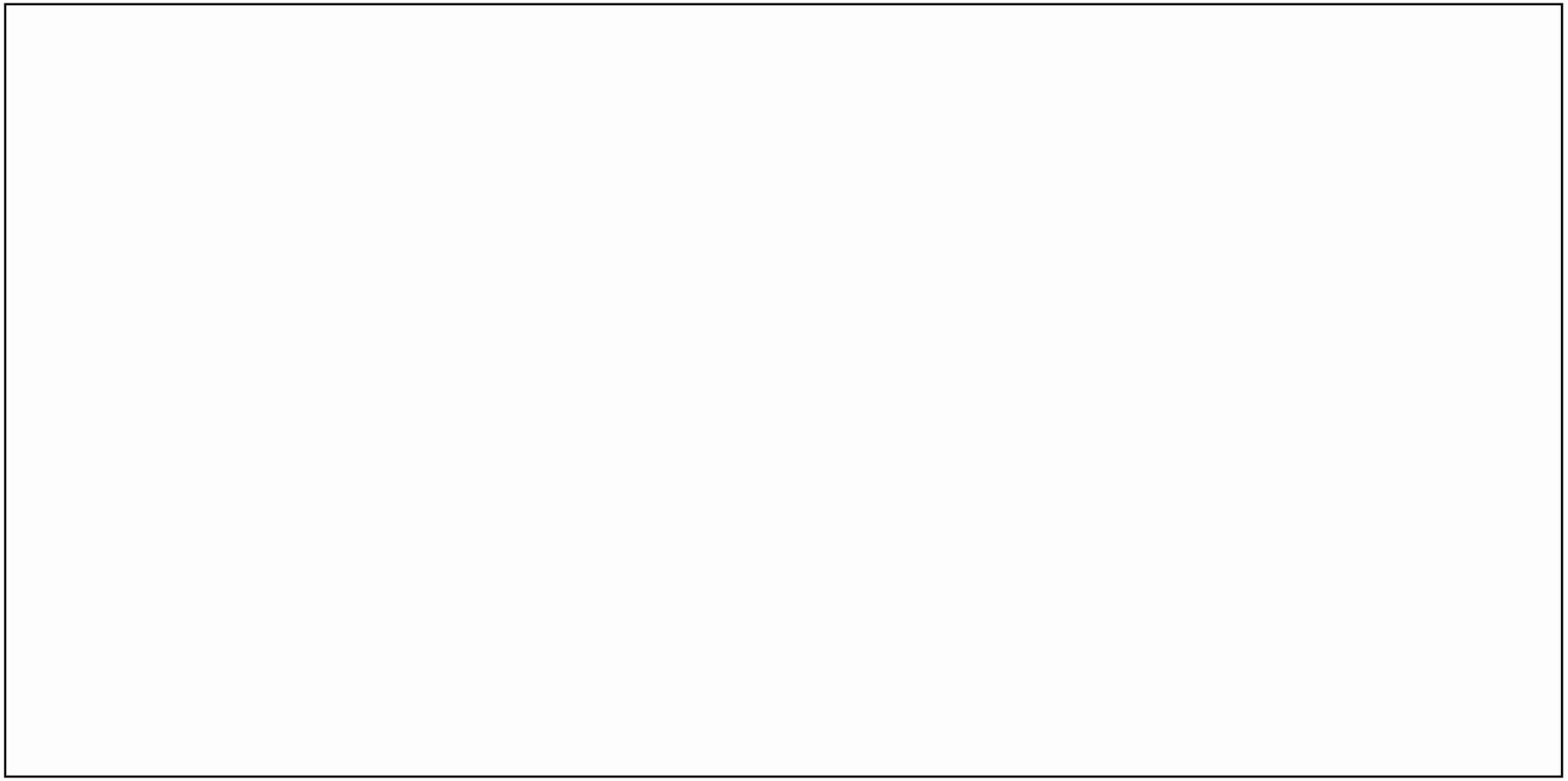

Memory

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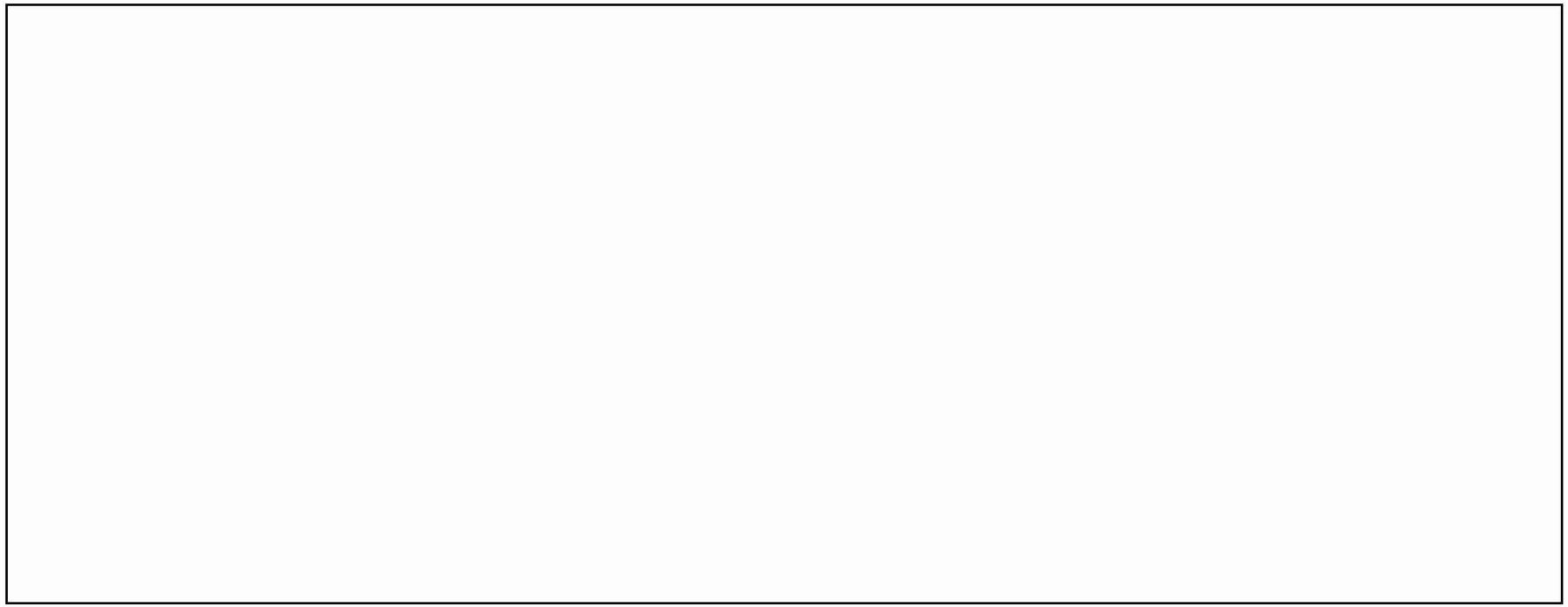
Coding → Storage → Retrieval



Questioning Techniques

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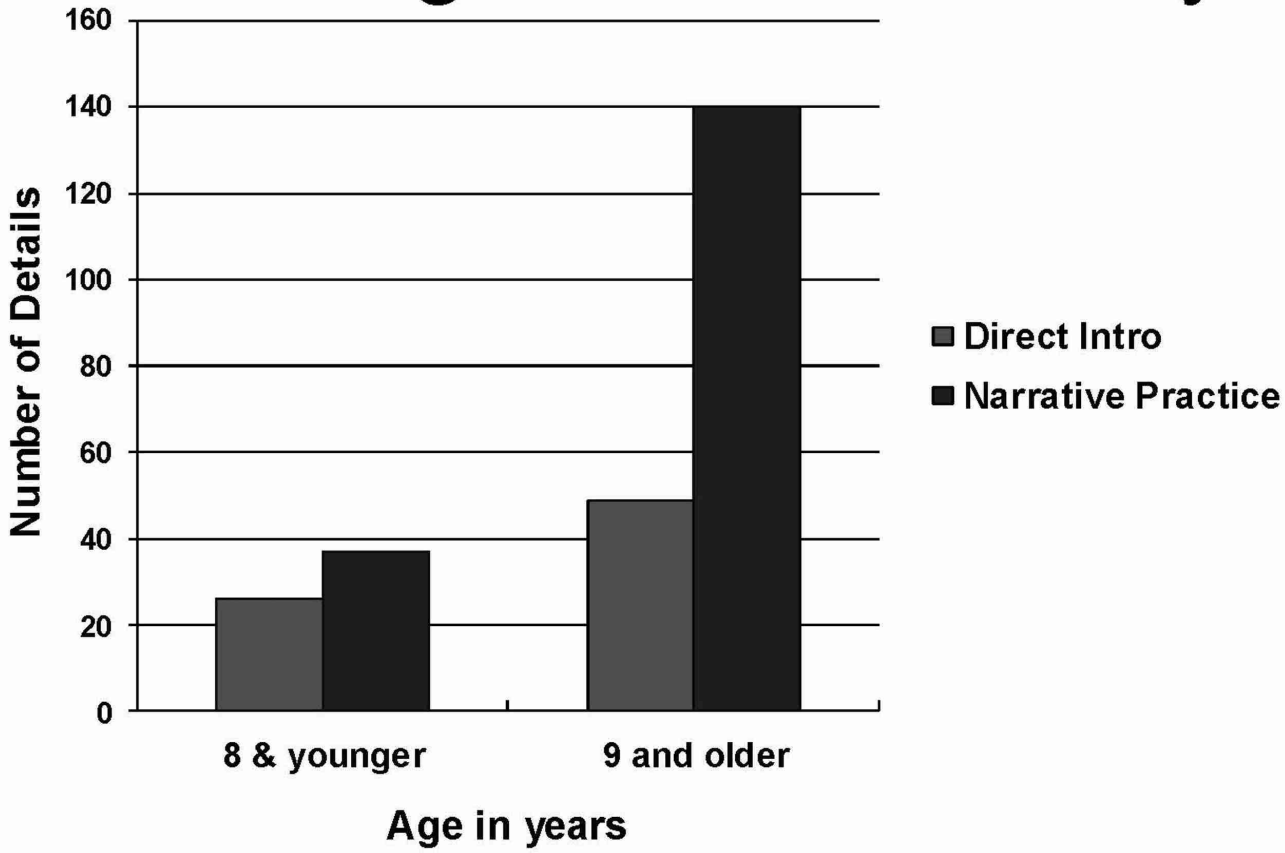
Tell me what happened

Tell me what happened

Narrative Practice Rapport Building and Productivity



Sternberg et al., 1997

Tell me what happened

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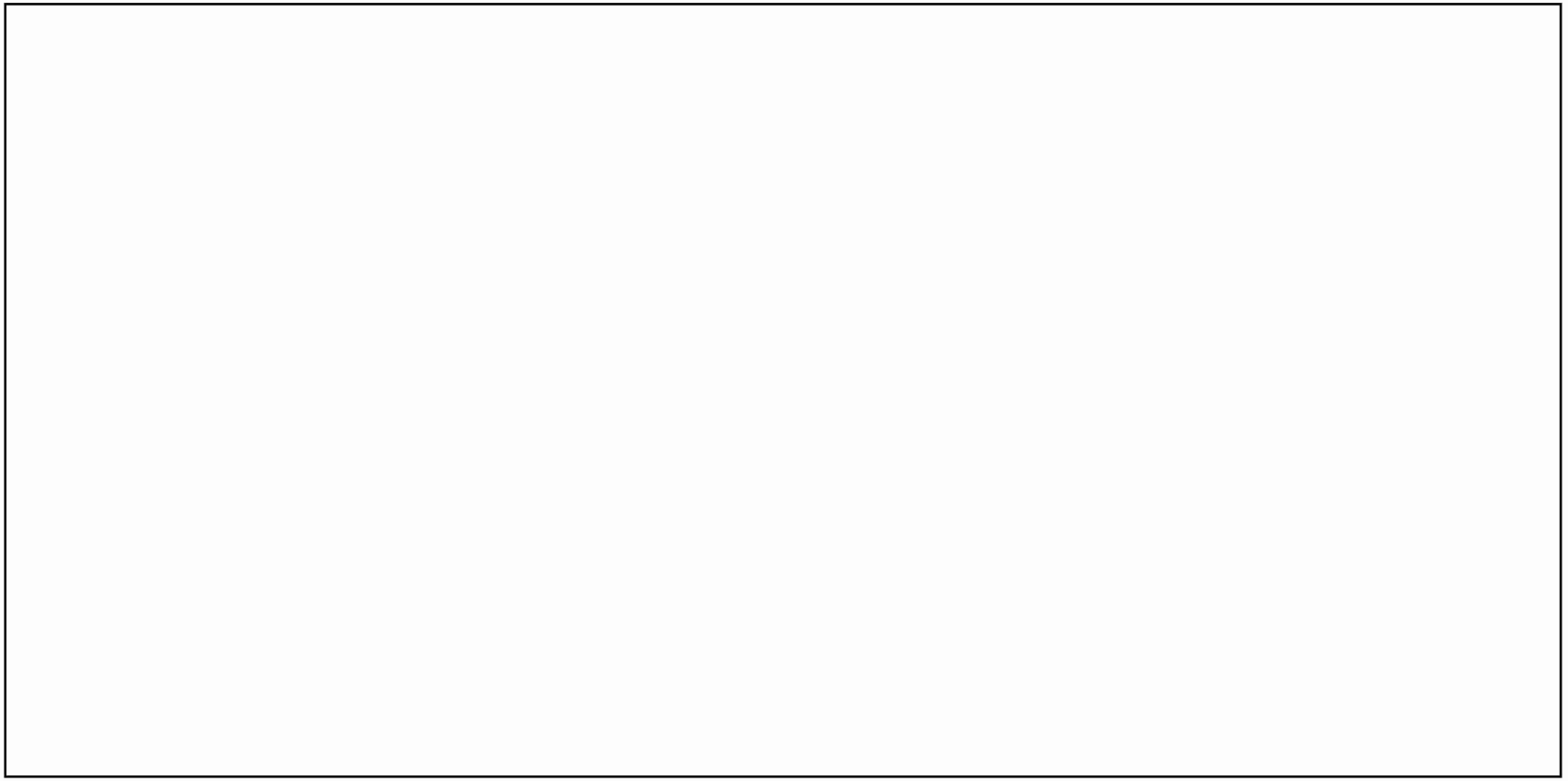

Benefits of Narrative Event Practice In the Rapport Building Phase

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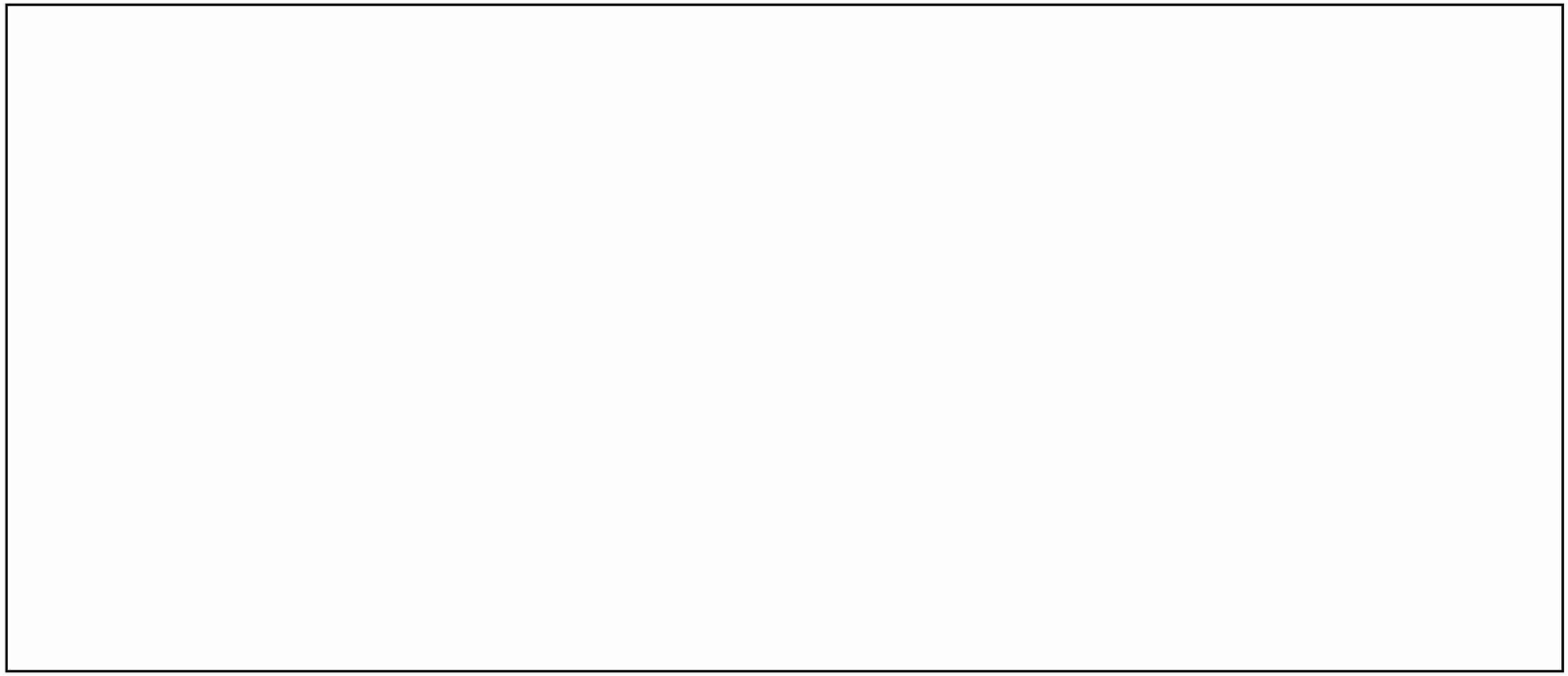
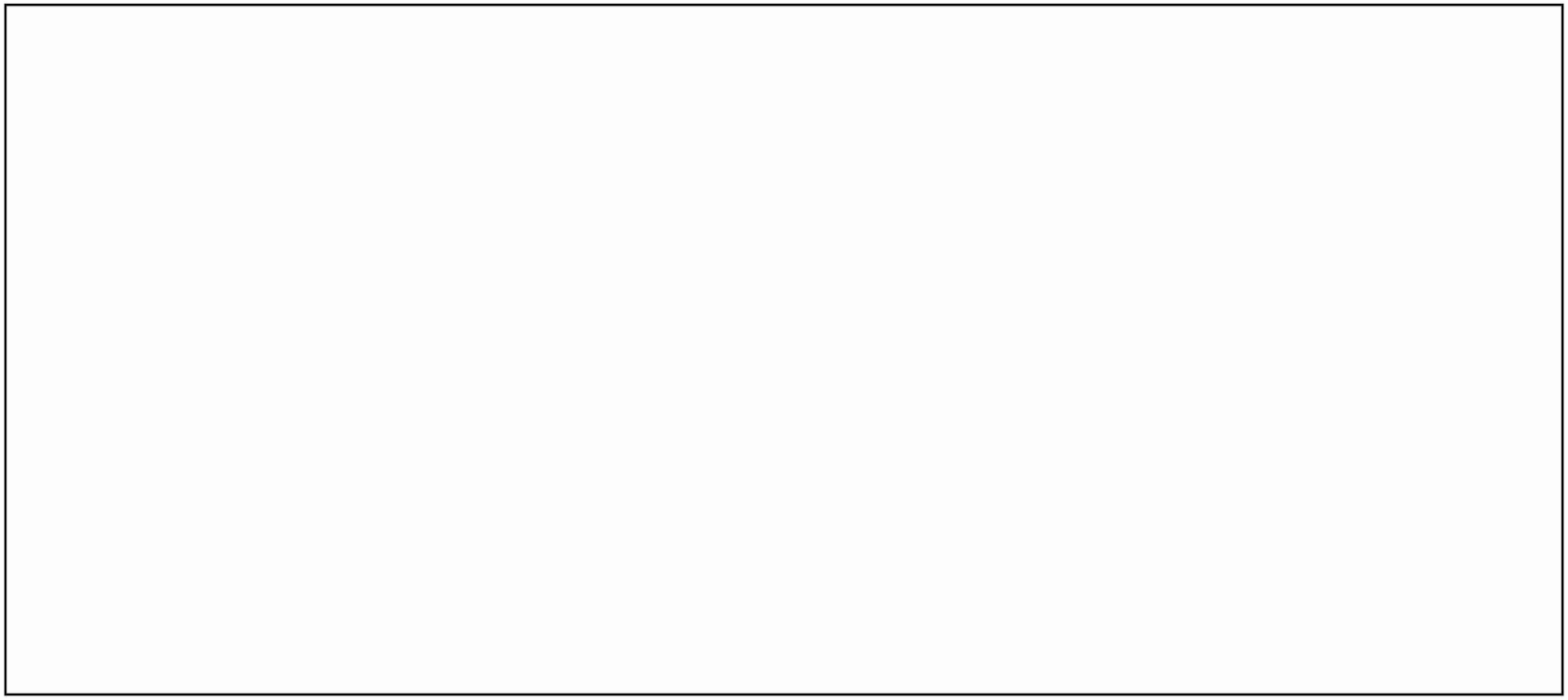


Memory & Narrative *Event* Practice (b)(7)(e)



Memory & Narrative *Event* Practice

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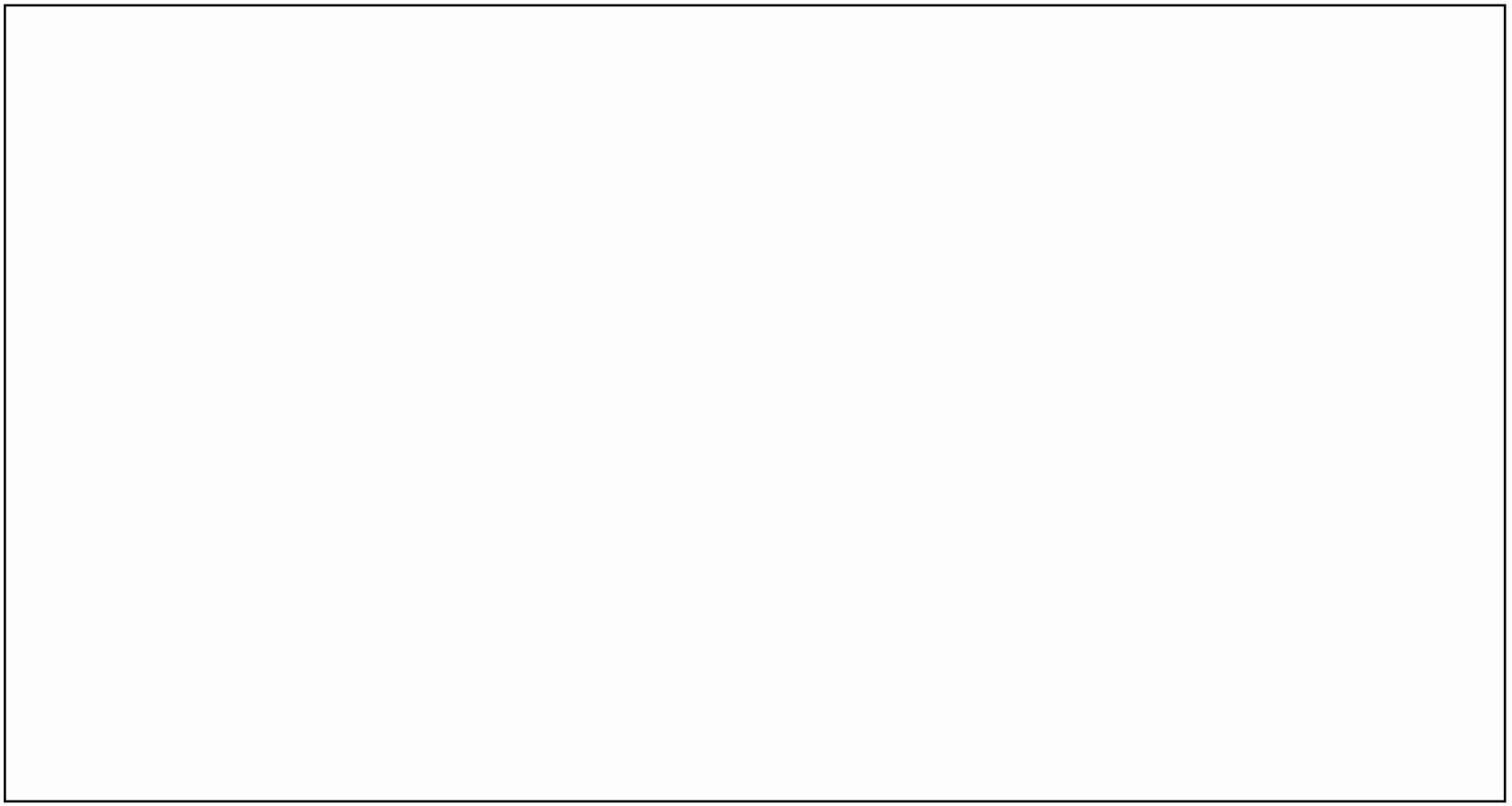

Memory & Narrative *Event* Practice

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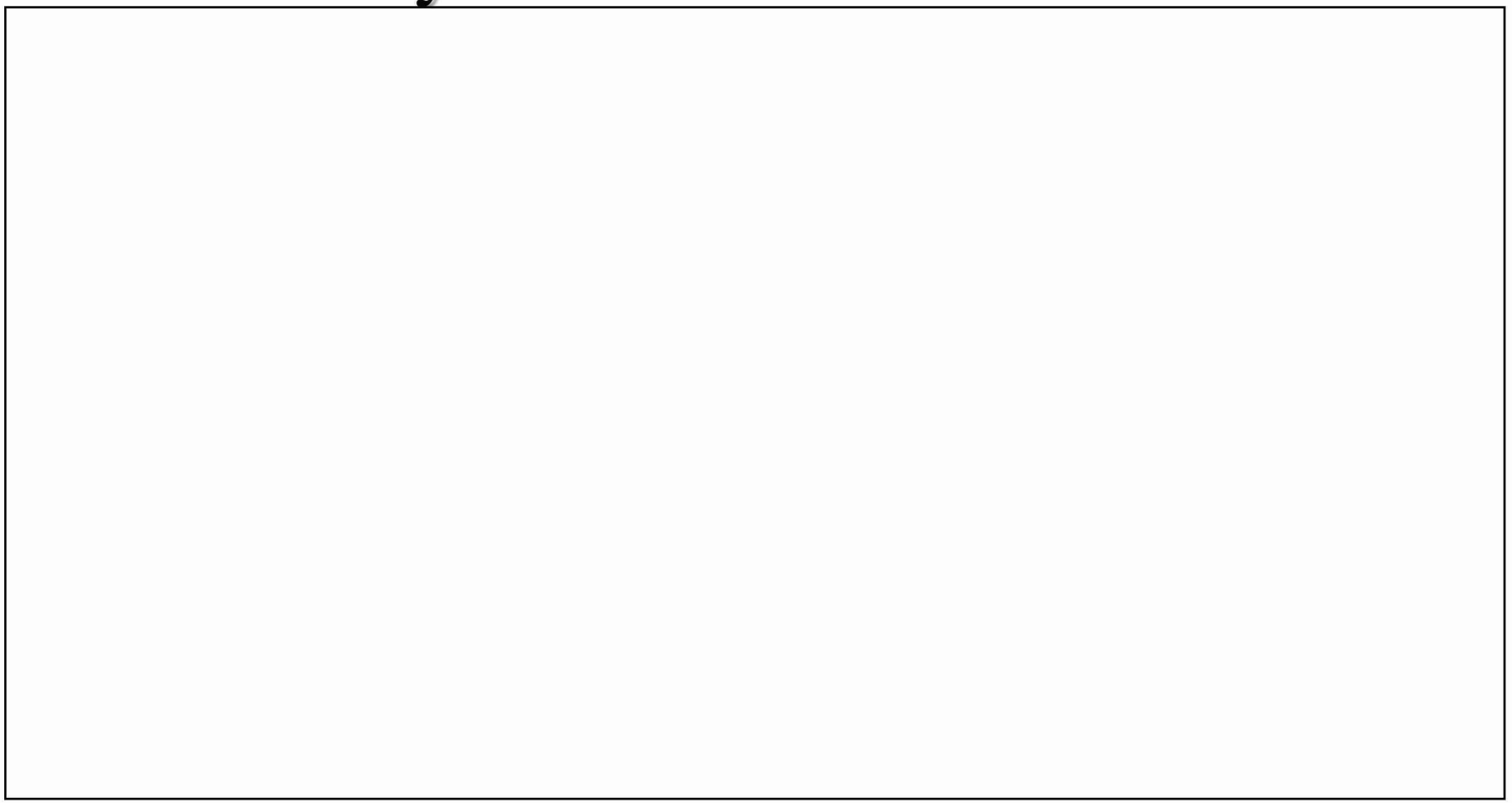

Children's Credibility Considerations

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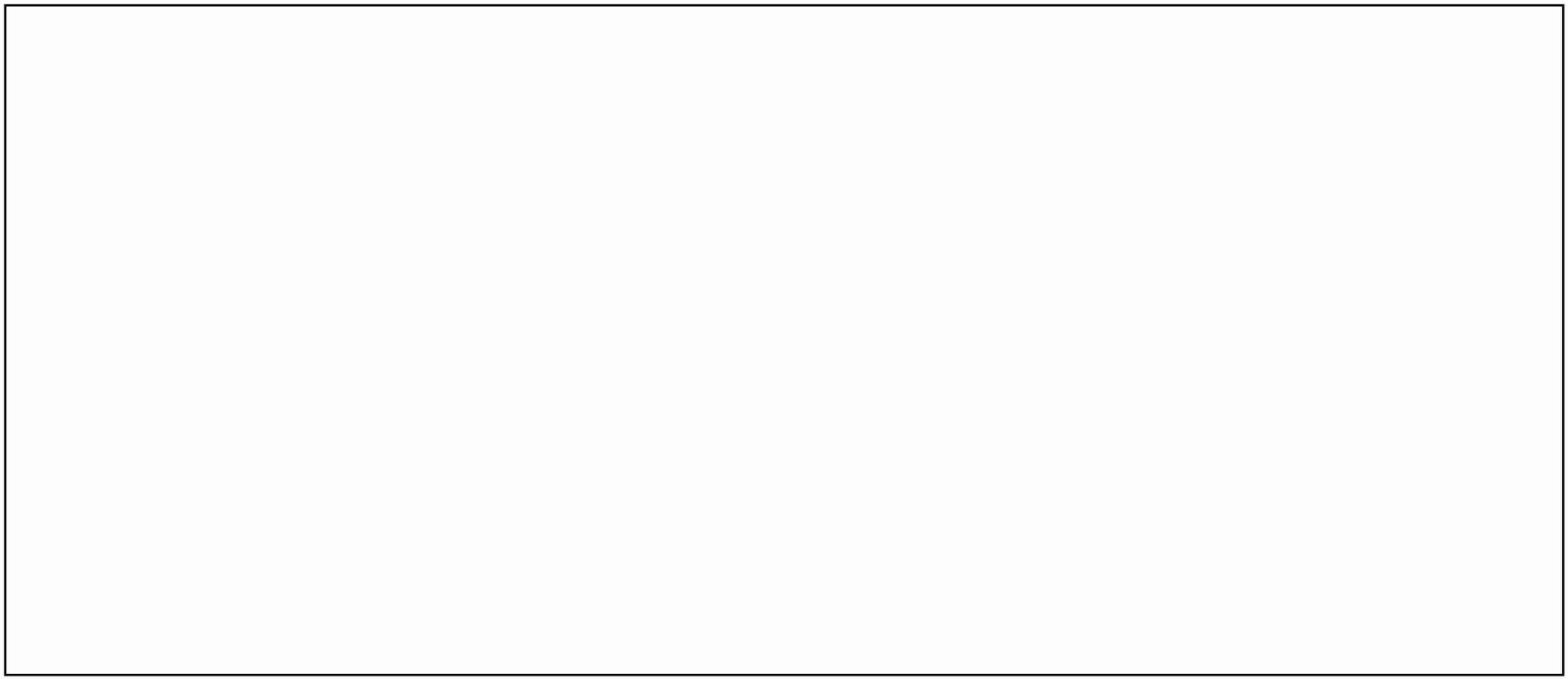

Other Credibility Considerations

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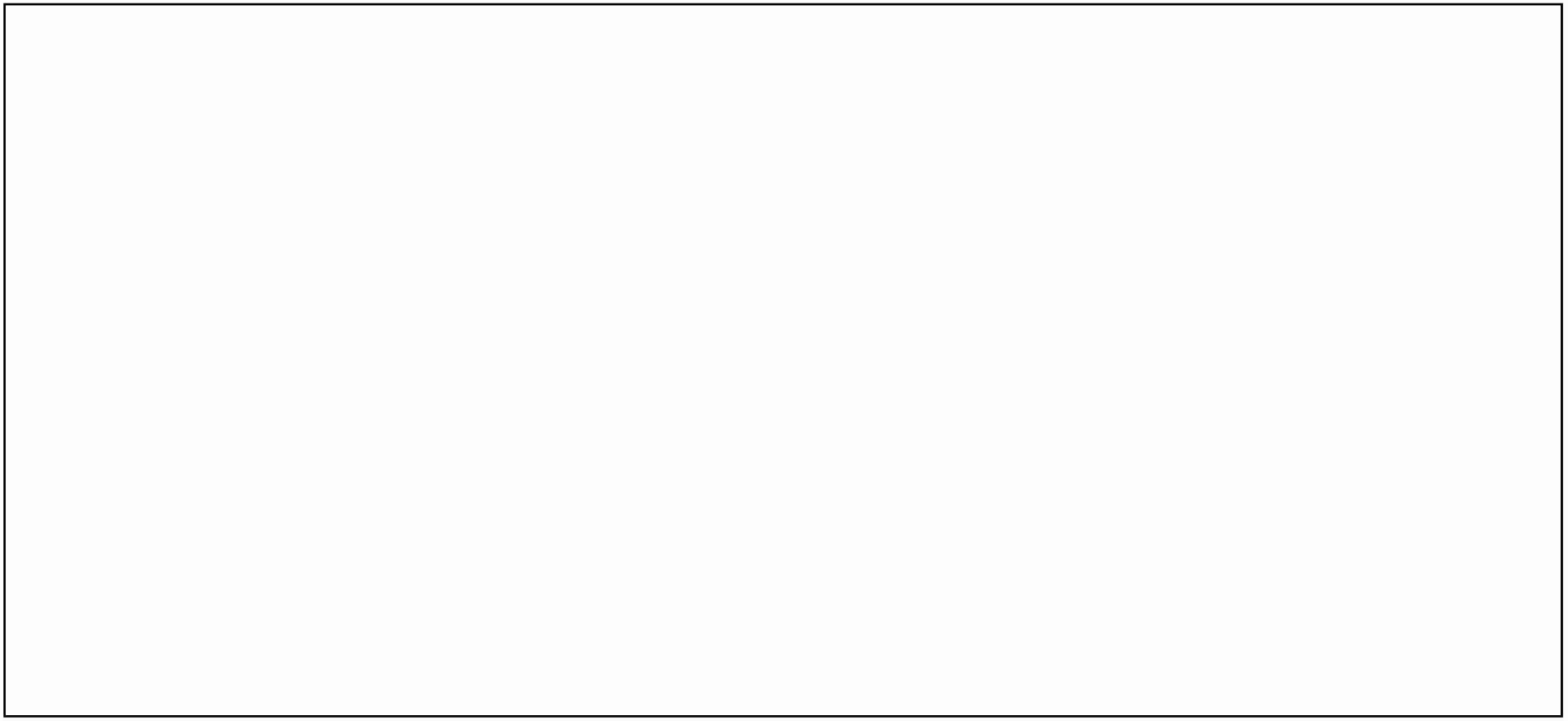

Evidence

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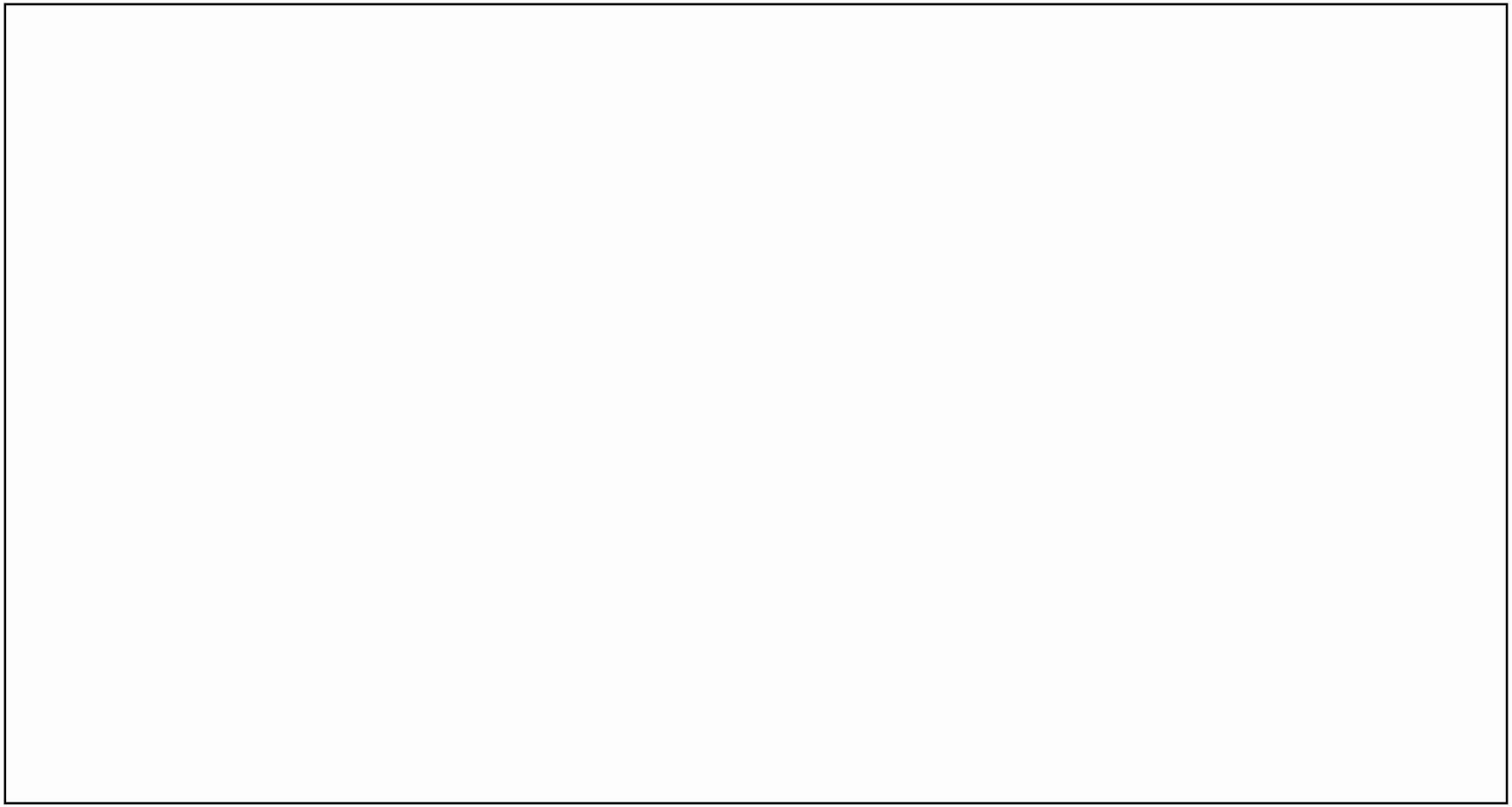

Legal Analysis: Definition of a Refugee

- Definition applies to all individuals regardless of age

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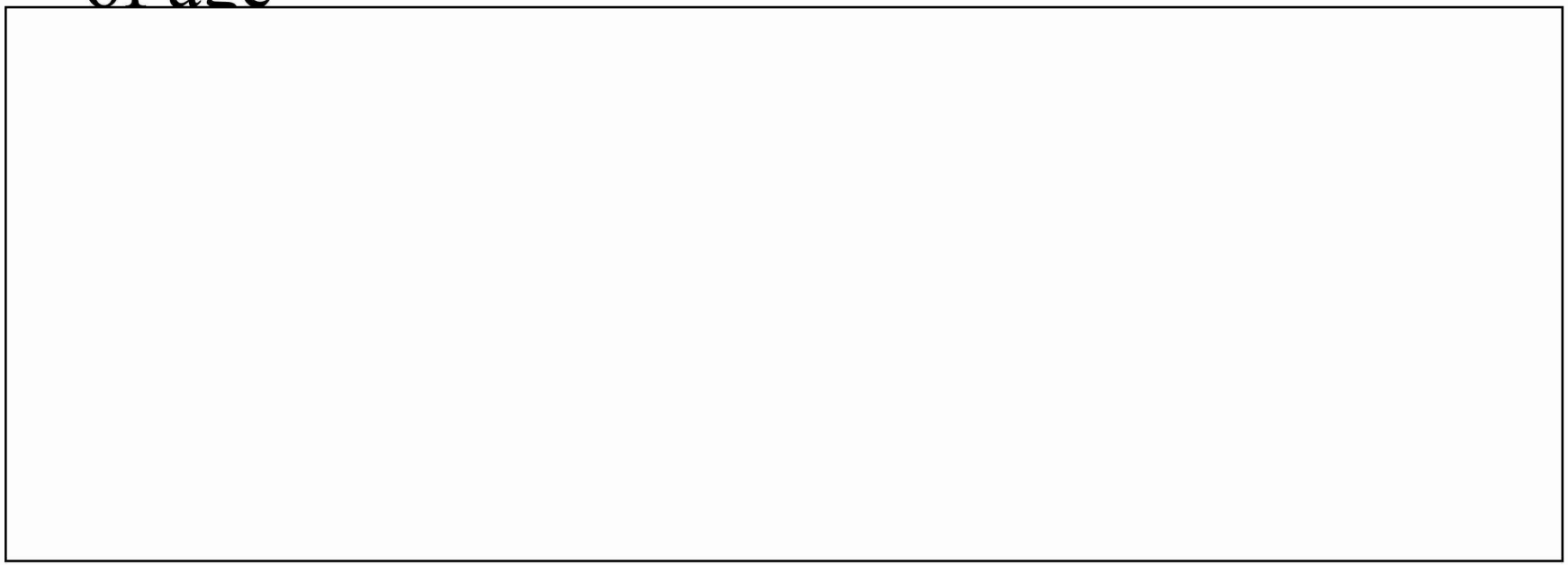

Persecution: Level of Harm

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Types of Harm to Children

- Types of harm that may befall children are varied
- Cultural practices that target young people may constitute persecution
- May often involve non-state actors

Well-founded Fear

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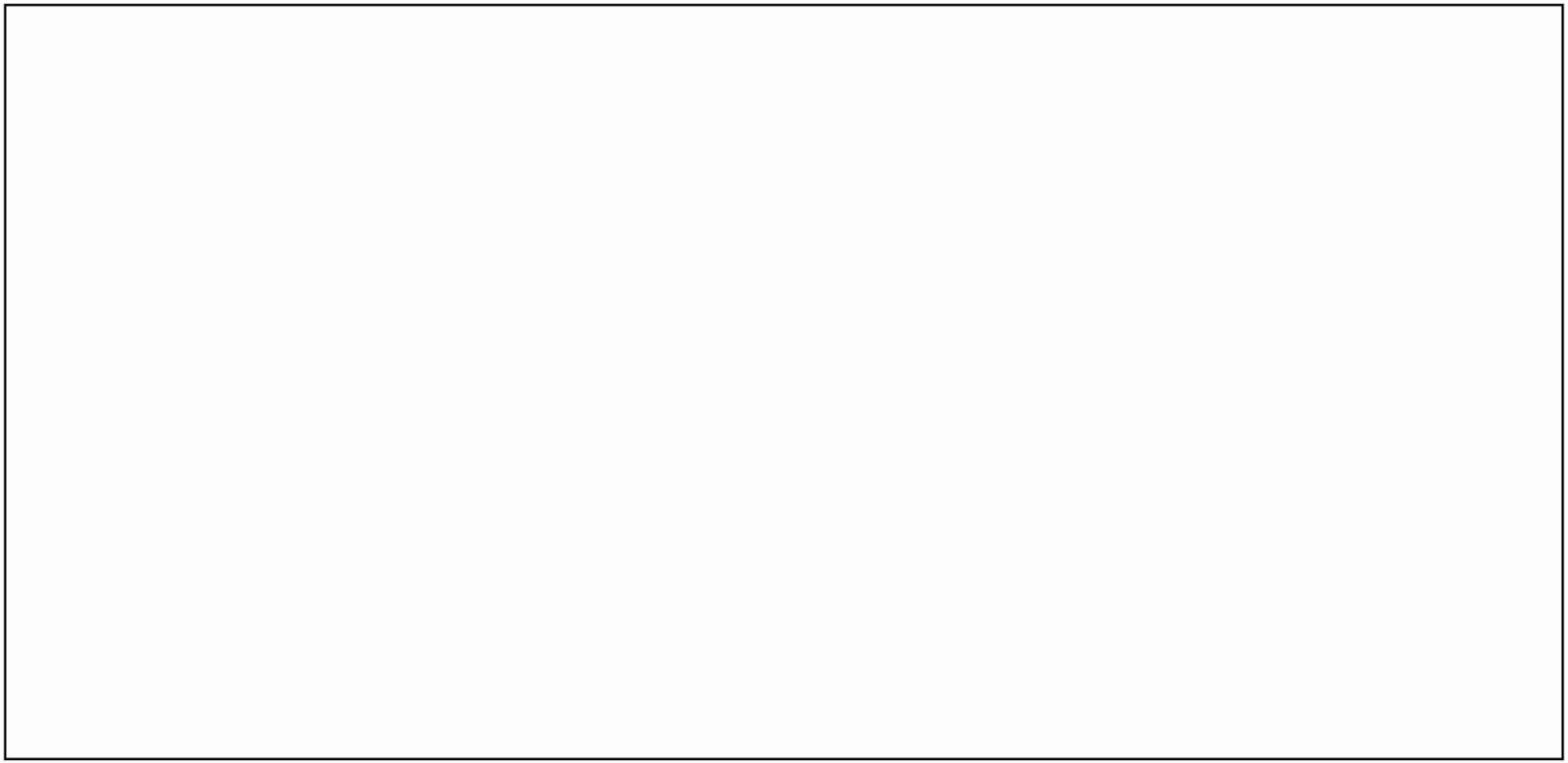

Nexus Issues

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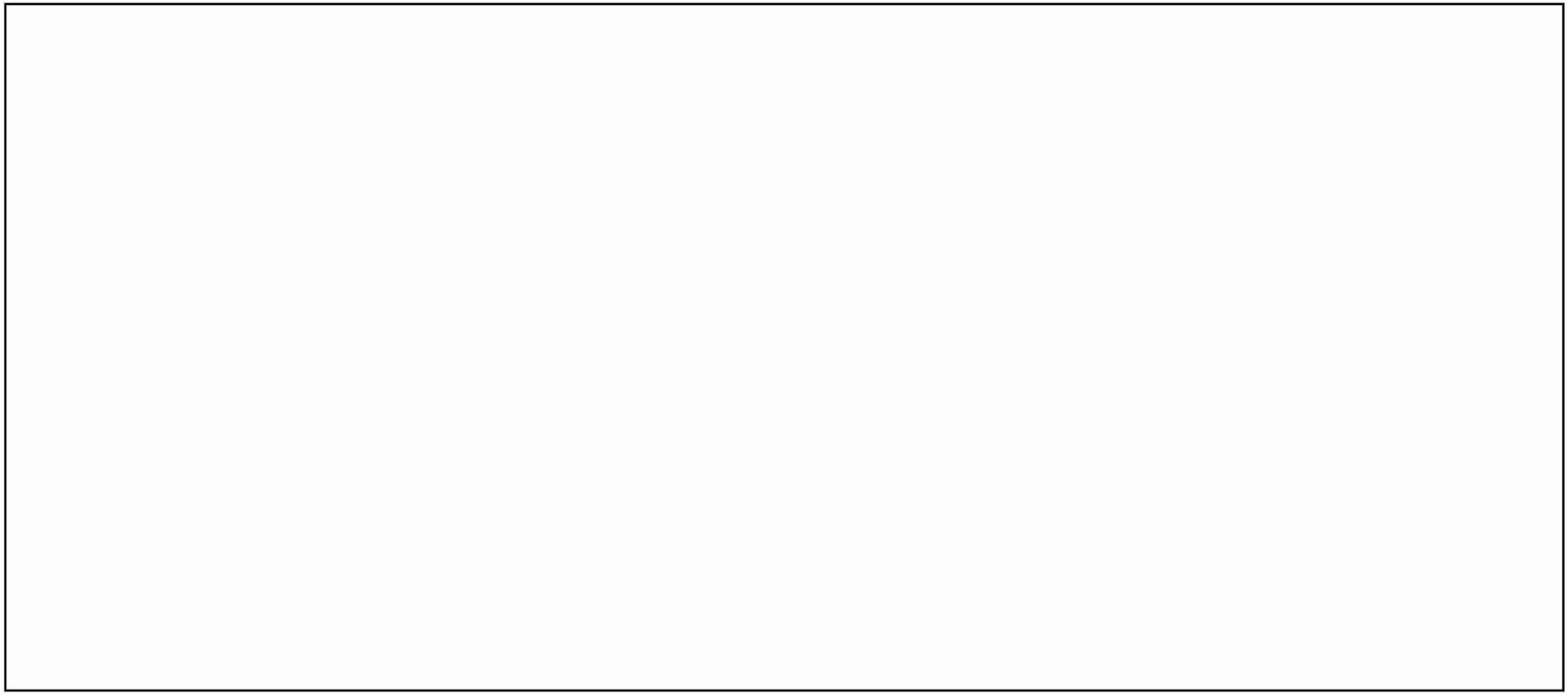

Interviewing the Reluctant Child

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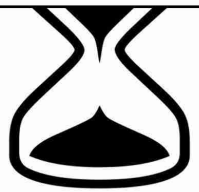

If you hit a road block

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What if the child becomes upset?

Resources

CALiO™ (Child Abuse Library Online) Collections is an assortment of over 2,100 unrestricted full-text publications, articles, etc. http://calio.org/

National Children's Advocacy Center – free online training http://www.nationalcac.org/

American Professional Society on the Abuse of Children http://www.apsac.org/

NICHD Protocol and associated research http://nichdprotocol.com/

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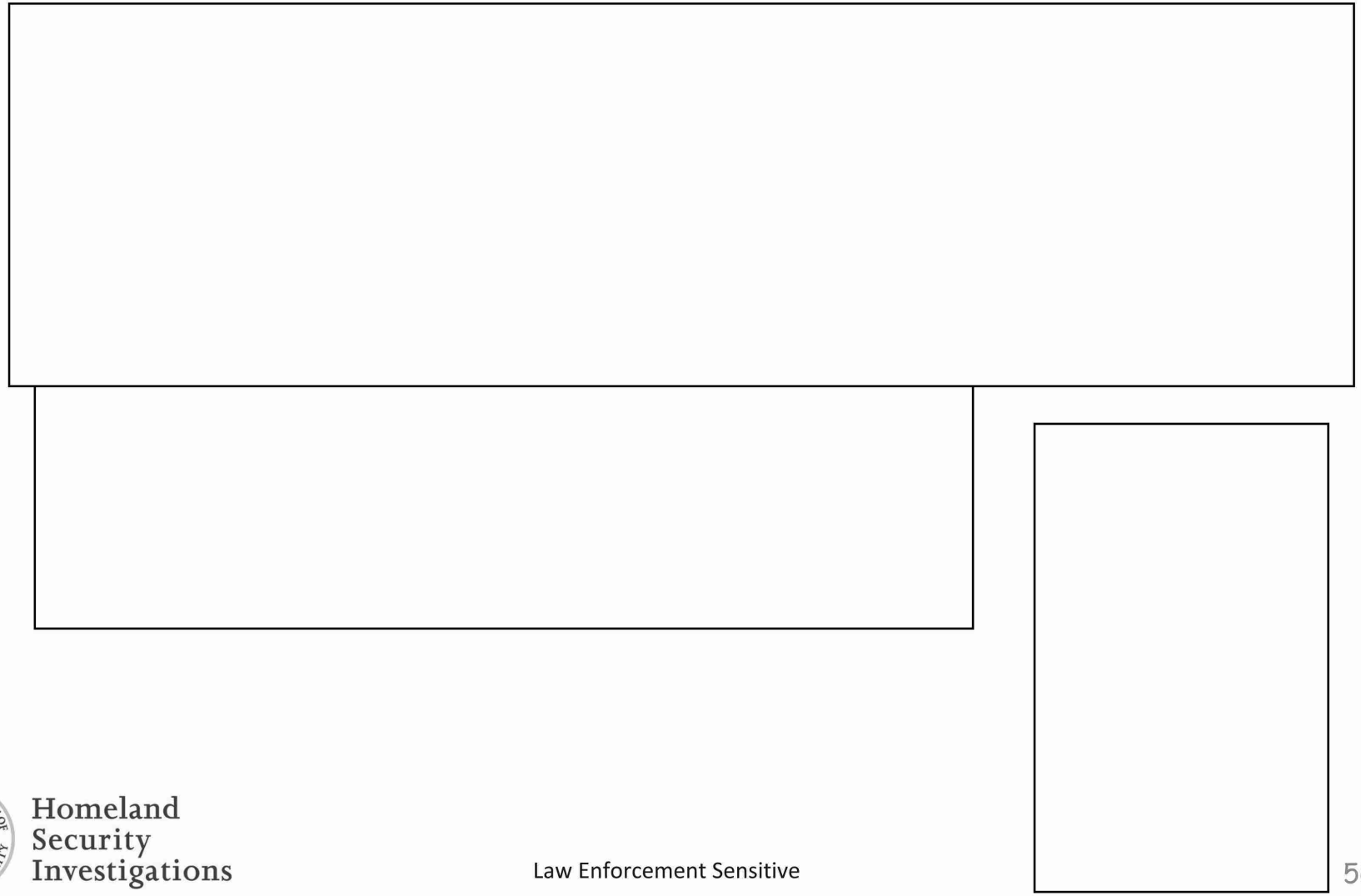
Resources



Resources

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[redacted]

Washington State Child Interview Guide

[redacted]

http://works.bepress.com/thomaslyon/

[redacted]

http://investigativecentre.org/

[redacted]

http://www.ibic.org.uk/[redacted]

U.S. Citizenship and Immigration Services

Credibility:

PART 2: STRATEGIES FOR ELICITING TESTIMONY

UPDATED: OCTOBER 2019

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[redacted] HQ Asylum Officer
[redacted] Adjudications Officer, RAIO Training

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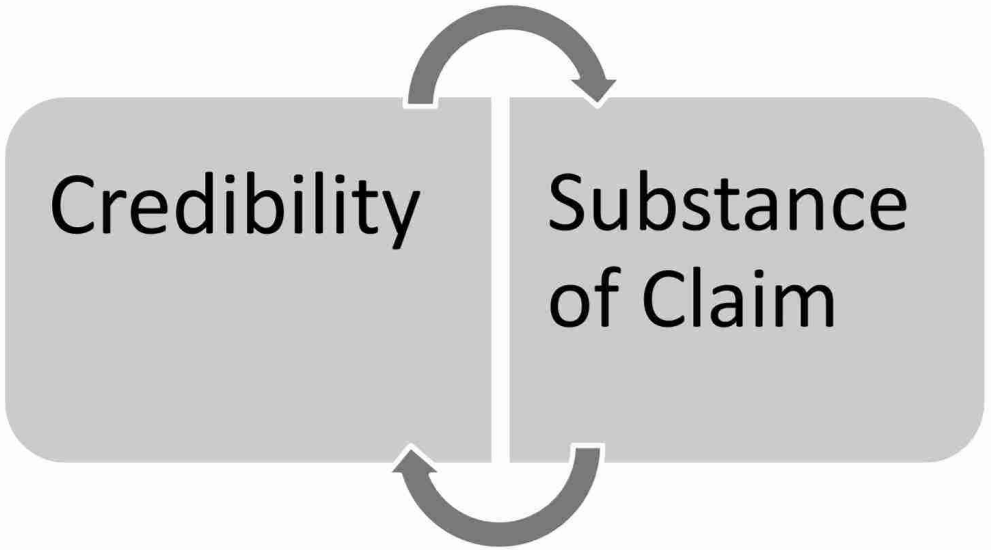
Presentation Roadmap:

U.S. Citizenship and Immigration Services

- No “One-Size-Fits-All”
- Eliciting Off Script
- The “Big Picture Approach”
- Evaluating Details in Context
- Laying a foundation
- Effective Confrontations
- Remaining Non-Adversarial

No “One-Size-Fits-All”



- Evaluate the credibility of applicant’s testimony as they present it
- Avoid “credibility-specific” questions

No “One-Size-Fits-All”

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U.S. Citizenship and Immigration Services

No “One-Size-Fits-All”

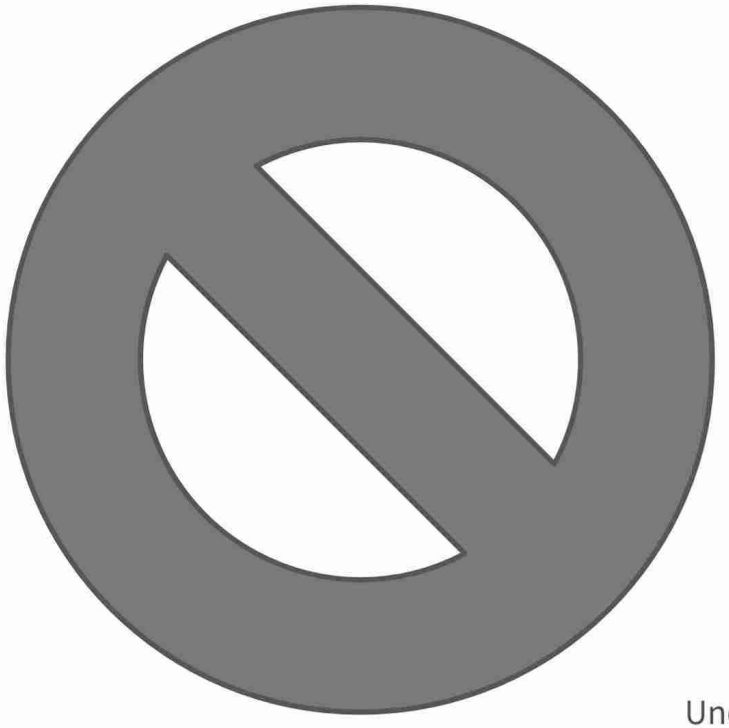
U.S. Citizenship and Immigration Services

- There is NO template for what should be asked
- Consider the totality of the circumstances
- Be curious!

Eliciting Off Script

U.S. Citizenship and Immigration Services

The interview should not be a memorization test



Eliciting Off Script

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U.S. Citizenship and Immigration Services

Eliciting Off Script

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U.S. Citizenship and Immigration Services

Eliciting Off Script

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U.S. Citizenship and Immigration Services

Eliciting Off Script

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U.S. Citizenship and Immigration Services

The Big Picture Approach

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U.S. Citizenship and Immigration Services

The Big Picture Approach

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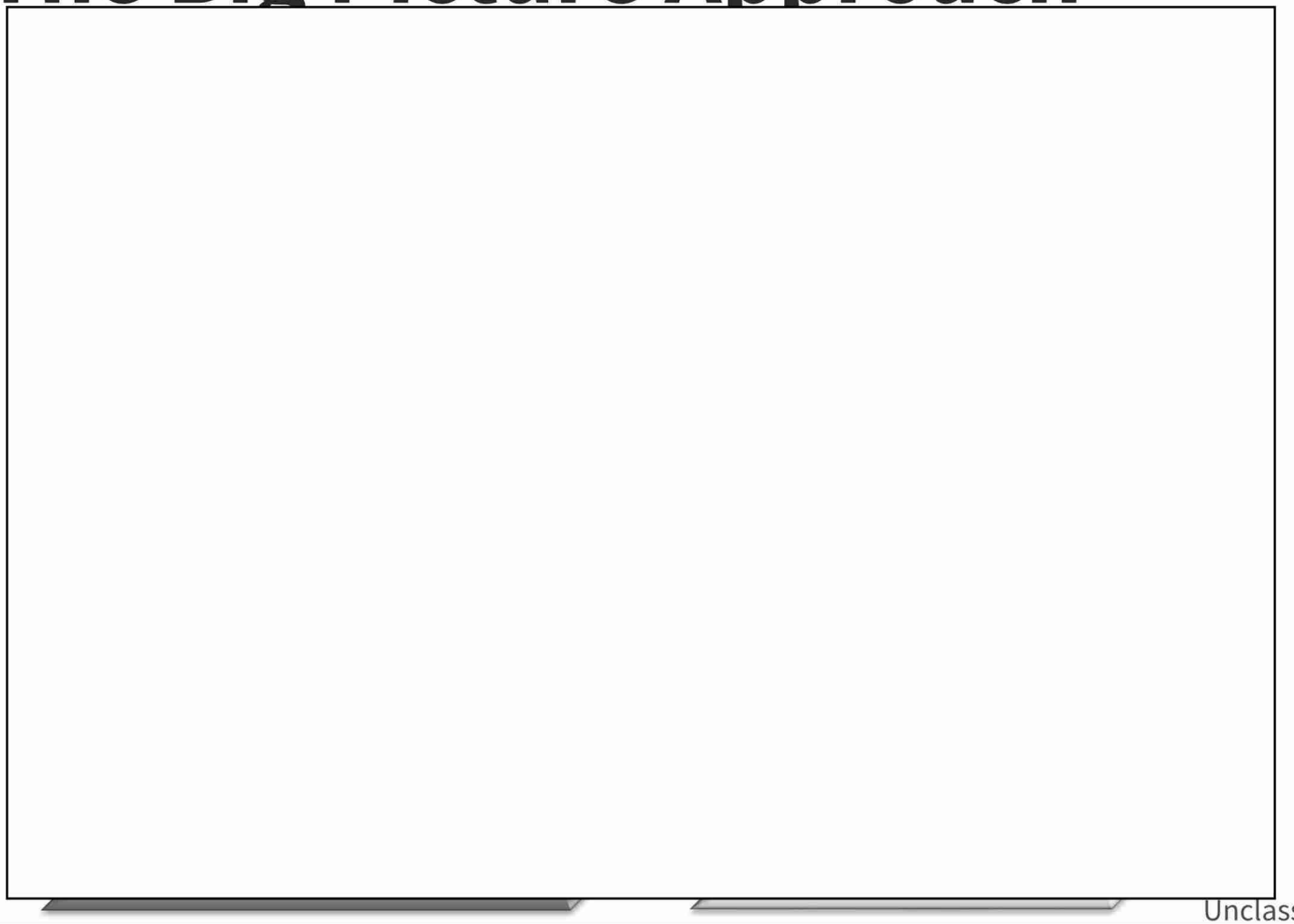
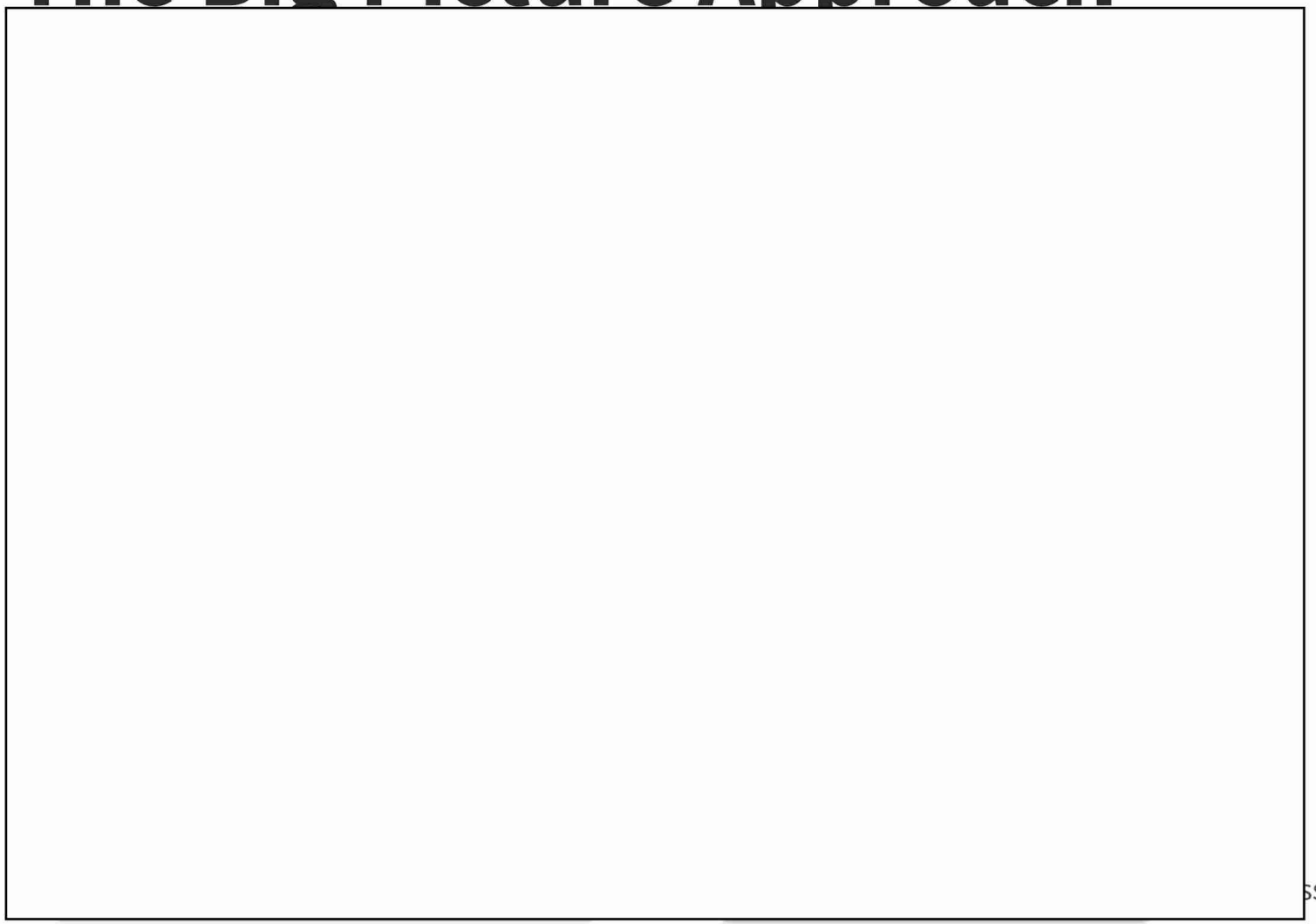
U.S. Citizenship and Immigration Services



The Big Picture Approach



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Putting the Details in Context

U.S. Citizenship and Immigration Services

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Probing potential credibility concerns

U.S. Citizenship and Immigration Services

Laying a Foundation

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U.S. Citizenship and Immigration Services

Laying a Foundation

(b)(7)(e)

U.S. Citizenship and Immigration Services

Laying a Foundation: Applicant's Circumstances

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U.S. Citizenship and Immigration Services

Laying a Foundation: Written Statements/Applications

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U.S. Citizenship and Immigration Services

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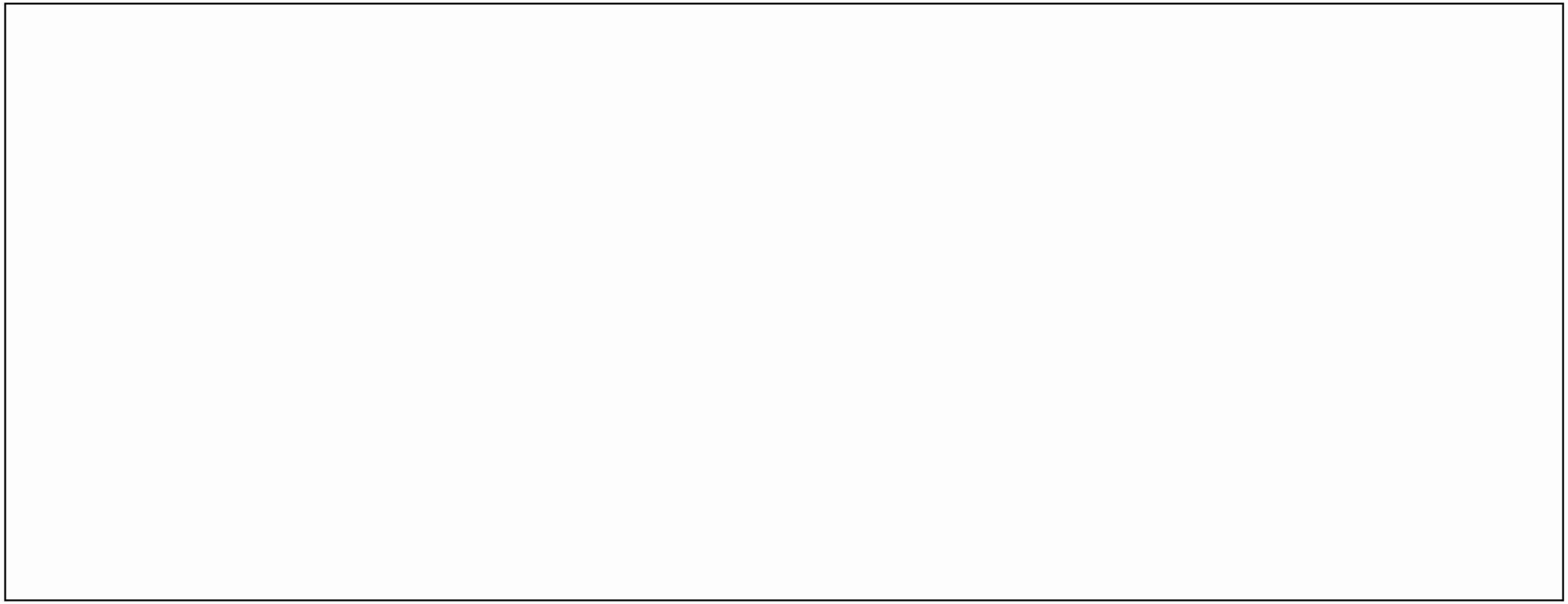
Laying a Foundation: Inconsistency



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Laying a Foundation: Inconsistency

U.S. Citizenship and Immigration Services

(b)(7)(e)

Laying a Foundation: Inconsistency

U.S. Citizenship and Immigration Services

(b)(7)(e)

U.S. Citizenship and Immigration Services

Laying a Foundation: Lack of Detail

Laying a Foundation: Lack of Detail

(b)(7)(e)

U.S. Citizenship and Immigration Services

(b)(7)(e)

Laying a Foundation: Lack of Detail

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Informing the applicant of credibility concerns

- Remain non-adversarial
- Be as specific as possible
- Check for understanding

Asking the applicant to explain (b)(7)(e)

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Following Up When Necessary after an Explanation is Provided

(b)(7)(e)

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Assessing the reasonableness of the explanation

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Following Up When Necessary After an Explanation is Provided

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Remaining Non-Adversarial

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- Non-Adversarial means parties are not opposing each other

- To maintain a non-adversarial interviewing environment, look at positive and negative factors together instead of focusing purely on the factor that supports the decision you intend to make

Evolve as an interviewer

- Learn from past interviews
- Change up how you approach similar claims
- Active listening
- Rapport
- Take a moment to review and analyze

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Cross-Cultural Awareness & Communication

ADOTP 2001-2002

(b)(6)

RAIO Training Team

September 2019

U.S. Citizenship and Immigration Services

Terminal Performance Objective

Given an interview with an applicant, students will demonstrate key elements of cross-cultural awareness and communication, in accordance with the USCIS/RAIO CT Cross-Cultural Communications Lesson Plan.

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Enabling Performance Objectives

- EPO #1: Recognize factors that may impede communication, and issues that may arise when interviewing individuals from different cultures.
- EPO #2: Demonstrate interview techniques for effective communication across cultural barriers.

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Communication in Asylum Adjudications

- **Non-native English speakers**
- **Filtered through an interpreter/monitor**
- **We bring certain Perceptions of the world**
- **Assumptions about how to act during interview**
- **Stress and personal agendas occur during the interview**

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Fact vs. Assumption

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Answers to Facts and Assumptions

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Tips to avoid Assumptions

- **Self-awareness of your own culture background**
- **Avoid assumptions about applicant's culture**
- **Check "personal baggage"**
- **Applicants may have assumptions, too**

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Assumptions about what?

- Body language
- Physical distance
- Physical contact
- Eye contact
- Time measurement
- Reaction to grief

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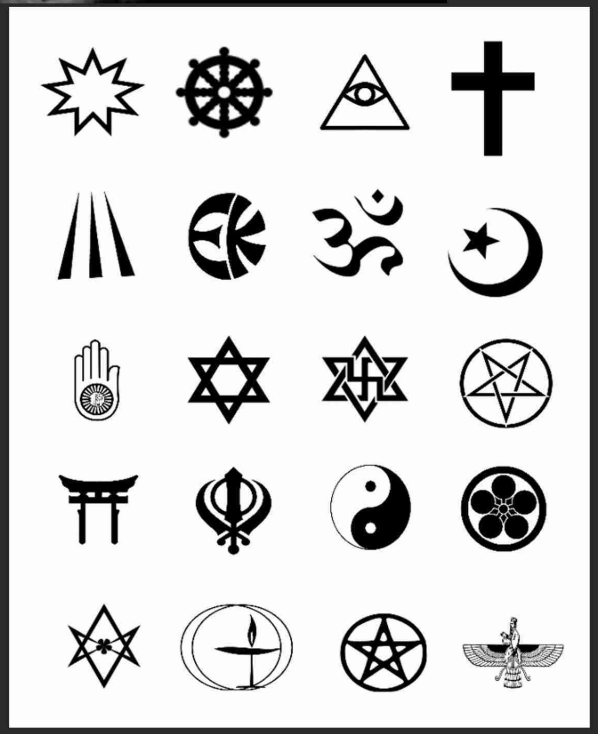
What is culture?



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- **Customary beliefs, social forms, and material traits of a racial, religious, or social group (Merriam Webster)**

OR

- **Basic beliefs, assumptions, and values which shape our behavior and the way we view the world**

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The Cultural

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(b)(7)(e)

What you see

Asylum Officer Responsibilities

- Recognize the role culture plays in asylum interviews
- Be aware of potential cultural differences we may encounter during an interview
- Do not need to be a cultural expert on the applicant's cultural background

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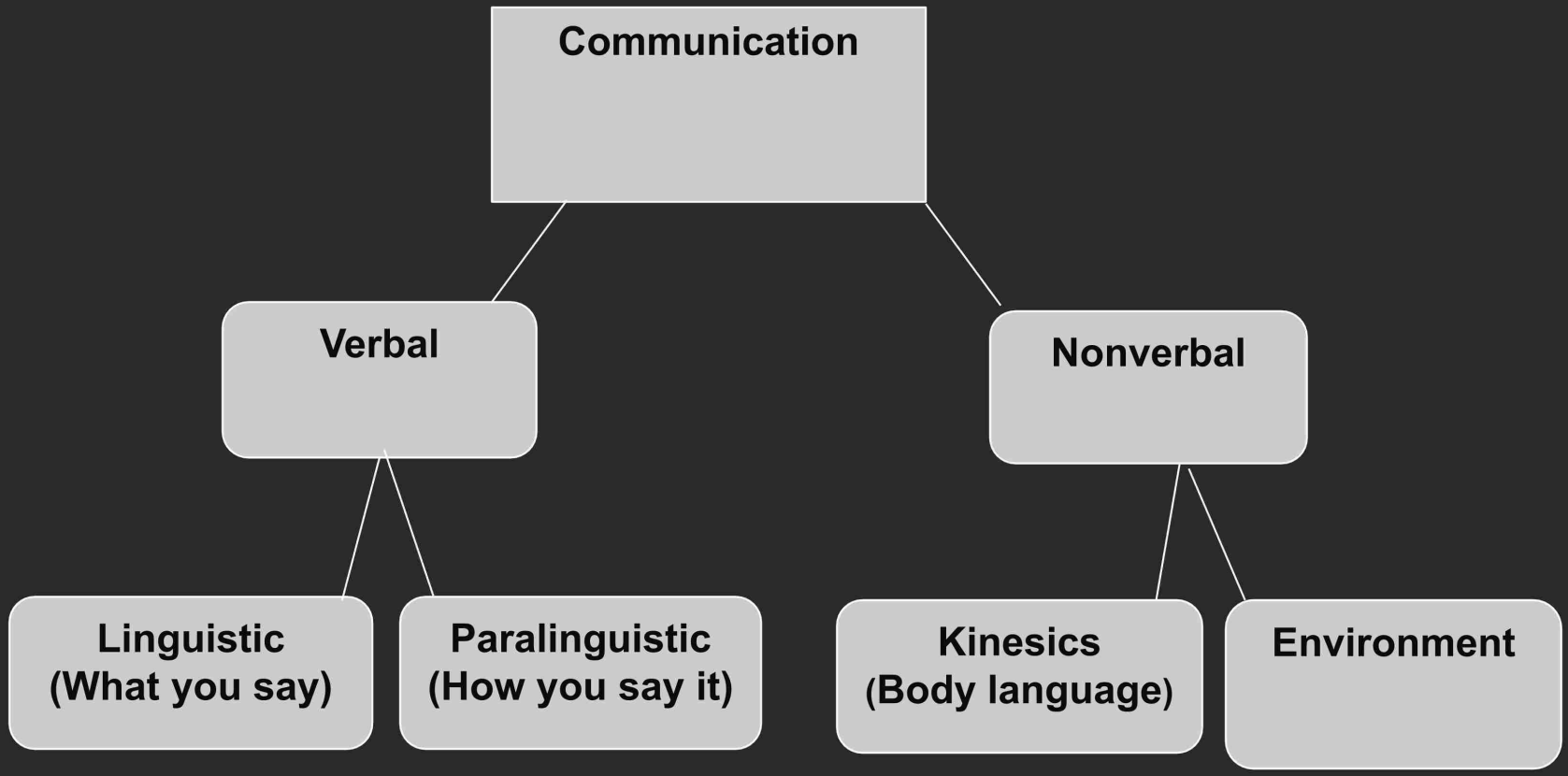
Components of Communication



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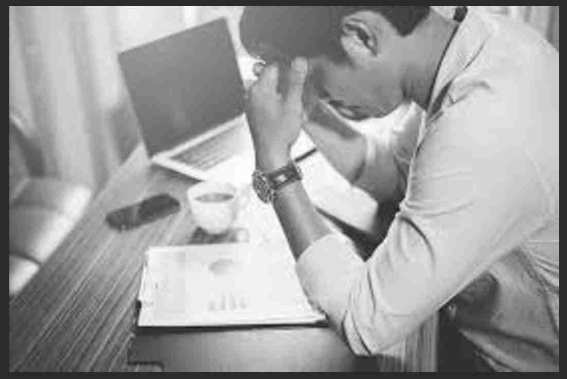
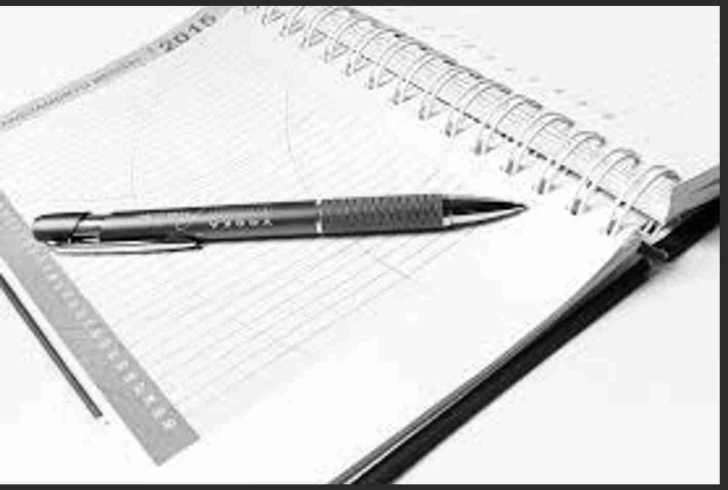
Other Factors in an Interview





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Impact on Interview

- **Testimony missing**
- **Interpretation Inaccuracies**
- **Applicant appears not credible**
- **Lack of focus**
- **“Pushiness”**
- **Impatience**

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Interviewer Tips

- **Try to put applicant at ease**
- **Assure applicant**
- **Explain process/roles at interview**
- **Focus on applicant**
- **Be patient**
- **Recognize your own agendas**
- **Use time wisely**

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Other Considerations

- PTSD
- Physical discomfort
- Impaired cognitive ability
- Uncomfortable interview environment
  - Different gender officer
  - Discomfort with interpreter
  - Location is a reminder of harm

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Points to Remember

- Do not assume
- Be self-aware
- Be mindful of traits impacting an interview

To effectively communicate, we must realize that we are all different in the way we perceive the world and use this understanding as a guide to our communication with others. “

– Anthony Robbins

U.S. Citizenship and Immigration Services

About this Presentation

- Author: [redacted] RAIO Training

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- Date of last revision: 09/05/2019
- This presentation is current only as of the date of the last revision.
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U.S. Citizenship and Immigration Services

Disclaimer

- This training module is intended solely to provide internal training to DHS/USCIS Field Offices. It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in benefit applications before USCIS, in removal proceedings, in litigation with the United States, or in any other form or manner. This training module does not have the force of law, or of a DHS directive.

U.S. Citizenship and Immigration Services

DECISION WRITING OVERVIEW:

Basic Components of Assessments and NOIDS

Components of an Assessment / NOID

I. **Biographic/Entry or Arrival/Immigration Status Information**
II. **Basis of claim**
III. **Analysis of Prohibitions Against Filing for Asylum**
IV. **Summary of Testimony**
V. **Analysis of Credibility/Evidence Assessment**
VI. **Focused Legal analysis**
VII. **Analysis of Bars/Discretionary Factors**
VIII. **Decision**

PAUSE

Please Pause the Webinar for 20 minutes in order to retrieve and review your completed "Assessment Writing PE" and cross check it with "Remote Assessment Writing Model Assessment with Guidance"

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A. Applicants Admitted to the U.S.

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Continue to Section II. Basis of Claim

B. Applicants Who Entered Without Inspection

The applicant indicated that [he/she] is a [age]-year-old [male/female] native of [country] and citizen of [countr(ies)] **OR** [stateless individual who last resided in [country]], who entered the United States without inspection at [location] on [date]. **If status changed/extended, indicate new date and provide new status and validity. Indicate if applicant received TPS and validity period.** The applicant [is/is not] in lawful status.

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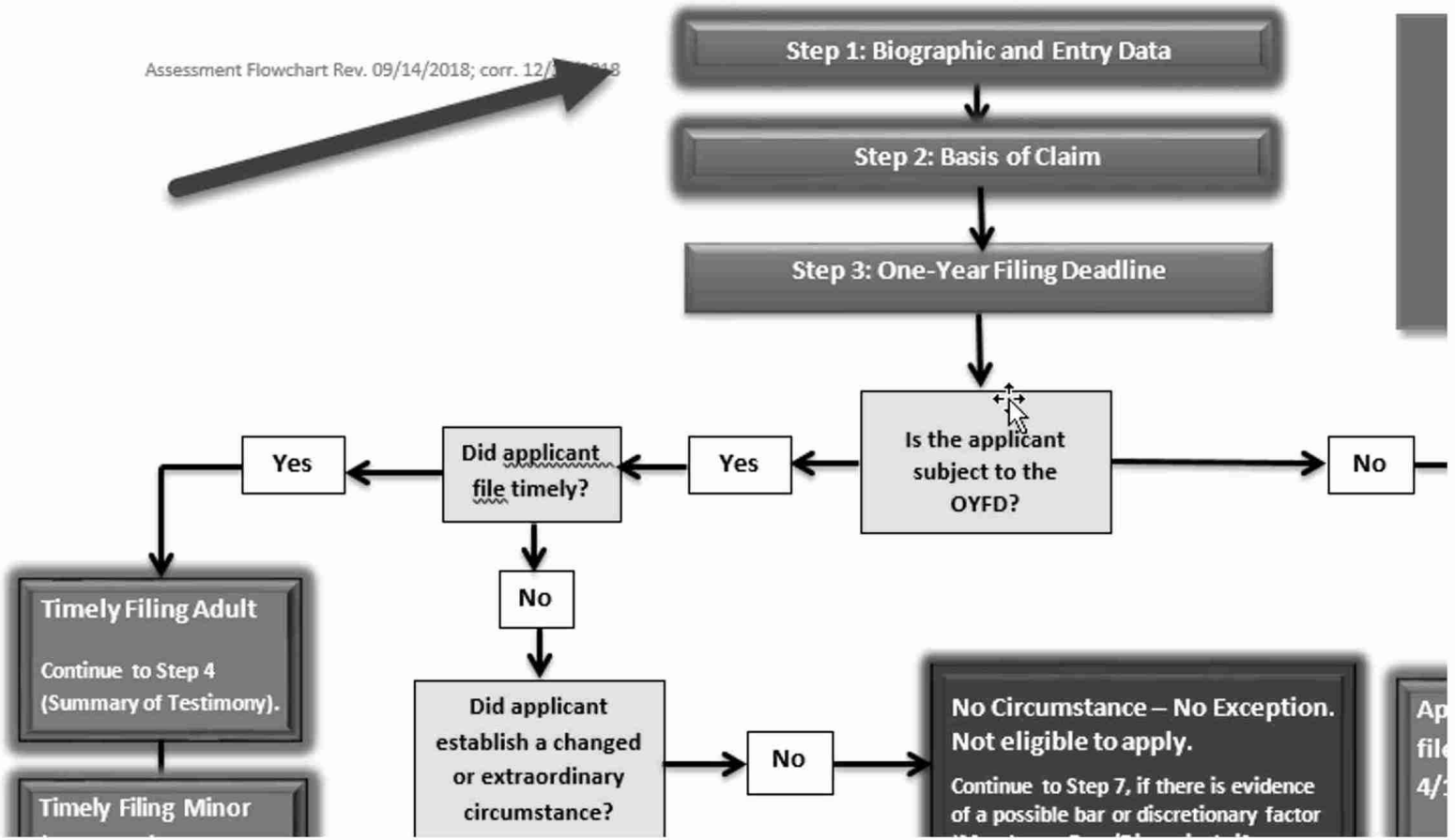
Basic Components: Biographic/Entry Statement



Basic Components: Biographic/Entry Statement

I. BIOGRAPHIC/ENTRY OR ARRIVAL/IMMIGRATION STATUS INFORMATION

[Who is the applicant? Where and how did the applicant enter the United States?]

Applicants Admitted to the U.S.:

- **The applicant indicated that [he/she] is a [age]-year-old [male/female] native of [country] and citizen of [**countr(ies)**] OR [**stateless individual who last resided in [country]**], who was admitted to the United States at [**POE**] on [**date**] as a [**status**] until [**date**].** If status was changed/extended, indicate new date and provide new status and validity. Indicate if applicant received TPS and validity period. **The applicant [**is/is not**] in lawful status.**

BIO/ENTRY – Assessment Writing PE

ORIGINAL:

(b)(7)(e)

BIO/ENTRY – Model Assessment

(b)(7)(e)

Basic Components: Basis of Claim

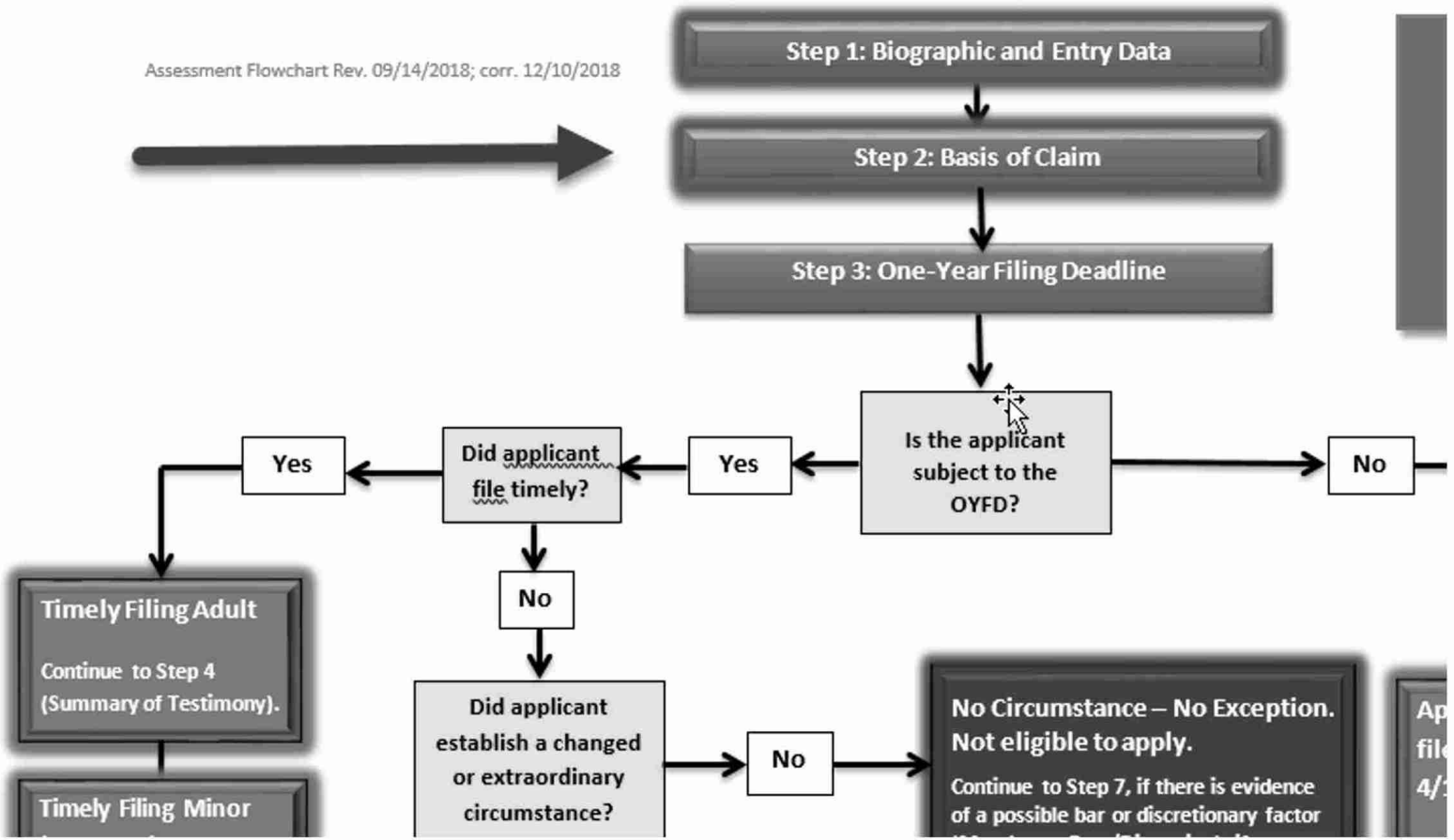
Continue to Section II. Basis of Claim

II. BASIS OF CLAIM

The applicant fears that [he/she] will be [harmed/feared] by [feared persecutor] in [country of feared persecution] on account of [protected ground(s) or other reason(s)].

Continue to Section III. Analysis of Prohibitions Against Filing for Asylum

Basic Components: Basis of Claim



Basic Components: Basis of Claim

II. BASIS OF CLAIM

[What does the applicant fear? Whom does he/she fear and Why?]

The applicant fears that [he/she] will be [harm feared] by [feared persecutor] in [country of feared persecution] on account of [protected ground or other reason].

Basis of Claim – Assessment Writing PE

ORIGINAL:

(b)(7)(e)

Basis of Claim – Model Assessment

(b)(7)(e)

Other Components

I. **Biographic/Entry or Arrival/Immigration Status Information**
II. **Basis of claim**
III. Analysis of Prohibitions Against Filing for Asylum
IV. Summary of Testimony
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Basic Components: Decision

VIII. DECISION

Every affirmative written assessment or NOID must include an actual decision.

- **Assessment is to grant.**
- **For the foregoing reasons, USCIS does not find the applicant eligible for asylum status [OR USCIS does not exercise its discretion to grant asylum] in the United States. Assessment is to refer to the Immigration Judge.**
- **For the reasons explained above, USCIS has found that you are not eligible [for/to apply for] asylum status in the United States.**

Decision – Assessment Writing PE & Model Assessment

Original:

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For the foregoing reasons, it is recommended that asylum be granted.

Model Assessment:

VIII. DECISION

Assessment is to grant.

Decision Writing Overview

- Familiarize yourself with the ECN
- Familiarize yourself with the Grant Template for ADOTP
- Familiarize yourself with the Referral Template for ADOTP
- Use the Flowchart to help you understand and navigate the templates
- Questions

DECISION WRITING OVERVIEW

Decision Writing - Overview Objectives

1. Discuss purpose of National Templates
2. Explain the role of the Supervisory Asylum Officer
3. Identify who may have access to Asylum Division Assessments and/or Notices of Intent to Deny (NOIDs)
4. Explain circumstances under which a NOID must be prepared
5. List components of a complete Assessment
6. List components of a complete NOID
7. Identify the information that should be included in the components

Decision Writing I - Overview Background

- **Assessments and Notices of Intent to Deny (NOIDs) are legal documents that explain the basis for Asylum Officers' decisions in asylum cases.**

- **Decision writing has been streamlined and Asylum Officers use standardized templates that are accessible on the ECN and on local asylum office Share Drives.**

Writing Style

A. Informational Tone
   - Objective - No reference to 1st person "I" or "the Asylum Officer." For NOIDS, "USCIS" is used (e.g. "USCIS finds that...")
   - No personal opinions, either positive or negative

B. Language That is Easy to Understand
   - No legal jargon or superfluous language

C. Language Structure, Grammar, Spelling
   - Always use computer "spell check"
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   - Turn Auto Correct OFF!

Supervisor's Role

- **For new AOs, every written decision is reviewed by and signed by a Supervisory Asylum Officer (SAO).**
- **If errors are found during the supervisor's review, the case is returned to the Asylum Officer for revision.**
- **If the supervisor disagrees with the Asylum Officer's analysis, the supervisor discusses the issues with the Asylum Officer.**

Assessments and NOIDs - Who has Access?

1. **The applicant and his or her attorney or legal representative** (NOIDs and FOIA requests)
2. **Asylum Office staff**
3. **Headquarters staff**
4. **ICE Associate Chief Counsel (ACC)** [Trial Attorneys]
5. **BIA and Federal Courts**
6. **Bureau of Democracy, Human Rights, and Labor (DRL) of the Department of State**—issues Advisory Opinions
7. **Certain government officials or contractors** as indicated in 8 C.F.R. §208.6
8. **Members of Congress and Congressional Liaisons** may also have access

Assessments vs. NOIDs

Assessment

- **A written document stating the reasons for granting a case or referring a case to an Immigration Judge**
- **An internal USCIS document; remains in the file**
- **Written in the *third person*, referencing "*the applicant*"**
- **No rebuttal**

NOID

- **A letter which states the reasons for a preliminary denial**
- **Sent to the applicant and applicant's attorney or legal representative**
- **Written in the *second person*, referencing "*you*"**
- **Applicant has a right to rebut before final decision**

Assessments vs. NOIDs

Both Assessments and NOIDS contain

- **limited background information (Bio/Entry Data)**
- **statement of the basis of claim**
- **examination of eligibility to apply for asylum**
- **material facts of the claim (Summary of Testimony)**
- **credibility determination**
- **legal analysis**
- **analysis of bars/discretionary factors**
- **decision**

Additionally, a NOID contains

- **limited information about the asylum process**
- **comments from DRL, where relevant**
- **citations to statute and case law that may not be always required in an Assessment**

Components of an Assessment / NOID

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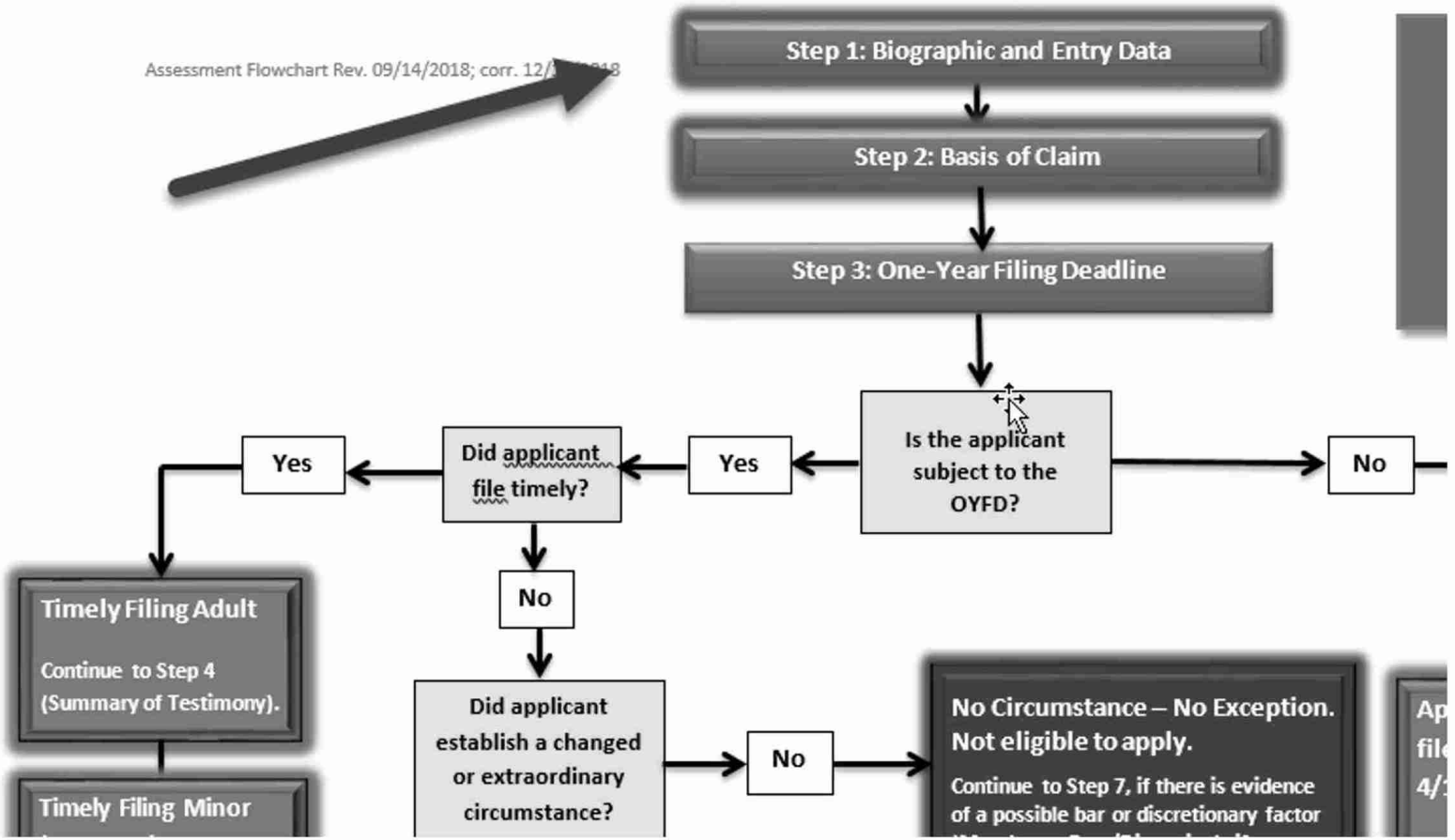

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BIO/ENTRY – Distance Training Sample

ORIGINAL:

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Sample Rewrite

(b)(7)(e)

Basic Components of Assessments and NOIDs

II. BASIS OF CLAIM

[What does the applicant fear? Whom does he/she fear and Why?]

The applicant fears that [he/she] will be [harm feared] by [feared persecutor & country of feared persecution] on account of [protected ground or other reason].

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-
-

Basis of Claim - Too Much Info

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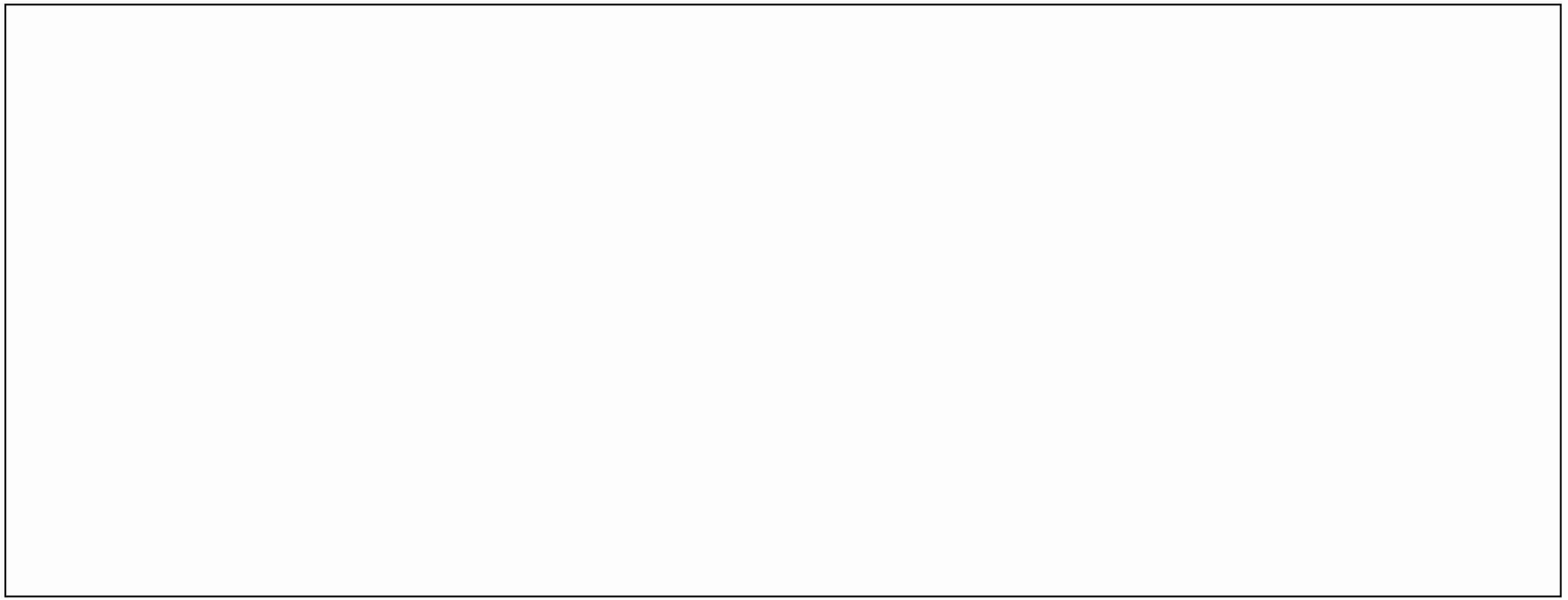

Basis of Claim – Distance Training PE

ORIGINAL:

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Basis of Claim – Distance Training PE - Rewritten

(b)(7)(e)

Analysis of Prohibitions Against Filing for Asylum

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

Is the applicant eligible to *file [apply]* for asylum?

- **One Year Filing Deadline (OYFD) - Assessment or NOID must always address the OYFD and whether the applicant is eligible to apply for asylum.**

- **Prior Denial – For applicants who were previously denied asylum by an immigration judge or the BIA and who filed on or after April 1, 1997 - assessment or NOID must address whether the applicant is eligible to apply for asylum.**

Basic Components of Assessments and NOIDs

IV. SUMMARY OF TESTIMONY

[What happened to the applicant and/or individuals similarly situated, what does he/she fear, and why?]

- **The applicant testified as follows:** [summary of material facts of applicant's testimony].

Material Facts

What facts are “material”?

How should they be presented?

Material Facts – what facts are "material"?

- **Harm experienced by the applicant – *seriousness of the harm***
- **Evidence relevant to motives for harming the applicant – *protected ground***
- **Facts relevant to the identity of the persecutor (state/non-state actor):**
  - ***unable or unwilling to control the persecutor***
  - ***reasons for not availing him/herself of state protection***
  - ***internal relocation options and reasonableness of those options***
- **Harm the applicant fears he/she will experience upon return – *seriousness of future harm***
- **Testimony indicative of motives for, capability of, and inclination to harm in the future – *Mogharrabi WFF analysis - PACI***
- **Harm to similarly situated persons**
- **Facts that raise the possibility that a bar to eligibility may apply**
- **Any other facts relevant to eligibility determination**

Material Facts – Sample Structure - Past Harm claimed; Non-government persecutor.

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Material Facts – Sample Structure: No Past Harm claimed; Future Harm feared; Non-government persecutor.

(b)(7)(e)

Summary of Testimony

When writing your summary of testimony, remember:

- **Be concise**
- **State the facts clearly**
- **Include all material facts needed for the legal analysis**
- **Stick to the facts as they were presented**
- **Don't editorialize**
- **Don't "interpret" what the applicant said**
- **Don't include legal analysis/legal conclusions**

Summary of Testimony
Issues from Distance Training PE

(b)(7)(e)

Summary of Testimony – For Discussion

(b)(7)(e)

The applicant testified as follows:

Summary of Testimony – For Discussion

(b)(7)(e)

Basic Components of Assessments and NOIDs

V. ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT

Positive Determinations:

- **Assessment: The applicant's testimony was detailed, consistent, and plausible. Considering the totality of circumstances and all relevant factors, the applicant's testimony is found credible.**

- **NOID: Your testimony was detailed, consistent, and plausible. Considering the totality of the circumstances and all relevant factors your testimony is found credible.**

Basic Components of Assessments and NOIDs

V. ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT

Negative Determination:

- **Assessment: The applicant's testimony was not credible because** [insert appropriate credibility factor(s) identified, e.g., it lacked detail and/or was inconsistent and/or was not plausible].

- **NOID: The burden of proof is on the applicant for asylum to establish that he or she is a refugee by establishing past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. 8 U.S.C. §§ 1158, 1101(a)(42); 8 C.F.R. § 208.13(a), (b). Your testimony was found not credible because** [insert appropriate credibility factor(s) identified, e.g., it lacked detail and/or was inconsistent and/or was not plausible].

More on this during the session on Credibility

Basic Components of Assessments and NOIDs

VI. FOCUSED LEGAL ANALYSIS

Consists of analysis of refugee eligibility:

- **Past Persecution**
- **Well Founded Fear of Future Persecution**

Basic Components of Assessments and NOIDS

VII. ANALYSIS OF BARS / DISCRETIONARY FACTORS

- **Are there mandatory bars to a grant of asylum?**
- **Are there negative discretionary factors that weigh against a USCIS exercise of discretion to grant asylum?**

Basic Components of Assessments and NOIDS

VIII. DECISION

Every affirmative written assessment or NOID must include an actual decision.

- **Assessment is to grant.**
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U.S. Citizenship and Immigration Services

Evidence

RAIO CTP

Case Sample: Evidence

U.S. Citizenship and Immigration Services

Session Objectives

U.S. Citizenship and Immigration Services

Given time to read the Lesson Plan and attend this session, students will be able to:

Identify types of Evidence in asylum adjudications

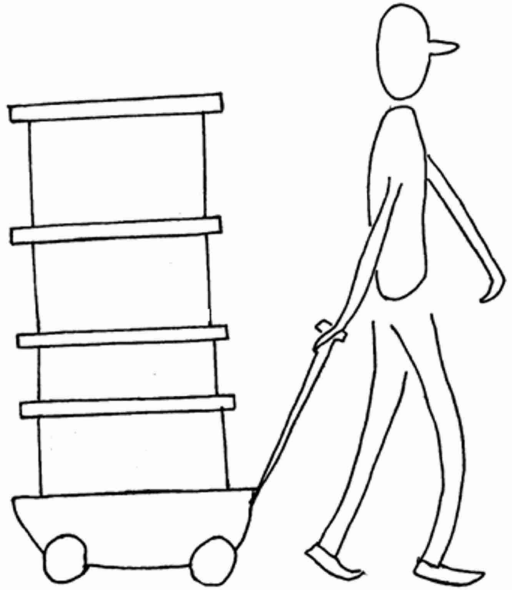
Articulate the meanings of burden/standard of proof

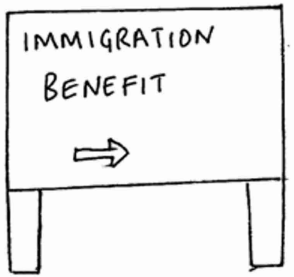
Understand the difference between burden/standard of proof

Be able to apply the methodological approach when working with evidence

Evidence

U.S. Citizenship and Immigration Services





Types of Evidence

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- Testimony
- Application
- Identification documents
- Travel documents
- Civil documents issued by government agencies
- Country of origin information
- U.S. government records
- Statements by applicant and/or other parties
- Experts (written reports and affidavits)
- Medical evidence
- Other types of physical evidence

How Does Evidence Fit into the Decision-Making Process?

U.S. Citizenship and Immigration Services

- Identify Legal Requirements of Adjudication
- Gather necessary evidence
- Evaluate quality of evidence
- Assign weight to evidence
- Determine if burden of proof has been satisfied based on the standard of proof

Burden of proof

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Definition: the duty of one party to prove facts that meet the legal standard being applied

Encompasses both the Burden of Persuasion and the Burden of Production

Burden of proof

U.S. Citizenship and Immigration Services

Burden of Persuasion

The burden to convince the adjudicator that the evidence supports the facts asserted

Borne by the applicant

Burden of Production

The obligation to come forward with the evidence at different points in the proceedings

Shared by the applicant and the adjudicator

Knowledge Check

U.S. Citizenship and Immigration Services

What is the definition of Burden of Proof?

A. The burden to convince the adjudicator that the evidence supports the facts asserted

B. The obligation to come forward with the evidence at different points in the proceedings

C. The obligation to evaluate the quality of the evidence

D. The duty of one party to prove facts that meet the legal standard being applied

Knowledge Check

U.S. Citizenship and Immigration Services

What is the definition of Burden of Proof?

A. The burden to convince the adjudicator that the evidence supports the facts asserted

B. The obligation to come forward with the evidence at different points in the proceedings

C. The obligation to evaluate the quality of the evidence

D. The duty of one party to prove facts that meet the legal standard being applied

Cooperative approach

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Shifting the burden

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When does the burden shift?

Standard of Proof

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What is standard of proof and how is it different from burden of proof?

Group Exercise

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Standard of Proof		Refugee	Asylum	Int'l Ops
Beyond any reasonable doubt	*Very high*			I-130 Adam Walsh Act- no risk to beneficiary
Clearly and beyond doubt	*Highly probably true*	Admissibility		Admissibility
AND Clear and convincing	*Firm belief or conviction*		Filed within one year	• Rebut prior fraudulent marriage • Citizenship of children born out of wedlock
Preponderance of the evidence	*More than 50% chance*	• Meets refugee definition • Special humanitarian concern • Not firmly resettled • Facts supporting eligibility	• Meets refugee definition • Not subject to any bars • Facts supporting eligibility	Eligibility for benefit sought
AND To the Satisfaction of the adjudicator	*Probably true*		Exceptions to 1-year rule	
AND More Likely Than Not				
Reasonable possibility	*One in ten chance*	Well-founded fear	Well-founded fear Reasonable fear	Well-founded fear
Significant possibility	*Substantial and realistic possibility*	Interdictions at sea	Credible fear	

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Methodological Approach (Evidence)

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- Gather the evidence
- Determine materiality
- Evaluate quality of relevant evidence
  - Testimony
  - Documents
  - Country of origin information

Gather the Evidence

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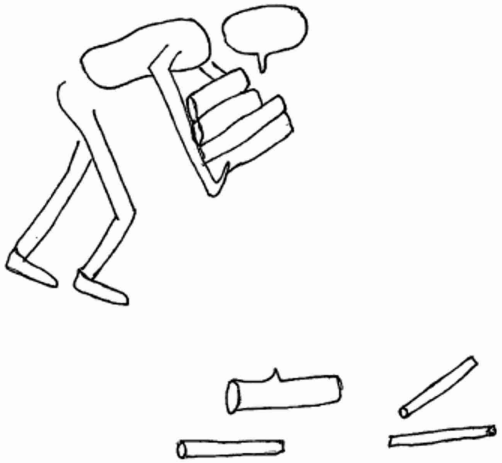
Gather evidence bearing on the adjudication



Determine Materiality

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Would it influence the outcome of the eligibility determination?

Evaluate Quality of the Evidence

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The quality of each type of evidence is measured in a different way.

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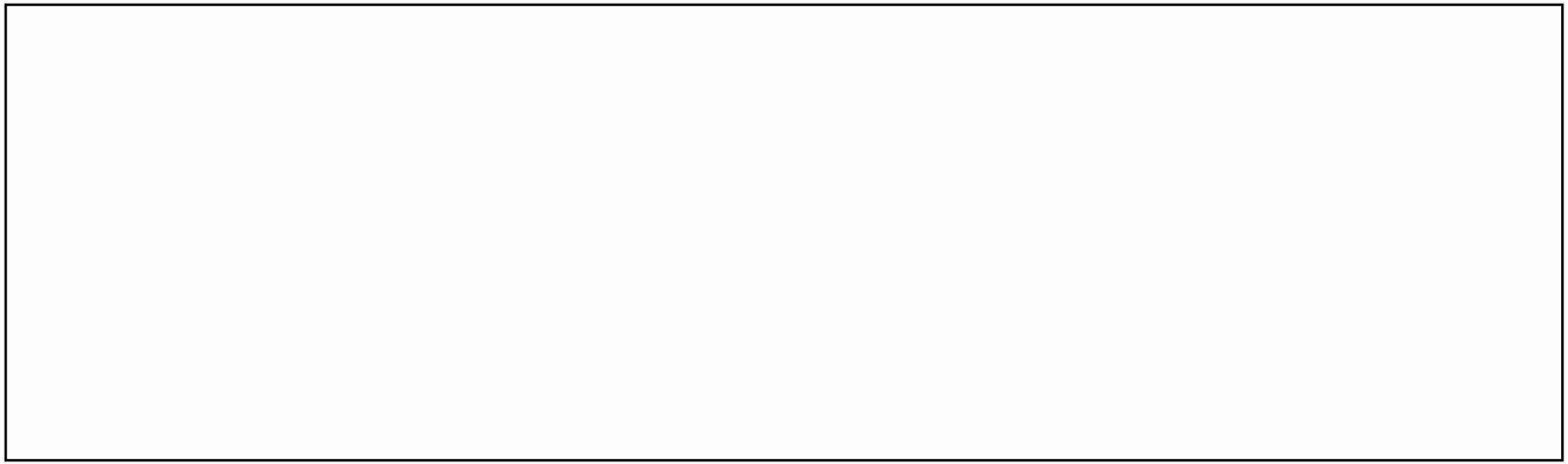

Knowledge Check

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Knowledge Check

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Authentication

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In asylum, authentication is *not* necessary.

However, authenticated documents are given more weight.

Case Sample: Evidence

U.S. Citizenship and Immigration Services

Case Sample: Evidence

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U.S. Citizenship and Immigration Services

About this Presentation

U.S. Citizenship and Immigration Services

- Authors: Refugee, Asylum and International Operations Directorate, Training Division, USCIS
- Date of last revision:
- OCC Cleared 09/26/14
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.
- All images in all slides were created by the RAIO Training staff, except slide 9 from Google.

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U.S. Citizenship and Immigration Services

An Overview of Our Organization

U.S. Citizenship and Immigration Services,
Department of Homeland Security

U.S. Citizenship and Immigration Services

We value and act on your feedback.

DHS HISTORY

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HOW AND WHEN WAS DHS CREATED?

- Homeland Security Act of 2002
- Combined 22 different federal departments and agencies
- Most agencies were placed intact into the department
- INS was abolished and broken into 3 agencies, which are:
  - CBP
  - ICE
  - USCIS
- DHS opened its doors on March 1, 2003

DHS SEAL

1

2

3

4

5

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DHS ORGANIZATION

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- **DHS -3rd largest Cabinet department**
- 240,000 employees
- $74 billion budget

DHS: ORGANIZATION

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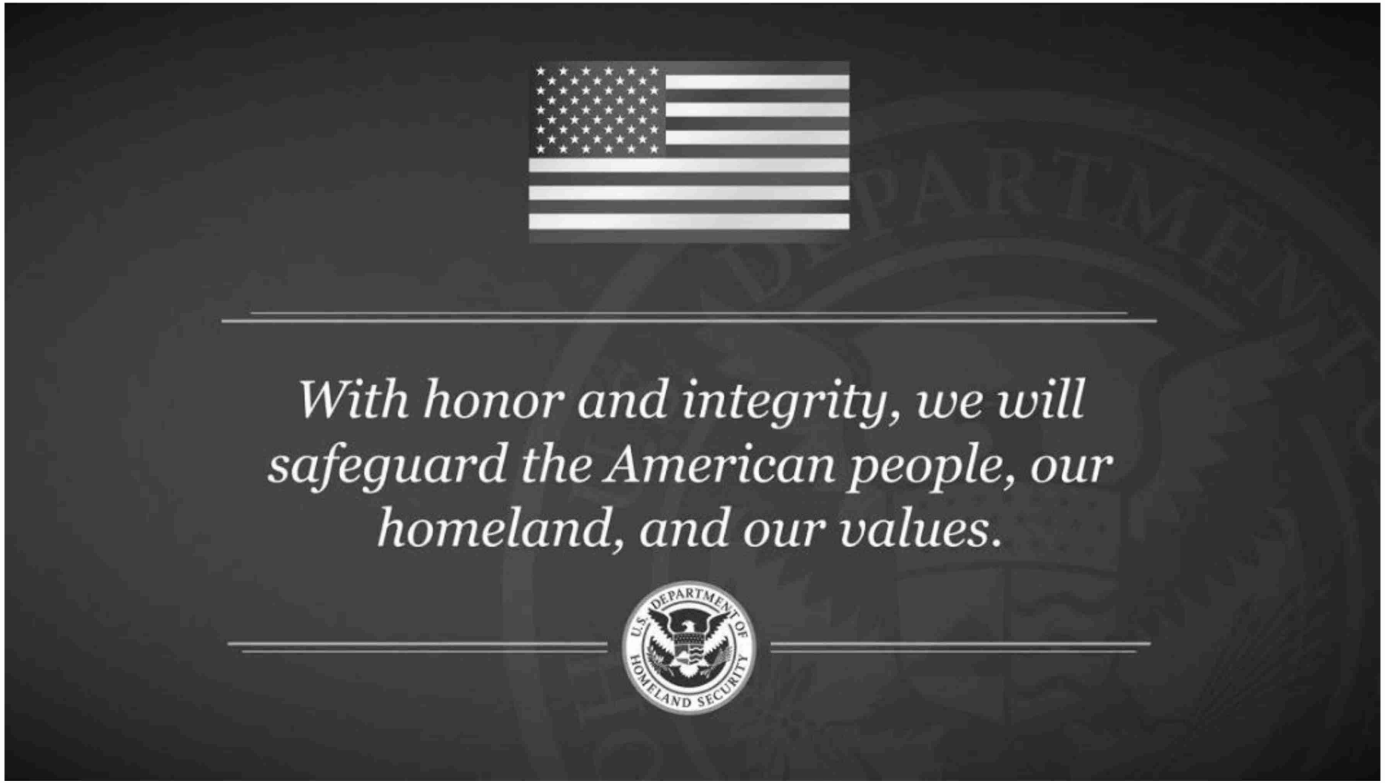

INS TRANSITION TO DHS

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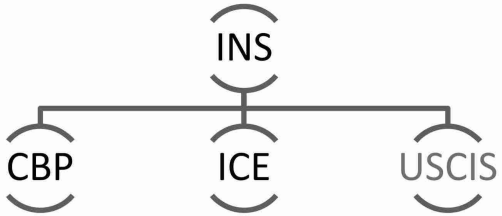
- **CBP safeguards America's borders** thereby protecting the public from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel.
- **ICE protects America** from the cross-border crime and illegal immigration that threaten national security and public safety.
- **U.S. Citizenship and Immigration Services administers the nation's lawful immigration system**, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.



WHAT WE DO

- Citizenship
- Immigration of family members
- Working in the United States
- Verifying an individual's legal right to work in the United States
- Humanitarian programs
- Adoptions
- Civic integration
- Genealogy

Photo from USCIS archive

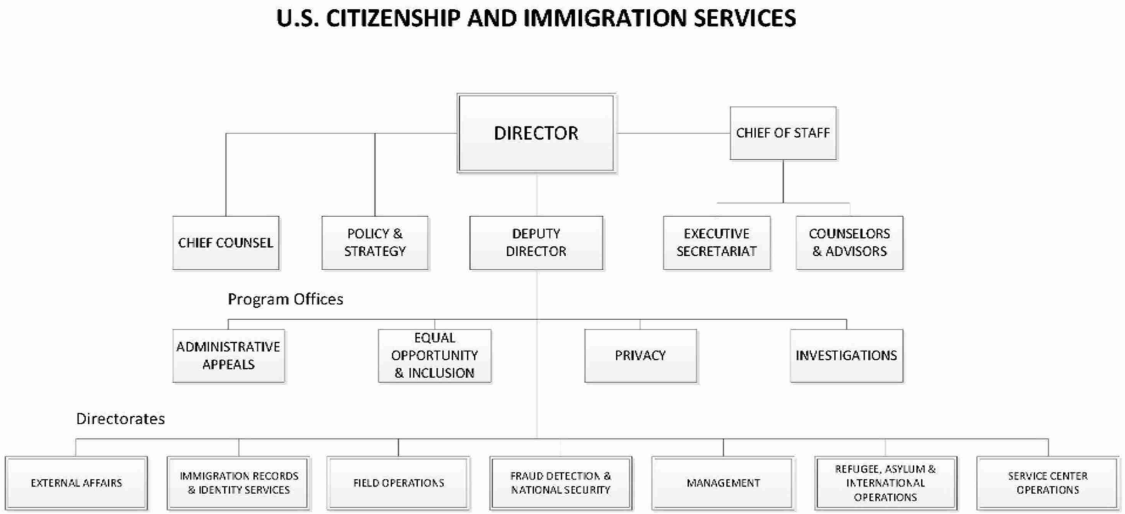
DAILY ACCOMPLISHMENTS

U.S. Citizenship and Immigration Services

- Interview **100 refugee applicants** around the world and **grant asylum to 45 individuals** already in the United States.
- Process **301 Credible Fear and Reasonable Fear** screenings.
- Answer **50,000 phone calls** at our toll-free customer service line.
- Fingerprint and photograph over **13,000 applicants** at our 137 Application Support Centers.
- Ensure the employment eligibility of more than **80,000 new hires**.
- Adjudicate more than **26,000 applications** for various immigration benefits.
- Receive **335,000 web hits**.
- Issue **7,000 Green Cards**.
- Help American parents **adopt 25 foreign-born orphans**.
- Welcome **2,000 new citizens**.
- Typically, **36** of these new citizens are members of the U.S. armed forces.

USCIS ORGANIZATIONAL STRUCTURE

U.S. Citizenship and Immigration Services



Strategic Goals:

- Strengthen our investment in an empowered workforce to better accomplish the agency's mission;
- Safeguard the homeland by deterring, detecting, and addressing vulnerabilities in the immigration system;
- Ensure fair and efficient adjudication of benefits and delivery of information; and
- Continuously improve key processes, programs, and systems.

FIELD OPERATIONS DIRECTORATE

U.S. Citizenship and Immigration Services

- Manages the National Benefits Center, and the domestic regional, district, field, and field support offices
- Interviews applicants for immigration benefits
- Completes background security checks
- Adjudicates applications and petitions for immigration benefits
- Conducts naturalization ceremonies nationwide
- Provides immigration information and outreach

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SERVICE CENTER OPERATIONS DIRECTORATE

U.S. Citizenship and Immigration Services

- Paper based adjudications
- Case intake – including asylum applications
- Programs:
  - Parole Program
  - Deferred Action for Childhood Arrivals (DACA)
  - H-1B Visa Program
  - H-2A Temporary Agricultural Workers
  - Temporary Protected Status (TPS)
  - Violence Against Women Act (VAWA)

SERVICE CENTER OPERATIONS

U.S. Citizenship and Immigration Services

Headquarters

California Service Center

Nebraska Service Center

Potomac Service Center

Texas Service Center

Vermont Service Center

70 %
of USCIS
adjudications

FRAUD DETECTION AND NATIONAL SECURITY DIRECTORATE

U.S. Citizenship and Immigration Services

- Anti-fraud, background checks
- Information sharing programs
- Liaison to broader law enforcement and intelligence communities.
- Embedded throughout RAIO

IMMIGRANT RECORDS AND IDENTITY SERVICES DIRECTORATE

U.S. Citizenship and Immigration Services

- 137 Application Support Centers
- Records policy and training
- E-Verify and the SAVE programs
- USCIS genealogy program
- The National Records Center (NRC), located in Lee's Summit, MO, maintains a-files and handles FOIA requests

WHAT IS THE NRC'S NICKNAME?

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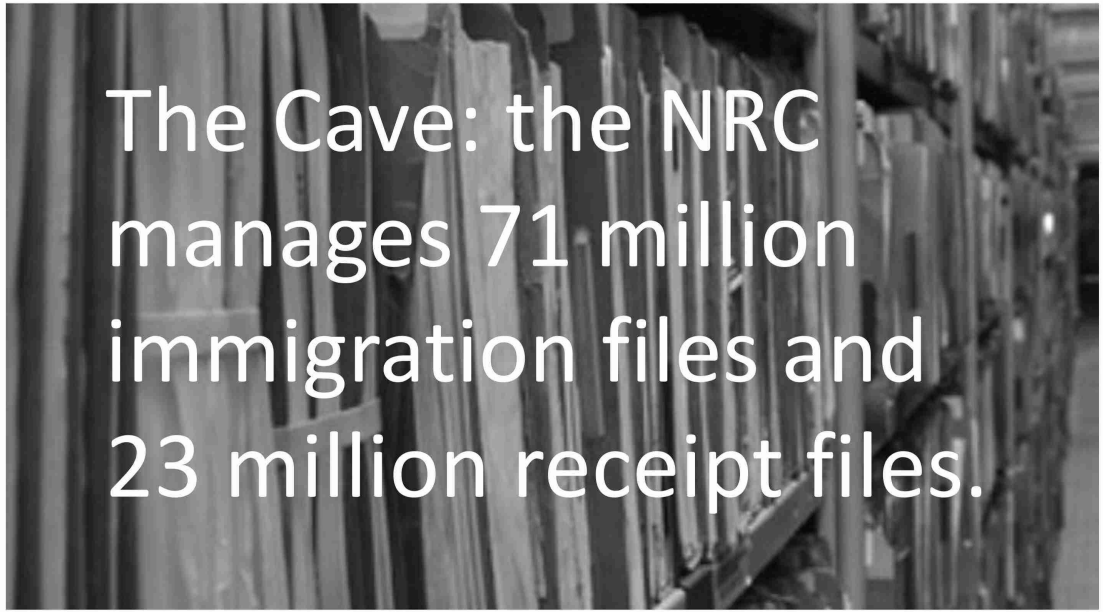

The NRC is built in a bomb-proof underground limestone cave!

MANAGEMENT DIRECTORATE

U.S. Citizenship and Immigration Services

USCIS's supporting infrastructure:

- Procurement
- Facilities, property
- Planning, budget, performance, and financial management
- IT systems infrastructure and support
- Equal employment opportunities and inclusion
- Human resources, hiring, training, employee benefits, and work-life programs
- Lockbox facilities (form intake -10M+)
- Security and emergency operations

EXTERNAL AFFAIRS DIRECTORATE

- The newest USCIS directorate brings together all agency official communications to stakeholders, employees, and applicants/petitioners to ensure that we all speak with one voice on behalf of USCIS to convey accurate and timely information.
- EXA is responsible for:
  - USCIS leadership and employees
  - Media Relations
  - Intergovernmental Relations
  - Stakeholder Outreach
  - Call centers
  - Web and social media including uscis.gov, e-verify.gov, myUSCIS, and our official Twitter, Facebook and Instagram accounts

USCIS PROGRAM OFFICES

U.S. Citizenship and Immigration Services

Program Offices

- Administrative Appeals Office (AAO)
- Office of Equal Opportunity and Inclusion (OEOI)
- Office of Privacy
- Office of Policy and Strategy (OP&S)
- Office of Chief Counsel (OCC)
- Office of Investigations

REFUGEE DEFINITION AND PERSECUTION

POP QUIZ!

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Refugee Definition

Refugee Definition

U.S. Citizenship and Immigration Services

INA § 101(a)(42)(A)

1. Outside country of nationality or last habitual residence
2. Unable or unwilling to return
3. Unable or unwilling to receive protection of home country
4. Because of persecution or a well-founded fear of persecution
5. On account of race, religion, nationality, membership in a particular social group or political opinion

INA § 101(a)(42)(B)

1. In-country refugee processing
2. Persecutor bar
3. Coercive family planning

Practical Exercise

Refugee Definition – Nationality

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U.S. Citizenship and Immigration Services

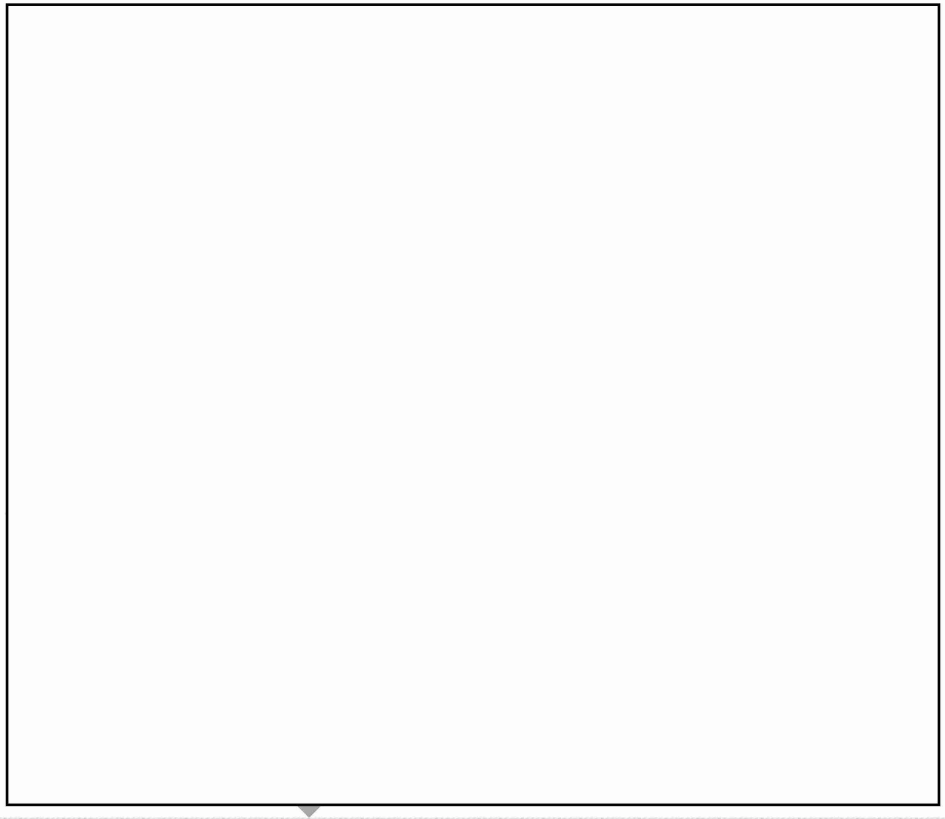
Persecution

Persecution

- Seriousness
- **Motivation**
- **Persecutor**
- **Location**

Practical Exercise

Persecution– Degrees of Harm



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Questions?

Gender-Related Claims

Presented by:

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[redacted]

HQ Asylum Division

[redacted]

HQ Asylum Division

September 2019

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Overview

1. Types of Gender-Based Harm
2. Factors Related To Gender That Must Be Considered
3. Factors That May Inhibit An Applicant's Ability to Present Fully a Gender- Related Claim
4. Effective Interviewing Techniques To Fully Elicit Sensitive Issues

(continued on next slide)

U.S. Citizenship and Immigration Services

Overview (*cont.*)

5. Factors Related To Gender That Must Be Considered In Evaluating Credibility
6. Evidentiary Considerations
7. Factors Related To Gender That May Affect An Ability To Relocate
8. Applying Appropriate Legal, Policy, Procedural, And International Guidance

U.S. Citizenship and Immigration Services

Examples of Gender-Based Harm

* Sexual Violence
  * Female Genital Mutilation (FGM)
  * Forced and Early Marriage
  * Forced Abortion
* Domestic Violence
  * Human Trafficking
  * Honor Crimes
  * Sexual Slavery

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Sexual Violence

* "Any act of a sexual nature which is committed on a person under circumstances which are coercive."
  * Examples include rape, sexual slavery, sexual mutilation

* Rape can be used on mass scale to terrorize but individual claims don't mean it's purely personal harm (look to case facts and country condition information)

* For rape, consider harm of act AND social harm/stigma as a consequence

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Female Genital Mutilation (FGM)

Females of _____ nationality or ethnicity who are subject to gender-related cultural traditions

* ***What are types of FGM?***
  * circumcision
  * excision
  * infibulation
* ***What are short and long term consequences of FGM?***
  * Short: Without anesthesia, often at home (unsanitary, non-medical personnel); bleeding, shock, infection
  * Long: Chronic infections, painful menstruation, child birth, HIV risk, psychological problems, sexual dysfunction

FGM Exercise

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Forced and Early Marriage

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* ***What are some possible reasons***

* ***What are some of the questions to distinguish between arranged and forced marriage***

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Human Trafficking

What is the difference between smuggling and trafficking?

Smuggling:

"the importation of people into the United States involving deliberate evasion of immigration laws"

Trafficking:

"The recruitment, harboring, transportation, or obtaining of a person (regardless of citizenship or immigration status) for forced labor or commercial sex.

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Honor Crimes

* Carried out to "restore" a family's honor

* Including: stoning, abduction, imprisonment, rape, poisoning, acid attacks, disfigurement, forced marriage, murder, or attempts to coerce the victim to commit suicide

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Factors That May Inhibit an Applicant's Ability to Fully Present a Gender- Related Claim

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Inhibiting Factors During Interview

Pre-Interview File Review: consult with supervisor about interviewer of same sex

Considerations Related to Gender and Culture: Shame, feelings of responsibility and blame

The presence of relatives or the interpreter

* Men who end up "speaking" for the women
* Men present may be the persecutor
* The interpreter who may substitute the word "harm" for "rape"
* Ask applicant's preference, when possible in the absence of others

One year rule – consider changed circumstances (new threats) and extraordinary circumstances (PTSD)

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Effective Interviewing Techniques

Suggested Interview Techniques

* Emphasize confidentiality
* Begin with easy topics
* Pause if the applicant becomes upset
* Acknowledge how difficult it may be for the applicant

Examples of Questions to Elicit Sensitive Information

* Open ended questions

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Factors When Evaluating Credibility

Assess Credibility in least invasive way possible

* Applicant may be able to provide sufficient detail about certain parts of the claim to establish credibility, without providing minute detail on particularly sensitive topics.
* Elicit testimony about before and after (instead of act itself)
* An applicant may initially characterize the attack as motivated by sexual desire, but you should make efforts to elicit any evidence that the assault occurred on account of a protected ground
* Detail (is it already in written documents, education level, gender roles)
* Consistency
* Plausibility (culturally specific)
* Demeanor (impossible to know)

Factors Related to Gender That Must Be Considered

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Reporting, Law Enforcement, and Access to State Protection

* Law enforcement officials and government entities often lack the sensitivity, professionalism and training to handle complaints of violence against women, and may use informal justice systems or cultural pressure to encourage women to return to an abusive situation rather than undertake serious investigations
* In many countries, a woman's testimony in court is not accorded the same legal weight as a man's testimony
* The law may also criminalize female victims of violence, e.g., rape victims may be detained and prosecuted as adulterers and victims of trafficking may be prosecuted as prostitutes.
* ***What sort of questions do you need for non-state actors?***

U.S. Citizenship and Immigration Services

Evidentiary Considerations

* Evidence that the government does not respond to requests for protection is a strong indication that state protection is unavailable

* In some cases, an applicant may establish that state protection is unavailable even when she did not actually seek protection

* Lack of documents; reluctance to file police reports due to stigma

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Ability To Relocate

* Whether relocation would be reasonable under all the circumstances
* Groups operating countrywide that the government is unable or unwilling to control
* Ability to Travel (e.g., Saudi Arabia and driving)
* Economic Circumstances (ability to survive, support children, have bank account, own property)
* Social Circumstances

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Questions?

IRFA & Religion Nexus

“Religious Freedom” is its middle name

[redacted] HQ Asylum

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Revision date: 16 September 2019

The Law

- On October 27, 1998, President Clinton signed into law the International Religious Freedom Act of 1998
- To promote religious freedom and advocate for individuals who suffer persecution on account of religion

"The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom."

22 U.S.C. § 6401(a)(1)

The Plan

- The IRFA: What is it and why we should care
- The Thing We Call Religion and Religious Freedom
- Baggage Check
- Challenges in Assessing Credibility and Burden of Proof
- Harm and Nexus
- Conclusion (wrap up)

IRFA: What is it and why we should care

1. It's a U.S. law, binding on RAIO officers and others
2. Religion is a leading cause of persecution in the world (and getting worse)

"About 74% of the world's population live in countries with serious restrictions on religious freedom."

David Saperstein, former Ambassador at Large, Department of State

"Overall, the Commission has concluded that the state of affairs for international religious freedom is worsening in both the depth and breadth of violations."

Father Thomas Reese, S.J., former Chairman of the United States Commission on International Religious Freedom, April 26, 2017

Established by IRFA:

The United States Commission on International Religious Freedom (USCIRF), an independent, bipartisan Federal Agency to monitor religious freedom violations globally

The office of Ambassador-at-Large for International Religious Freedom within the U.S. Department of State (DOS)

A special **Advisor on International Religious Freedom** within the U.S. National Security Council (NSC)
(The NSC considers national security and foreign policy matters for the President.)

IRFA consists of seven titles and many requirements

Title VI concerns “Refugee, Asylum, and Consular Matters,” including:

- Sec. 601. Use of Annual Report.
- Sec. 602. Reform of refugee policy.
- Sec. 603. Reform of asylum policy.
- Sec. 605. Studies on the effect of expedited removal provisions on asylum claims.

… and many others

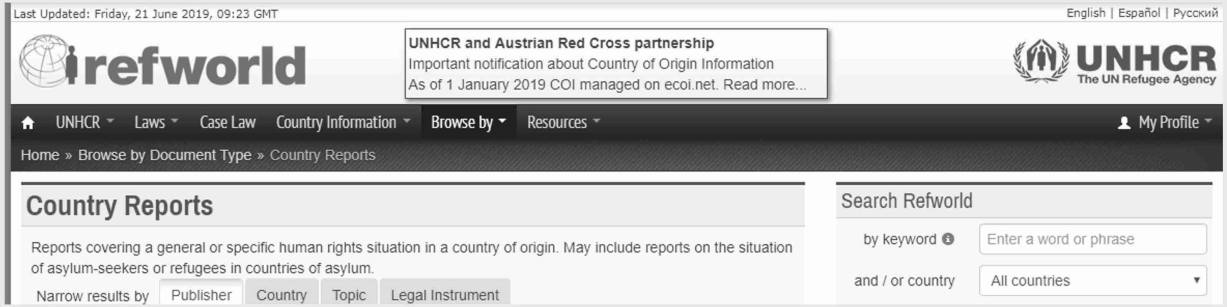
Sec. 601: Use of DOS Annual Report on International Religious Freedom

When assessing a protection claim based on religion, you:

- **Must use the DOS Annual International Religious Freedom Report** and any other reliable country conditions information
- Cannot deny a protection claim only because the DOS Annual Report on International Religious Freedom does not mention conditions in that country as reported by the applicant

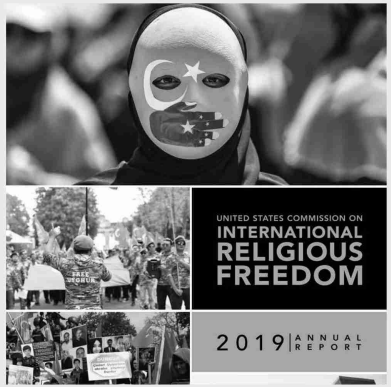
https://www.state.gov/reports/2018-report-on-international-religious-freedom

Other useful and reliable country conditions sources



http://www.refworld.org/

http://www.uscirf.gov/reports-and-briefs/annual-report.html



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Watch Lists

Slide update June 21, 2019

U.S. Department of State, Office of International Religious Freedom

U.S. Commission on International Religious Freedom

Sections 602 and 603
(*Bias* is a big deal)

Sec. 602: Reform of Refugee Policy

- Mandates special training, including religious persecution training, for refugee adjudicators and consular officers
- Requires training to address improper bias
- Requires greater scrutiny to ensure unbiased refugee adjudication

Sec. 603: Reform of Asylum Policy

- DOS and DHS may not use interpreters who may hold biases
- Officers working in the Expedited Removal context (credible fear) must receive training on the "nature of religious persecution abroad…"

What IRFA did not change:

- Did not change the legal standard for determining refugee or asylum eligibility
- Did not give a preference to religious persecution claims
- The same general standards that apply to claims based on other protected grounds apply to claims based on religion

Most important for RAIO Officers to remember:

The provisions in Title VI reflect Congress's will that refugee and consular officers pay better attention to religious persecution, out of a concern that many legitimate claims of persecution on account of religion were not being properly adjudicated

Supplemental Sources of Legal Guidance

United Nations Charter

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

The Helsinki Accords

The European Convention for the Protection of Human Rights and Fundamental Freedoms

IRFA: What is it and why we should care REVIEW

It’s a U.S. law, binding on DHS and others

Religion is a leading cause of persecution in the world (and getting worse)

IRFA established: CIRF, DoS Office of International Religious Freedom and a Special Advisor on International Religious Freedom within the U.S. National Security Council (NSC)

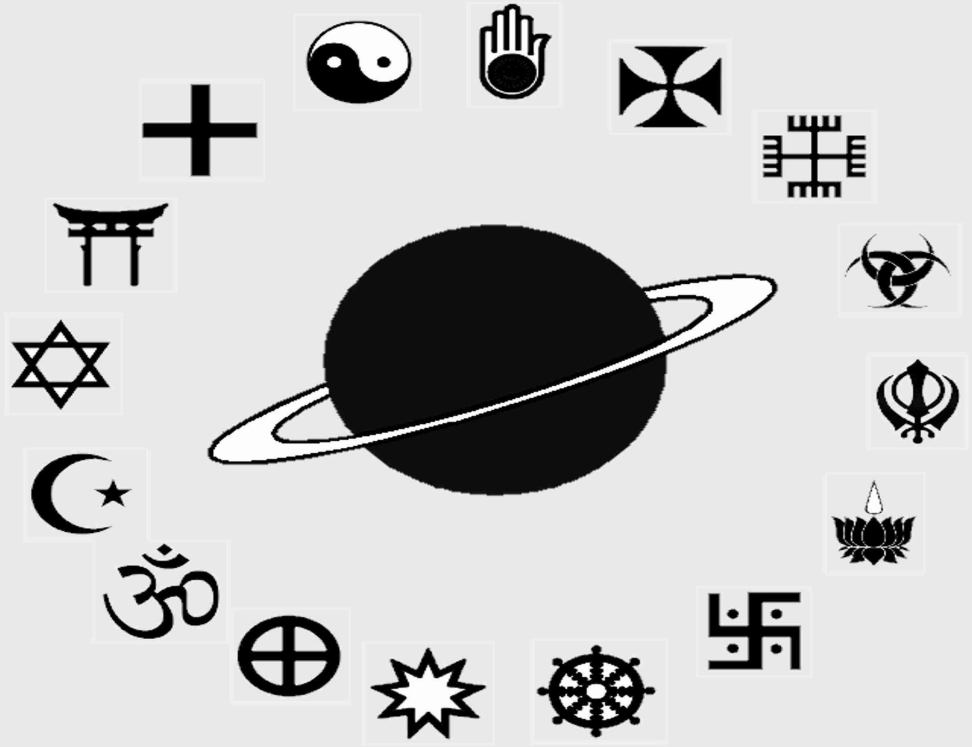
You must use the DOS Annual International Religious Freedom Report and any other reliable country conditions information

Watch Lists (Countries and Entities of Particular Concern)

IRFA increased attention to asylum and refugee claims based on religion, belief and conscience

Make use of the Supplemental Sources of Legal Guidance: International Declarations and Covenants as you adjudicate asylum claims

The Thing We Call RELIGION



What is Religion?

“We have learned more about ‘the religions’, but this has made us perhaps less… aware of what it is that we … mean by religion.”

Wilfred Cantwell Smith, PhD., Director, Harvard Center for Study of World Religions

“The academic study of religion is the study of the observable: rituals, mythologies, ideas, teachings, institutions, arts… But religion is not exhausted by the observable… there is another unobservable dimension which is the source of religion’s purpose and meaning.”

“What is Religion?”, Thomas Idinopoulos, PhD., Dept. of Comparative Religious Studies, Miami (of Ohio) University

Defining Religion

- A belief that the source of existence is also the source of moral imperatives
- A belief in the existence of nonmaterial reality
- A search for significance related to the sacred
- The external expression of faith, comprised of beliefs, ethical codes and worship practices that unite individuals to community

IRFA’s definition of religion

- IRFA does not define religion or describe its nature

- The UNHCR Handbook provides a broad definition of religious freedom.

  As to religion, the Handbook says that it’s got something to do with:

  thought, conscience, practice, worship and observance.

It’s about RELIGIOUS FREEDOM

In respect to religious freedom, the IRFA and the UNHCR Handbook refer to the Universal Declaration of Human Rights

THE UNIVERSAL DECLARATION OF Human Rights

UNITED NATIONS

https://www.un.org/en/universal-declaration-human-rights/

Rights people have with respect to religion:

- Freedom of thought
- Freedom of conscience
- Freedom of religion, including:
    - right to change one's religion
    - manifest it in public or private
        - in teaching
        - practice
        - worship and observance

UNHCR Handbook, paragraph 71
Universal Declaration of Human Rights, Article 18

IRFA: religious freedom violations

IRFA lists specific religious freedom violations including:

- State-sponsored slander campaigns
- Confiscation of property
- Denial of the right to assemble
- Relegation of religious communities to illegal status through arbitrary registration laws…

IRFA, sec. 2(a)(4)

Defamation of Religion Laws

Blasphemy, Apostasy and Defamation of Religion Laws

- Some countries have laws that were perhaps intended to protect religious freedom, but in effect suppress it.
- The “defamation of religions” concept promotes intolerance and human rights violations… It deviates from protecting individual human rights to addressing the interests of religious institutions and interpretations rather than the rights of individuals.
  Leonard Leo, Chairman, USCIRF 2009.

Religious persecution claims may involve one or more of the following:

Religion as a belief

Religion as identity

Religion as a way of life

Religion as Belief

Religion may be expressed as:

- Conviction
- Values
- Idea of the divine
- Idea of ultimate reality
- Idea of spiritual destiny
- Theistic
- Non-theistic
- Atheistic

Persecutors may consider that person:

- Heretic
- Apostate
- Schismatic
- Pagan
- Superstitious
- Blasphemous
- An alien and a threat to the persecutor’s legitimacy

Religion as Identity

Religion may be expressed through:

- Ethnic affiliation
- Nationality
- Ancestry
- Traditions and rituals

Persecutors may consider that person:

- A threat to the rest of the community
- A threat to the persecutor's legitimacy

Religion as Way of Life

Religion may be expressed through:

- Manner of dress
- Observance of religious practices or holidays
- Dietary restrictions

Persecutors may consider that person:

- A rebel, even an alien, and a threat to the persecutor's own identity and way of life

Does Religious Freedom include freedom from religion?

"The Frank R. Wolf International Religious Freedom Act," enacted December 16, 2016, amended IRFA by including:

> *"[t]he freedom of thought, conscience, and religion is understood to protect theistic and non-theistic beliefs and the right not to profess or practice any religion," by condemning "specific targeting of non-theists, humanists, and atheists because of their beliefs"*

Sample case law: *Jabri v. Attorney General*, 675 F.3d 20 (3rd Cir. 2012) (apostasy case – leaving one's religion)

A current example of apostasy: https://www.uscirf.gov/https%3A//www.uscirf.gov/youcef-nadarkhani

The Thing We Call Religion and Religious Freedom REVIEW

IRFA does not define religion

Focus on "religious freedom:" of thought, conscience, religion, including:

- **right to change one's religion**
- **manifest it in public or private**
- **in teaching, practice, worship and observance**

IRFA lists specific religious freedom violations

Defamation of Religion Laws: they tend to favor one religion above others, often an excuse to persecute)

Religious persecution claims may involve religion as Belief, Identity and/or Way of Life

Freedom of thought, conscience, and religion is understood to protect theistic and non-theistic beliefs and the right not to profess or practice any religion

BAGGAGE CHECK

- IRFA is also about **bias**

  Dictionary.com: a particular tendency or inclination, especially one that prevents objective consideration of a question; prejudice

- Know thyself: learn what sets you off

- **IRFA requires greater scrutiny of how we conduct interviews and decisions to make sure they are free of biases and inaccuracies**

What we…

MUST DO:

- Determine whether a person has suffered or may suffer persecution *on account of religion*
- As to the religious belief itself, we may inquire into the *sincerity* of an applicant's claimed belief

MUST AVOID:

- Determining if a specific religion is valid or true
- Determining if a specific belief system is reasonable
- Determining if a particular belief system can be considered a "religion"

Religious beliefs are not required to be consistent, or logical, or acceptable to others.

Stevens v. Berger, 428 F. Supp. 896 D.C.N.Y.(1977)

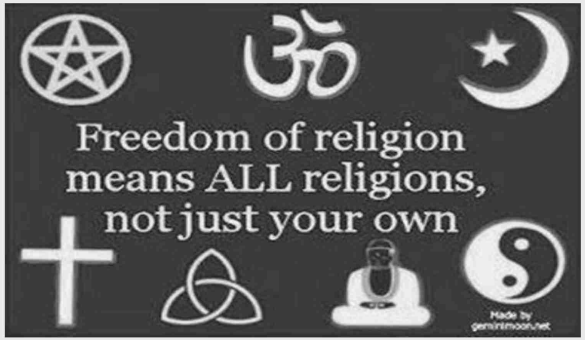
Some Religions Are Strange to You

A religious belief can appear to every other member of the human race preposterous, yet merit the protections of the Bill of Rights.

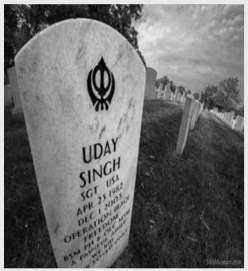
Popularity, as well as verity, are inappropriate criteria.

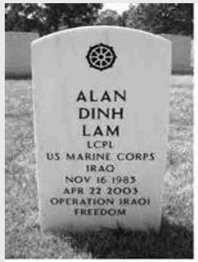
Stevens v. Berger, 428 F. Supp. 896, D.C.N.Y. (1977)

Always keep this in mind:



Arlington Cemetery

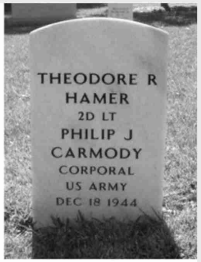




Buddhism

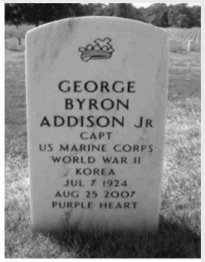
Soka Gakkai

Unitarian Universalist Association



Non-adherent

United Church of Christ



Church of Christ, Scientist

Church of Jesus Christ of Latter-day Saints

Community of Christ

Baggage Check (Bias)
REVIEW

IRFA requires greater scrutiny of how we conduct interviews and decisions to make sure they are free of biases and inaccuracies

Know Thyself: learn what ticks you off

What We Must Do v. What We Must Avoid

Religious beliefs are not required to be consistent, or logical, or acceptable to others

Some religions may seem strange to you

Challenges Assessing Credibility and Burden of Proof

"A little learning is a dangerous thing;

drink deep, or taste not the Pierian spring:

there shallow draughts intoxicate the brain,

and drinking largely sobers us again."

Alexander Pope, An Essay on Criticism, 1709

Who has the burden of proof?

Applicants making a religious persecution claim bear the burden of proof

- Matter of S-A-, 22 I&N Dec. 1328 (BIA 2000) (holding, inter alia, that “even when abuse has been severe and longstanding”, an asylum applicant still bears the burden of establishing eligibility to asylum).

Testimony alone may be enough

You MUST consider individual circumstances

Amount of detail required depends on individual circumstances:

- Age, sex, educational/professional background, social factors
- Suppression of a religious group may affect religious practices and knowledge
- Practices and rituals vary according to country and even within a country

You must test credibility according to the particulars of the specific claim:

Religion as a belief

Religion as identity

Religion as a way of life

See: "*Guidance on Religious Persecution Claims Relating to Unregistered Religious Groups.*" David Landau, Chief Appellate Counsel, Appellate and Protection Law Division Office of the Principal Legal Advisor, ICE. Note: this memo is FOUO and must not be shared outside DHS.

Challenges Assessing Credibility and Burden of Proof REVIEW

A little learning is a dangerous thing

Applicants making a religious persecution claim bear the burden of proof (just like any other)

As in other cases, testimony alone may be enough

Amount of detail required depends on individual circumstances:

- Age, sex, educational/professional background, social factors
- Suppression of a religious group may affect religious practices and knowledge
- Practices and rituals vary according to country and even within a country

You must test credibility according to the particulars of the specific claim

Harm and Nexus

Harm rising to the level of persecution.

Harm comes in different forms:

- physical
- psychological

If a person is unable to practice her religion, is that harm that, in itself, can rise to the level of persecution?

Forbidden to practice

- An example of such conduct might be requiring a person to renounce his or her religious beliefs or to desecrate an object of religious importance. Such conduct might be regarded as a form of "torture" and thus as falling within the Board's description of persecution in [Matter of] Acosta.

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993)

- If a person is forbidden to practice his religion, the fact that he is not imprisoned, tortured, or banished, and is even allowed to attend school, does not mean that he is not a victim of religious persecution… The difference between persecution and discrimination is one of degree, which makes a hard and fast line difficult to draw.

Bucur v. INS, F. 3d 399 (7th Cir. 1997)

Forced compliance with laws that fundamentally are abhorrent to a person's deeply held beliefs may, in some circumstances, be considered to rise to the level of persecution. (These may include dress codes, dietary restrictions, etc.)

Scope of Harm (focus on the victim)

- Focus of religious claims must not be limited to evidence of physical abuse
- Restrictions or limitations on religious beliefs and practices may rise to the level of persecution, even without physical mistreatment
- Relevant factors include the effect restrictions have on the asylum applicant
- Harm must rise to the level of persecution

Violations (real or perceived) of Religious Norms

In some countries social norms are very heavily influenced by the established religion and the established religion influences social norms so that violation of one amounts to violation of the other

This is true where there is no separation of “church and state,” such as the Islamic Republic of Iran and in other places

The Lesson Plan discusses Matter of S-A- and Sarhan v. Holder as examples refusing to comply with or allegedly flouting of religious norms.

NEXUS - Prosecution v. Persecution: Analytical Framework

To determine whether punishment for violation of a generally applicable law constitutes religious persecution, you should consider:

- Is the law one of general applicability?
- Is the law neutral in intent? (Is it designed to affect some more than others?)
- Is the law neutrally, or unequally, enforced?
- How does the persecutor view those who violate the law?
- How does compliance with the law affect the applicant’s own religious beliefs?

Harm and Nexus
REVIEW

Forced compliance with laws that are abhorrent to a person's religious beliefs may rise to the level of persecution.

The difference between persecution and discrimination is one of degree

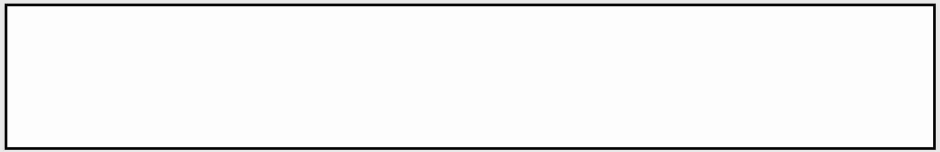
Prosecution v. Persecution

- Analytical framework
- Mix-motives analysis

Violations of real or perceived social norms

Wrap up

- IRFA: What it is and why we should care
- The thing we call Religion and Religious Freedom
- Baggage Check
- Challenges in Assessing Credibility and Burden of Proof
- Harm and Nexus
- Conclusion (wrap up)



(b)(6)

Nexus and the Protected Grounds

- Asylum Distance Training

- [redacted] (HQ-Asylum)

(b)(6)

Nexus and the Protected Grounds

- Essentially there are two parts to this lesson:
  1. Nexus = Connection
  2. Protected Grounds/Characteristics:
     - Race
     - Religion
     - Nationality
     - Membership in a particular social group and
     - Political opinion

Who is a Refugee

- A refugee is someone "… who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion…"
- INA 101(a)(42)

The big question

- This lesson is all about answering the question:

Why?

- … **because** of persecution or a well-founded fear of persecution **on account** of race, religion, nationality, membership in a particular social group, or political opinion.

- **Nexus to protected ground is established when sufficient evidence shows that persecution happened, or may happen “on account of” any of the specifically protected grounds**

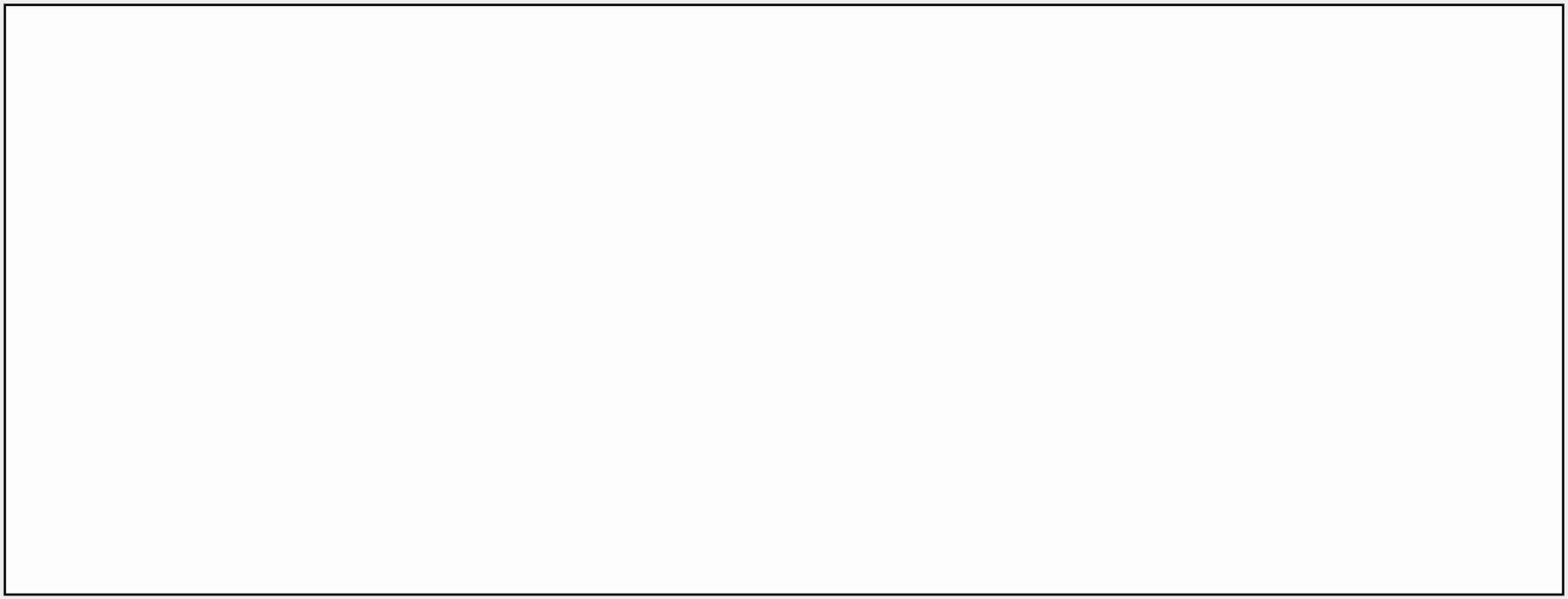
Nexus?

- Nexus is the connection between an act of persecution (i.e.: was harmed, may be jailed) and the victim's protected ground (i.e.: race, religion, etc.)

Ground vs. Characteristic

Figuring out the “Why” in the following example:

(b)(7)(e)



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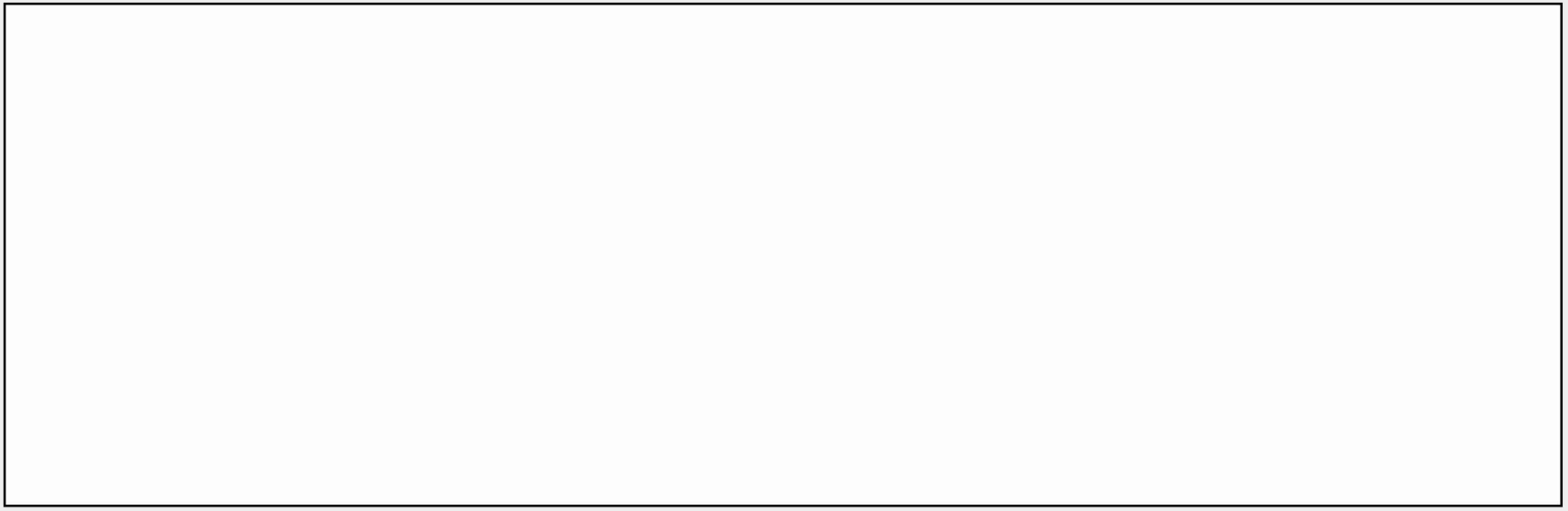
Figuring out the “Why”: Another example



A totally unscientific poll

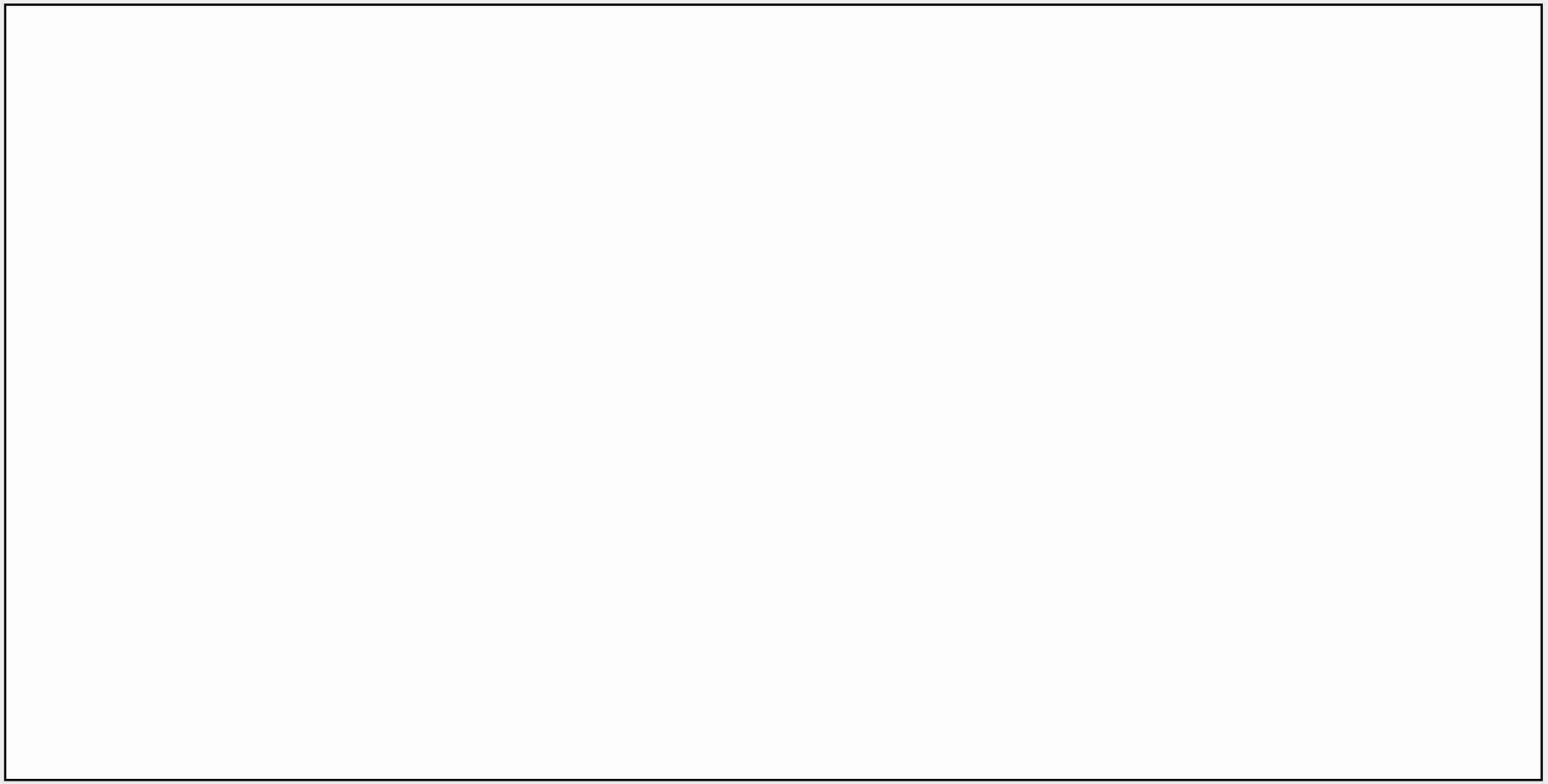
- How many of you possess a “protected characteristic?”

(b)(7)(e)

My telltale marks (characteristics)

Notice that your telltale characteristics fall into 2 broad categories

(b)(7)(e)



Figuring out “on account of”

- Two stipulations:
  1. Everyone has at least one protected characteristic, and
  2. Bad stuff happens for all sorts of reasons
- Our job is to figure out if the bad stuff happens “on account of” any one of the protected grounds

Matter of A-B-

- "… the asylum statute does not provide redress for all misfortune."

Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018)

Elias-Zacarias

- A 1992 Supreme Court case
- Question: what does “on account of” mean?
- A lower court granted asylum upon ruling that a guerrilla organization's harm for acts of conscription constituted persecution on account of political opinion because the organization was motivated by political aims when it sought to punish Mr. Elias-Zacarias for failing to join it

A 6-3 decision

- Justice Scalia wrote for the majority:

  "Even if [he has a political opinion], Elias-Zacarias still has to establish that … he has a "well-founded fear" that the guerrillas will persecute him because of that political opinion, rather than because of his refusal to fight with them."

Elias-Zacarias, 502 U.S. 478 (S.Ct. 812)

- Justice Stevens wrote a lengthy dissent finding, among other things, that Elias-Zacarias' neutrality was an expression of political opinion.

Elias-Zacarias: Major Points

- The evidence simply shows that Elias-Zacarias would be harmed because of his refusal to join the guerrilla organization.
- That evidence is not enough! [… to grant asylum]
- Elias-Zacarias' political opinion may not have played any role in motivating the guerillas to harm him for refusing to join in.
- Elias-Zacarias has the burden to show that the guerrillas would harm him *on account of his political opinion*.
- The protected characteristic may be imputed.

On account of whose political opinion?

- **The persecution must be on account of the victim's political opinion, not the persecutor's**

  … Elias-Zacarias … has to establish that … the guerrillas will persecute him because of [his] political opinion …

CRITICAL!

- **<u>The persecutor's motive is critical.</u>**

- In an asylum application, the question is:

  Is (or was) the persecutor motivated by at least one central reason to harm the applicant for possessing a protected characteristic?

What motivates the persecutor

- How do we inquire into the mind of the persecutor when usually the persecutor doesn't volunteer the information or submit to questioning at the asylum interview?

Evidence

- "… he must provide *some* evidence of [motivation], direct or circumstantial"

INS v. Elias-Zacarias

Direct Evidence

- Evidence may be:
  - Direct - such as a signed, notarized death threat letter from the persecutor referring to the applicant by name, date of birth, occupation and social security number

Circumstantial Evidence

"an applicant does not bear the unreasonable burden of establishing the exact motivation of a 'persecutor' where different reasons for actions are possible."

Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988)

“direct or circumstantial” …

“Elias-Zacarias objects that he cannot be expected to provide direct proof of his persecutors' motives. We do not require that. But since the statute makes motive critical, he must provide some evidence of it, direct or circumstantial”.

Elias-Zacarias

Example of circumstantial evidence (b)(7)(e)

More on Circumstantial Evidence

Circumstantial proof includes "evidence of the nature, structure and specific purposes of the persecutor as revealed in its past actions or statements."

Deborah Anker et al., The Supreme Court's Decision in INS v. Elis-Zacarias: Is There Any "There" There?, 69 INTERPRETER RELEASES, 285 (1992)

In other words: facts may be “inferred”

- *Inferred*: deduced, concluded from evidence and reasoning, rather than explicit statements

A cooperative effort

- The applicant bears the burden to provide evidence establishing eligibility to asylum, or refugee status

- You have an affirmative duty to elicit information and develop the record

(b)(7)(e)

The analysis

(b)(7)(e)

Once again … it's a cooperative effort

- Who bears the burden to provide evidence establishing eligibility to asylum or refugee status?

- Who has an affirmative duty to elicit information and develop the record?

What else have we learned from the example

(b)(7)(e)

(b)(7)(e)

(b)(7)(e)

Three lessons from the [redacted] example

[redacted]

REAL ID Act and "mix motivation"

- The REAL ID Act introduced the "*one central reason*" standard of proof
- It applies only to asylum applications (not to withholding of removal) filed on or after May 11, 2005
- The "*one central reason*" language has been interpreted consistent with prior BIA "mixed motives" precedent decisions

(b)(7)(e)

Parussimova – Mix motives -One central reason?

Parussimova v. Mukasey, 555 F. 3d 734 (9th Cir. 2009)

(b)(7)(e)

(b)(7)(e)

One central reason?

- The reason must be *important enough* that the persecutor would not have acted had that reason not existed
- Protected ground must play more than a *minor*, *tangential*, or *superficial* role
- One central reason means that there may be more then one reason
- Motivation relating to the protected ground need not be dominant or primary

(b)(7)(e)

Identifying the 5 Protected Characteristics

- GROUND RULES:
  - You must apply a broad construction of each protected characteristic
  - Applicants are expected to provide facts, not legal constructions or conclusions
  - In each case you must consider all possible grounds
  - Grounds may overlap
  - Each of the protected characteristics may be imputed

On account of **RACE**

- Broad construction of the term *race*
  - It should be understood broadly
- *Race* does not mean the same to everyone
- The question is:

(b)(7)(e)

WE SERVE
WHITE'S only
NO
SPANISH or MEXICANS

THE 1935 NUREMBERG RACE LAWS

- Promoted the superiority of the “Aryan race,” excluded German Jews from Reich citizenship and prohibited them from marrying or having sexual relations with persons of "German or related blood."
- These laws defined “Jewish" as anyone who had three or four Jewish grandparents, regardless of whether that individual identified religiously, or ethnically as Jewish.

June 17, 2015: Charleston, SC

- A 21-year-old white male entered the historic Emanuel African American Methodist Episcopal Church and for an hour participated in a Bible study session before taking out a gun loaded with hollow point bullets and started shooting. He said: “I have to do it. You rape our women and you're taking over our country. And you have to go.” By the end, he had killed nine people, including the church’s pastor, Reverend Pinckney, who was also a South Carolina state senator.

Harm suffered because of… refusal to adhere to legal or cultural barriers within a society may be considered to have been inflicted on account of the applicant's race. (UNHCR Handbook, para. 69)

What you must remember about *race*

- Different cultures have very different understanding of the meaning of *race*
- Some understand it along *biological groupings*
- Some understand it as a *social construct*

You must find out from the applicant and country of origin information what is the persecutor's understanding of the term *race*

- Apply the term broadly

On account of **NATIONALITY**

- Broad construction of the term
- It may refer to ethnicity, common descent, cultural affiliation, linguistic grouping, biological characteristics, tribal, clan as well as citizenship

Nationality conflicts

- Conflicts among *nationality* groups may result in religious or political movements identified along nationality lines giving rise to persecution on account of *nationality, religion, or political opinion*, depending on how the persecutor sees the victim

Practical Exercise

(b)(7)(e)

Once again:

- Conflicts among nationality groups may result in religious or political movements identified along nationality lines giving rise to persecution on account of nationality, religion, or political opinion, depending on how the persecutor sees the victim

On account of **RELIGION**

- The Universal Declaration of Human Rights and the Human Rights Covenant proclaim the right to freedom of thought, conscience and religion, which right includes the freedom of a person to change his religion and his freedom to manifest it in public or private, in teaching, practice, worship and observance.

UNHCR Handbook, paragraph 71

Religion in its widest concept

- Religion includes an individual's thought, conscience, and belief.
- Religious rights include:
  - The right to adopt a religion of one's choice
  - The freedom to worship, observe, practice, and teach in a public or private setting
  - The right not to be subjected to coercion that would impair this freedom

(b)(7)(e)

-
-
-

No requirement to conceal

- See *Zhang v. Ashcroft*, 388 F. 3d 713, 719 (9th Cir. 2004)(per curiam) rejecting IJ's finding that petitioner could avoid persecution by practicing Falun Gong in secret.
- See also, *Muhur v. Ashcroft*, 382 F. 3d 653 (7th Cir. 2004) finding that immigration judge erred that Eritrean Jehovah's Witness "can escape the notice of the persecutors by concealing one's religion."

Conversion

- In some countries it may be illegal to convert from one religion to another, and the penalties may be severe. *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992)
  - The right to adopt a religion of one's choice
  - The freedom to worship, observe, practice, and teach in a public or private setting
  - The right not to be subjected to coercion that would impair this freedom

Some laws affect some religious practitioners more than others. (But is it *persecution?*)

- Prohibitions against what you choose to wear (a turban, a beard, a niqab, a cross)
- Being required to work on holydays
- Laws telling you what you can smoke, or ingest (marijuana, peyote)
- Laws compelling you to vaccinate your children, sell a wedding cake for a gay wedding, or send your children to public school
  - Ex: Romeike v. Holder, 718 F.3d 528 (6th Cir. 2013)

Practical Exercise –

(b)(7)(e)

Practical Exercise - [redacted] (analysis) (b)(7)(e)

-
-
-
-
-

Practical Exercise –

(b)(7)(e)

(Practical Exercise - [redacted] analysis)

(b)(7)(e)

Questions:

(b)(7)(e)

(b)(7)(e)

(prosecution or persecution?)

On account of **POLITICAL OPINION**

- Broad construction
  - Not just participation in political party or process
  - Includes any opinion on any matter in which the machinery of the state, government and police may be engaged (Prof. Guy Goodwin-Gill)
  - Evidence of verbal or openly expressed behavior by the applicant [for refugee status] in furtherance of a particular cause
  - Nexus LP at section 8.1 has a list of of non-traditional expressions of political opinion

A few examples of expressions of political opinion

- Expression of feminist beliefs
- Exposure of government human rights abuses
- Activities to protect or establish the right of association (such as labor union membership), workers' rights, or other civil liberties
- Association with certain student groups
- Participation in community improvement or cooperatives, or movements for land reform
- Whistleblowing, exposing government corruption
- Opposition to gangs

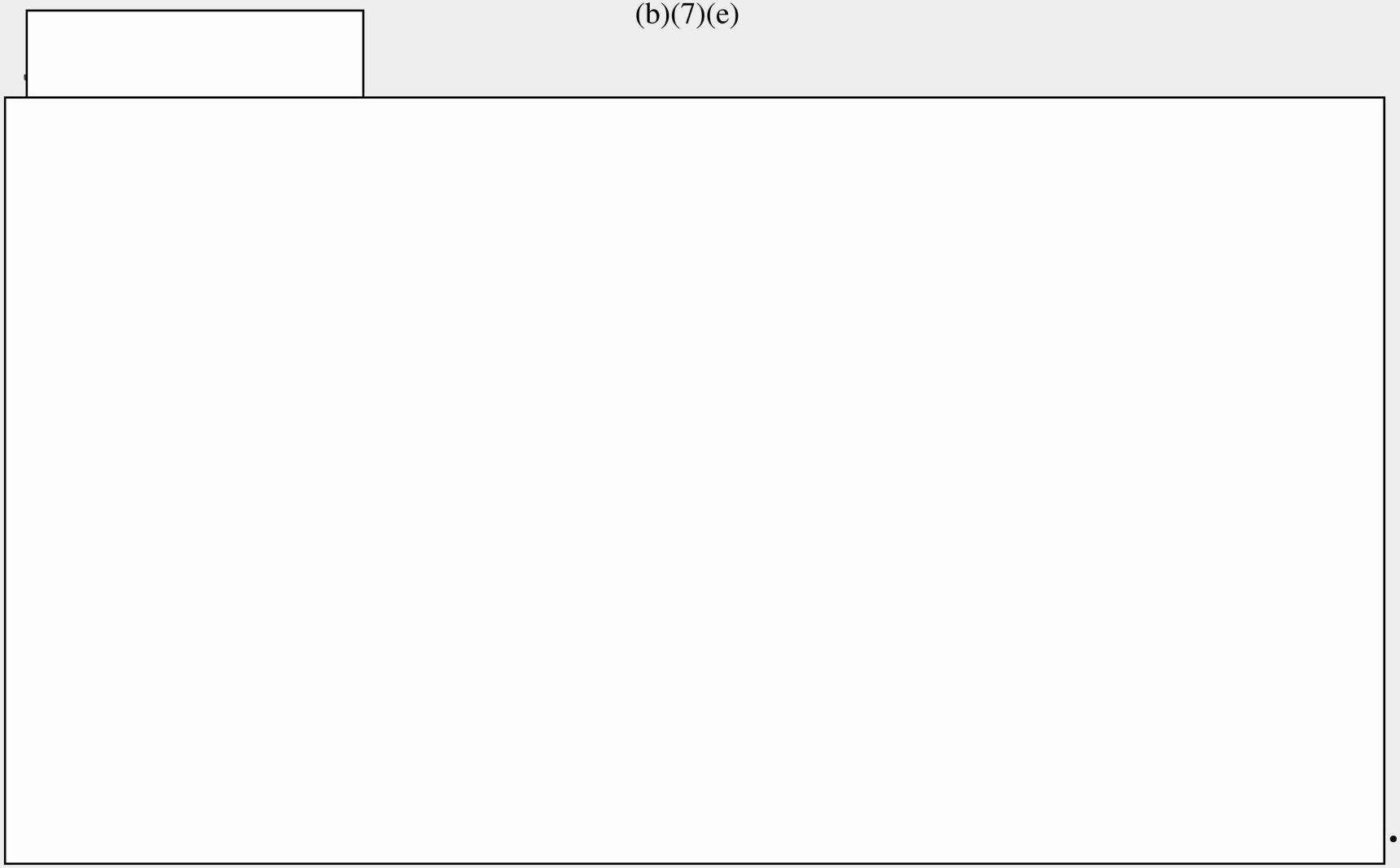
Whistleblowing, exposing government corruption

- Retaliation for whistleblowing is not enough:
  - the applicant must show that the persecutor is motivated by actual or imputed anti-corruption beliefs [a political opinion] and that there is evidence of pervasiveness of government corruption

Matter of N-M-, 25 I&N Dec. 526 (BIA 2011)

State actors may be motivated to retaliate for purely personal reasons, however sometimes the personal motivations are mixed-in with retaliation on account of political opinion. (Mix-motive analysis.)

(b)(7)(e)



Opposition to gangs

- Opposition to a gang may have a political dimension, but harm for refusal to join or pay extortion is not necessarily politically motivated

Marroquin-Ochoma v. Holder, 574F. 3d 574 (8th Cir. 2009)

- Mere refusal to join, generally is not enough
- To show nexus to political opinion, the evidence must show that the gang is motivated to harm the individual because of opposition (actual or imputed) to the gang in principle
- The Opinion did not discuss whether *state action* is required (the machinery of state …), but it noted that the applicant believed that seeking help from the prosecutor's office was futile

Harm in the course of Civil Strife

- Harm incidental to civil strife lacks the "on account of" requirement

… but

- Intentional harm on account of a protected characteristic can and frequently does occur in the midst of civil strife

(b)(7)(e)

Recruitment by Insurgent Groups

Forced recruitment by insurgents

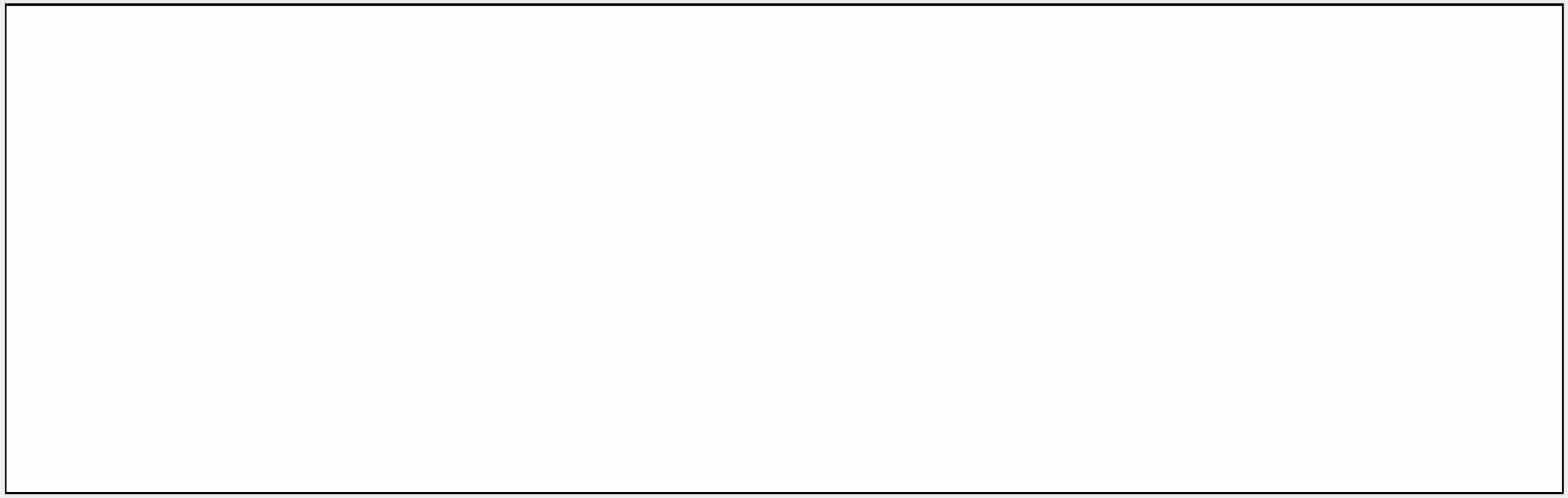
- Insurgents may recruit for reasons unrelated to a protected characteristic
  - To inflate their ranks
  - To use an individual's skill, expertise or knowledge …
- Individuals may refuse for any number of reasons
  - Fear of reprisal by government officials
  - Desire to stay home to protect family members …
- There must be some evidence indicating that the harm feared, or suffered is motivated "*on account of*" a protected characteristic.

Jose R. Lopez/The New York Times

The case of Jairo Jonathan Elías Zacarías, right, who was denied political asylum and is now appealing to the Supreme Court, could help decide the fate of thousands of Central Americans who say they fled to avoid forcible recruitment into guerrilla armies. With him is his lawyer, Peter von Mehren.

Considerations in Conscription forced recruitment

- Forced recruitment may be a form of punishment (b)(7)(e)



- If the evidence shows that the recruitment was "on account of" a protected characteristic, the applicant may have established eligibility.

Coercive Population Control (CPC)

- In 1996, Congress amended 101(a)(42):
- A person who has been forced to abort a pregnancy or undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, **shall be deemed to have been persecuted on account of political opinion,** and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

Coercive Population Control (CPC)

- Past Persecution includes persons who:
  - Were forced to abort a pregnancy
  - Were forced to undergo involuntary sterilization
  - Were persecuted for failure or refusal to undergo such a procedure or for "other resistance" to CPC
- OR
- Well-founded fear includes persons who risk undergoing such a procedure (by force), or for failing, refusing, or resisting the population control policy.

- Matter of X-P-T-, 21 I&N Dec. 634 (BIA 1996)
- (There is a significant body of case law dealing with this - CPC was covered in the Asylum Distance Training.)

(b)(7)(e)

Ground Rules Reminder

- You must apply a broad construction of each protected characteristic
- Applicants are expected to provide facts, not legal constructions or conclusions
- In each case you must consider all possible grounds (and develop the record)
- Grounds may overlap
- Each of the protected characteristics may be imputed

And … **When evaluating motive …**

- A few things to keep in mind:
  - The persecutor's perception of the applicant
  - The persecutor's motives can be mixed
  - The persecutor's initial motivation may not be "on account of"
  - The persecutor may not intend to harm (yet does): punitive, or malignant motive is not required

SUMMARY

- Protected characteristics: there are 5
  - Broad construction of each
- "On account of" the victim's characteristic
  - may be imputed
- Burden of proof is applicant's, but …
  - a cooperative effort
- Evidence
  - direct
  - circumstantial

…SUMMARY

- Motive: is critical, need not be exact (mixed motives, "at least in part", need not be punitive)
- On account of grounds
  - Civil strife
  - Military conscription
  - Recruitment by insurgent groups
  - Coercive population control
  - Purely personal problems

Nexus:
Particular Social Group (PSG)

(b)(6) [redacted] HQ Asylum Division

October, 2019

Agenda

* Basics – Definition of PSG
* Three-Step Process
* PSG Examples
* Practical Exercises

Particular Social Group – 3-part test

1) **Immutability:** Comprised of individuals who share a **common, immutable** characteristic that members cannot change or should not be required to change. ***Acosta***

2) **Social distinction:** "[T]hose with the characteristic in the society in question would be **meaningfully distinguished** from those who do not have it." ***M-E-V-G-***

3) **Particularity:** "characteristics that provide a **clear benchmark** for determining who falls within the group." ***M-E-V-G-; W-G-R-***

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Matter of Acosta

19 I&N Dec. 211 (BIA 1985)

* Ejusdem generis – Latin for "of the same kind"
* BIA looked at other four grounds (race, religion, nationality and political opinion) to determine the meaning of PSG
* BIA noted that each of the other four is:
  - ✓ An immutable characteristic:
    * Beyond the power of the individual to change, or
    * Fundamental to the individual's identity or conscience

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Immutable Characteristic

* Unchangeable

or

* Fundamental to Identity or Conscience

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Characteristic

Defined as:

"A distinguishing trait, quality or property." Webster's

Note: The applicant must possess or be perceived as possessing the characteristic.

Characteristic may include:

- ✓ Social status
- ✓ Physical trait
- ✓ Voluntary association
- ✓ Past experience
- ✓ Cultural Identity

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Fundamental

Generally consider:

- ✓ Applicant's personal circumstances
- ✓ Impact giving up characteristic would have on applicant's:
  - Identity
  - Conscience

Also consider:

- ✓ Human rights norms – is there a fundamental right to retain the characteristic?
- ✓ Voluntary assumption of extraordinary risk may be evidence of the fundamentality

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Social Distinction

Matter of M-EV-G-, 26 I&N Dec. 227 (BIA 2014) Holding:

- ✓ Renames "social visibility" as "social distinction" and clarifies that social distinction **does not require "outwardly observable characteristics**" or actual visibility.

M-E-V-G- is binding on all Asylum Officers, including in the 3rd and 7th Circuits. This case clarifies social distinction/visibility.

The Board clarified that social distinction relates to society's, not the persecutor's, perception.

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Social Distinction

- ✓ Those with the characteristic in the society in question would be **meaningfully distinguished** from those who do not have it.

Members of a social group may seek to hide their characteristic to avoid persecution, and may not be ocularly visible

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Social Distinction Continued

* Must be evaluated on case-by-case and society-by-society basis

* Officers' duty to elicit information to develop the record

Evidence of Social Distinction

* Testimony
* Country conditions information

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Particularity

In Plain Language of INA – "***particular*** social group"

To meet ***particularity*** requirement, group must:

* Have a clear benchmark for determining who falls within the group.
* Be discrete, with definable boundaries.
* Not be overbroad or subjective.
* Address outer limits of group's boundaries.

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Particularity

* Does the group's size matter?
* Does the ability to identify members matter?
* Does cohesiveness matter?
* Must members associate voluntarily?
* Society's perspective (*W-G-R-*).

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Are these groups “particular” ?

* The wealthy
* Lawyers
* Ranchers
* Women
* Widows

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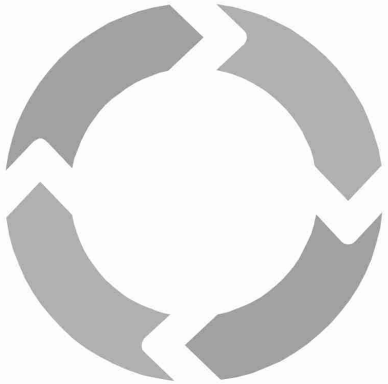
Other Requirements

* A social group cannot be defined by terrorist, criminal, or persecutory activity or association, past or present

* Avoid Circular Reasoning



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On Account Of

* Do not conflate membership with nexus.

* Remember that even if an applicant establishes that she is a member of a cognizable particular social group, she must still establish that she was persecuted, or has a well-founded fear of persecution, on account of her membership in the group.

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On Account Of

* **Motive** is critical.
  * *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

* The "**motivation of the persecutors** involves questions of fact, and the burden **can be met by testimonial evidence**."
  * *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

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Imputed Membership

* As with any protected ground, membership in a PSG can be imputed.
* Persecutor falsely believes that an applicant is a member of the PSG.
* Do not include "imputed" in the PSG definition; instead, it is the applicant's PSG *membership* that is imputed.

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Exercise 1

- Either individually or in a group, **complete PSG Exercise 1**
- **Upload your answers to your student drop box** using the following naming convention: Last name, First name_PSG Exercise 1. Everyone must do this, even if working in a group.
- You have **15 minutes** to complete the exercise.

Domestic Violence PSGs--BIA

Pending OCC guidance

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Nexus to Family Membership:

Pending OCC Guidance

Law Enforcement Assistance

Matter of C-A-

* Non-criminal informants generally not socially visible or particular, but there may be social visibility for those informants discovered because they appear as witnesses or otherwise come to the cartel's attention.
* In *M-E-V-G-*, BIA acknowledged C-A- "language highlighting… ocular visibility" and clarified that it's not required.

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Witnesses

Cases recognizing witness PSGs:

* *Garcia v. Att'y Gen. of U.S.* (3d Cir. 2011).
  * "[c]ivilian witnesses who have the 'shared past experience' of assisting law enforcement against violent gangs that threaten communities in Guatemala"
* *Gashi v. Holder* (2d Cir. 2012).
  * cooperating witnesses [who met with war crimes investigators]
* *Henriquez-Rivas* (9th Cir. 2013).
  * witnesses "who testified in court against gang members" in El Salvador

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Law Enforcement Assistance: Lack of Consistent Precedent

* Proposed PSGs involving youth who report gang threats or gang beatings:
  * *Garcia v. Holder* (8th Cir. 2014).
  * *Zelaya v. Holder* (4th Cir. 2012).
* Those courts only examined the proposed PSG formulations put forward by the applicants, and rejected them.

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Law Enforcement Assistance: Lack of Consistent Precedent

* *Carvalho-Frois v. Holder* (1st Cir. 2012).
  * Woman who received threats from two men leaving a neighbor's home where a murder occurred did not establish membership in a valid PSG.

* *Escobar v. Holder* (7th Cir. 2011).
  * Upheld PSG of truckers who refused to cooperate with FARC and collaborated with law enforcement.

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Law Enforcement Assistance

* "[Nationality] who assist law enforcement by reporting a serious gang-related crime"
* No bright line rule re proposed PSG. Elicit information re persecutor's motive, circumstances of threats received, & similarly situated individuals. Review COI.
* If a valid proposed PSG exists, then examine nexus.

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Law Enforcement Assistance in the U.S.

* Several circuits have rejected claims involving informants who help U.S. law enforcement.
  * *Martinez-Galarza v. Holder* (8th Cir. 2015).
  * *Costa v. Holder* (1st Cir. 2013).
* The courts decided those cases based on the record evidence. AOs should examine the specific facts of the case at hand to determine if an informant to U.S. law enforcement officials may be able to establish eligibility.

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Exercise 2

- Either individually or in a group, **complete PSG Exercise 2**
- **Upload your answers to your student drop box** using the following naming convention: Last name, First name_PSG Exercise 2. Everyone must do this, even if working in a group.
- You have **15 minutes** to complete the exercise.

Former Gang Members

Fourth, Sixth and Seventh Circuits

* Sixth and Seventh – Former gang membership can form the basis for a PSG

  - *Urbina-Mejia v. Holder* (6th Cir. 2010) and *Benitez Ramos v. Holder* (7th Cir. 2009).

* Fourth – former gang membership is immutable, remanded for application of other criteria.

  - *Martinez v. Holder,* (4th Cir. 2014).

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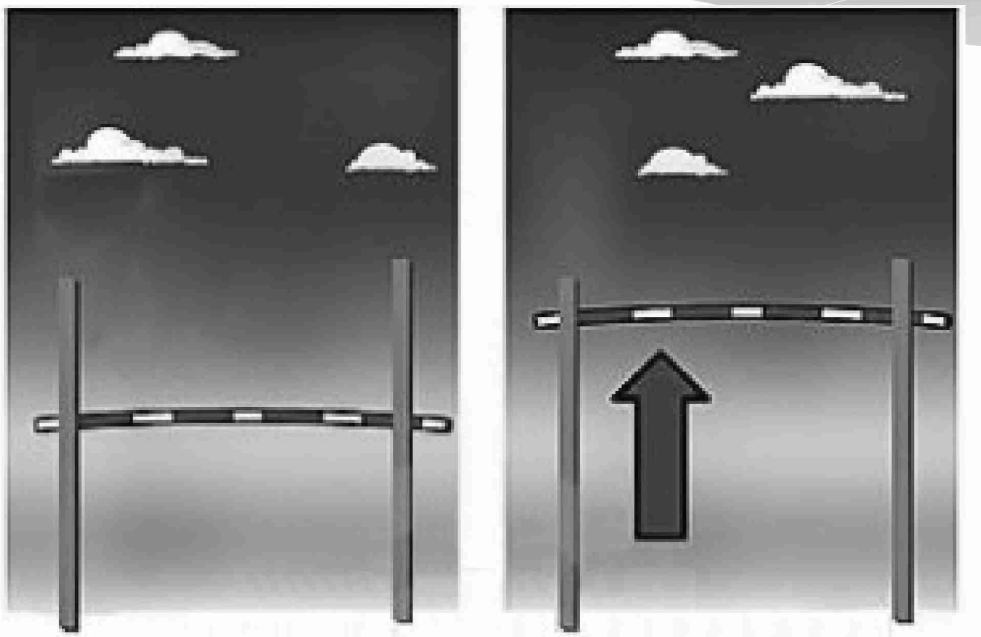
CF/RF vs. Affirmative



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Review:
Road Map for PSG Claims

(b)(7)(e)

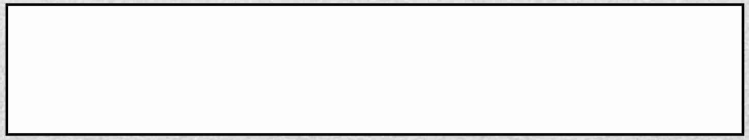
*

*

*

Questions?

Past Persecution



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HQ Asylum – ADOTP Distance Training

June 2019

U.S. Refugee Definition

The statute - INA § 101(a)(42) - includes both "persecution" and a "well-founded fear of persecution" as a basis for protection.

Unlike the UN Definition which focuses primarily on well-founded fear. A cessation clause allows for revocation of protection if no well-founded fear, but there is an exception.

101 (a)(42) Excerpt

The term refugee means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution *or* a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . . (emphasis added)

Past Persecution

8 CFR § 208.13(b)(1)

If Past Persecution, a Well-Founded Fear Is *Presumed on the basis of the original claim*

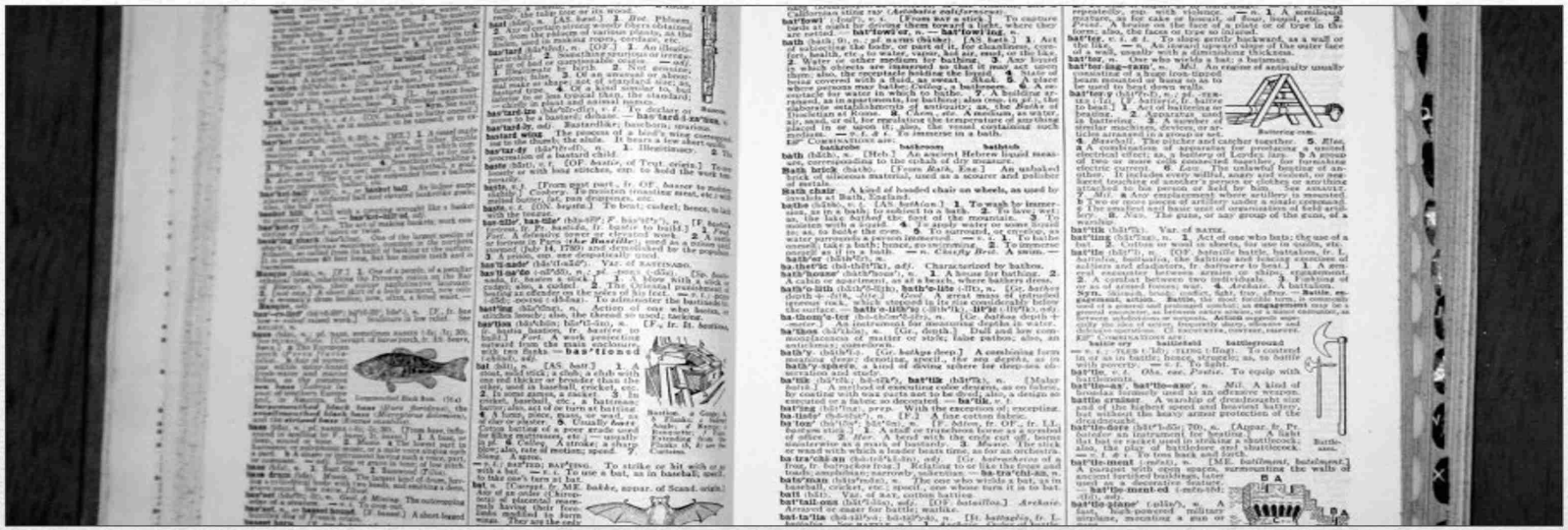
- Presumption Is Rebuttable if:
  - ✓ Fundamental Change in Circumstances
    - Country
    - Personal
  - ✓ Internal Relocation Option
    - Avoidance of Future Persecution
    - Reasonable under All Circumstances
    - Presumption that internal relocation is not reasonable (8 CFR § 208.13(b)(3)(ii))
- If Presumption of a Well-Founded Fear Is Rebutted, Asylum May Be Granted Based on:
  - ✓ Severity of Past Persecution
  - ✓ Reasonable Possibility of Other Serious Harm

- Presumption may be rebutted by DHS by preponderance of evidence.
- Refugee processing – past persecution alone is enough.

If applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing a well-founded fear.

8 CFR § 208.13(b)(1)

Exception



PRESUMPTION

A fact assumed to be true under the law is called a presumption.

DEFINITION

Elements of Persecution

- Severity of Past Harm
- Motivation
- Persecutor
- Location

Remember: Cumulatively Incidents of Harm May Amount to Persecution

Review

Rebuttable Presumption

Past Persecution

If past persecution-

"an applicant shall be **found to be a refugee**..."

and shall be "**presumed to have a well-founded fear**. . ."

8 CFR § 208.13(b)(1)

BUT

You are <u>required</u> to deny or refer in two circumstances - in the exercise of your ***discretion*** *if* a preponderance of evidence shows:

1. ***Fundamental Change***
2. ***Reasonable Internal Relocation Option***

Definition: The freedom of choice and of action of a judge, prosecutor, or other public official, within the defined scope of his or her responsibilities.

You are exercising DHS's discretion; you must follow the regulation. If **changed circumstances** or **a reasonable internal relocation** option – you ***must*** refer or deny case as a matter of ***discretion***.

A Word about Discretion

Steps

If Past Persecution:

1. Presume Fear Is Well-Founded,
2. Determine if Fundamental Change in Circumstances,
3. Determine if *Reasonable* Internal Relocation Option Exists

8 CFR § 208.13(b)(1)(i)

If presumption of well-founded fear is ***not rebutted*** by:

fundamental change or **reasonable internal relocation option**

= well-founded fear.

Two Ways to Rebut Presumption

Fundamental Change

Must be a change to:

- ✓ Personal circumstances

or

- ✓ Country conditions

+

Change must be:

- ✓ Fundamental
- ✓ Not a mere, possibly transitory change

+

Such that applicant no longer has a well-founded fear

Internal Relocation

By relocating, must be able to:

- ✓ Avoid future persecution
- ✓ If **reasonable** under all circumstances

Consider, *but not limited to*:

- "Other serious harm"
- Ongoing civil strife
- Administrative, economic, judicial infrastructure
- Geographic limitations
- Social and cultural constraints, *such as*: age, gender, health, social and familial ties.

8 CFR § 208.13(b)(3)

Fundamental Change

- The BIA has emphasized that simply demonstrating a change, such as a change in regime, cannot substitute for careful analysis of the facts of each applicant's individual circumstances.

- *Matter of N-M-A-*, 22 I&N Dec. 312, 320-21 (BIA 1998)

Internal Relocation

Steps:

1. Past Persecution
2. Presumption of Well-Founded Fear
3. Presumption that Internal Relocation Is Not Reasonable
   8 CFR 208.13(b)(3)

You Can Rebut the Presumption by Showing:

- ✓ Applicant Can Avoid Future Persecution by Relocating to Another Part of the Applicant's Country
- ✓ Under All Circumstances It Is Reasonable to Expect the Applicant to Do So

Reasonableness

8 CFR § 208.13(b)(3)

Reasonableness of Internal Relocation:

You Can Rebut the Presumption by Showing:

✓Applicant Can Avoid Future Persecution by Relocating to Another Part of the Applicant's Country

✓Under All Circumstances It Is Reasonable to Expect the Applicant to Do So

- ✓ Other serious harm
- ✓ Ongoing civil strife
- ✓ Administrative, economic, judicial infrastructure
- ✓ Geographic limitations
- ✓ Social and cultural constraints, *such as*: age, gender, health, social and familial ties

INTERNAL RELOCATION – EXAMPLE

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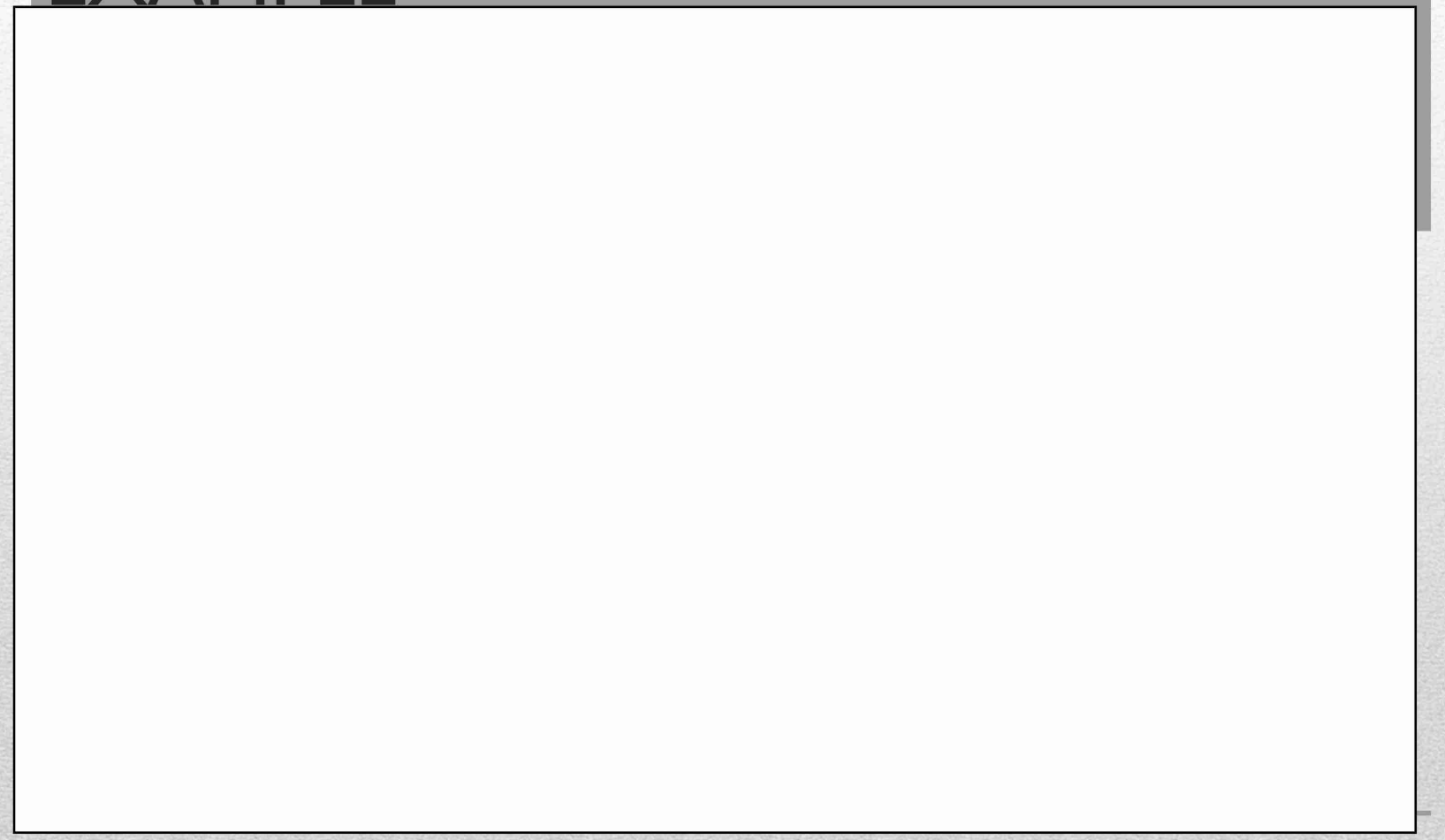
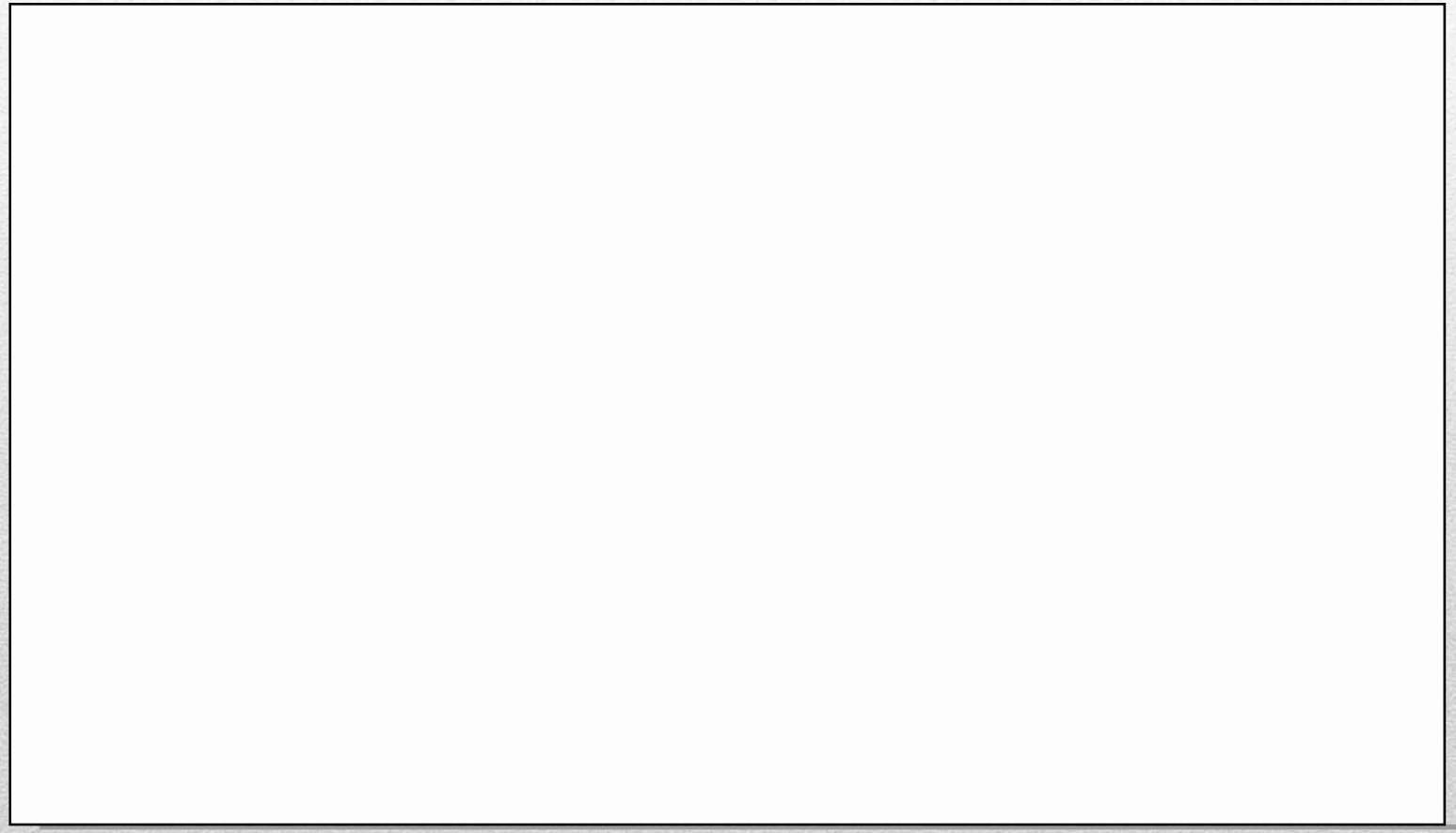


Internal Relocation – Other Examples

(b)(7)(e)



GRANTING IN ABSENCE OF WELL-FOUNDED FEAR

Compelling Reasons & Other Serious Harm

Granting in Absence of Well-Founded Fear

8 CFR § 208.13(b)(1)(iii)

If presumption is rebutted ---- by fundamental change or internal relocation option

You may grant asylum, in the exercise of discretion, if:

- ✓ **Compelling reasons** arising out of severity of past persecution
- ✓ Reasonable possibility of **other serious harm** upon removal

A person subject to very severe persecution in the past will not cease to be a refugee.

UNHCR Handbook, ¶135

Compelling Reasons

Compelling Reasons

Factors you should consider:

- ✓ Duration of persecution
- ✓ Intensity of persecution
- ✓ Age at time of persecution
- ✓ Persecution of family members
- ✓ Conditions under which persecution was inflicted
- ✓ Whether it would be unduly frightening or painful for the applicant to return to the country of persecution
- ✓ Whether there are continuing health and psychological problems or negative repercussions stemming from the harm inflicted
- ✓ ***Any other relevant factor***

COMPELLING REASONS - EXAMPLES:

Matter of Chen (1989) (China):

- house arrest for six months,
- no opportunity to go to school,
- later abused by teachers and classmates,
- two years of re-education with physical abuse resulting in hearing loss.

COMPELLING REASONS

Matter of B- (1995) (Afghanistan):

- 13-month detention
- frequent physical and mental torture, including:
  - sleep deprivation
  - beatings
  - electric shocks
  - not knowing fate of detained father
- inadequate diet and medical care
- integration with prison population
- ongoing civil strife in Afghanistan.

COMPELLING REASONS

Matter of S-A-K- and H-A-H- (2008)(Somalia):

- mother and daughter involuntarily subjected to FGM
- daughter subjected at an early age – no anesthesia
- mother nearly died from infection after FGM
- both subjected to FGM later (mother subjected 5 times)
- both continue to have medical problems
- mother beaten for opposing FGM for daughters

NO COMPELLING REASONS

Matter of N-M-A- (1998) (Afghanistan):

- Father kidnapped
- Home searched twice
- Detained for one month
- During detention beaten periodically
- During detention deprived of food for three days.

(BIA did remand the case to allow submission of additional evidence re: fear of Taliban).

Another Avenue for Grant if No Well-Founded Fear

Elements:

1. Past Persecution
2. Reasonable Possibility of
3. Other Serious Harm
4. In Home Country

Other Serious Harm

Other Serious Harm

Definition in Federal Register

65 FR 76121

(Dec. 6, 2000)

[B]y "other serious harm," the Department means

- harm that is **not inflicted on account of** race, religion, nationality, membership in a particular social group, or political opinion,
- but is **so serious** that it equals the **severity of persecution**.

Other Serious Harm

What to Consider:

- Current country conditions
  - ✓ Civil Strife
  - ✓ Extreme Economic Deprivation
    - Must Be Severe
    - Need not Be Deliberately Imposed
  - ✓ Potential for Physical Harm
  - ✓ Potential for Psychological Harm
- Applicant's Circumstances
  - ✓ Physical Health
  - ✓ Mental Health

OTHER SERIOUS HARM – EXAMPLES

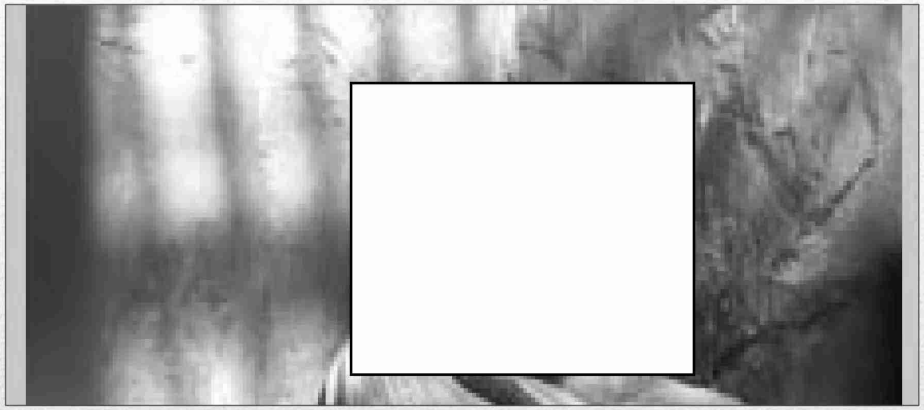
- ***Pllumi v. Att'y Gen. of U.S.***, (Albania) (3d Cir. 2011) – harm resulting from unavailability of necessary medical care (for severe injuries sustained in a hit-and-run accident in U.S.)

- ***Kholyavskiy v. Mukasey***, (Russia) (7th Cir. 2008)- debilitation and homelessness due to unavailability of specific medications for his social anxiety disorder

Practical Exercise

Analyze Past Harm

Eligible for Asylum?



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eligible for asylum?

Country Conditions

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1.

2.

3.

4.

5.

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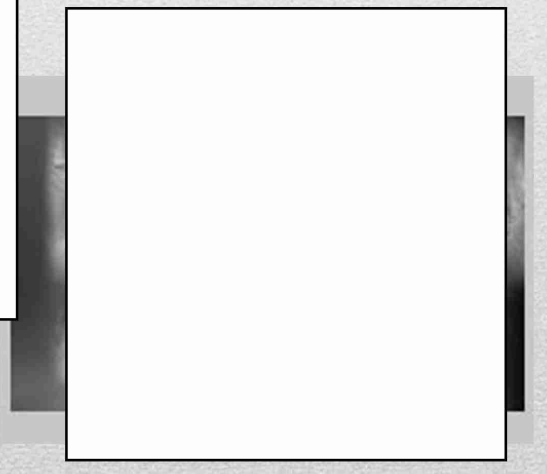

5 Steps in Case

- Thanks for listening!

LGBTI and HIV-Related Asylum Claims

U.S. Citizenship and Immigration Services

Agenda

- Introduction: Terms and History
- Establishing Sexual Orientation, Gender Identity, or Intersex Status
- LGBTI Claims: Beyond the “G”
- Special Considerations when Assessing Credibility
- HIV and AIDS

U.S. Citizenship and Immigration Services

Introduction: Terms and History

Terminology

(See RAIO LGBTI Lesson Plan, pp. 13–15)

- Sexual Orientation
  - A person's emotional and physical attraction to others, often based on the gender to whom they are attracted: straight, lesbian, gay, bisexual
- Gender Identity
  - The internal, deeply felt sense of being male, female, something else, or in-between
- Gender Expression
  - Characteristics and behaviors such as outward appearance, dress, mannerisms, speech patters, or interactions socially perceived as masculine or feminine

Historic Background

- 1917 – “constitutional psychopathic inferiority”
- 1952 – “afflicted with a psychopathic personality, epilepsy or mental defect”
- 1965 – “sexual deviation”
- 1973 – “homosexuality” no longer a mental illness
- 1975 – first denial of marriage based green card *Adams v. Howerton* (9th Cir.)
- 1987 – Helms Amendment
- 1990 – “homosexual” exclusion lifted
- 2010 – HIV “travel ban” lifted

U.S. Citizenship and Immigration Services

Membership in a Particular Social Group (PSG)

- *Matter of Toboso-Alfonso,* 20 I&N Dec. 819 (BIA 1994) – Cuban gay man
- *Pitcherskaia v. INS,* 118 F.3d 641 (9th Cir. 1997) – Russian lesbian
- *Karouni v. Gonzales,* 399 F.3d 1163 (9th Cir. 2005) – "*all* alien homosexuals"
- *Morales v. Gonzales,* 472 F.3d 689 (9th Cir. 2007) – transgender identity
- *Avendano-Hernandez, v. Lynch*, 800 F.3d 1072 (9th Cir. 2015) – transgender women as distinct from gay men

- RAIO Lesson Plan on LGBTI claims (2015) – "sexual minorities"

- David Martin, 1996 legacy INS memo stating that HIV can found membership in a PSG – available at http://www.immigrationequality.org/wp-content/uploads/2011/07/HIV-asylum-memo.pdf
- HIV "travel ban" lifted in 2010 (Congressional action)

U.S. Citizenship and Immigration Services

Establishing Sexual Orientation, Gender Identity, or Intersex Status

Establishing Sexual Orientation, Gender Identity, or Intersex Status

(See RAIO LGBTI Lesson Plan at pp. 44–45)

- Adjudicator cannot rely on stereotypes of "looking gay"
  - *Shahinaj v. Gonzales*, 481 F.3d 1027 (8th Cir. 2007)
- "Coming out" story (exploring and/or accepting LGBTI identity, and/or telling others)
- Corroboration by partner, ex-partner, family member, friend, mental health professional
  - *Eke v. Mukasey,* 512 F.3d 372, 381 (7th Cir. 2008) – applicant should supply extrinsic evidence such as "letters, affidavits, photographs, or other forms of corroborative evidence; or establish that such evidence was not reasonably available to him."
- Membership in LGBTI groups (helpful but not required)

Do's for Establishing Sexual Orientation, Gender Identity, or Intersex Status

- Do ask applicant when they first realized they were LGBTI
- Do ask applicant whether they had any romantic or intimate relationships in their country; if yes, describe how these relationships/encounters came about
- Do ask applicant whether they knew other LGBTI people there
- Do ask applicant how LGBTI people find each other in their country
- Do ask whether they have come out to their family, why or why not, what their family's reaction was, etc.
- Do ask how others may learn that they are LGBTI

Don'ts for Establishing Sexual Orientation, Gender Identity, or Intersex Status

- Don't ask questions that are explicitly sexual or anatomical
- Don't view sexual orientation or gender identity as a "choice" or "lifestyle"
- Don't use the term "homosexual" unless applicants do so
- Don't assume that all LGBTI people live or participate in a particular "lifestyle"
- Don't assume that if someone does not "look gay" to you, that people in their country will not be able to tell they're LGBTI (*i.e.*, cultural norms vary greatly)
- Don't assume that applicants can remain safe by being "discreet" in their home country

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Hypothetical #1

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Proof of sexual orientation:

- Testimony
- Affidavits from partners, ex-partners, friends, family, and others
- Photos
- Profiles and social media data

This list is **not** exhaustive

Forces preventing the ability to present corroborative evidence:

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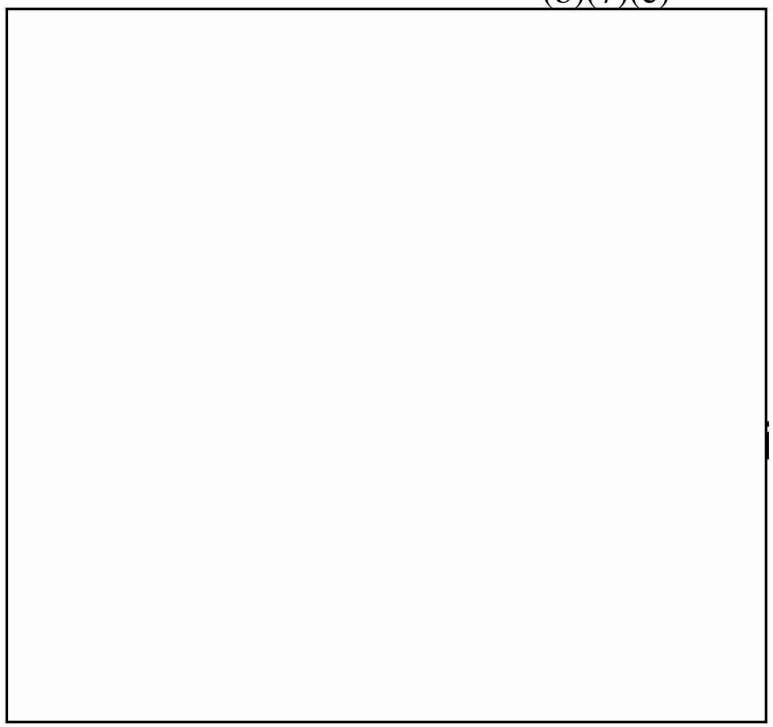

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This list is **not** exhaustive

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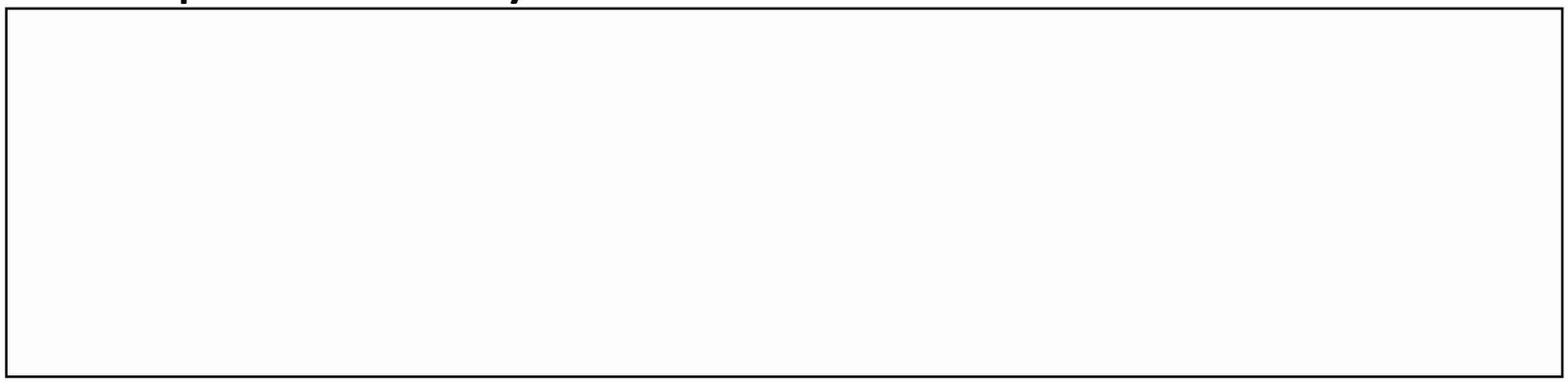
LGBTI: More than just “G”

Special Concerns for Lesbian Cases

- Often less visible culturally; more likely to be married
  - Victoria Neilson, "Homosexual or Female? Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Claims," 16 STAN. L. & POL'Y REV. 417, 426 (2005)
- More likely to experience private harm
  - *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997) – forced psychiatric treatment
  - *Nabulwala v. Gonzales*, 481 F.3d 1115 (8th Cir. 2007) – "corrective" rape
- Overlap with gender-based claims
  - *See, e.g.*, *Matter of S-A-*, 22 I. & N. 1328 (BIA 2000)

Special Concerns for Bisexual Cases

- Bisexuality is real
- Bisexual people have the capacity for romantic or sexual attraction towards men and women – but they cannot "choose" whom they feel attracted to
- Fact-specific analysis (b)(7)(e)



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Transgender Issues

- Gender identity and sexual orientation are distinct
  - Recap: Gender identity concerns a person's inner feelings about self; sexual orientation concerns the objects of a person's attraction
  - Trans people can thus identify as straight, bisexual, or lesbian/gay
- A transgender person is assigned one gender at birth but later realizes that they do not identify with that gender
- Most (but not all) trans people consider themselves to be male or female (*i.e.*, "transgender" is usually not a gender)
  - BUT: In some cultures (*e.g.*, some parts of India), being transgender may be considered a third gender

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Transgender Terminology

- Preferred terms:
  - transgender person
  - assigned the [fe]male gender at birth
- Non-preferred terms:
  - he/she
  - transsexual or transvestite
  - transgenders or transgendered
  - pre- or post-op[erative]
  - born [fe]male, anatomically [fe]male, biologically [fe]male

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Transition

- The process whereby a transgender person begins to live in the gender that feels appropriate to them
  - Generally involves dressing in clothes associated with their gender identity
  - May or may not involve medical interventions
  - May or may not involve changing legal documents and legal name
- Not everyone's transition takes the same form; no necessary progression from one "step" to the "next"

Transgender Do's

- If unclear from the documents, ask applicants for their chosen name and/or pronoun – and then use it
- Do ask when applicants first realized they were transgender
  - Bear in mind that many (but not all) trans people may identify as gay or lesbian before they come to realize that they are transgender
- Do ask when they began to transition or whether they plan to do so

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Transgender Don'ts

- Don't assume that the applicant wants or will have surgery
- Don't impose your opinion of the applicant's gender on how you address them
- Don't assume that trans persons who "pass" well won't have problems in their countries
- Don't assume that a transgender person who uses different terminology is not trans (*i.e.*, a trans woman may simply refer to herself as a woman)

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USCIS Guidance on Claims by Transgender Persons

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- Affirmative Asylum Procedures Manual, section III.B.13

  [redacted]

  - Follow an applicant's self-identification (*i.e.*, don't question their gender identity) unless strong evidence indicates otherwise
  - Gender identity doesn't enter the picture unless it's part of the claim
- Gender marker on documents issued by USCIS may reflect the applicant's gender identity (rather than sex assigned at birth) if corroborated by:
  - Amended documents (*e.g.*, birth certificate, passport, court order) **OR**
  - Medical certification from an MD or similar; no requirement of sex reassignment surgery (or any other specific medical procedure)
  - Some asylum offices indicate appropriate gender if found credible

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Hypothetical #2

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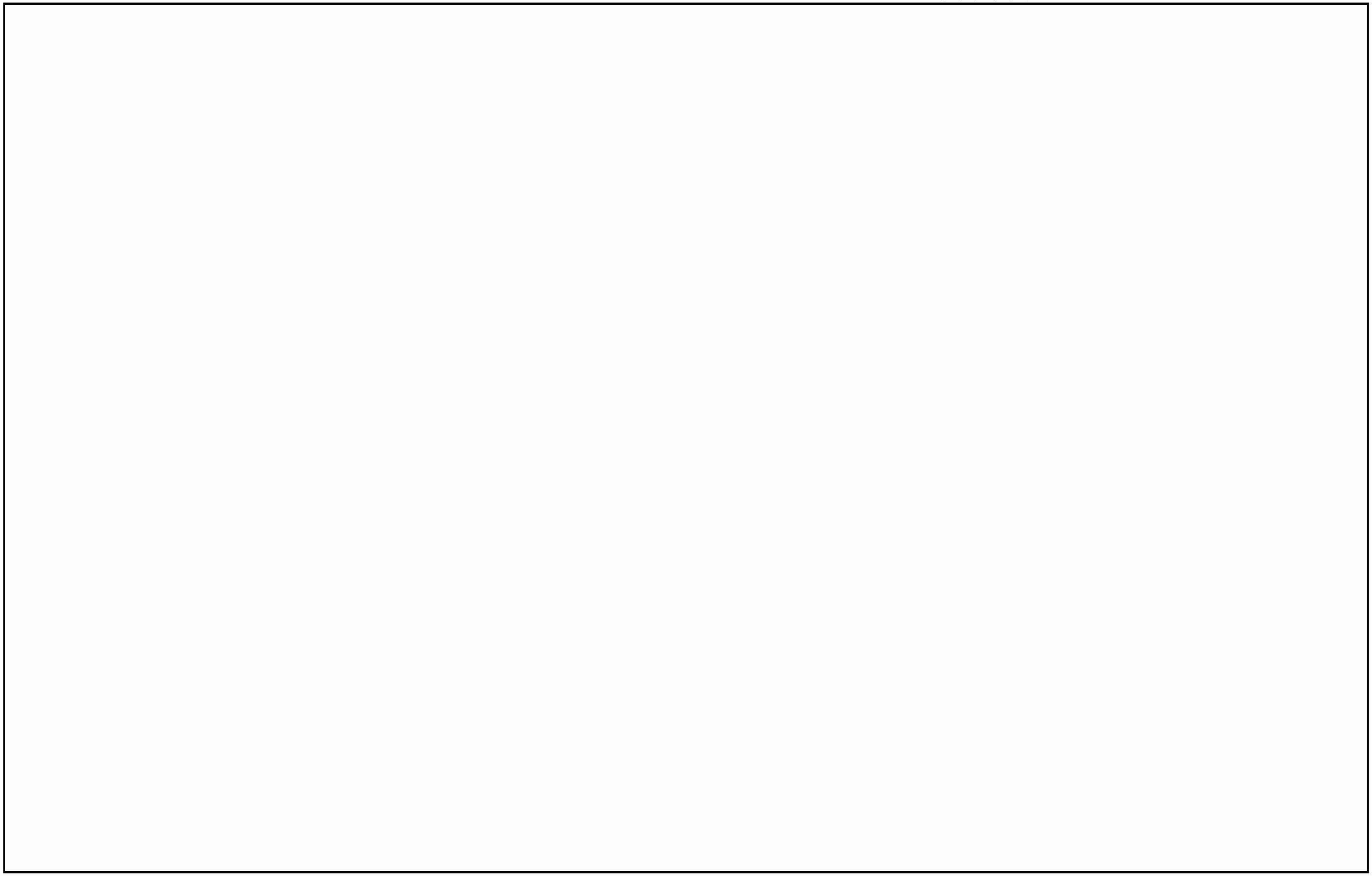

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Hypothetical #2

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- [redacted]

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Intersex Persons

- Intersex persons have reproductive or sexual anatomy, and/or chromosomal patterns, that don't seem to fit typical definitions of male or female
- Distinct from gender identity and sexual orientation
- Cases may present similarly to transgender cases or may be very different
- Causes may be genetic, hormonal, or environmental
- May be subject to forced treatment and/or violence

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Intersex Treatment / Proof

- Medical professionals often intervene and "choose" one gender at birth
  - Experts now encourage delaying surgery as long as is healthy, and ideally involving the child in the decision
  - Nonconsensual surgery, or prohibition of treatment, may be forms of persecution
- It is common for people to discover they are intersex at puberty or when trying to have children
- In the absence of medical proof, credible testimony is also acceptable

Special Considerations: The Queer Community

- "Queer" is an identity more common among younger people; some may still find this term offensive
- May encompass a broad variety of sexual orientations, gender identities, and gender expressions that differ from traditional expectations or binaries such as:
  - Genderqueer
  - Gender fluid
  - Gender non-binary

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Special Considerations: Types of harm minors may experience

- Minors may experience past persecution
  - Often subject to persecution by non-state actors (*e.g.*, family violence, psychiatric "treatment" or religious exorcism, sexual abuse)
- Minors may have a well-founded fear
  - Many cases are future-fear only (not "out," less life experience)

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Special Considerations: LGBTI minors

- Family may refuse to assist and/or may actively sabotage the asylum claim
  - May formally oppose application
  - Previous applications as part of a family may require procedural choreography (*e.g.*, independent application, *sua sponte* reopening)
- Minor may not be willing to testify against family

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Special Considerations: LGBTI minors

- Maturity issues (appearing for appointments, gathering evidence, etc.)
- Consequences of marginalization, including:

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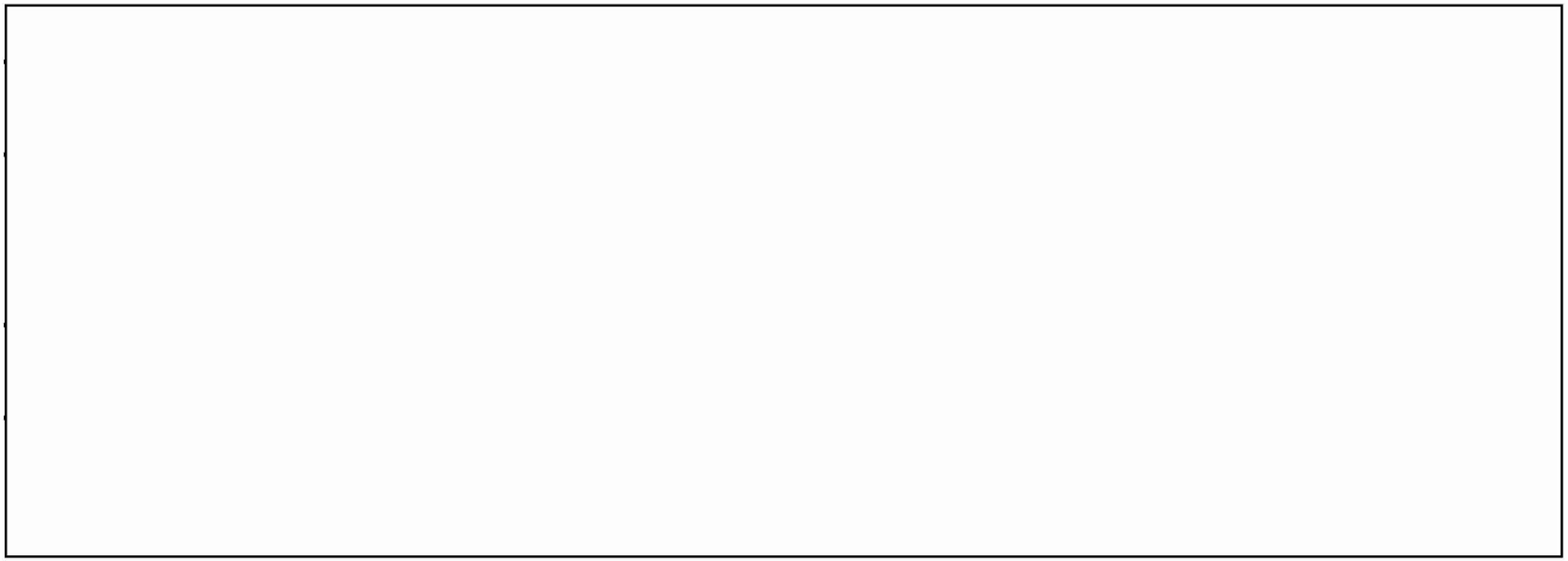

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Imputed LGBTI Identity

- Imputed membership in the particular social group of sexual minorities from [x country/last habitual residence]
  - *Amanfi v. Ashcroft*, 328 F.3d 719 (3rd Cir. 2003)

- Remember, the focus is on persecutor's motive and applicant's experience—irrespective of the applicant's self-identification (which may or may not align with the persecutor's perception)

Special Considerations when Assessing Credibility

Assessing Credibility: Cultural and Linguistic Variation

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- Conceptions of gender roles and sexual orientation vary—for example, in some cultures:

Assessing Credibility: Differing Reactions to Risk

- Not all LGBTI applicants will react similarly to the risk of persecution in their country
  - Some applicants may have lived proudly as LGBTI despite the danger they faced as a result
  - Other applicants may have remained entirely closeted

Assessing Credibility: Internalized Homo-/Bi-/Transphobia

- Applicants may have internalized that being LGBTI is wrong, which can manifest in many ways—for example:

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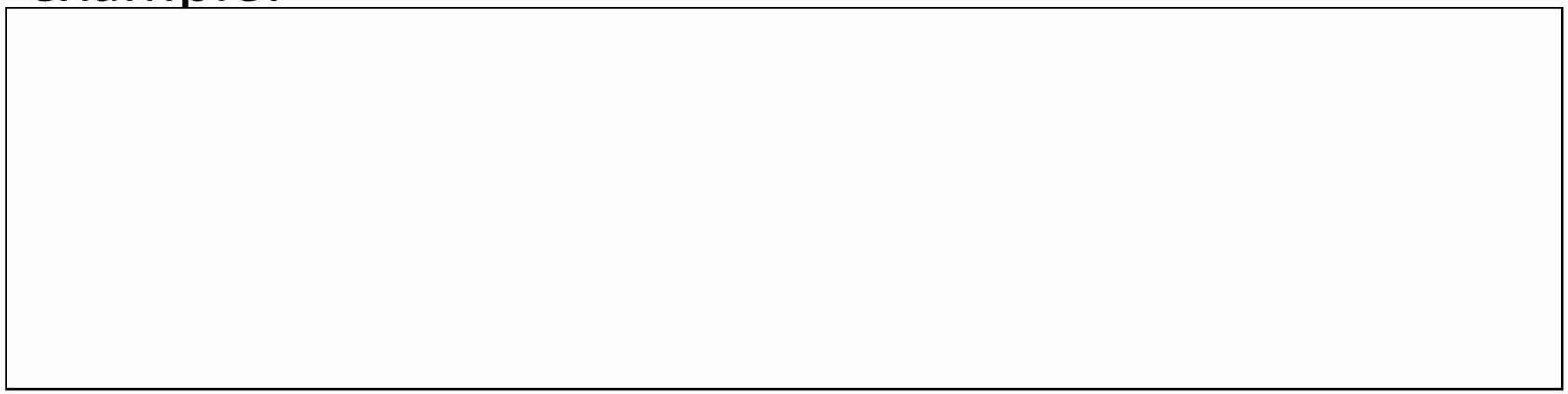

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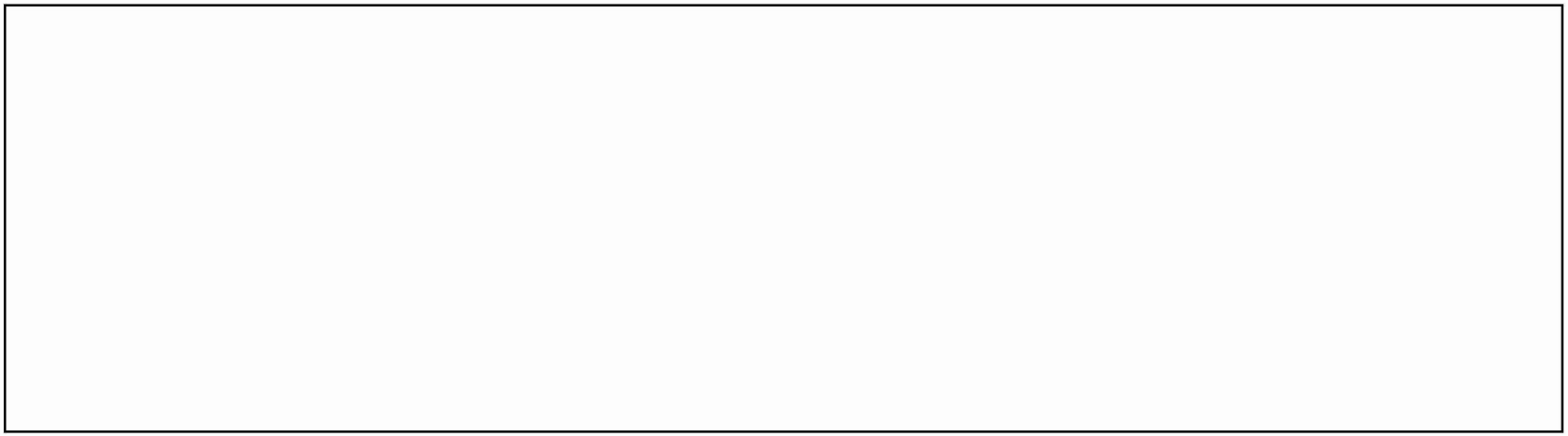
Assessing Credibility: "Covering"

- Applicants may have taken steps to avoid being "outed," or perceived as LGBTI—for example: (b)(7)(e)



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Assessing Credibility: Fear of Authorities

- Many LGBTI applicants have had profoundly upsetting interactions with official figures in their country of origin

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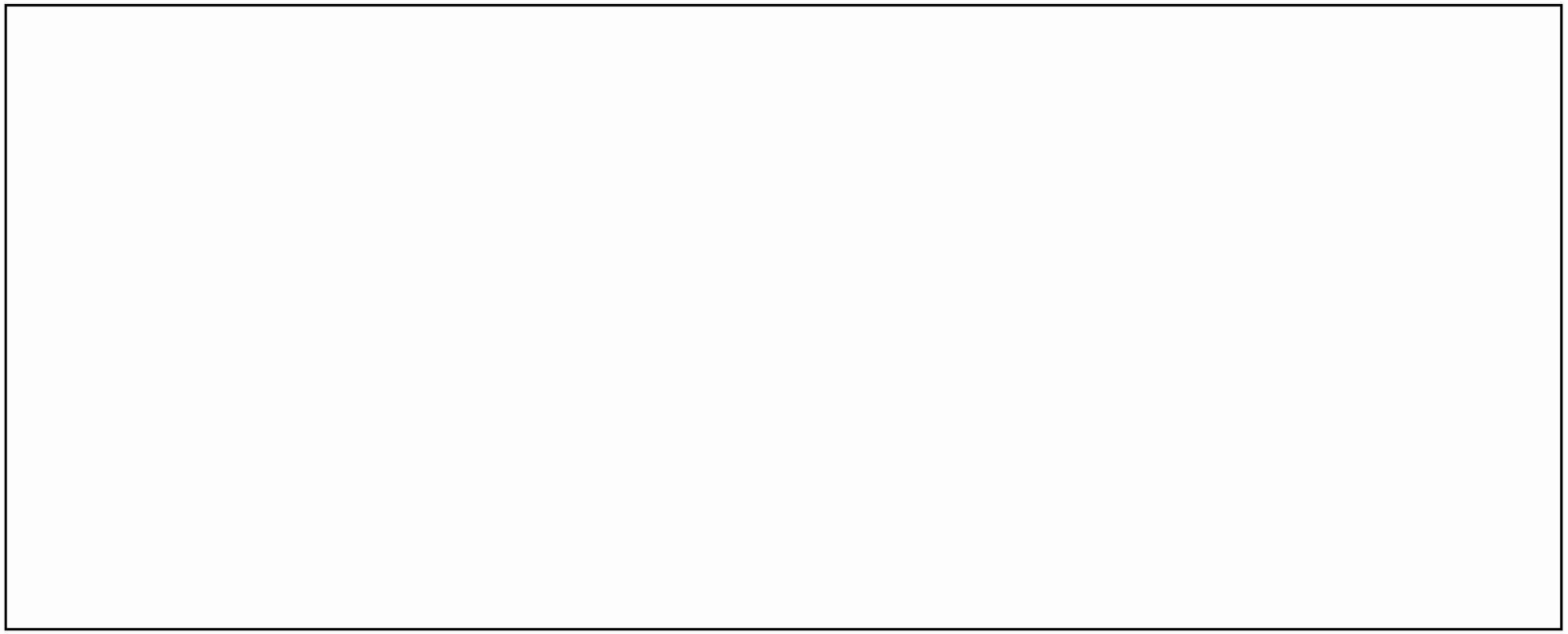

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Assessing Credibility: Hypothetical #3

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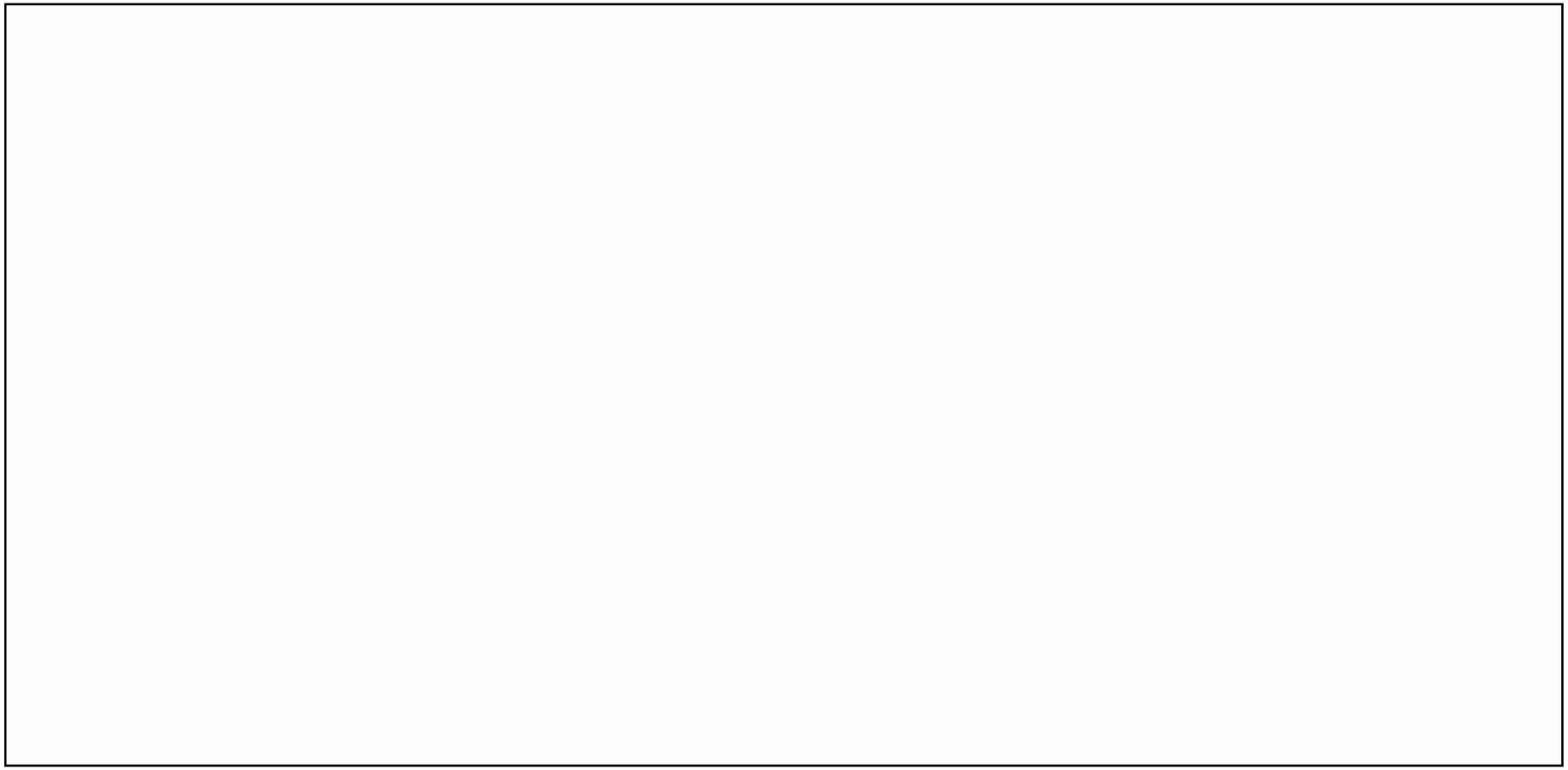

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Assessing Credibility: Hypothetical #4

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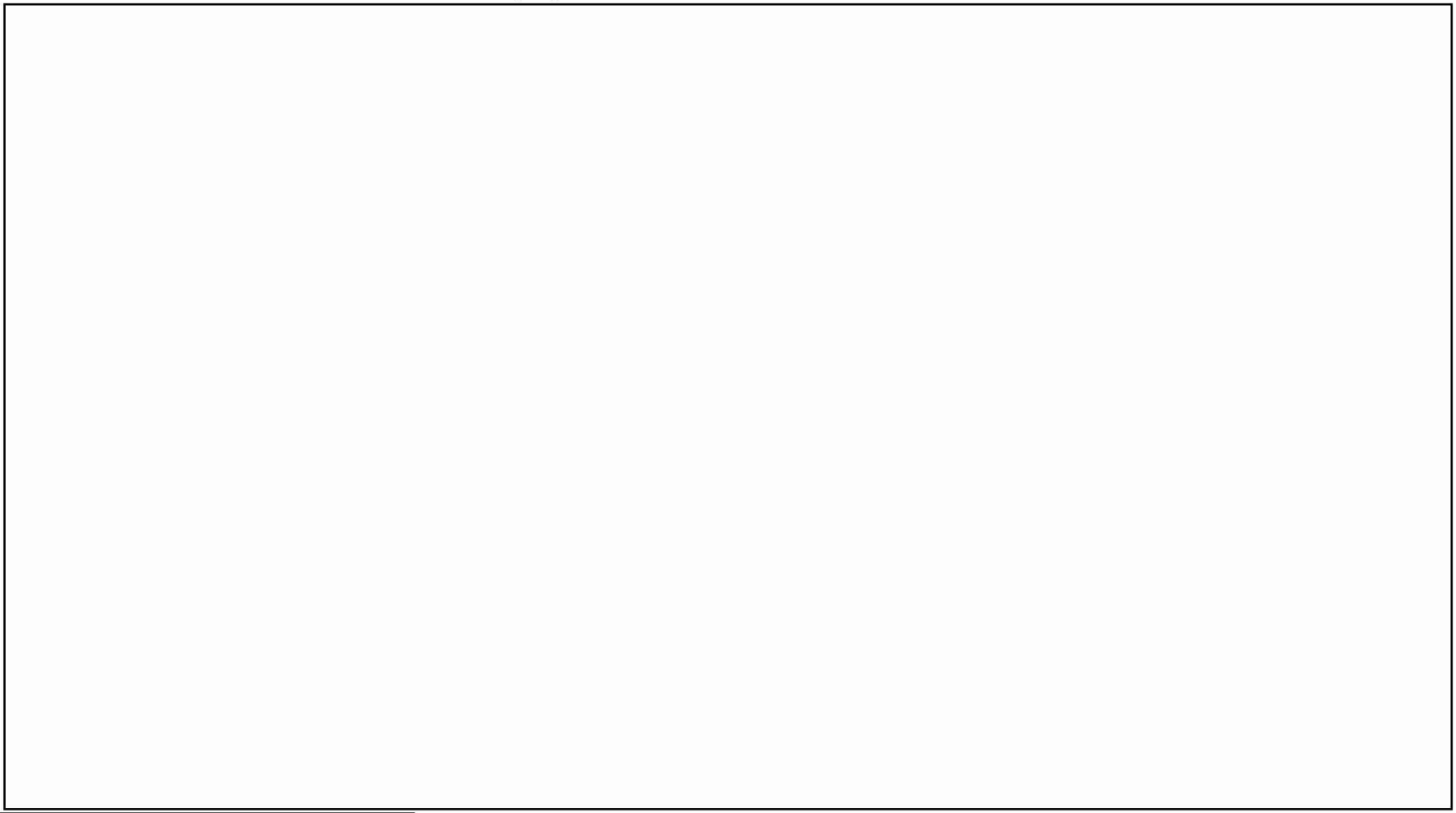

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How do you address this applicant?

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HIV and AIDS

Introduction and Terminology

- HIV (Human Immunodeficiency Virus)
  - HIV is transmitted primarily through sexual contact – but also through blood transfusions, hypodermic needles, pregnancy, delivery, or breastfeeding
  - HIV infection may, depending on access to medical care, environment, and personal immunity, develop into AIDS (a stage of HIV infection)
- AIDS (Acquired Immune Deficiency Syndrome)
  - AIDS is marked by a CD4 count below 200 (normal range is 500–1200), or by the presence of one or more opportunistic illnesses

HIV Do's

- Do prefer "person living with HIV" to "HIV-positive"
- Do ask about the state of the applicant's health
- Do ask about the applicant's current treatment regimen and its availability in their home country
- Do ask whether persons living with HIV are assumed to be LGBTI in the home country
- Do ask about any problems experienced by the applicant or by other people living with HIV in the applicant's home country (and how the applicant knows about these problems)

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HIV Don’ts

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- Don’t ask how the applicant contracted HIV, unless he or she raises the issue [redacted]
- Don’t ask about current sexual practices
- Don’t ask about who is paying for medical treatment

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Final Thoughts and Questions

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LGBT Claims Post-DOMA

- Spouses can be dependents
- Spouses can be primary applicant and dependent
- Spouses can be interviewed together

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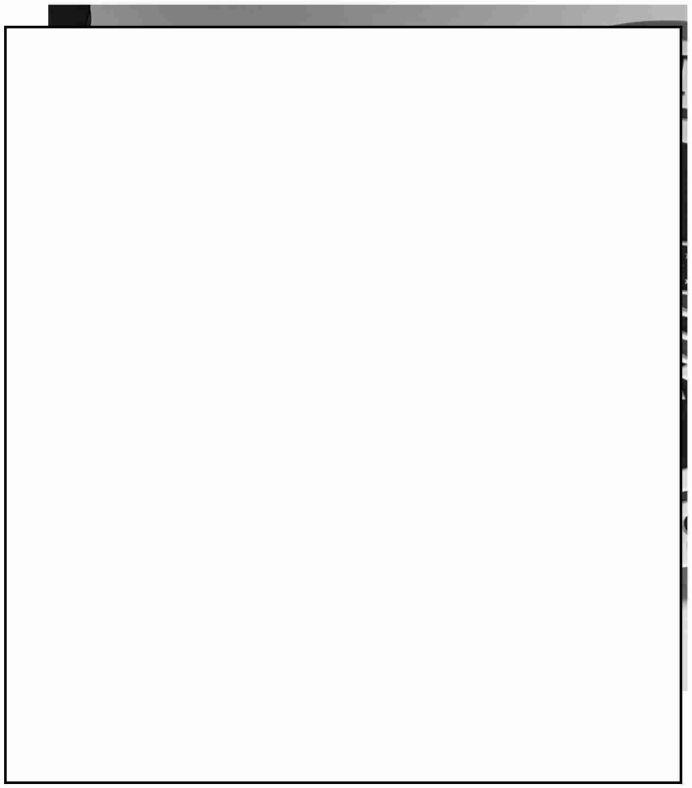
Analyzing the Persecutor Bar



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1951 Refugee Convention

Article 1F ("Exclusion Clauses"):

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations

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Mandatory Bar to Asylum

INA § 208(b)(2)(A)(i): Asylum may not be granted to an alien if the alien

- ordered,
- incited,
- assisted, or
- otherwise participated

in the persecution of any person on account of:

- race,
- religion,
- nationality,
- membership in a particular social group, or
- political opinion.

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Exception to Withholding of Removal

INA § 241(b)(3)(B)(i): Withholding of removal does not apply to an alien if the alien

- ordered,
- incited,
- assisted, or
- otherwise participated

in the persecution of any person on account of:

- race,
- religion,
- nationality,
- membership in a particular social group, or
- political opinion.

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Exclusion from Refugee Definition

INA § 101(a)(42): The term "refugee" does not include any person who:

- ordered,
- incited,
- assisted, or
- otherwise participated

in the persecution of any person on account of:

- race,
- religion,
- nationality,
- membership in a particular social group, or
- political opinion.

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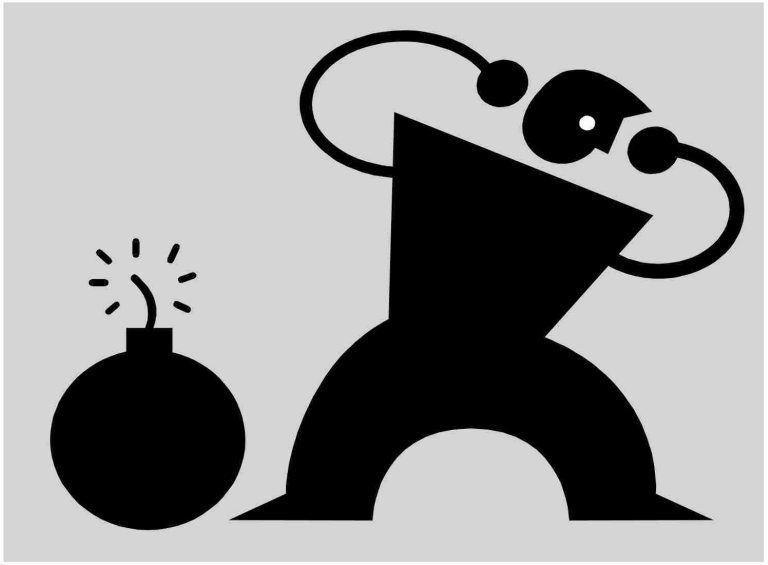
Persecutor Bar vs. TRIG



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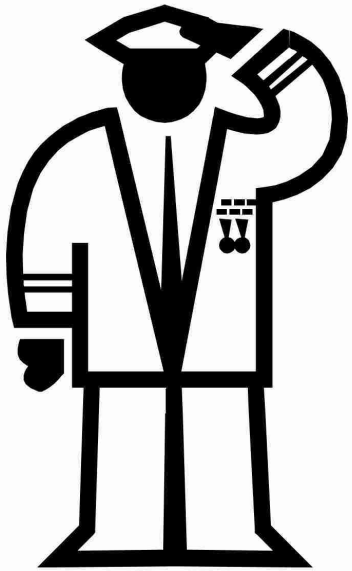
How do you recognize a Persecutor?



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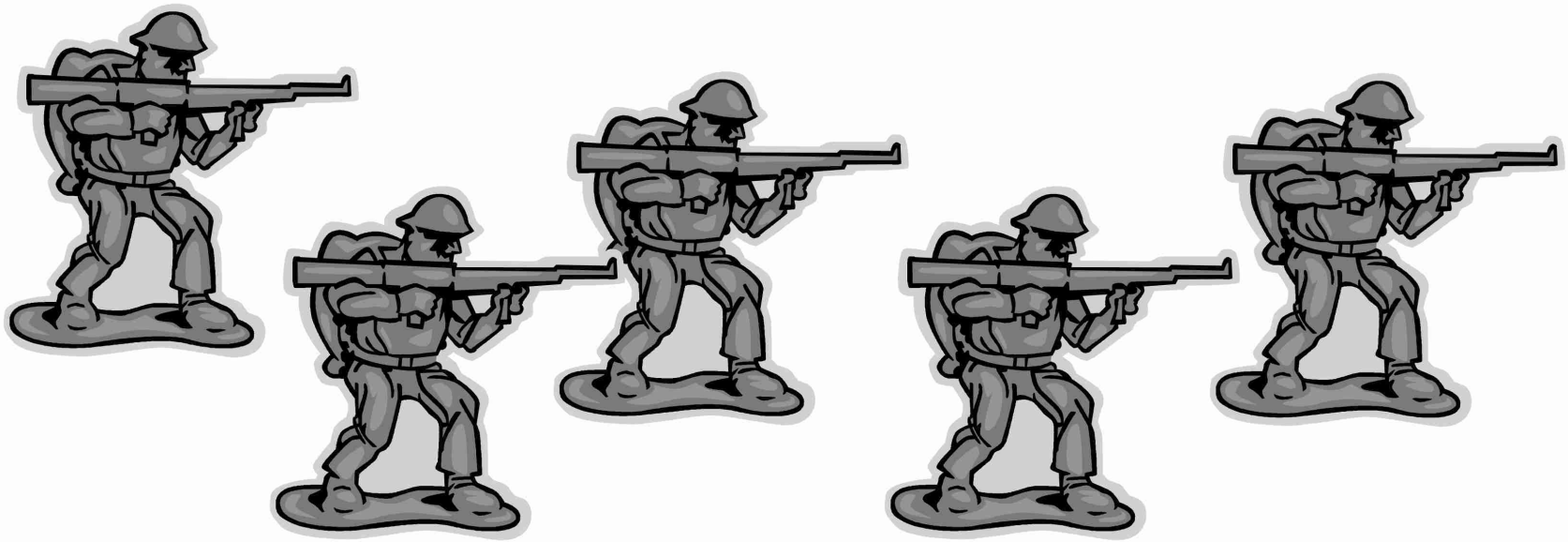

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How do you recognize a Persecutor?

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Knowledge Check

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Knowledge Check

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Knowledge Check

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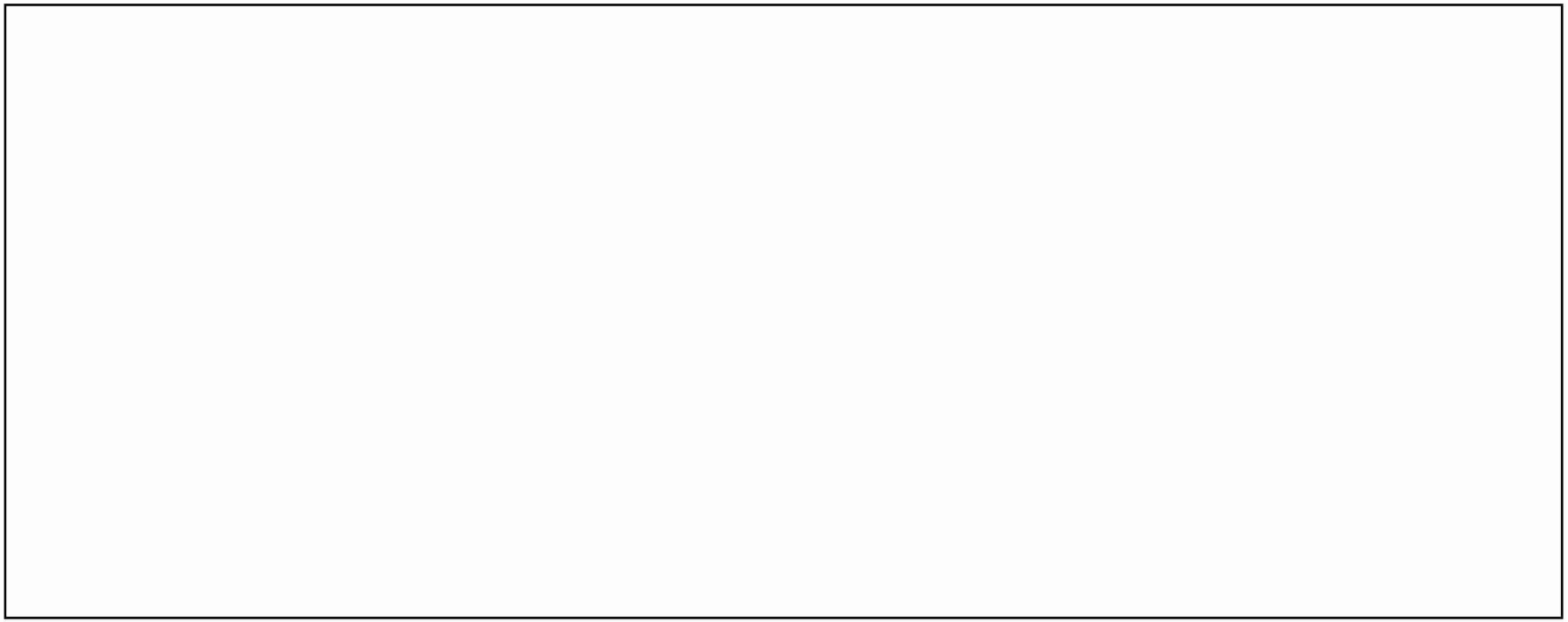

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Analytical Framework

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Step 1:

Step 2:

Step 3:

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Step One:

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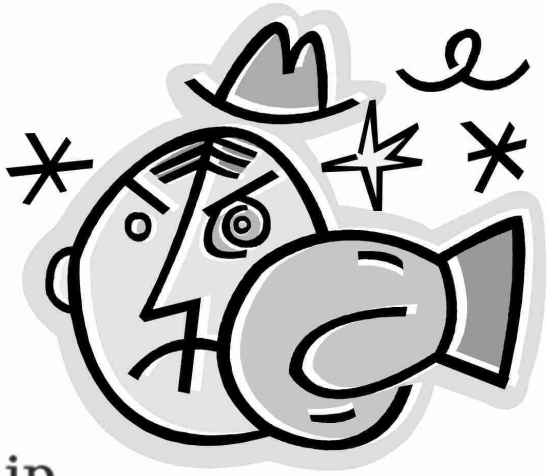
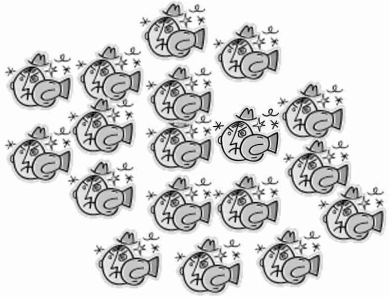
Step Two:





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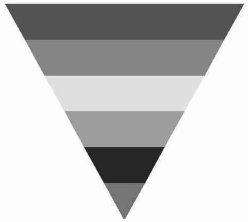

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Step Two:

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Knowledge Check

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Knowledge Check

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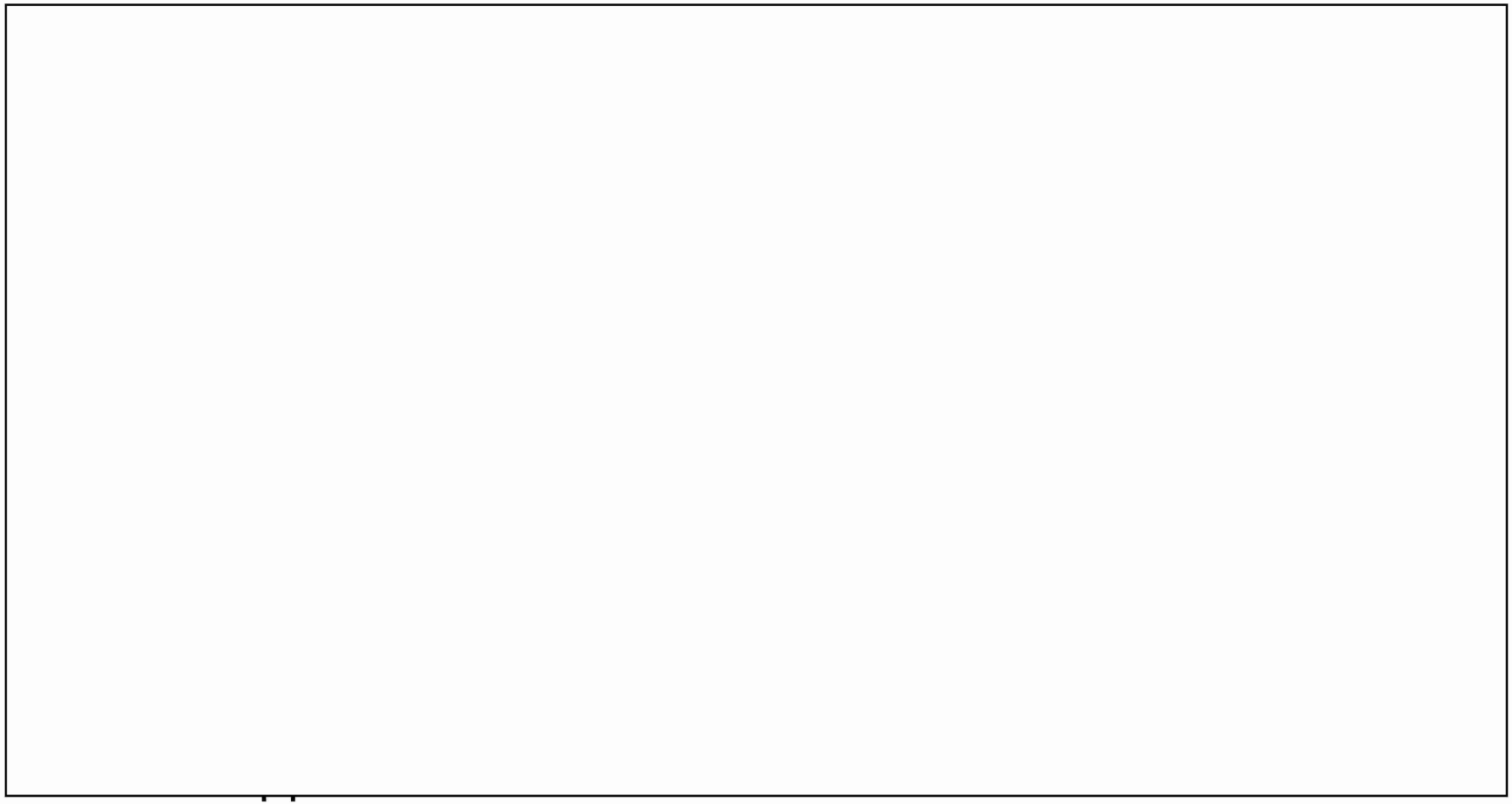

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Knowledge Check

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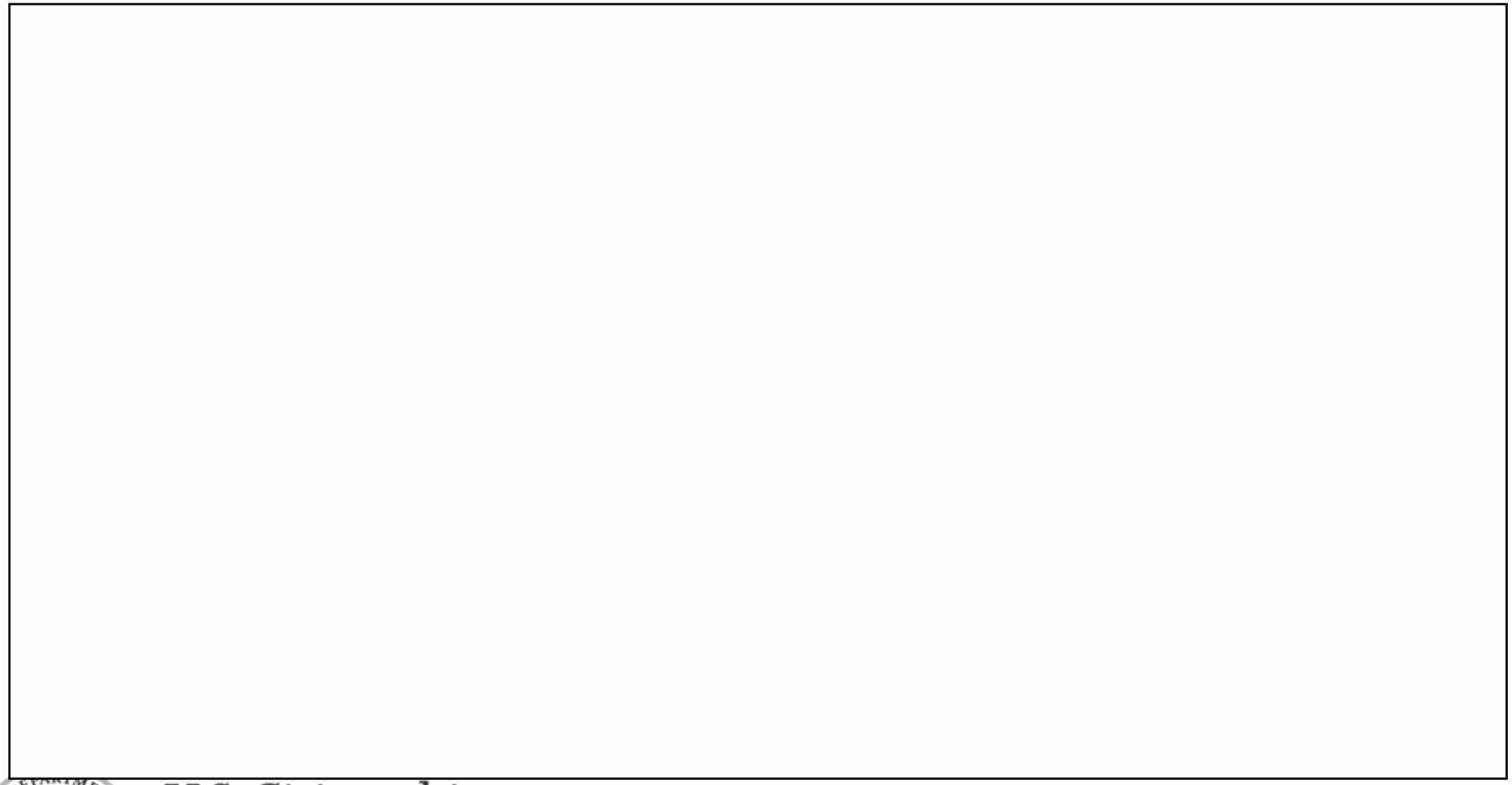

Knowledge Check

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Knowledge Check

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Step Three:

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Step Three:

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Step Three:

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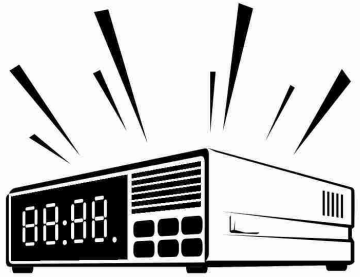

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Step Three:

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Subject to the Bar (b)(7)(e) **Not Subject to the Bar**

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Step Three:

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Knowledge Check

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Knowledge Check

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Knowledge Check

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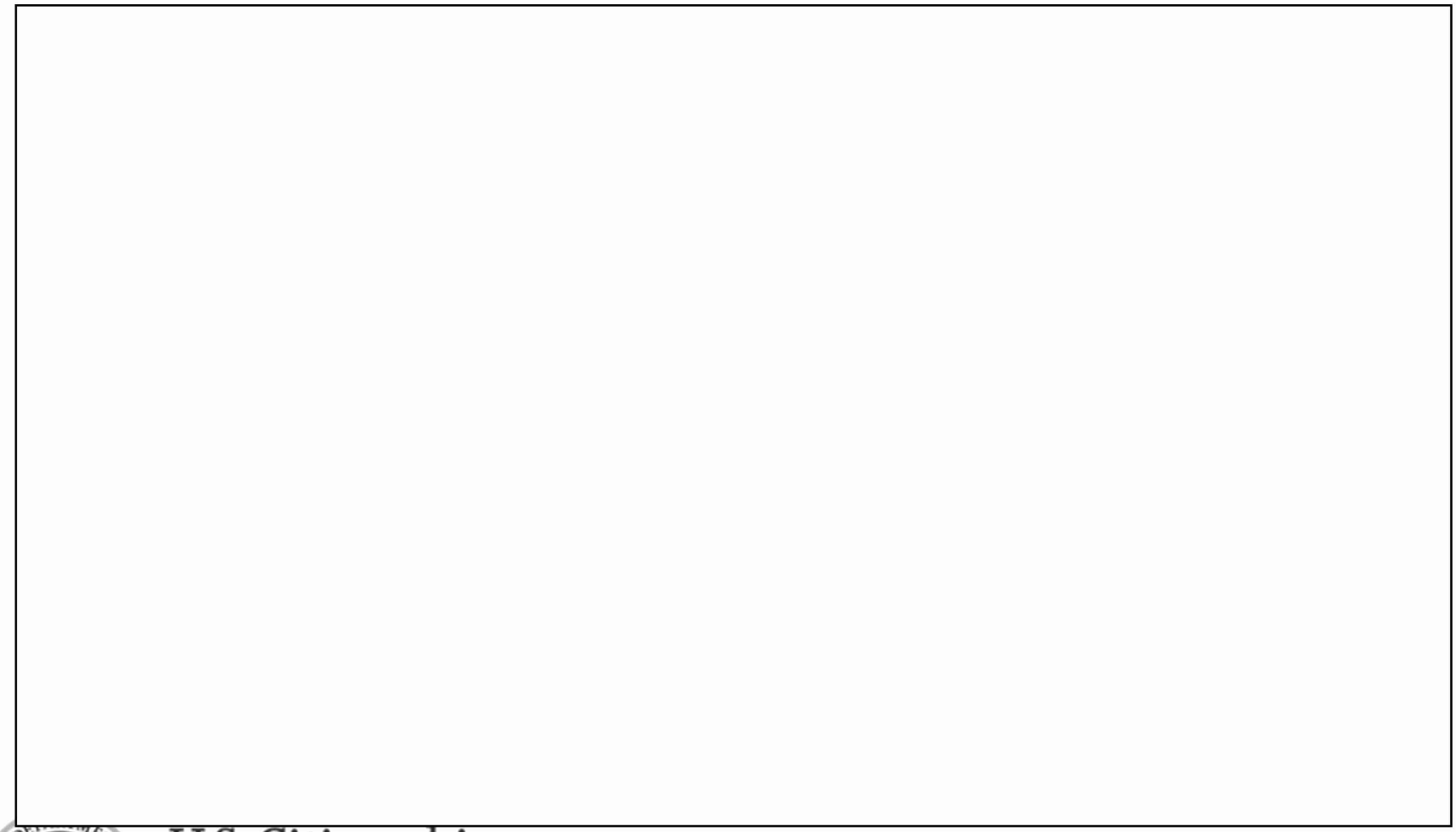
Knowledge Check



Knowledge Check

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Is there a claim of duress?

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Minimum Threshold Requirements for Duress Defense

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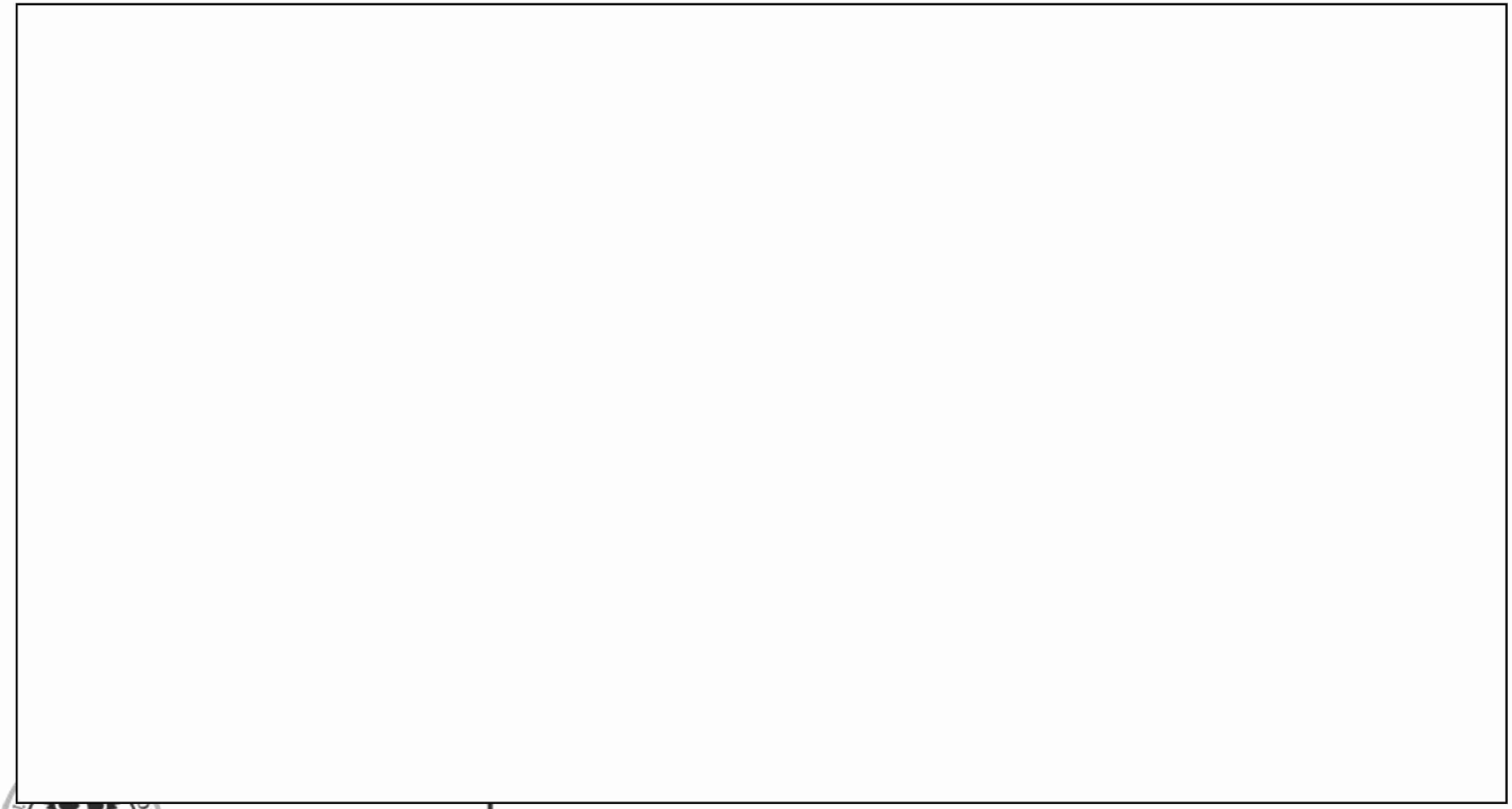

Duress Defense

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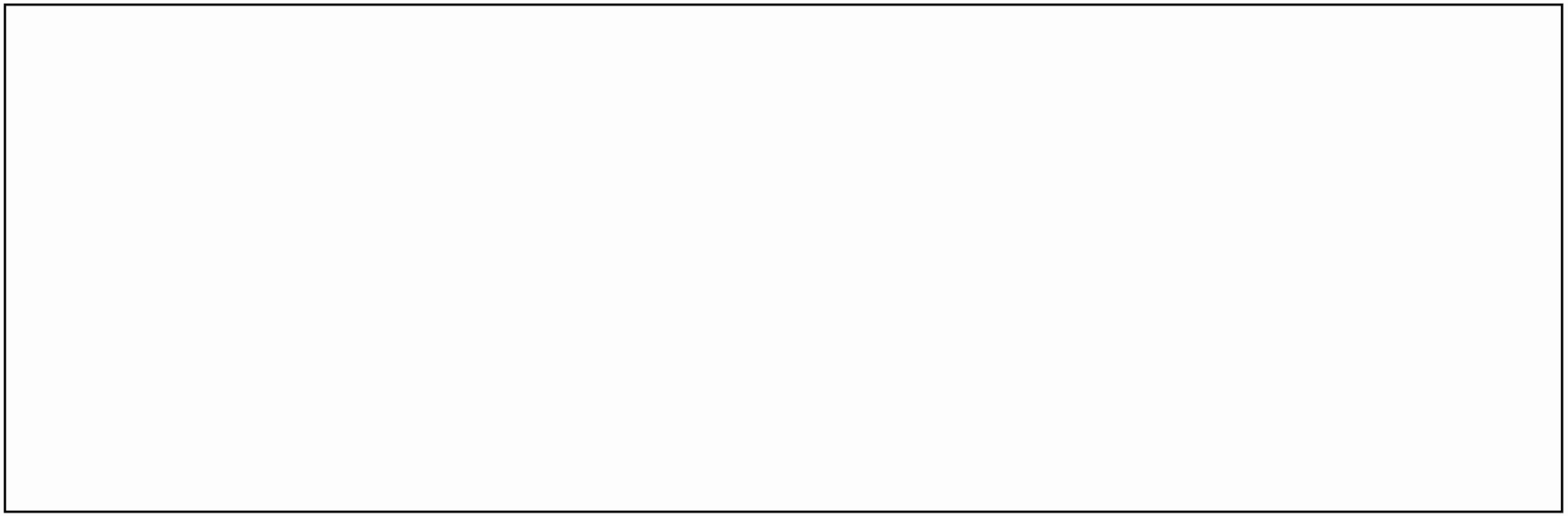

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Credibility and the Persecutor Bar

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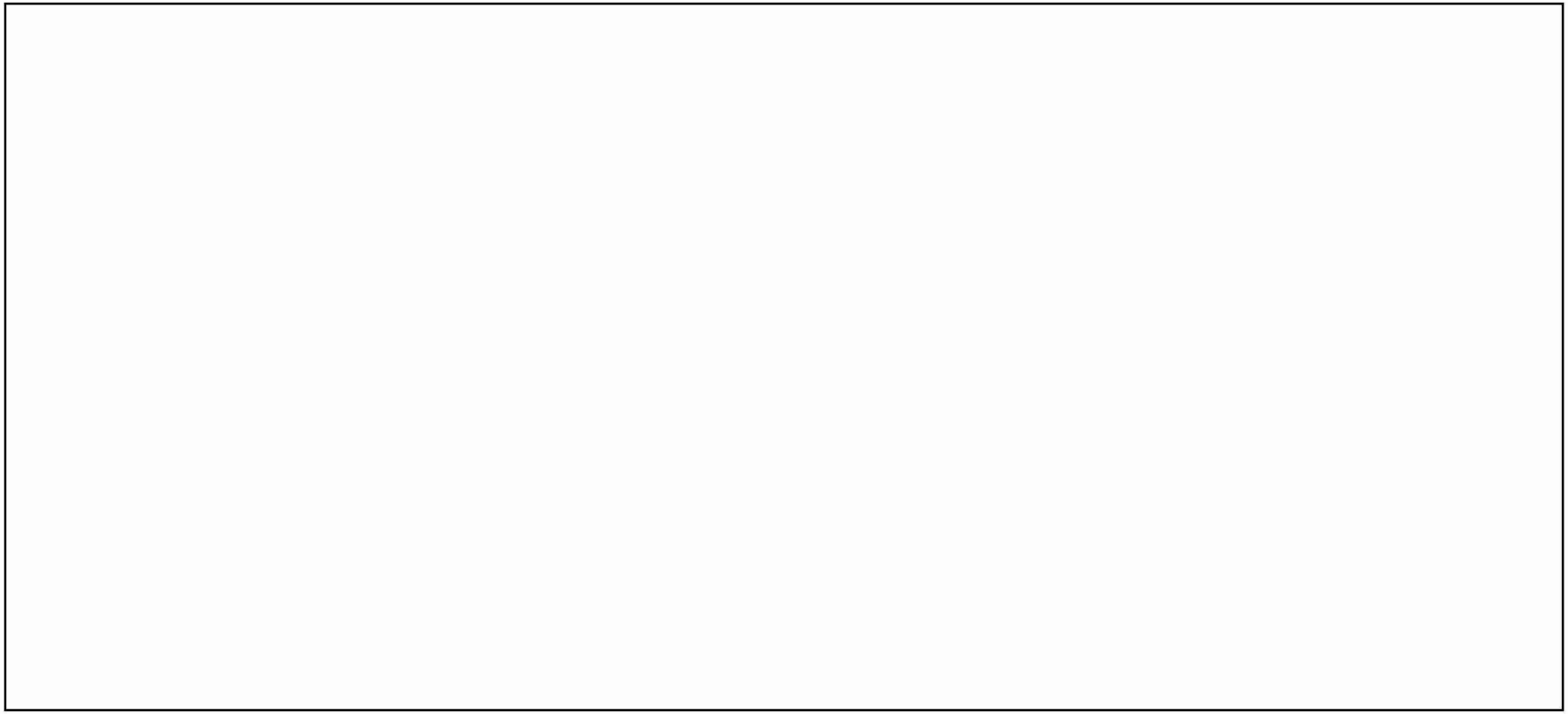

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An applicant can meet
his or her burden of proof through
credible testimony alone.

Remember:

You have the duty to remain neutral and unbiased.

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Pause the Webinar

40 minutes

Last name, First initial_PB PE_Office Code

E.g.:

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Scenario 1

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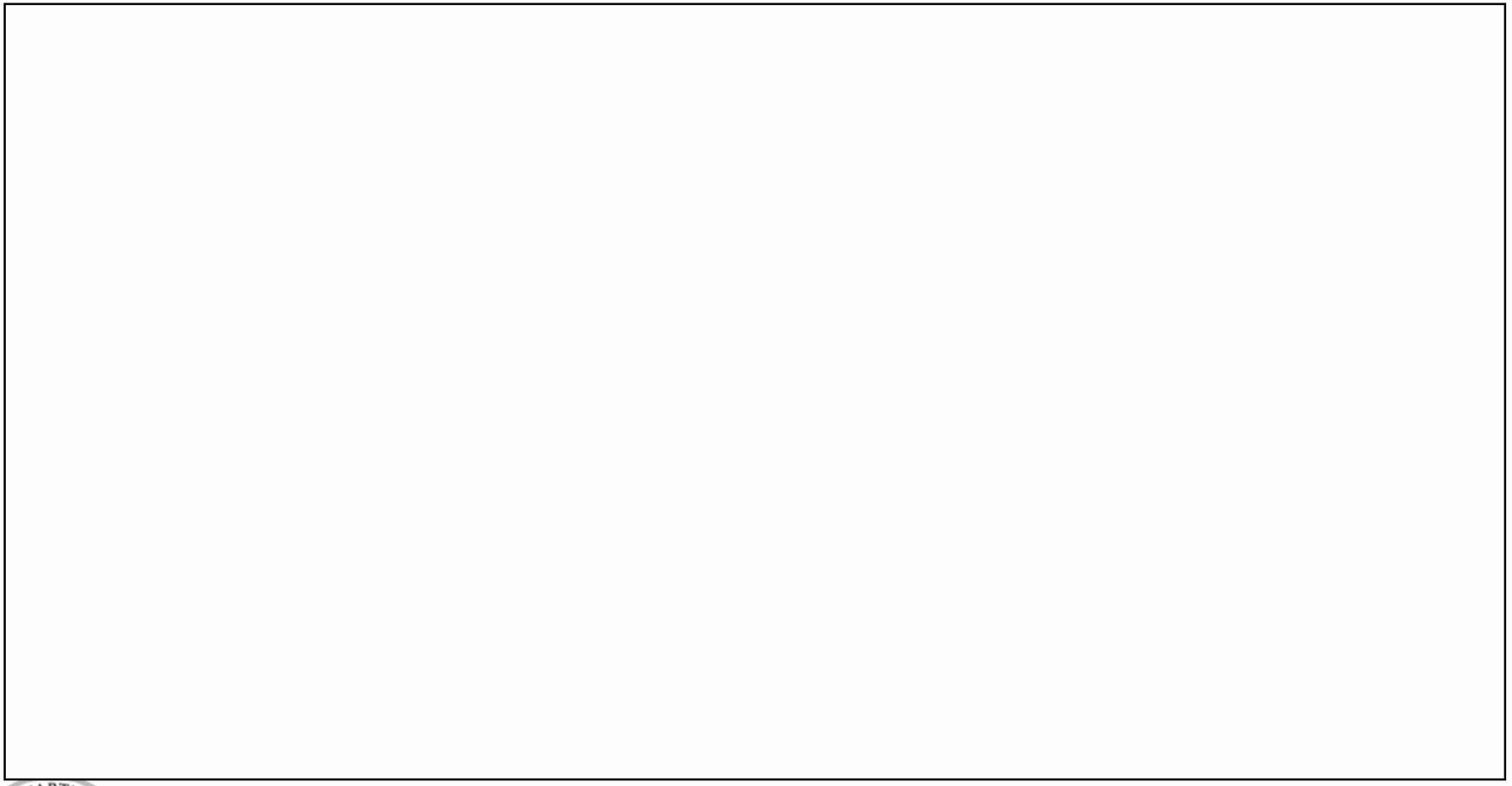

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Scenario 2

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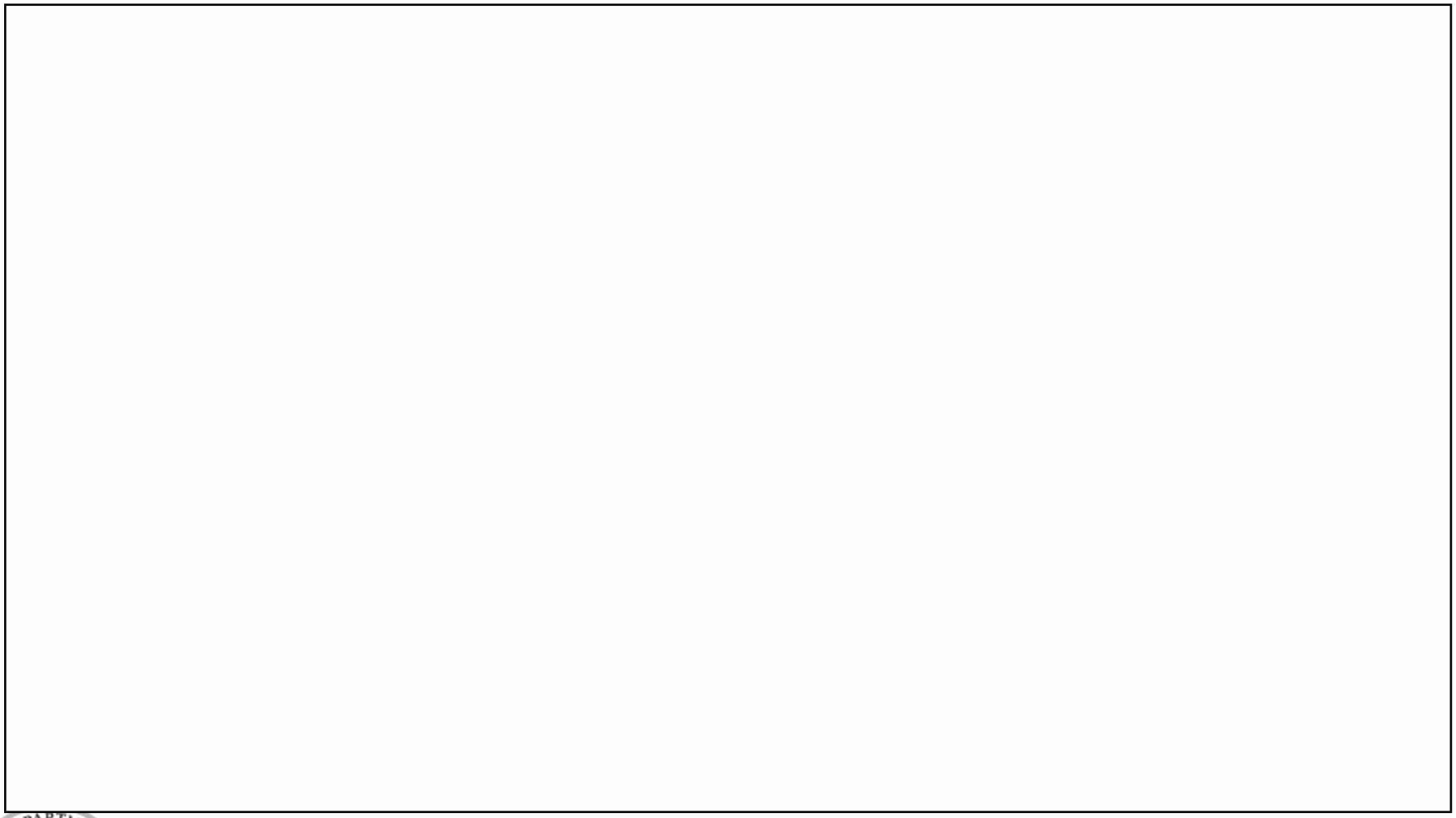

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Scenario 3

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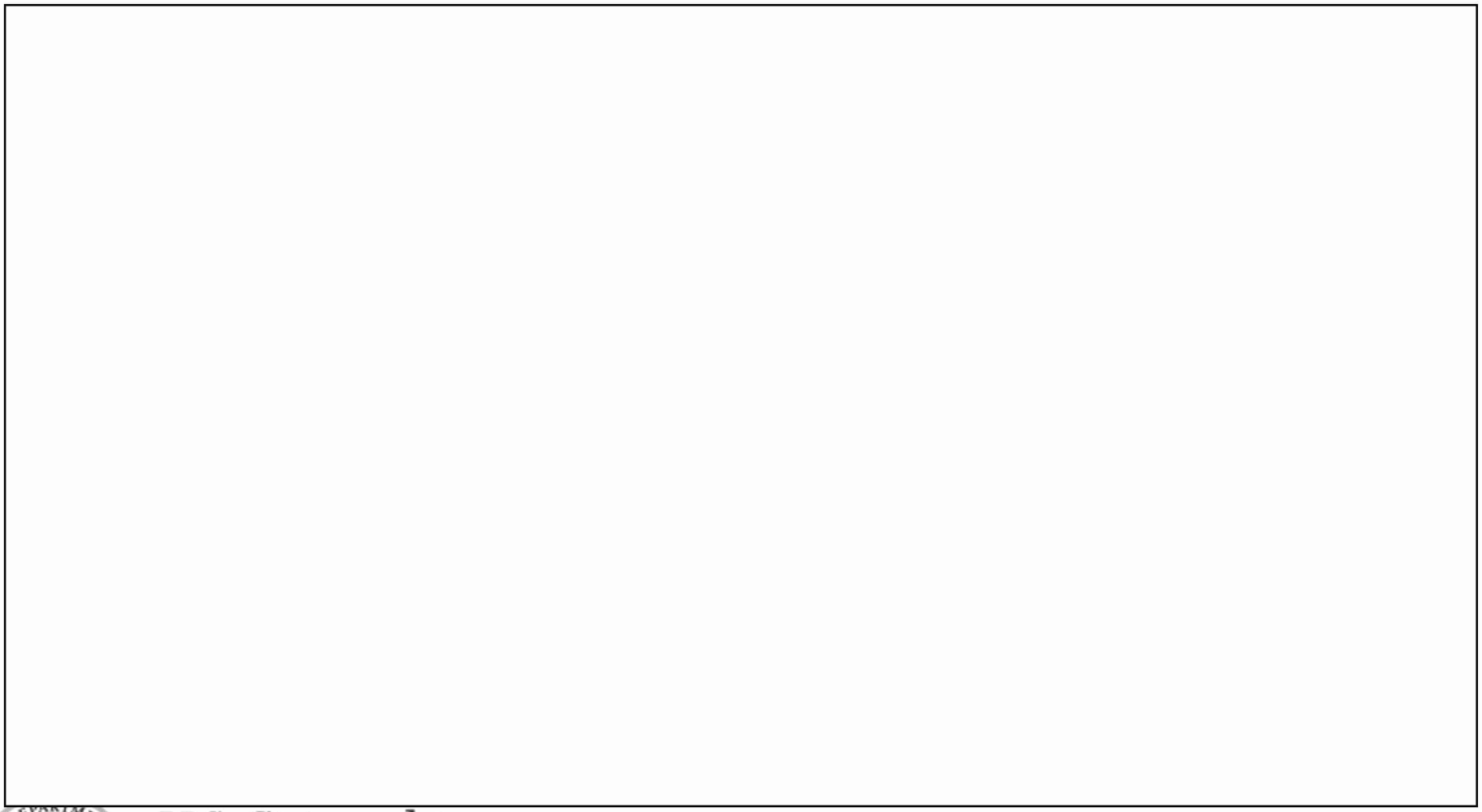

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Scenario 4

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Scenario 5

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Summary

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Rationale for the persecutor bar

Who may be a persecutor?

- [redacted]
- Persecutor bar & TRIG are not interchangeable

Three-step analytical process

1. [redacted]
2.
3.

Duress Defense?

Credibility

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About this Presentation

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- Date of last revision: September 16, 2019
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Interviewing: Non-Adversarial Interview

RAIO Combined Training Program

Teaching Points

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- The purpose of the interview
- Importance of the interview
- The participants and their roles
- Components of the interview
- Interview tips

Adversarial vs. Non-adversarial

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Adversarial

- Opposing sides
- Advocates case before neutral arbiter
- One side prevails and one side loses

Non-adversarial

- No opposition
- Neutral decision-maker
- Active adjudicator
  - Examination
  - Fact-finding
  - Investigation
  - Impartial

In an interview you elicit information to:

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1. Verify identity of those present at the interview

2. Determine whether to proceed with the interview

3. Evaluate credibility and determine eligibility for asylum

4. Determine if interviewee is subject to bars and/or inadmissibility

Provide Information to Interviewee about:

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1. The purpose and process of interview.

2. The roles and responsibilities of all persons involved in the interview.

3. What the interviewee can expect during and after the interview

Importance of Interview

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1. May be the only opportunity to obtain accurate and complete information.

2. May be the only opportunity for you to elicit and clarify information upon which to base a decision.

3. The decision you make may have serious consequences.

4. Interviewees may shape their opinion of the U.S. Government based on their interactions with you.

Participants and Their Roles

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1. The Officer
2. The Interviewee
3. The Interpreter
4. The Representative
5. Other Parties (e.g., children may need assistance of relative or guardian)

Components of an Interview

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- Pre-Interview Preparation
- Introduction
- Oath
- Verification of biographic info
- Testimony
- Closing Statement/Comments/Questions
- Conclusion

“Dos” of Non-Adversarial Interview

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- Be organized
- Interview, do not interrogate
- Maintain control of the interview

“Don’ts” of Non-Adversarial Interview

- ❑ Do not over-empathize with the interviewee
- ❑ Do not ask irrelevant questions
- ❑ Do not eat, drink, answer the phone, or conduct other personal behavior.

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Interviewing: Note Taking

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What do they have in common?

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Two main purposes of note-taking:

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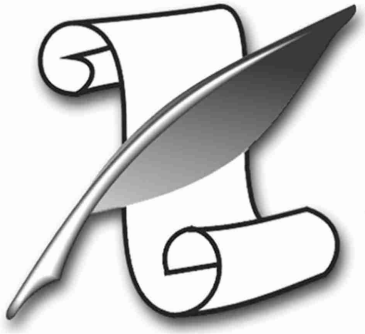
1) Support the officer's decisions

2) Enable a reviewer to reconstruct the interview



What do proper notes look like?

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- No standardized format
- Modified Q&A
- Accurately reflect both the officer's questions and the applicant's response
- Record the applicant and interpreter oaths
- Record factors relating to bars/inadmissibility
- Identifying information included on every page including A#, page #, etc.

  (refer to division specific guidance)
- Written in a way a reviewer can easily understand

What about the officer's observations?

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Appropriate

- Objective observations (e.g., non-verbal communication, long pauses, unusual exchanges)
- Bears directly on the evidence and testimony provided by the applicant

Inappropriate

- Subjective opinions
- Suppositions/Inferences
- Legal conclusions
- Information which is not a part of the applicant's record

When do I go into sworn statement/ detailed note-taking

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- When the interviewee admits or there are serious reasons to believe the applicant. . .
  - Is associated with/a member of a terrorist org
  - Is/has been involved with terrorist activities
  - Assisted/participated in persecution
  - Assisted/participated in torture
  - Is a threat to national security
  - Committed/convicted of a serious crime outside the U.S. and we don't have a record of conviction
  - Committed human rights abuses

- Or at the officer's discretion, when appropriate

11 Rules for note-taking

1. Be legible.
2. Be accurate.
3. Be objective.
4. Be complete.
5. Record relevant non-verbal exchanges.
6. Clearly identify the speaker.
7. Record identifying information on every page.
8. Employ commonly-used abbreviations.
9. Record the oath and the use of an interpreter.
10. Record confrontations on credibility issues.
11. Record exchanges regarding document deficiencies.

Effective Methods and Techniques

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Develop non-intrusive note-taking techniques

- Take notes while interpreter speaks
- Explain purpose of note-taking
- Ensure note-taking does not interview with flow
- Refer to notes throughout the interview and conclusion

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Interviewing: Eliciting Testimony

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What will we cover?

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Eliciting information in a non-adversarial manner:

- How to probe in order to elicit necessary information
- Types of questions to ask
- Questioning Techniques to use

This includes…

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- Biographical Information
- Information Pertaining to Eligibility
- Information pertaining to bars/inadmissibilities/discretion
- Using different questioning techniques
- How to ask follow-up questions

Efficient and Effective

- Control the interview
- Change the direction of the interview
- Focus on relevant issues
- Consider multiple factors that may impact interview
- Ensure you and the interviewee understand each other
- Use the info you have gathered to guide the interview

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In order to be a truly effective and efficient interviewer, what skills do we need to have as a RAIO Officer?

Important Skills

- ✓ Listening Skills
- ✓ Self-awareness
- ✓ Knowledge
- ✓ Reading Skills
- ✓ Organized
- ✓ Analytical
- ✓ Adaptable

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Who has the burden to elicit testimony?

What does it mean to “elicit testimony”?

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Officer's duty to elicit testimony:

- Applicant's burden to establish eligibility for benefit
- Equally important is your obligation to elicit pertinent information

What does it mean to “elicit testimony?”

- More than Q&A
- Fully explore an issue by asking follow-up questions
- Allow interviewee opportunity to provide relevant information
- Help interviewee understand process
- Seek clarification on vague/non-responsive answers

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What are types of questions did you learn about when reading the Lesson Plan?

Types of Questions

1. Open/close-ended
2. Multiple choice
3. Leading
4. Compound
5. Loaded

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Open-ended Questions

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- Gives interviewee opportunity to provide full answer
- Assists officer with obtaining info
- Puts interviewee at ease
- Demonstrates willingness to listen
- Yields more info than most other question types
- May bring up other important points to address

Be careful!

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Open-ended questions can:

- Invite a lengthy response
- Be broad/confusing if not carefully worded

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"Research on interview techniques shows us that carefully framed open-ended questions can provide more accurate information with more detail than other types of questions. The research further indicates that if the interviewer uses open-ended questions and encourages the interviewee with occasional prompting questions, the most detail is elicited and the information provided is more accurate."

RAIO Lesson Plan, Interviewing Eliciting Testimony

Psychology, Public Policy, and the Law Journal

Close-ended Questions

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- Elicit simple answers, such as yes/no
- Allow Officer to obtain specific info in short amount of time
- Good to use when confirming info already provided
- Good to use to probe into answers from previous questions

Be careful!

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Closed-ended questions:

- Limit information you can elicit
- Does not encourage applicant to explain circumstances surrounding information in the respnose

Multiple Choice Questions

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- Requires applicant to choose between options
- Limited Options and Open options

Leading Questions

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- Can be useful when it's used to confirm something the interviewee has already stated (e.g., confirm bio info)

- Can be dangerous if phrased in a way that suggests or elicits a particular answer

Be careful!

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Closed-ended questions:

- Limit information you can elicit
- Does not encourage applicant to explain circumstances surrounding information in the respnose

Eliciting Facts Bearing on Eligibility

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Clarify Terms and Phrases

Clarify Statements

Connect Statements Made at Different Points in Interview

Resolve Inconsistencies/Address Vague and Non-responsiveness

Guidelines for Eliciting Testimony

- Prepare for your interview
- Establish Rapport
- Listen Carefully
- Show interest/be curious
- Be patient/flexible
- Use Plain language
- Consider cultural background
- Keep interview focused

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- Focus on relevant details
- Use time efficiently
- Thoroughly address each issue
- Consider past trauma
- Ask questions about events in relation to COI
- Avoid making assumptions
- Resolve inconsistencies
- Develop best practices for yourself

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Interviewing: Working with an Interpreter

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Let’s get acquainted. . .

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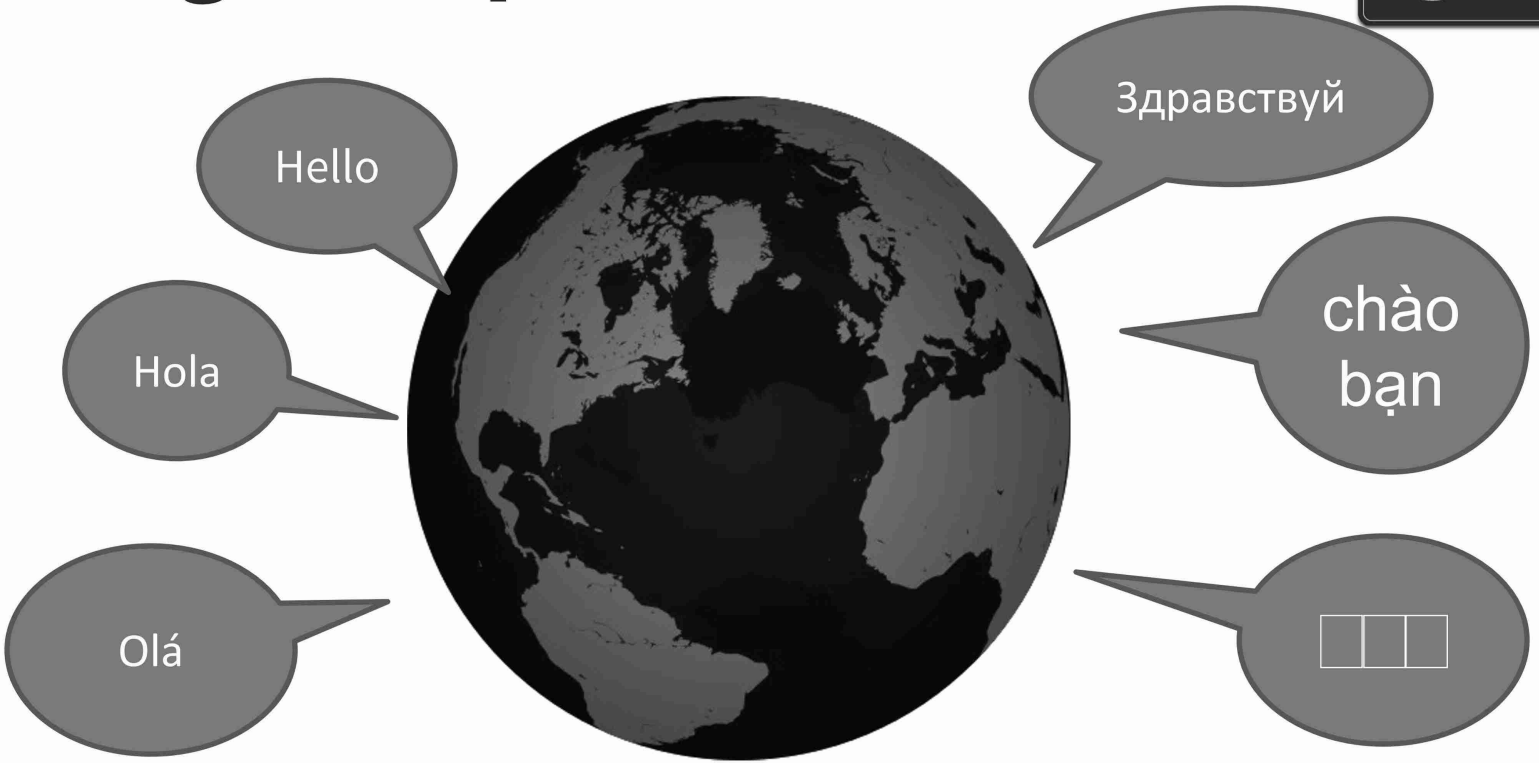

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Interpreting vs. Translating

Interviewees

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- Have varying English proficiency
- Should use language in which s/he can fully express self
- Not required to participate in a language other than his/her primary language

Interpreters

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- Explain role at beginning of the interview
- Key reminders
  - Confidentiality
  - Interpret verbatim
  - Keep you informed if s/he or the interviewee does not understand something

Signs of Misinterpretation

- The response does not answer the question or only partially answers the question.
- Words you recognize without interpretation (e.g., proper names) are not interpreted.
- The interpreter uses very few words to interpret a lengthy question or response
- There is dialogue between the interpreter and applicant, without explanation.
- The applicant indicates non-verbally that he or she is confused or does not understand (e.g., not responding or looking surprised or confused).

Facilitating Interpretation

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- Address the interviewee directly
- Choose words carefully and avoid idioms
- Keep questions clear and simple
- Resolve all communication issues ASAP
- Remind interpreter of his/her role when necessary

From

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Firm Resettlement

RAIO CTP

October 2018

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Firm Resettlement

- Three Requirements
- BIA's Four-Part Test
- Exceptions

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The Pilgrims

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The Pilgrims

- Where did most of the Pilgrims live before they came to America?

The Pilgrims

- Leiden, the Netherlands

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The Pilgrims

- For how long?

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The Pilgrims

- 12 Years

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The Pilgrims

- Why didn't they stay?

The Pilgrims

- Why didn't they stay?
  - Poor, low-paying jobs because they didn't speak the language and came from a rural area
  - Worried because children influenced too much by Dutch culture and would lose their religious values
  - The Netherlands was at war with Catholic Spain, and they feared that if the Netherlands lost the war they'd be subject to even greater religious persecution

The Pilgrims

- Firmly resettled or not firmly resettled?

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Why is Firm Resettlement a Bar?

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Why is Firm Resettlement a Bar?

- No need for protection
  - Right to remain indefinitely in a third country

- Origins in International Law

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Origins in International Law

1951 Convention relating to Status of Refugees

- Article 1.C.(3): This Convention shall cease to apply to any person if . . . He has acquired a new nationality, and enjoys the protection of the country of his new nationality.
- Article 1.E.: This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

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Sources of Authority - Statutes

Refugee Resettlement

- INA § 207(c)(1):

"The Attorney General may . . . admit any refugee who is not firmly resettled."

Asylum

- INA § 208(b)(2)(A)(vi):

An applicant is ineligible for asylum if the applicant "was firmly resettled in another country prior to arriving in the United States."

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Sources of Authority - Regulations

Refugee Resettlement

- 8 C.F.R. § 207.1(b)

Asylum

- 8 C.F.R. § 208.15

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What is Firm Resettlement?

3

Basic

Requirements

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First Requirement

1. Entry

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First Requirement - Entry into Another Country Must Be:

Refugee Resettlement– "as a consequence of flight from persecution" 8 C.F.R. § 207.1(b)

Asylum – "prior to arrival" in the U.S. 8 C.F.R. § 208.15

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Second Requirement

2. Offer

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Second Requirement

2. or Receipt

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Offer or Receipt: What Is an Offer?

- Acceptance of an Offer Not Required
- Existence of a Legal Mechanism May Be Sufficient
- Class-Based Offers (by operation of law) May Be Sufficient

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Third Requirement

3. of Permanent Resettlement (ability to stay ***indefinitely***)

- Permanent resident status
- Citizenship
- Or some other type of permanent resettlement

- What happens if an applicant has lost status?

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Questions to Ask

- What does document say on its face?
- How difficult is it to renew?
- What are the conditions of the permit?

Firm Resettlement Applies only to Refugees

All three requirements must be fulfilled after the applicant becomes a refugee because:

- Source of firm resettlement bar in the Convention
- Purposes behind the firm resettlement bar
- Language of exceptions to the regulations and dicta in case law

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Recap of Three Requirements

1. Entry (as consequence of flight / or prior to arrival in the U.S.)

2. Offer or Receipt of

3. Permanent Resettlement (e.g., permanent residence, citizenship, ability to stay *indefinitely*)

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How to Apply the Law?

- Four-Step Framework set forth in *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

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STEP ONE: Prima Facie Evidence of an Offer of Permanent Resettlement

- Government's burden.
- Direct Evidence (passport, residence card, refugee status etc.)
- If no direct evidence, Indirect Evidence.

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STEP TWO: Rebuttal by applicant

- Applicant's burden: "a preponderance of the evidence"
  - Offer has not, in fact, been made; or
  - Would not qualify for the offer.

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STEP THREE: Totality of Circumstances

- Did applicant rebut evidence of an offer?

- If failed to rebut, then applicant received an offer of firm resettlement.

STEP FOUR: Exception?

- Applicant's burden / preponderance of evidence
  - BUT, remember your duty to elicit testimony.
- 2 exceptions for asylum
- 1 exception for refugees

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Restrictive Conditions Exception

Restrictive Conditions Exception

Refugee: 8 C.F.R. § 207.1(b): If conditions of residence in that country are so restrictive as to deny resettlement.

Asylum: 8 C.F.R. § 208.15(b): If conditions were so substantially and consciously restricted by the authorities.

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Restrictive Conditions

What are some conditions that you may see under this exception?

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Restrictive Conditions (cont'd)

Refugee 8 CFR § 207.1(b)

- Housing (temp. or perm.)
- Employment
- Benefits Offered or Denied, which are available to other residents, such as:
  - Property Ownership Rights
  - Travel Documentation
  - Education
  - Public Welfare
  - Citizenship

Asylum 8 CFR § 208.15(b)

- Housing (temp. or perm.)
- Employment
- Permission to Hold Property, and
- To Enjoy Other Rights and Privileges, such as:
  - Travel Documentation (including right of entry or reentry)
  - Education
  - Public Relief
  - Naturalization

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Restrictive Conditions - Evidence

- Testimony of Applicant
- Formal government policies limiting the rights of non-citizens
- Government's inability to provide benefits to non-citizens
- Withholding of travel documents
- Travel documents that allow exit only
- Threats or harm in the country of resettlement

Necessary Consequence of Flight

Asylum ONLY 8 C.F.R. § 208.15(a)

Not firmly resettled if:

- Entry into country was a necessary consequence of flight
- Remained only as long as necessary to arrange onward travel
- Did not establish significant ties to country

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Firm Resettlement and Dual Nationality

Similarities and Differences

- Firm Resettlement includes, but not limited to, citizenship
- Dual Nationality requires citizenship, but not entry or an offer
- Dual National must show past persecution or well-founded fear in both countries of nationality
- Firm Resettlement does not require a showing of persecution to meet the exception

Derivatives

Firm Resettlement is not a bar to derivative family members of the principal applicant:

- Spouses
- Children (under 21)

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The Pilgrims

Thoughts on Firm Resettlement?

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The Pilgrims

Reminder - Didn't stay in the Netherlands because:

- Poor, low-paying jobs because they didn't speak Dutch and came from a rural area
- Worried because children influenced too much by Dutch culture and would lose their religious values
- The Netherlands was at war with Catholic Spain, and they feared that if the Netherlands lost the war they'd be subject to even greater religious persecution

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Apply Four-Part Framework

1. *Prima Facie* **Evidence** of (or Evidence Indicating) **Offer** of **Permanent** Resettlement (Direct Evidence or, if none, Indirect)

2. Applicant's burden to **Rebut** *Prima Facie* Evidence of Offer by Preponderance of Evidence

3. Look at **Totality of Evidence**

4. If Applicant Is Firmly Resettled, Burden Shifts to Applicant to Show **Exception** Applies by Preponderance of Evidence

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PRACTICAL EXERCISE

PAUSE THE WEBINAR:
10 MINUTES

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Country of Origin Information (COI) Research

Research Unit (RU)

Refugee, Asylum and International Operations

October 2019

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This Presentation Discusses:

- Importance of COI and the history of the RAIO Research Unit
- Evaluating COI sources, their reliability and bias
- Navigating COI resources at the Research Unit ECN page
- Finding actual COI
- Citation of COI sources
- Types of queries, and how to contact the RAIO Research Unit for assistance

The Genesis of the Research Unit

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The Genesis of the Research Unit

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The Genesis of the Research Unit

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The RU was Established as an Independent Entity for COI

The RIC was put in place in 1991 in the efforts to ensure foreign policy considerations (whether the US supports/agrees with a country of origin) do not influence determinations of whether an applicant has a WFF of persecution.

Congressional Mandate
8 C.F.R. §208.1(b)

"The Director of International Affairs shall also, in cooperation with the Department of State and other appropriate sources, **compile and disseminate to asylum officers information** concerning the persecution [of protected groups]…in other countries, and **other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.**"

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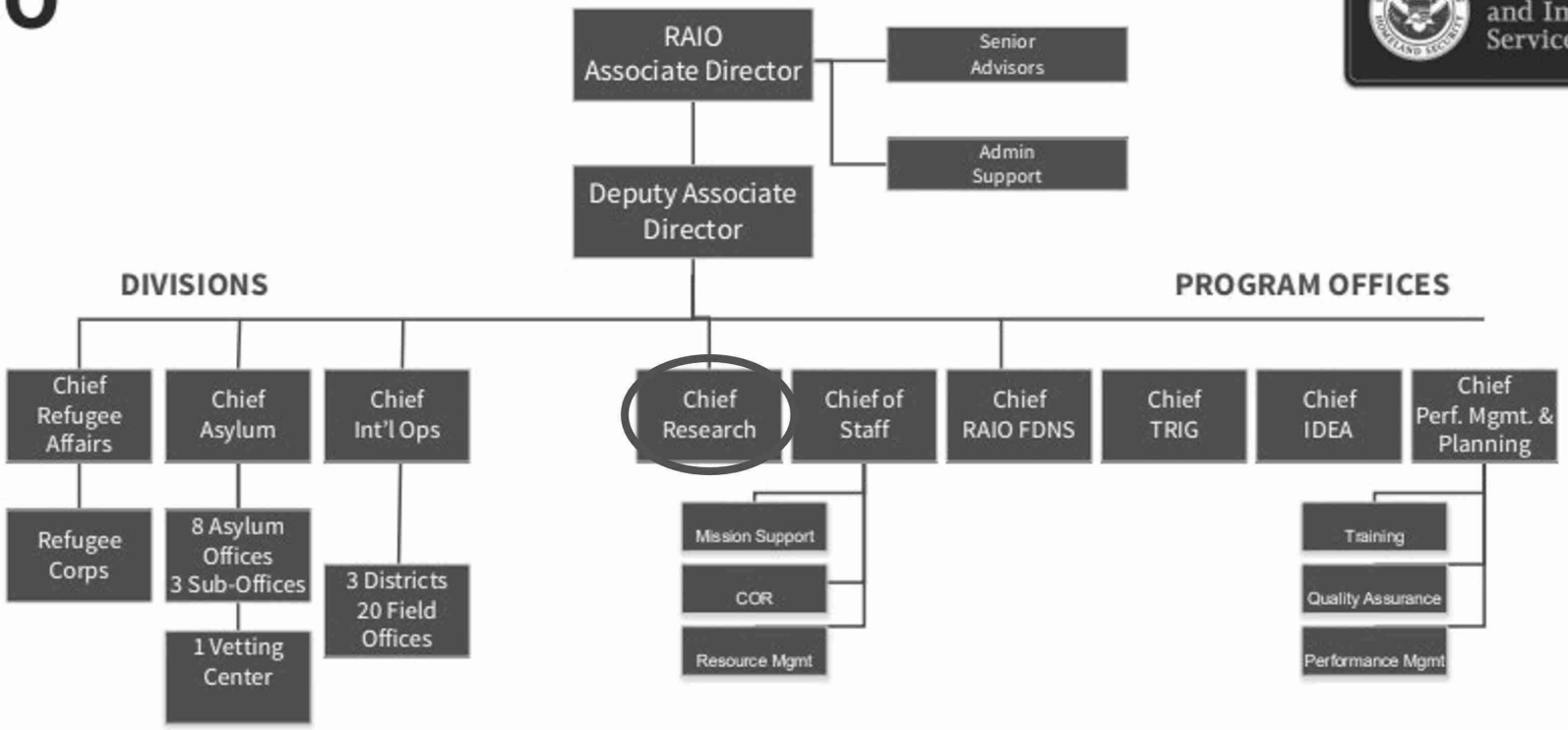
Evolution to the RU

- Resource Information Center (RIC) (1991) within the Asylum Division
- Then, Country of Origin Information Research Section (COIRS)
- Finally, the Research Unit in 2011—and expanded to the whole RAIO

RAIO and RU

RAIO



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RU's Vision and Mission

Vision

The RAIO Research Unit is a center of expertise in country of origin information (COI), including human rights conditions, in support of USCIS and DHS.

Mission

The RAIO Research Unit provides (1) reliable country of origin information and training to support timely and accurate adjudications and (2) other related assistance to fulfill the mission of USCIS and DHS.

Research Unit Core Values

- Responsiveness
- Collaboration
- Objectivity

Common Challenges with COI

- Not having a familiarity with the country/issue
- There are not sufficient resources available in English/or another language that the officer is proficient in
- Too many separate venues to search for the information that you need

Caution with Social Media as a Source of COI

Suggested Places to Start

- RU ECN (Country pages and Encyclopedia)
- ECOI.net (ACCORD)
- Janes (security-related)

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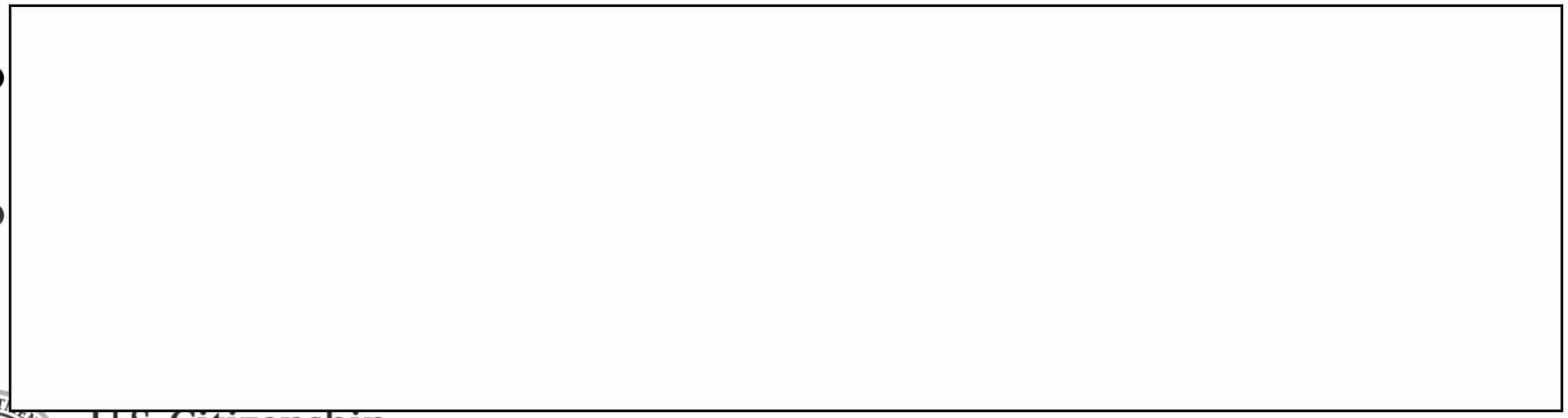

How to Navigate the Research Unit ECN Page

- Go To
- Go to
- Go to
- Go to
- Go to
- Go to

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U.S. Citizenship and Immigration Services

The Research Unit Can Help You

- General background information about a country conditions issue
- Information to help you prepare to interview a specific case
- Information to help you reach a decision on a specific claim
- Sources of info that you could cite in support of your decision
- We are your POC for the Law Library of Congress and if needed will act as a POC for the USCIS Liaison at the HSI Documents lab

RU Country Pages

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U.S. Citizenship
and Immigration
Services

Query Responses

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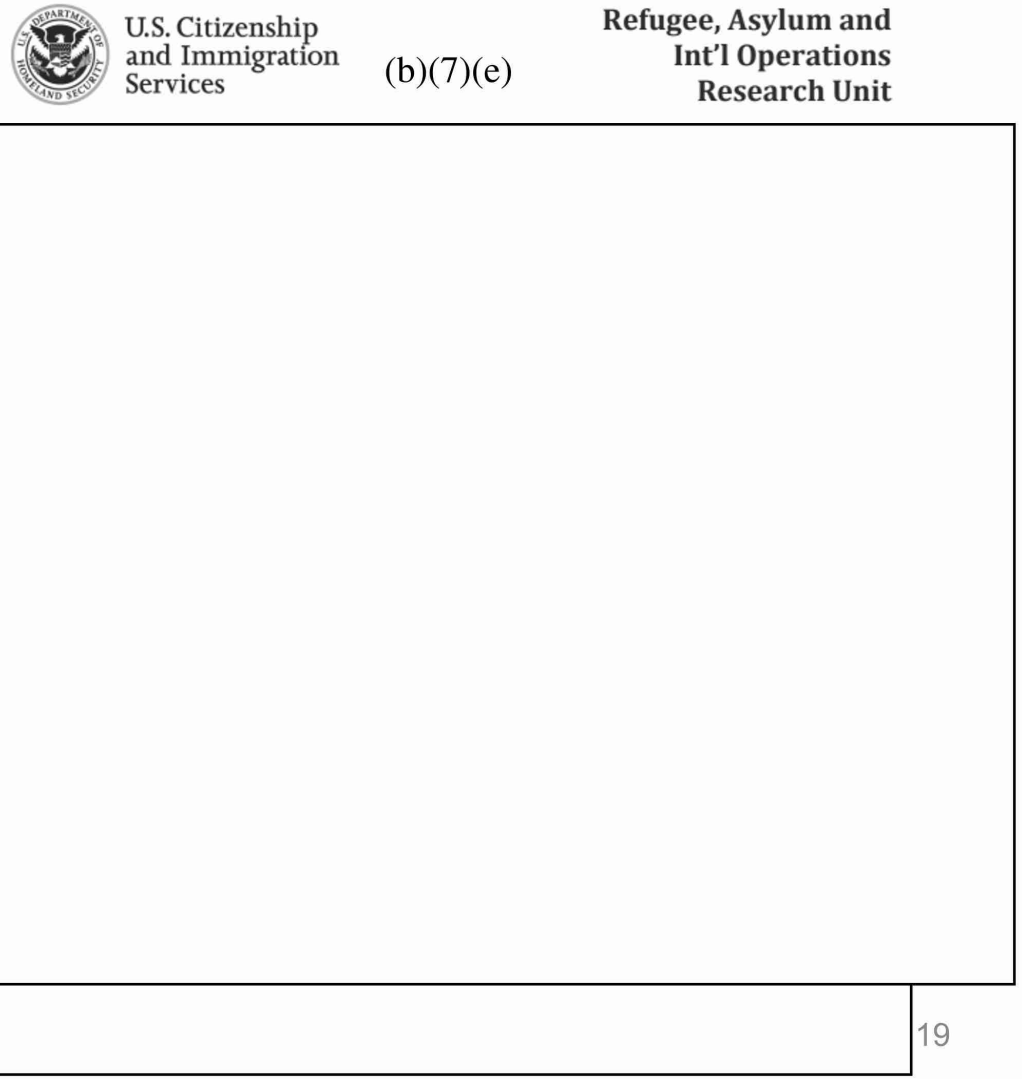
Formal Query (and ex. of formal Query Response)

RAIOResearch@uscis.dhs.gov

- Detailed response
- About 2-20 pages
- Response in hours or weeks



Informal Query

What to Include in a Query

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U.S. Citizenship and Immigration Services

News Summary Bulletin

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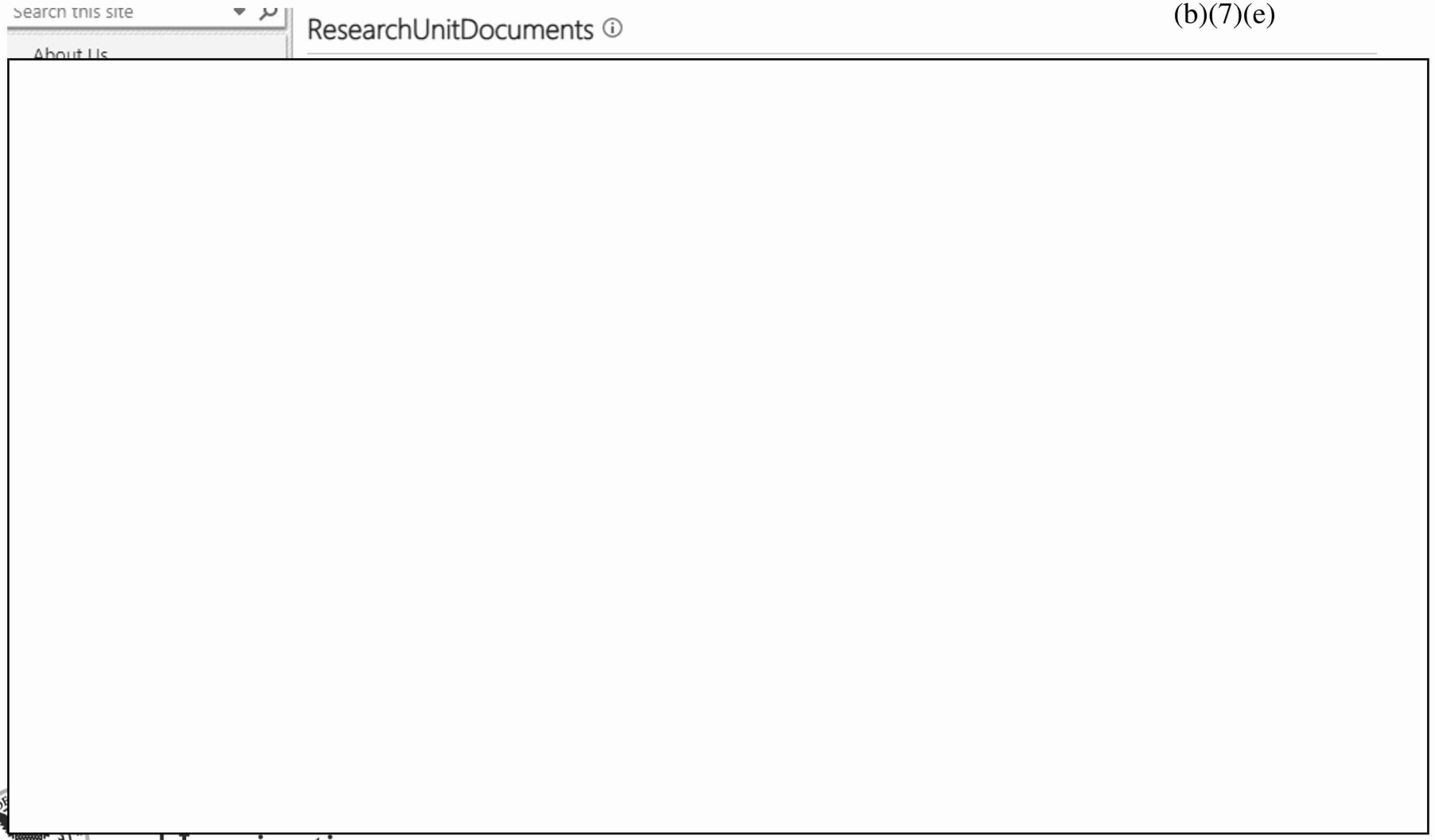

Encyclopedia of Online Resources

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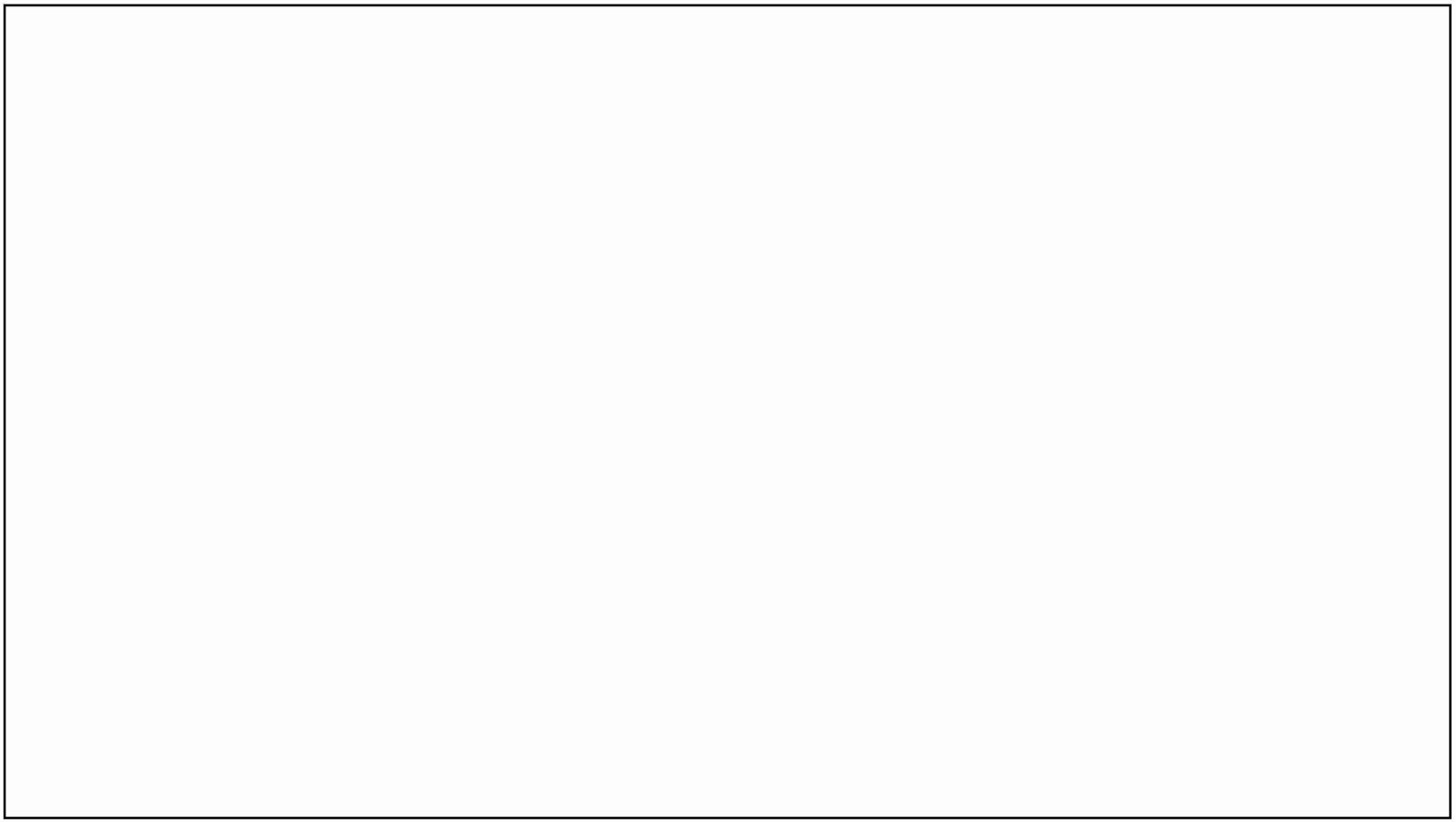

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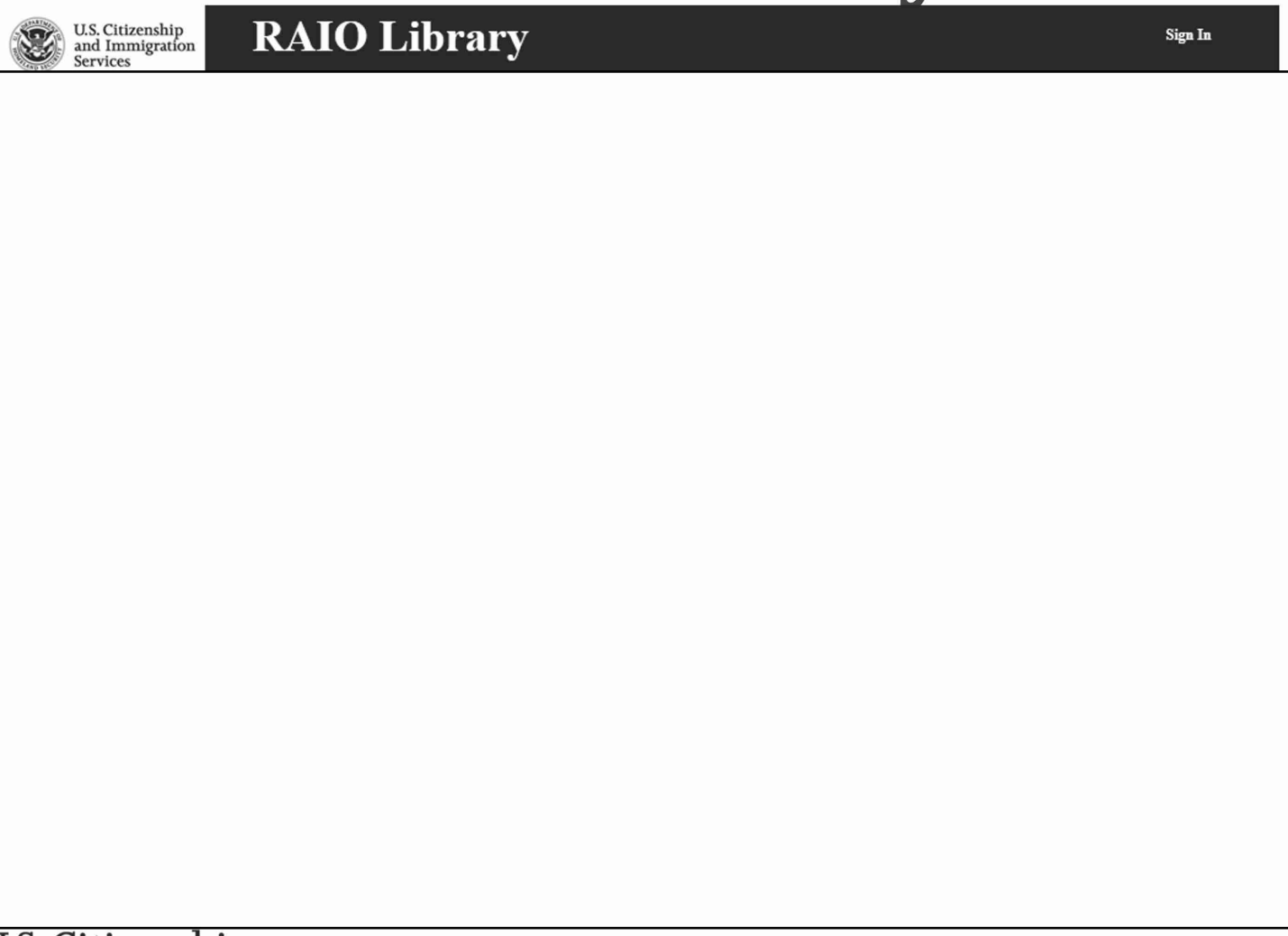
RAIO Library



Some Research Tips

- Be familiar with the types of information available (at your office library and at the RU)
- Preferably cite at least two reliable sources
- Focus on your research—do not spend time on unrelated info
- Use “find” (CTRL+F) for research within a long document
- Limit your search results to the relevant time period where applicable
- Re-purpose your research products
- Create folders of more useful products

Reliability of Sources

- The first step in assessing any source of information is to identify the source.
- Next: What is the agenda/bias of the source?
- Does the source express its point of view or does it claim to present an unbiased report?
- How does the info provided compare to info from other sources on the same topic?
- What do we know about the source's research methodology?

Practical Exercise: Evaluating Sources

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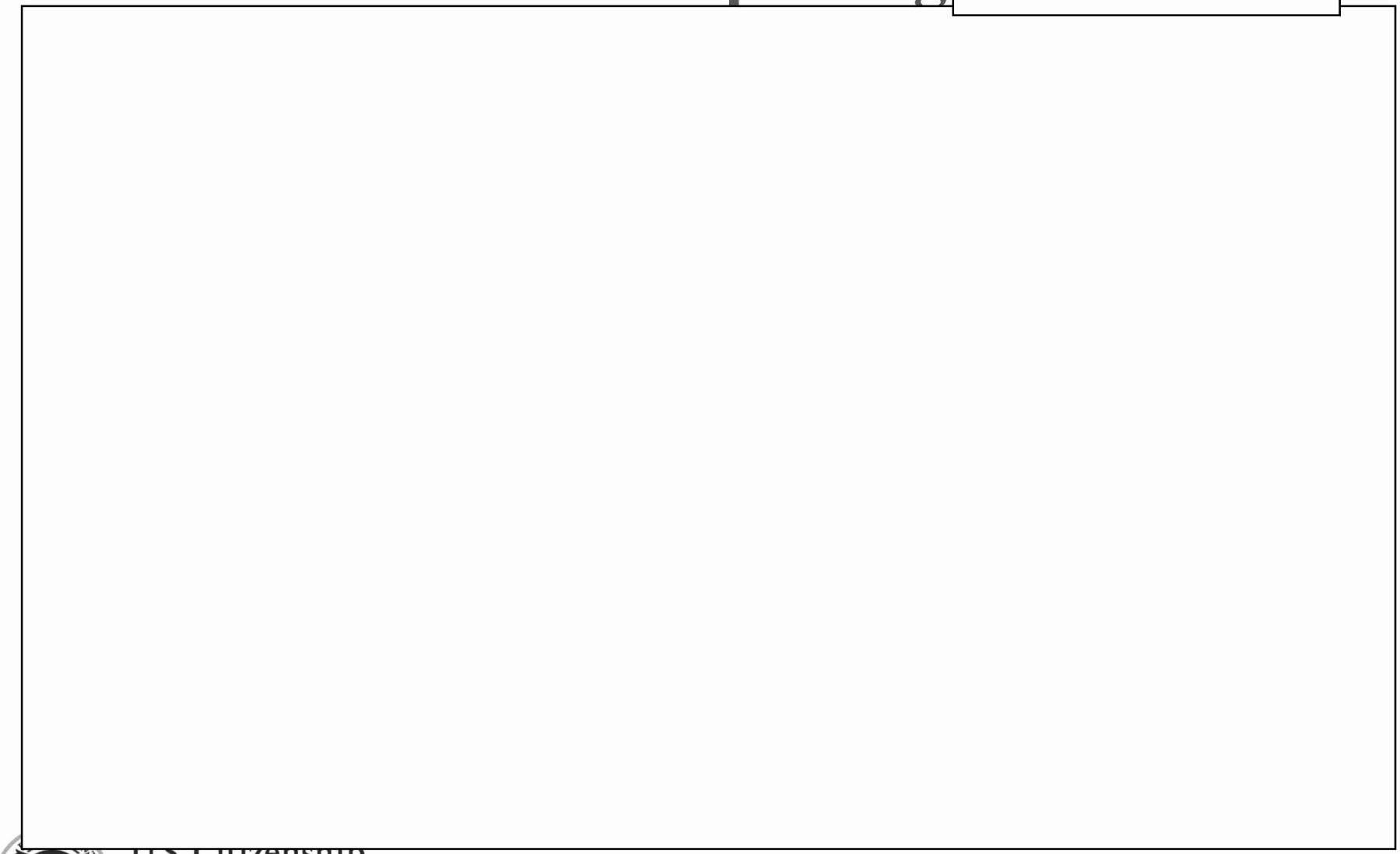
Five News Sources Reporting



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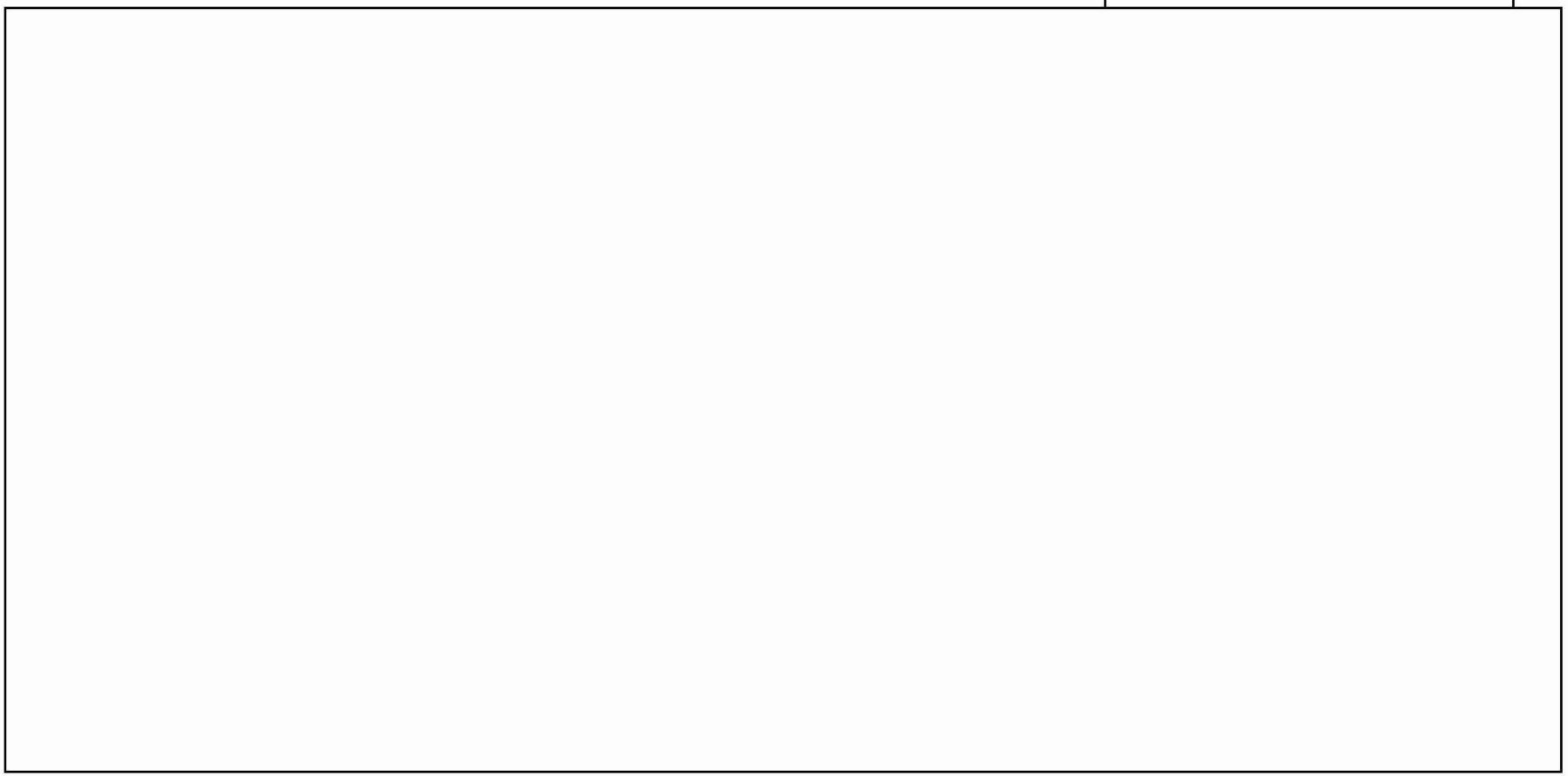

U.S. Citizenship and Immigration Services

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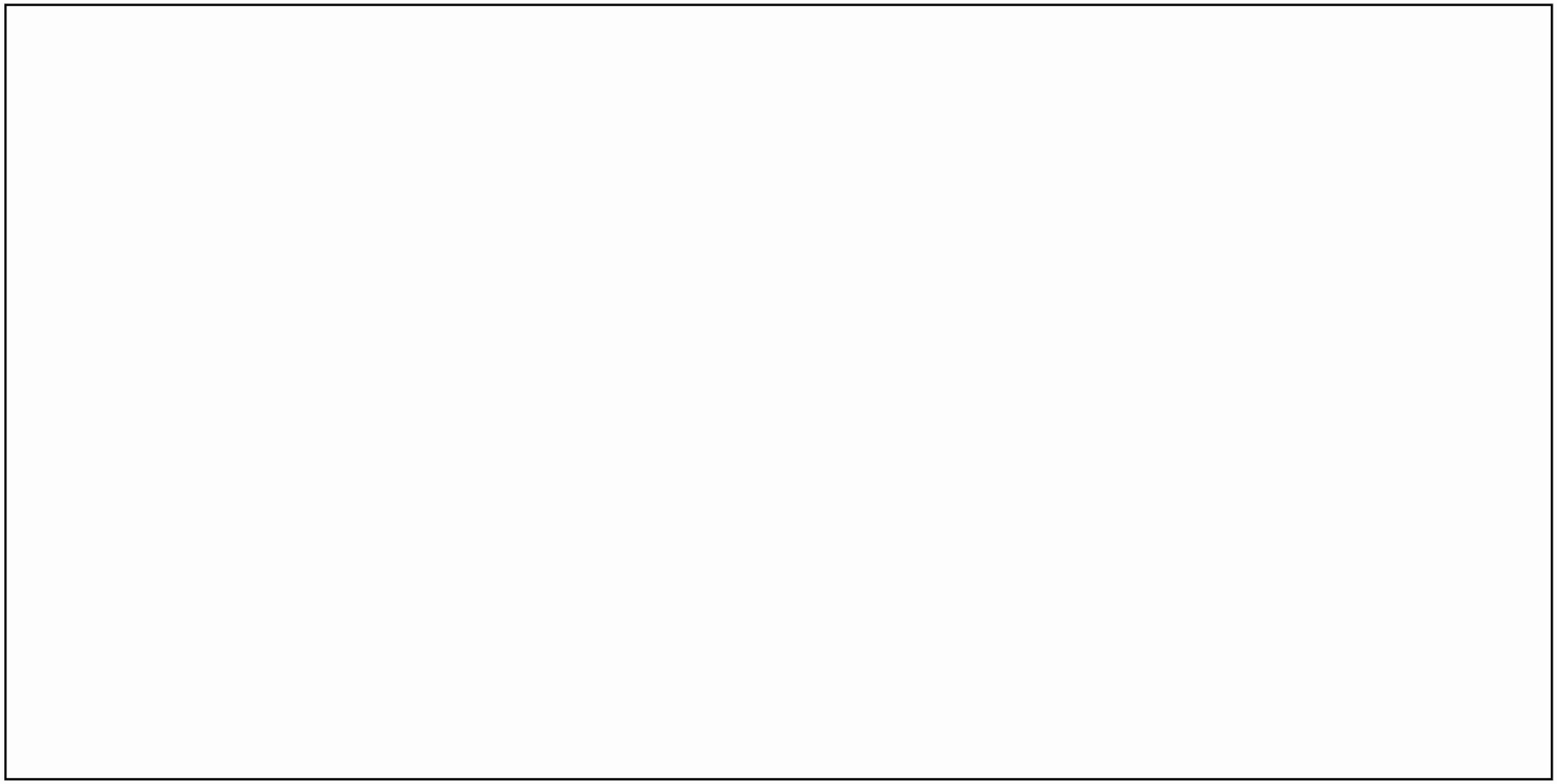

U.S. Citizenship and Immigration Services

Five News Sources Reporting Source 2

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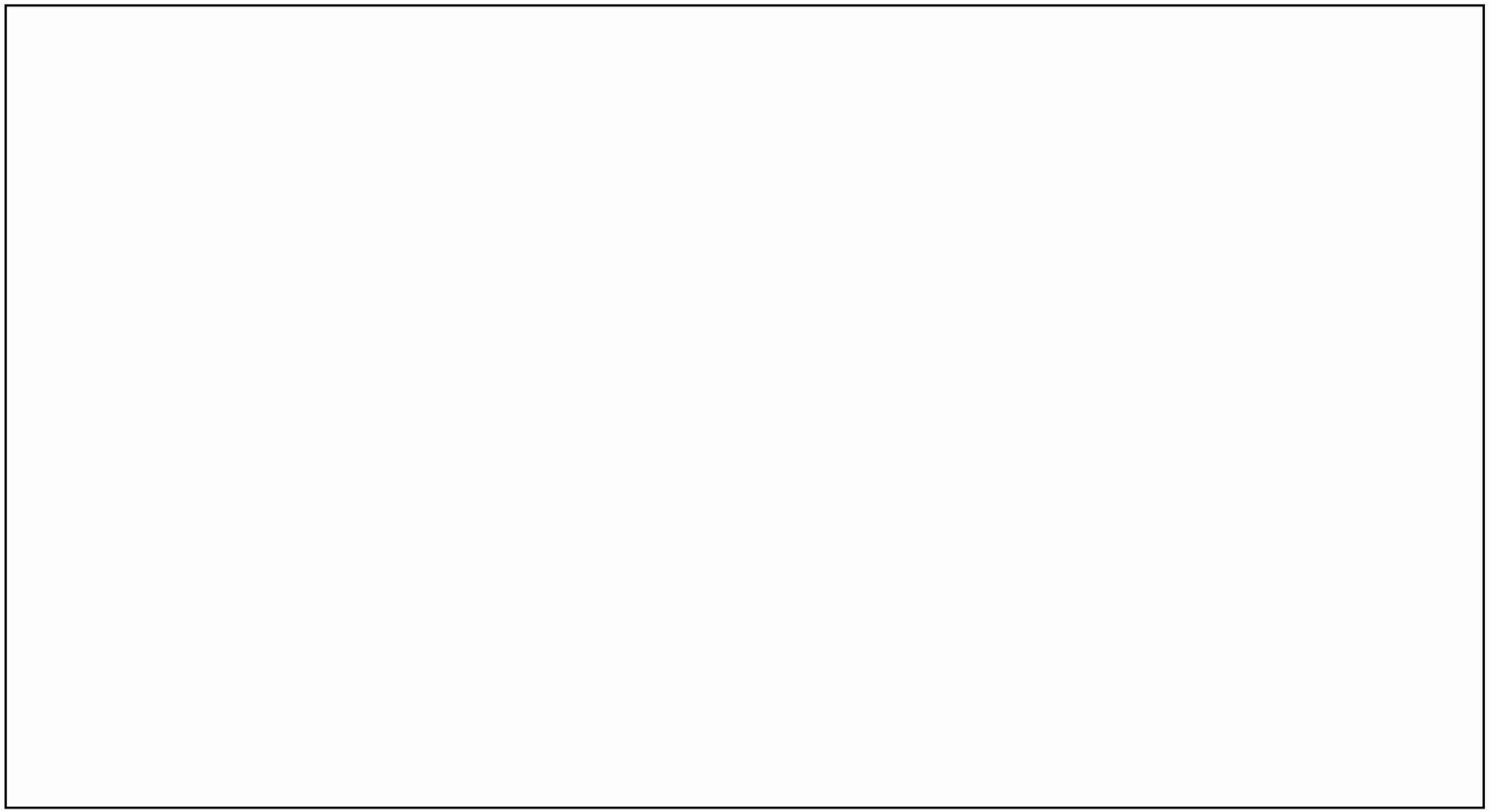

U.S. Citizenship and Immigration Services

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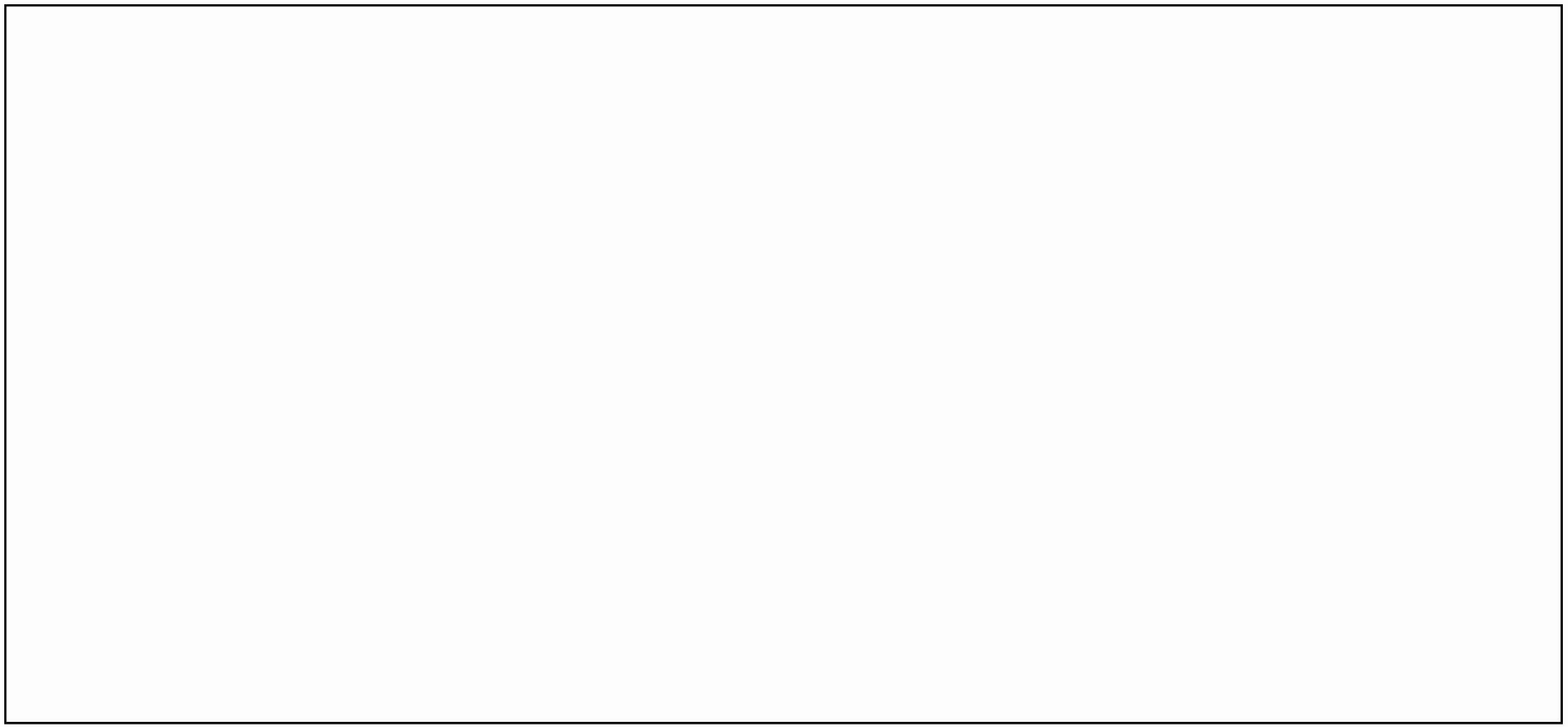

U.S. Citizenship and Immigration Services

Five News Sources Reporting Source 3

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U.S. Citizenship and Immigration Services

Five News Sources Reporting [redacted]

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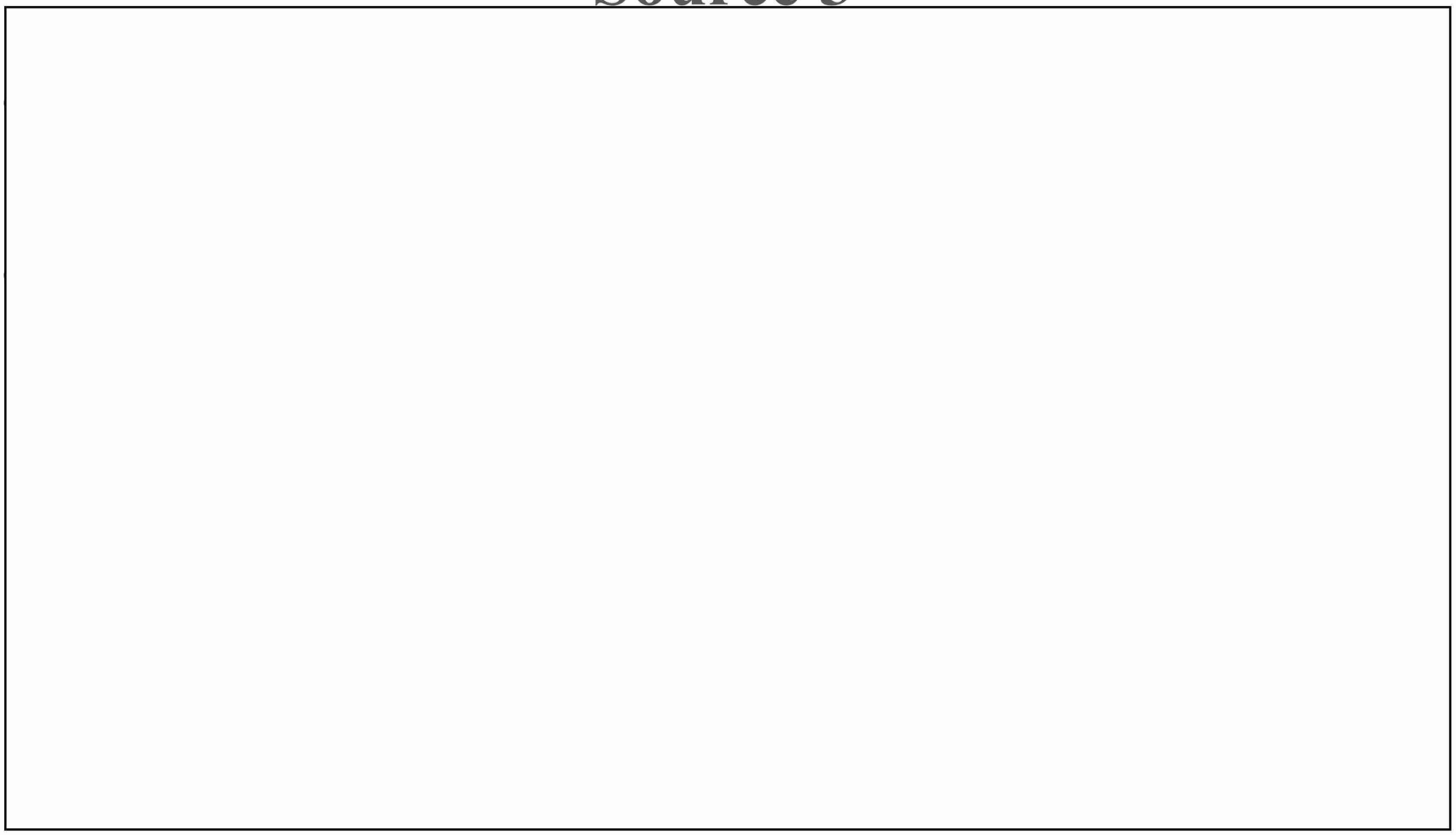

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Five News Sources Reporting Source 4

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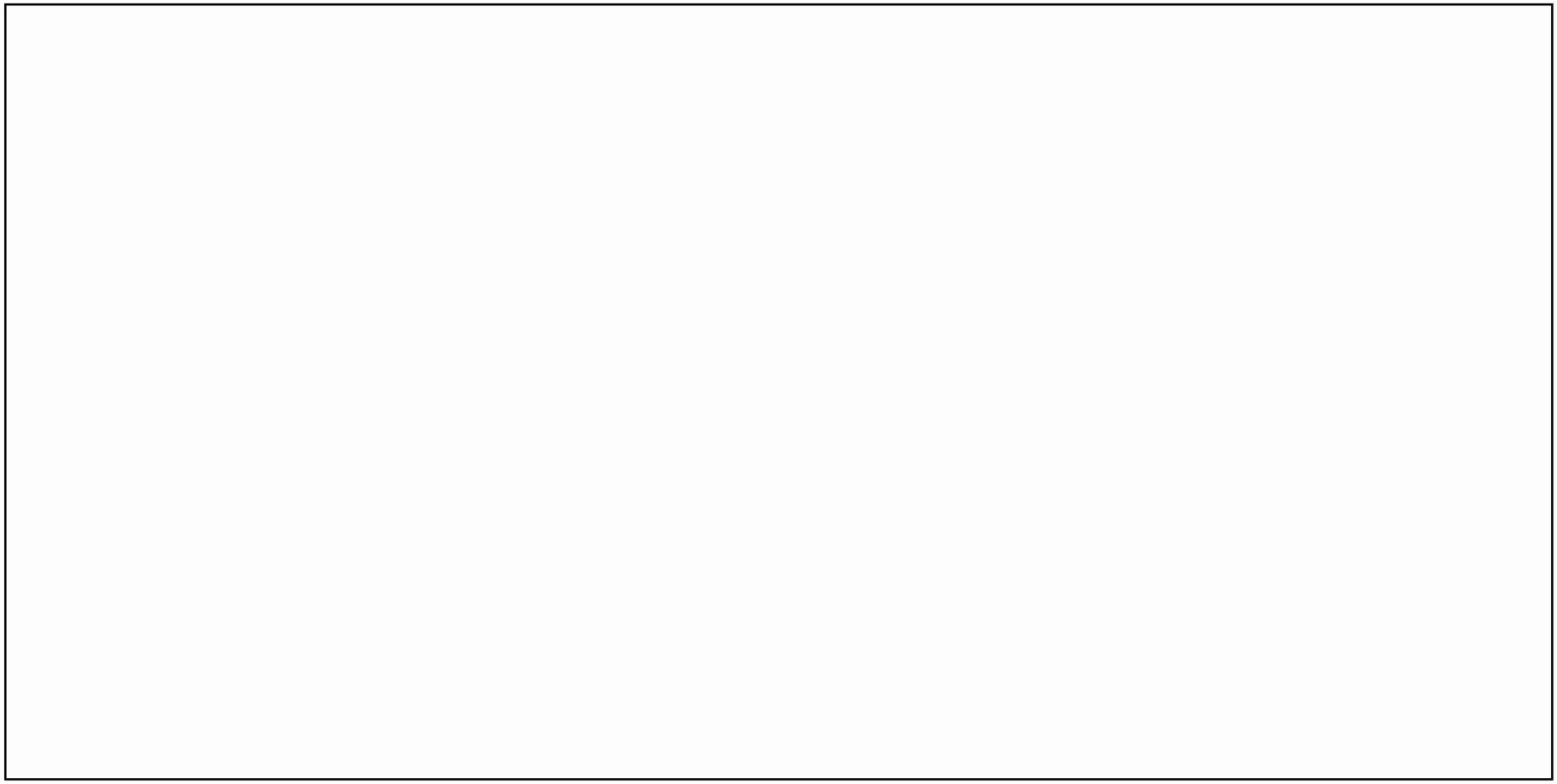

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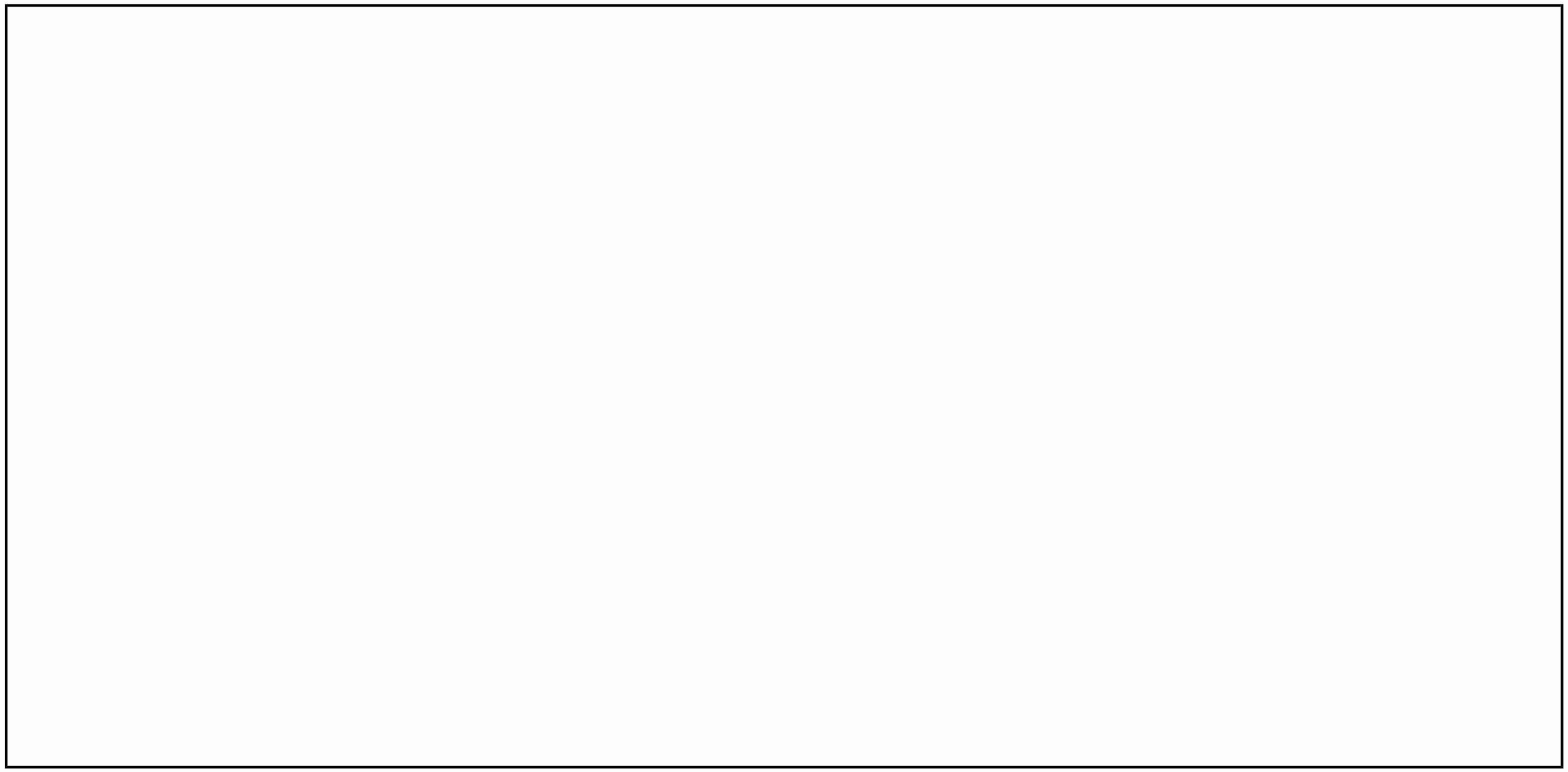

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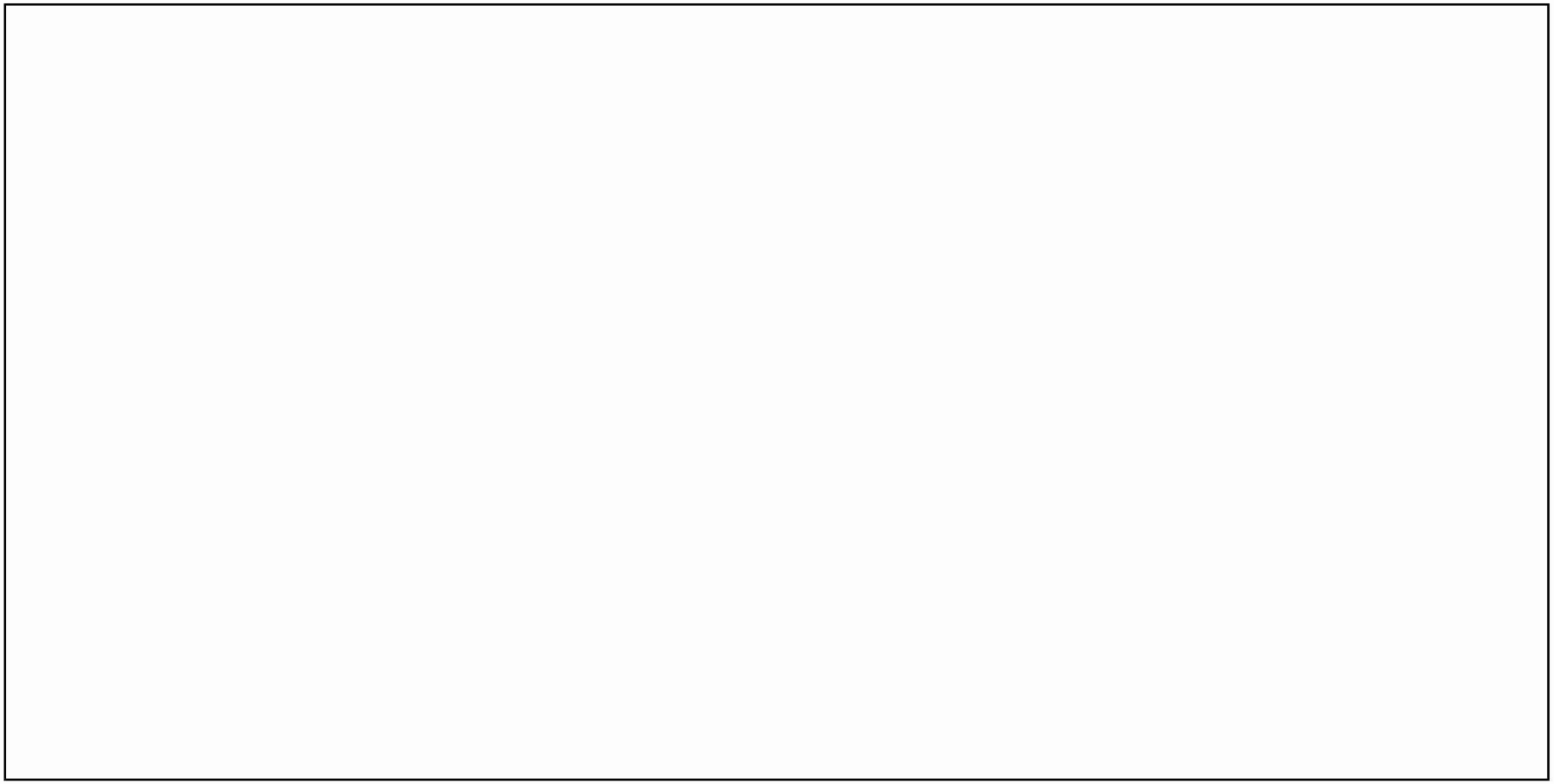

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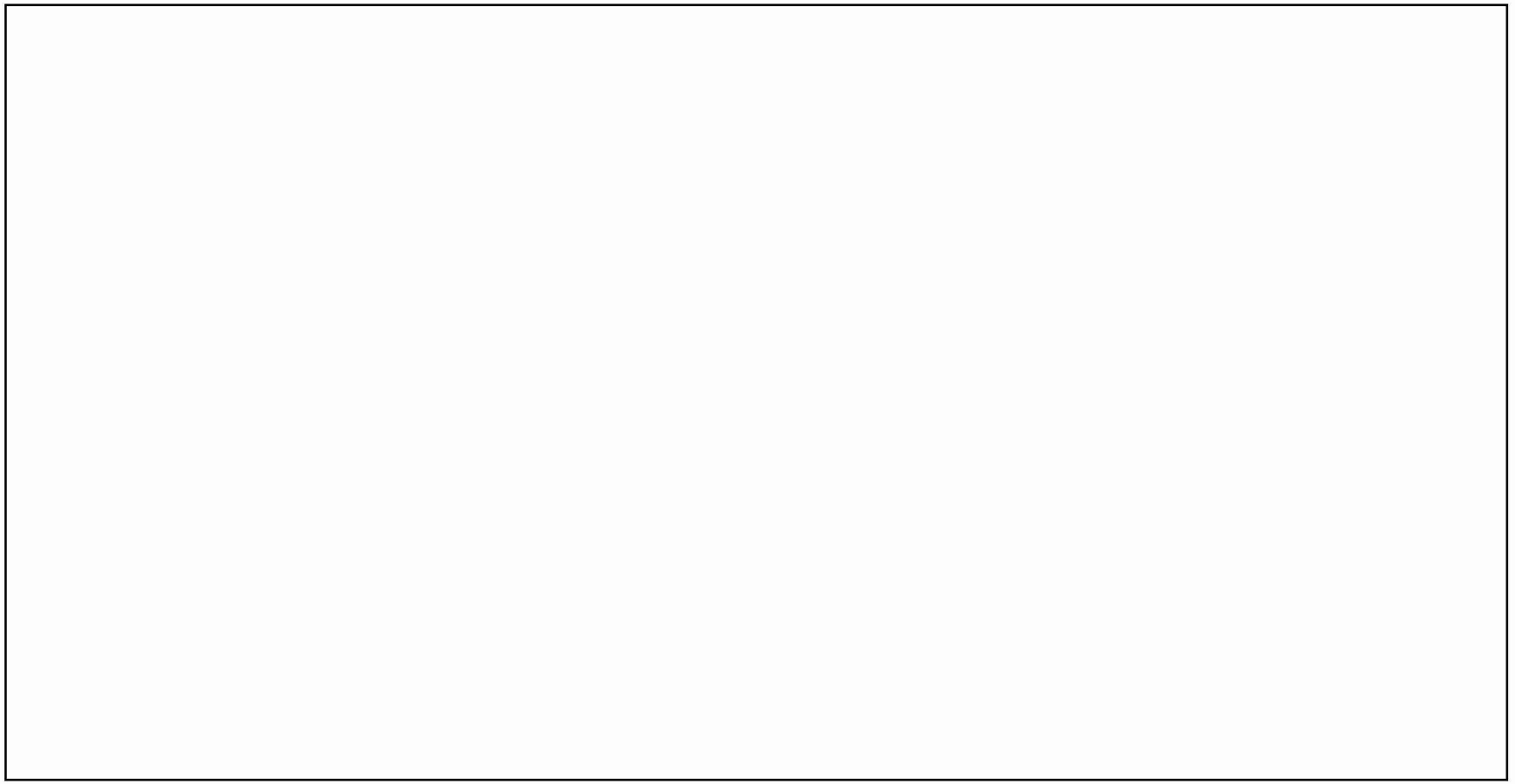

Recap

- We explained the purpose and history of the Research Unit.
- We introduced you to several of the most useful COI databases, including the Research Unit's ECN page.
- We discussed some of the Research Unit's products and ways in which the Research Unit can assist you.
- We provided a few tips on how to conduct research.
- We introduced you to the task of evaluating the reliability or biases of sources.

What Determinations Involve COI Evidence?

- Whether a particular fear is well-founded (PACI)
- Whether a pattern or practice of persecution exists
- Whether circumstances have changed or changed during a certain period (incl. for one-year filing deadline)
- Whether a threat exists countrywide
- Whether internal relocation would be reasonable
- Credibility of testimony
- Whether a state is unable or unwilling to control a non-government persecutor
- Questions of nationality
- Assessing possible assistance or participation in persecution
- Addressing terrorism-related grounds of inadmissibility

When COI Must be Cited in an Assessment

- In asylum decisions, COI must be cited if it is relied upon in making the decision
- DOS Int'l religious freedom report must be used when religion is the basis of the claim

Citing Sources in Asylum Adjudications

- Citations *must* include:
  - Source
  - Title
  - Date of publication
  - URL
  - Access date

U.S. Citizenship and Immigration Services

How to Cite Sources Not From The Web

See RU's Citation Guide, found on the RU's ECN page

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Citing Sources(cont'd)

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- In-line Quotation:

- Block Quotation

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COI in Decision-making

- COI matches the specific details of the claim?
- Lends support to the broad outlines of the claim but not the specific details?
- Neither supports nor casts doubt upon the claim?
- Casts doubt upon the claim?

Usage of COI in decision-making

Practical Exercises: Use of COI in Decision Making

WARNING Before Beginning Practical Exercises

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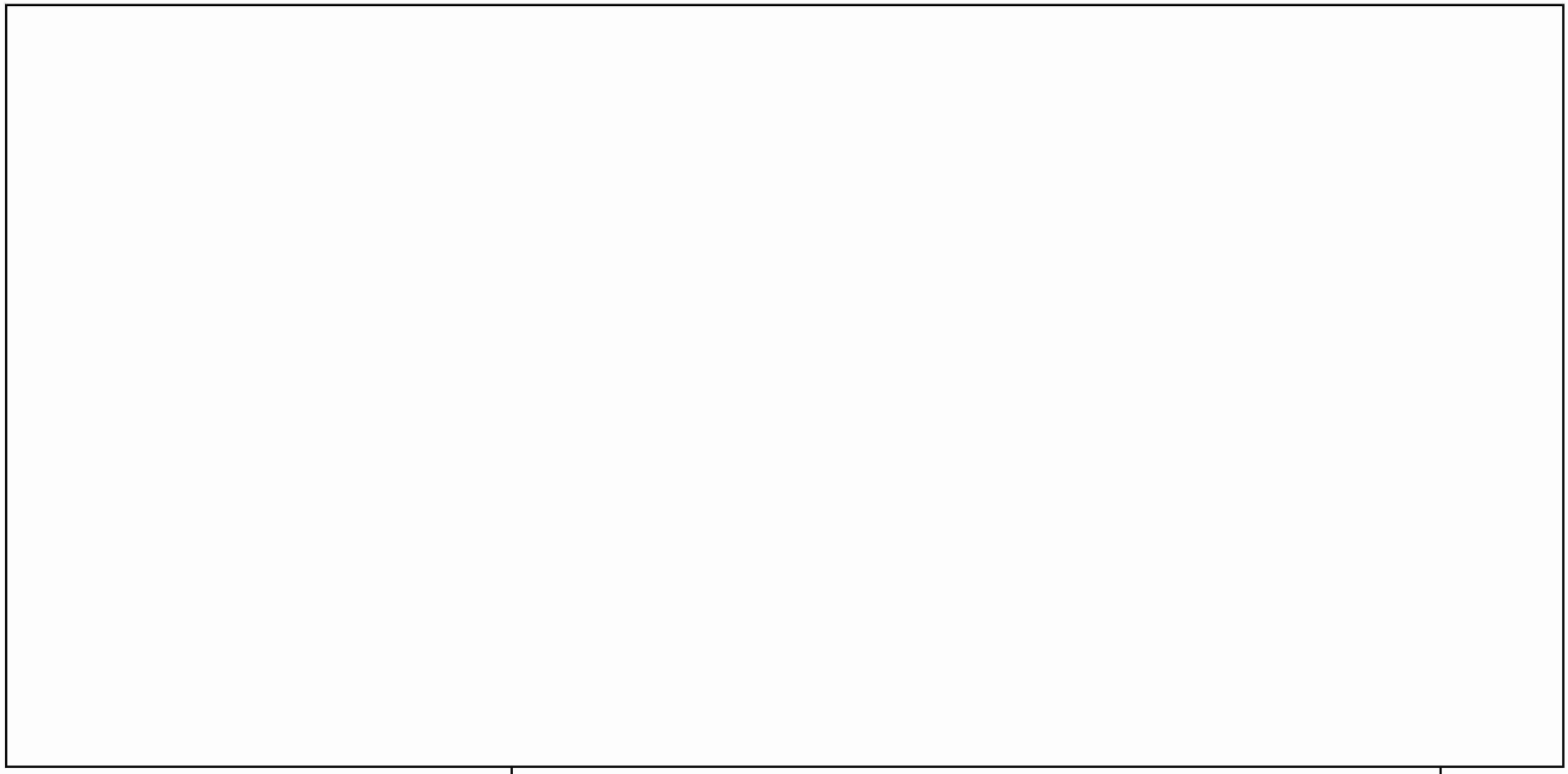

U.S. Citizenship and Immigration Services

Practical Exercise: [redacted]

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Practical Exercise: [redacted]

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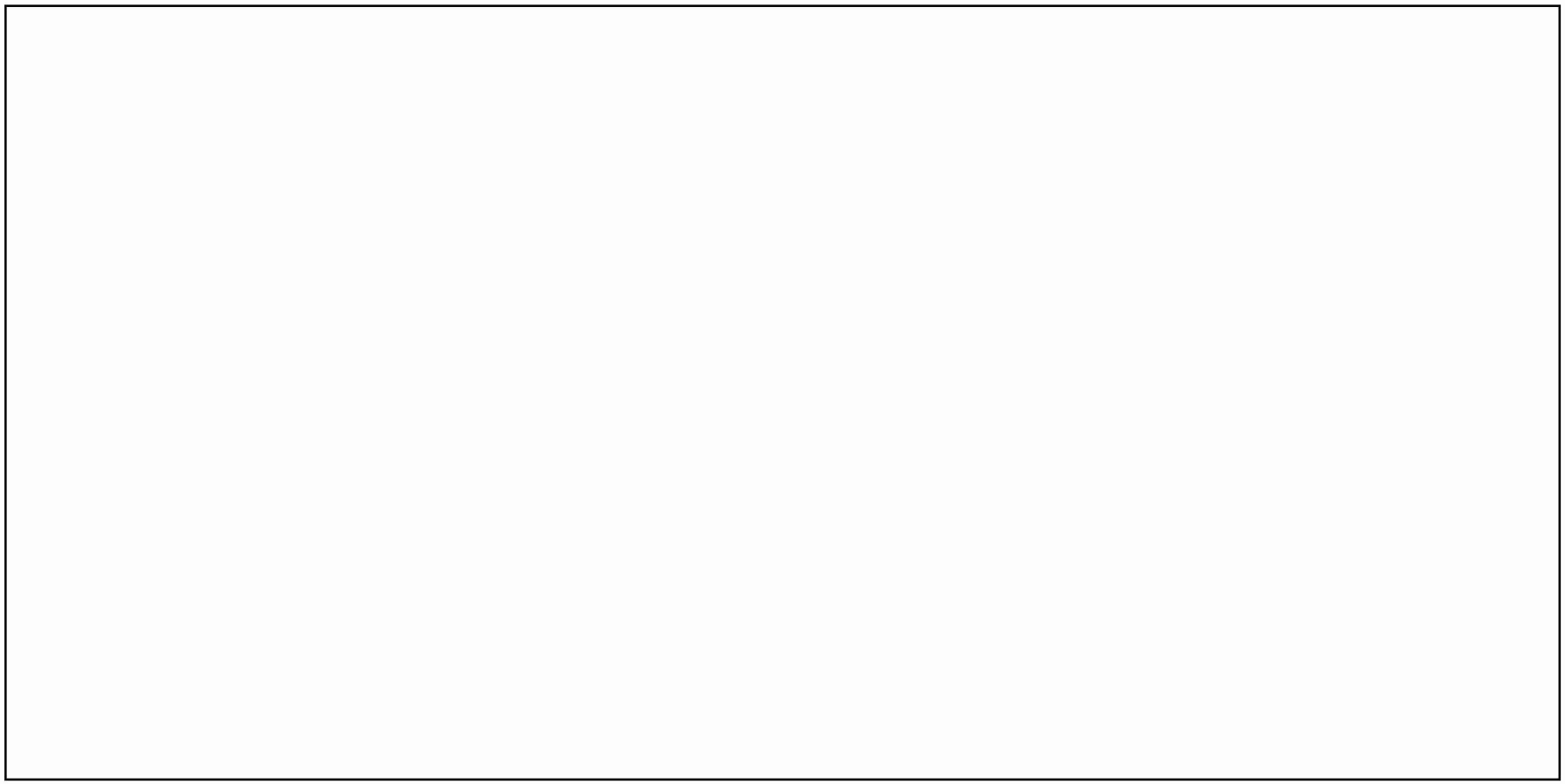

U.S. Citizenship and Immigration Services

Practical Exercise:

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Some sources you may have found:

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Finding COI on the Internet: An Asylum Seeker

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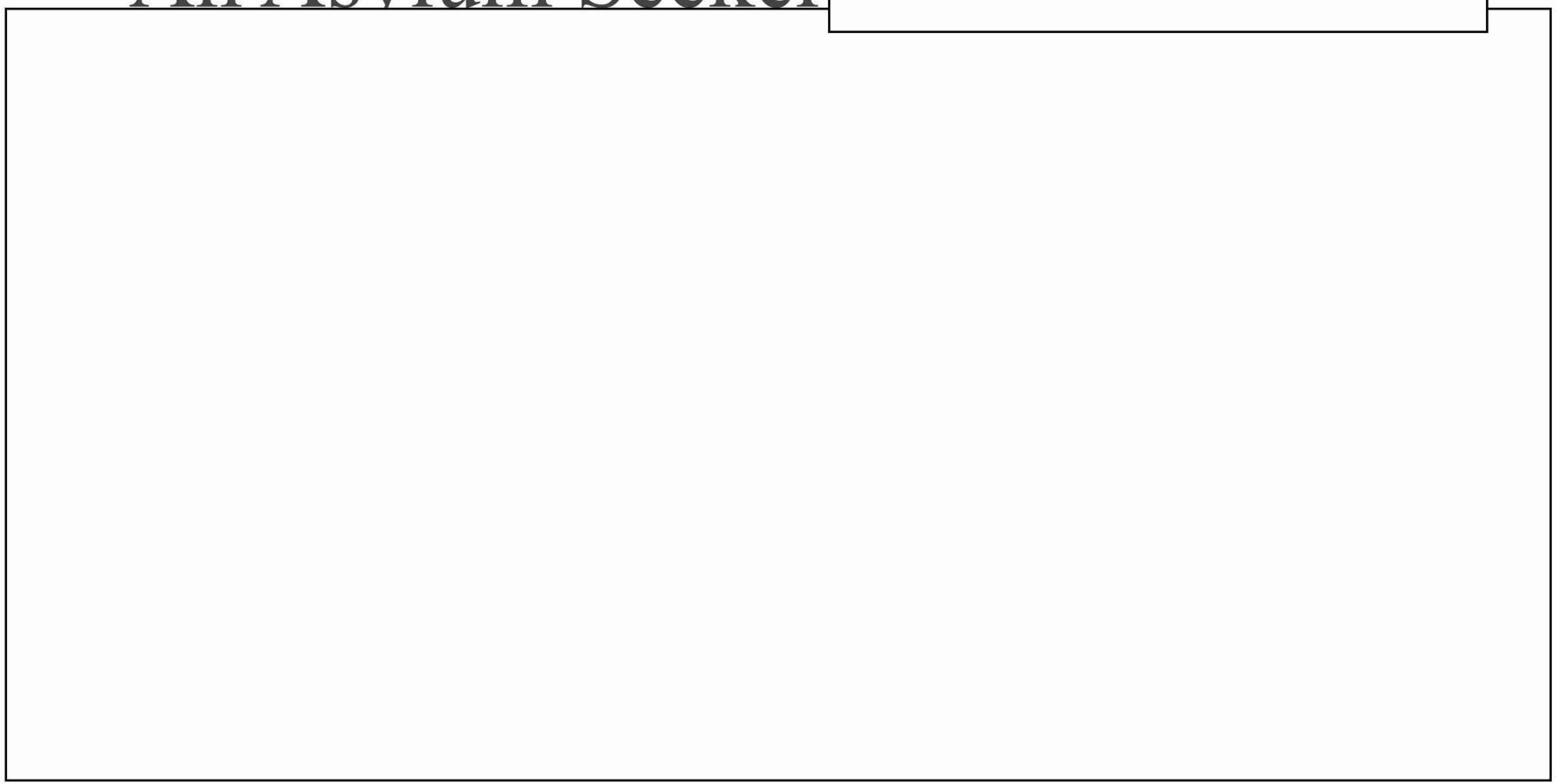

Finding COI on the Internet: An Asylum Seeker

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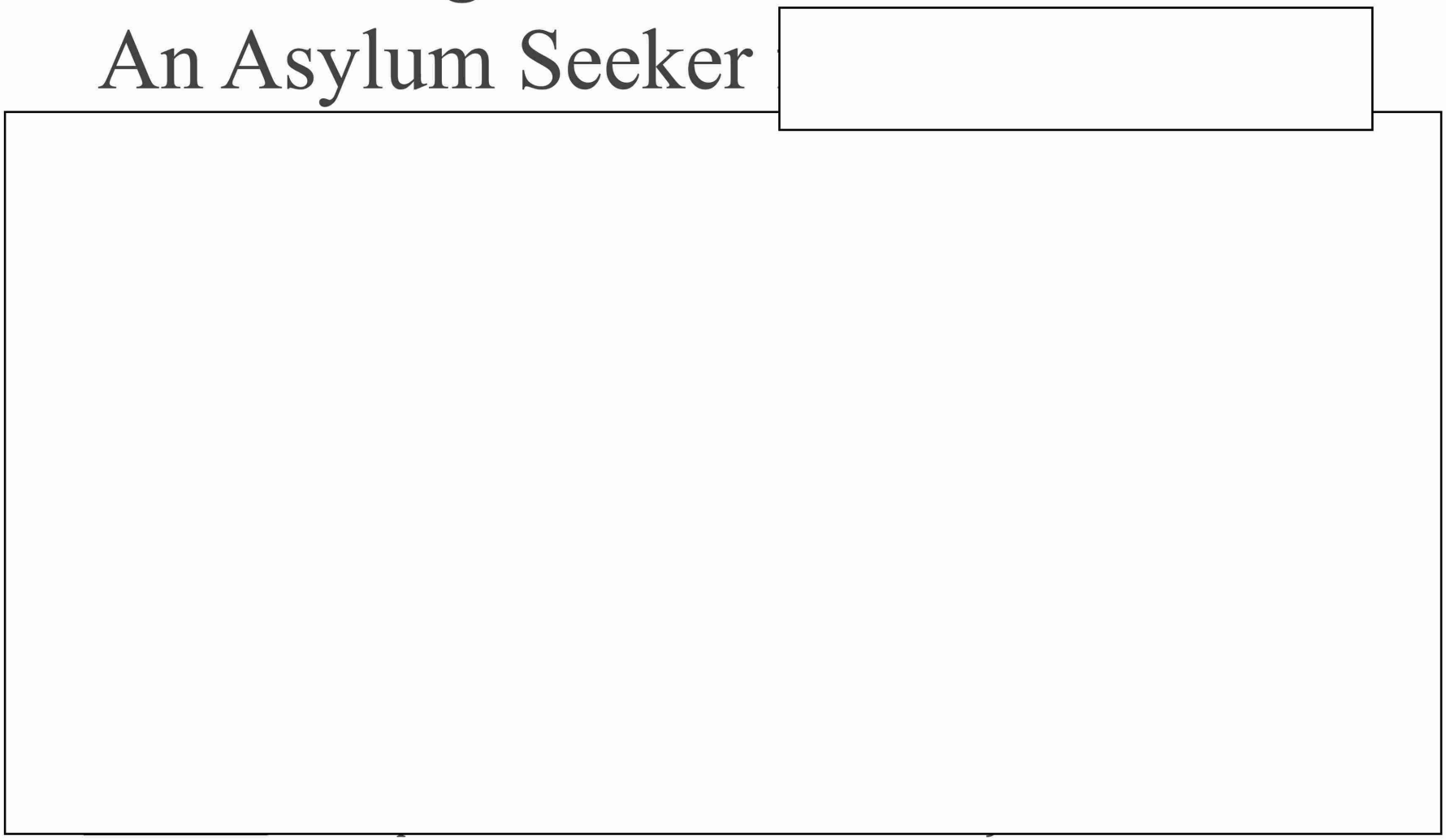
U.S. Citizenship and Immigration Services

Finding COI on the Internet: (b)(7)(e)

An Asylum Seeker



Reviewing COI Sources: An Asylum Seeker

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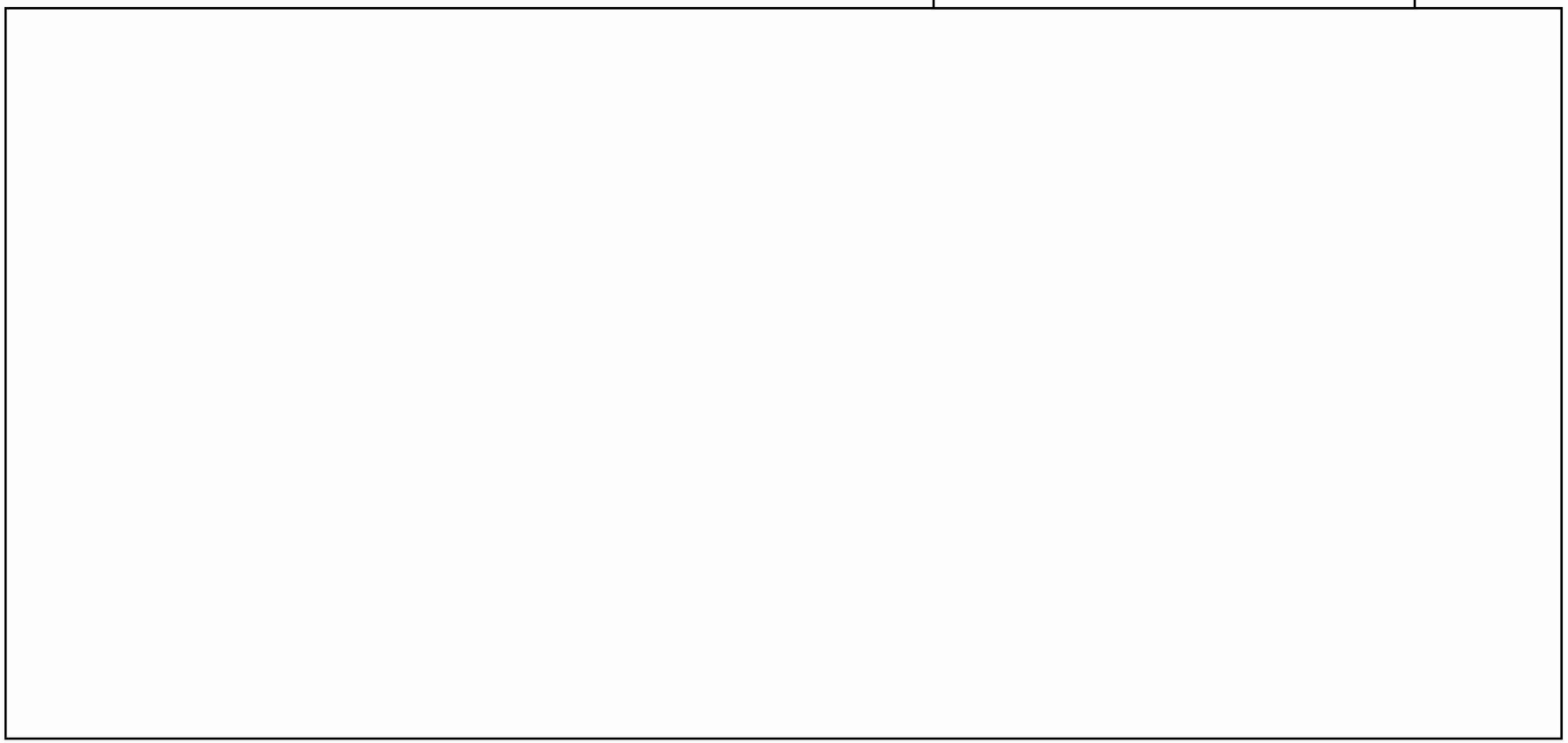

Reviewing COI Sources: An Asylum Seeker

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Did you find this source?

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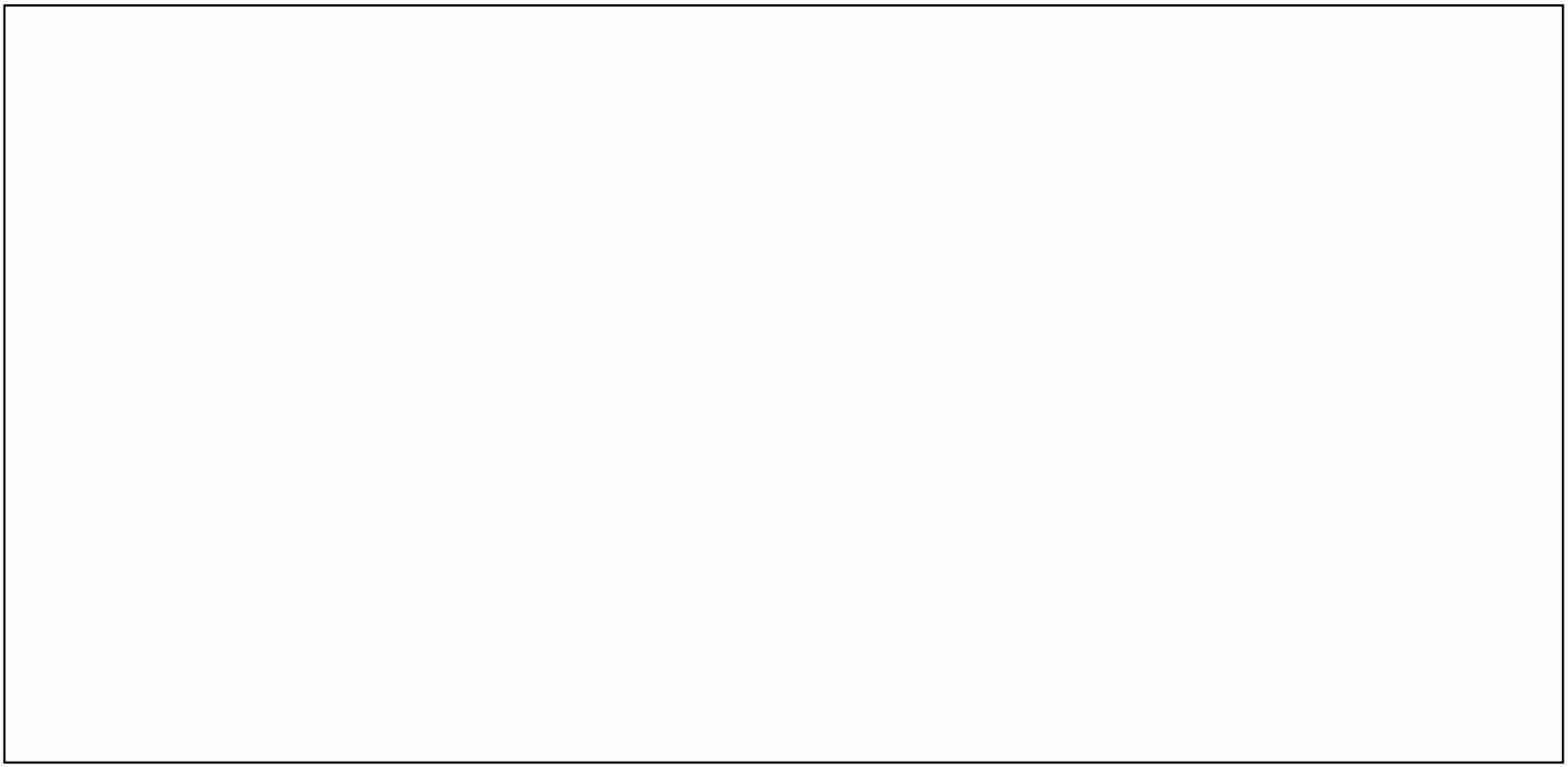

U.S. Citizenship and Immigration Services

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Practical Exercise on

U.S. Citizenship and Immigration Services

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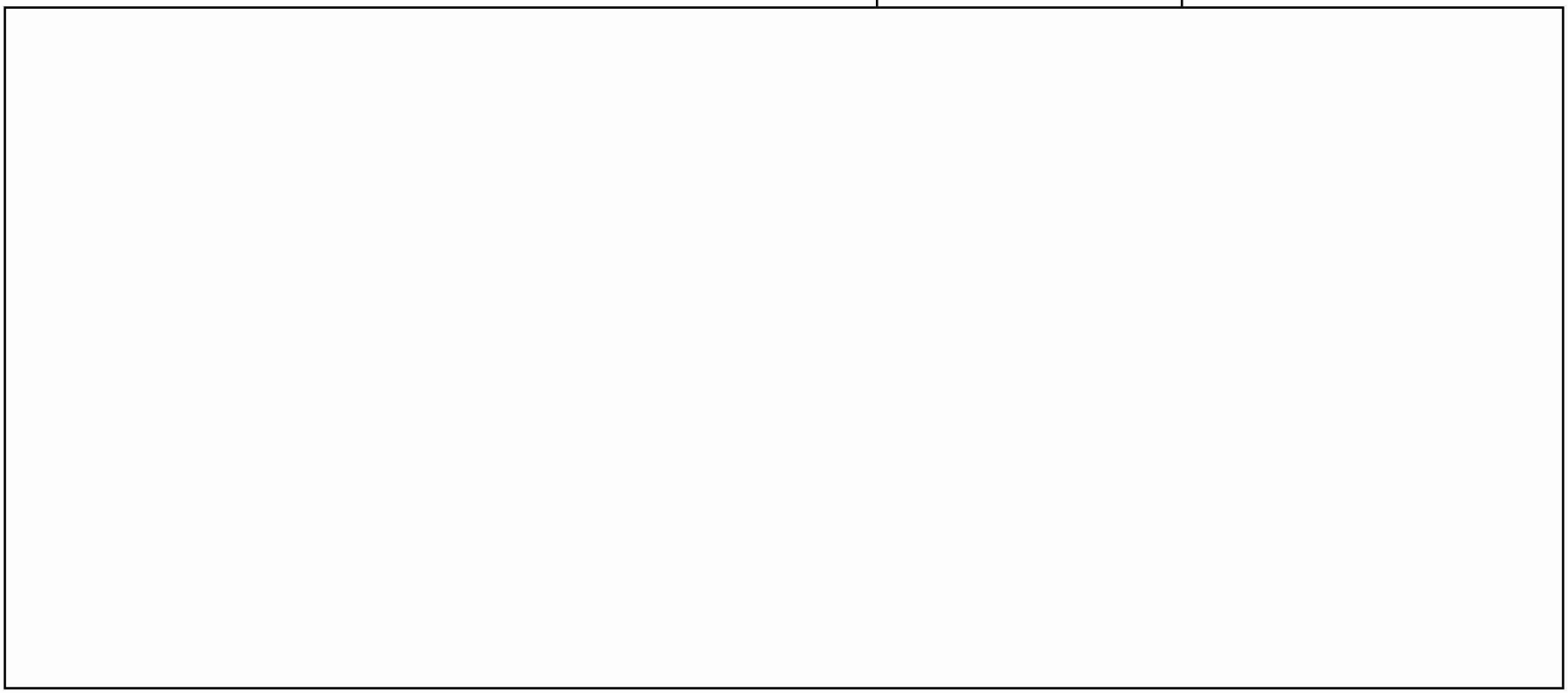
Practical Exercise on [redacted] (cont'd)



U.S. Citizenship and Immigration Services

Practical Exercise on [redacted] (cont'd)

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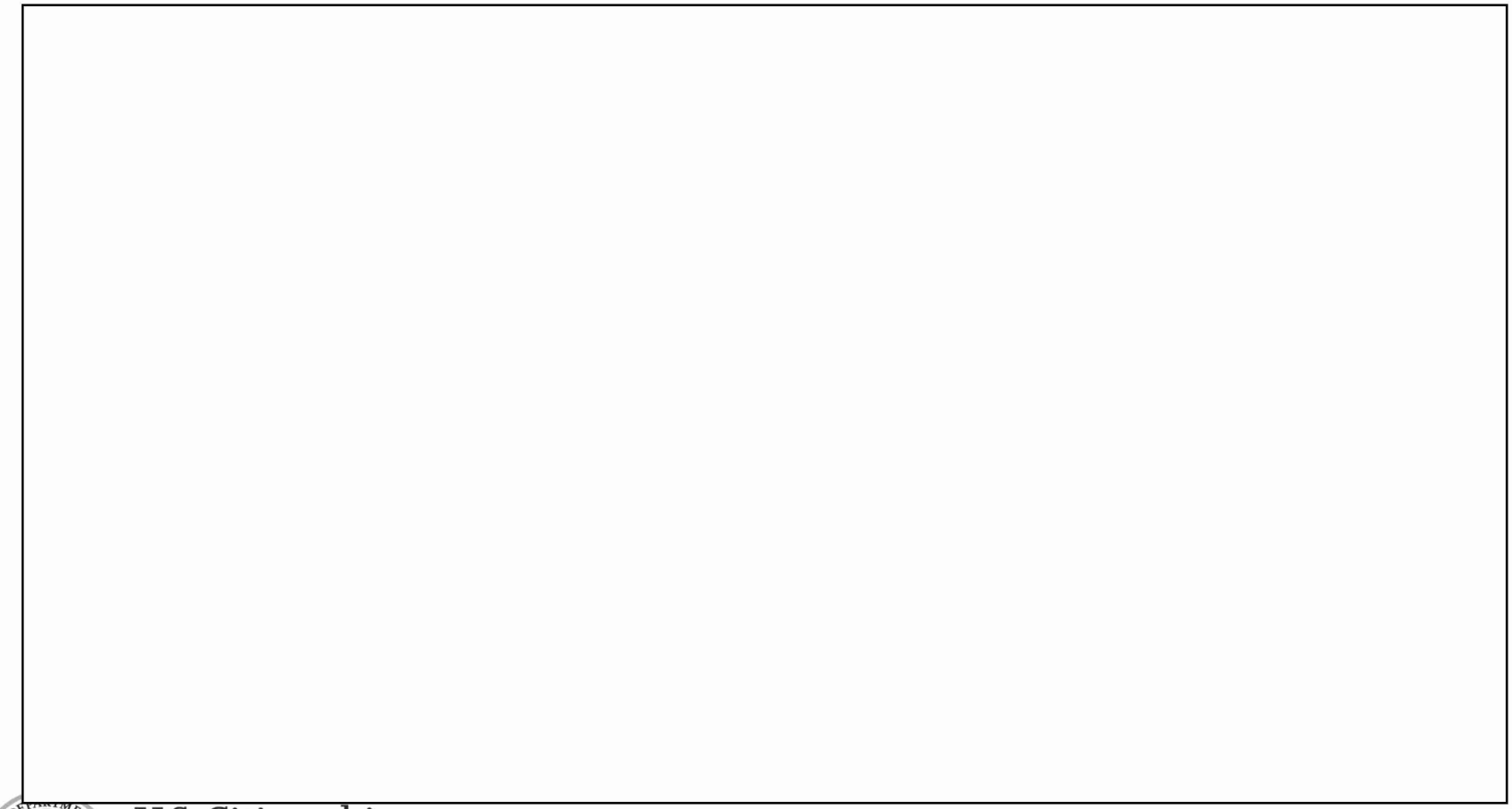

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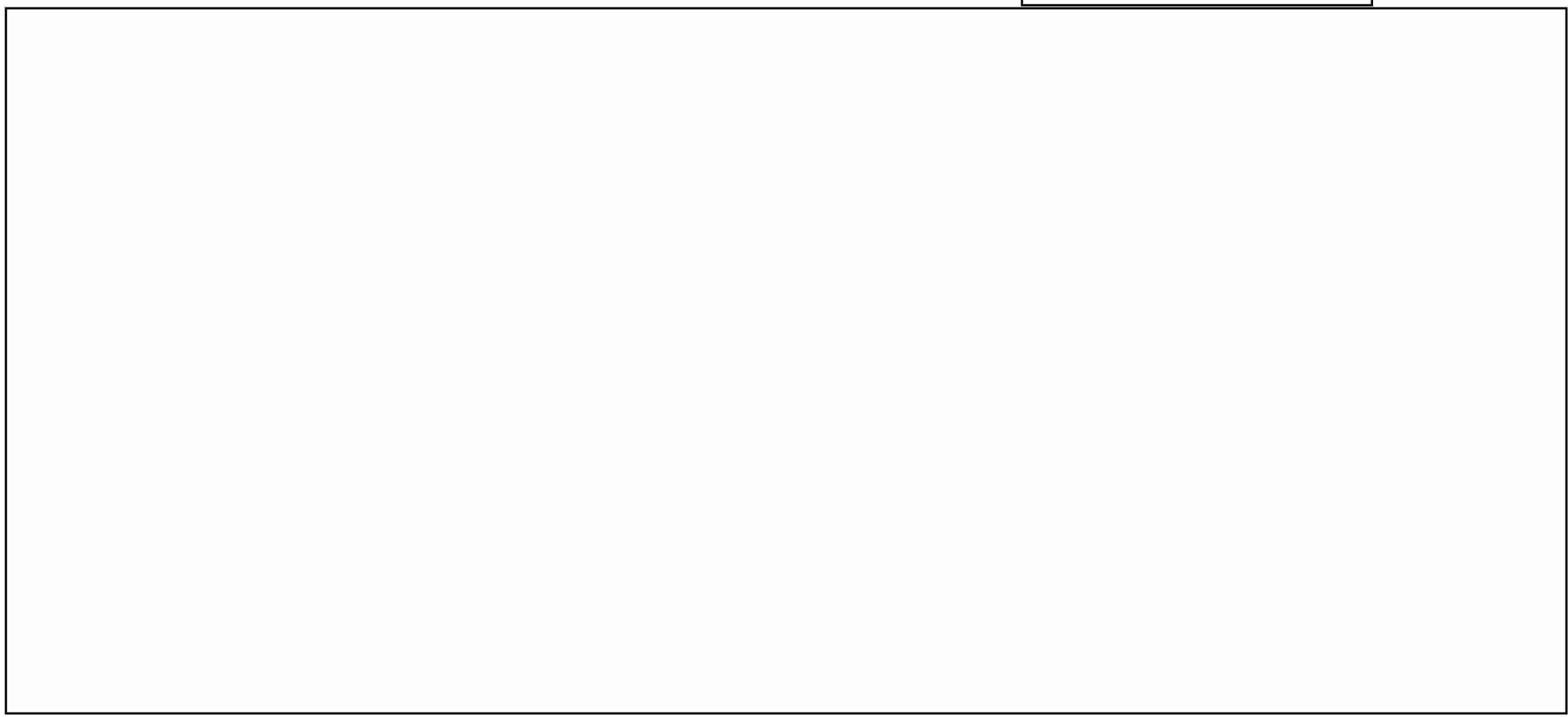

U.S. Citizenship and Immigration Services

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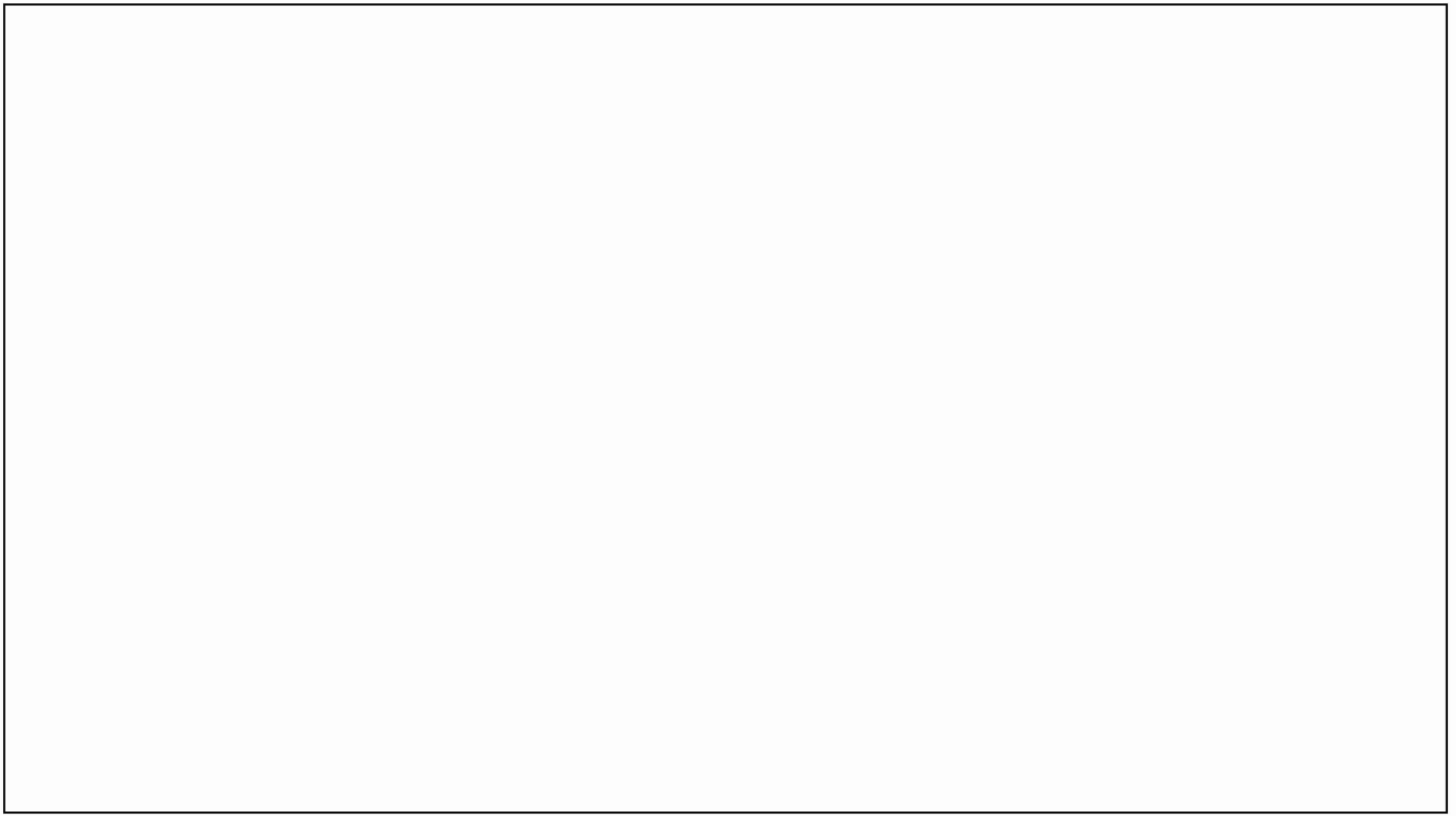

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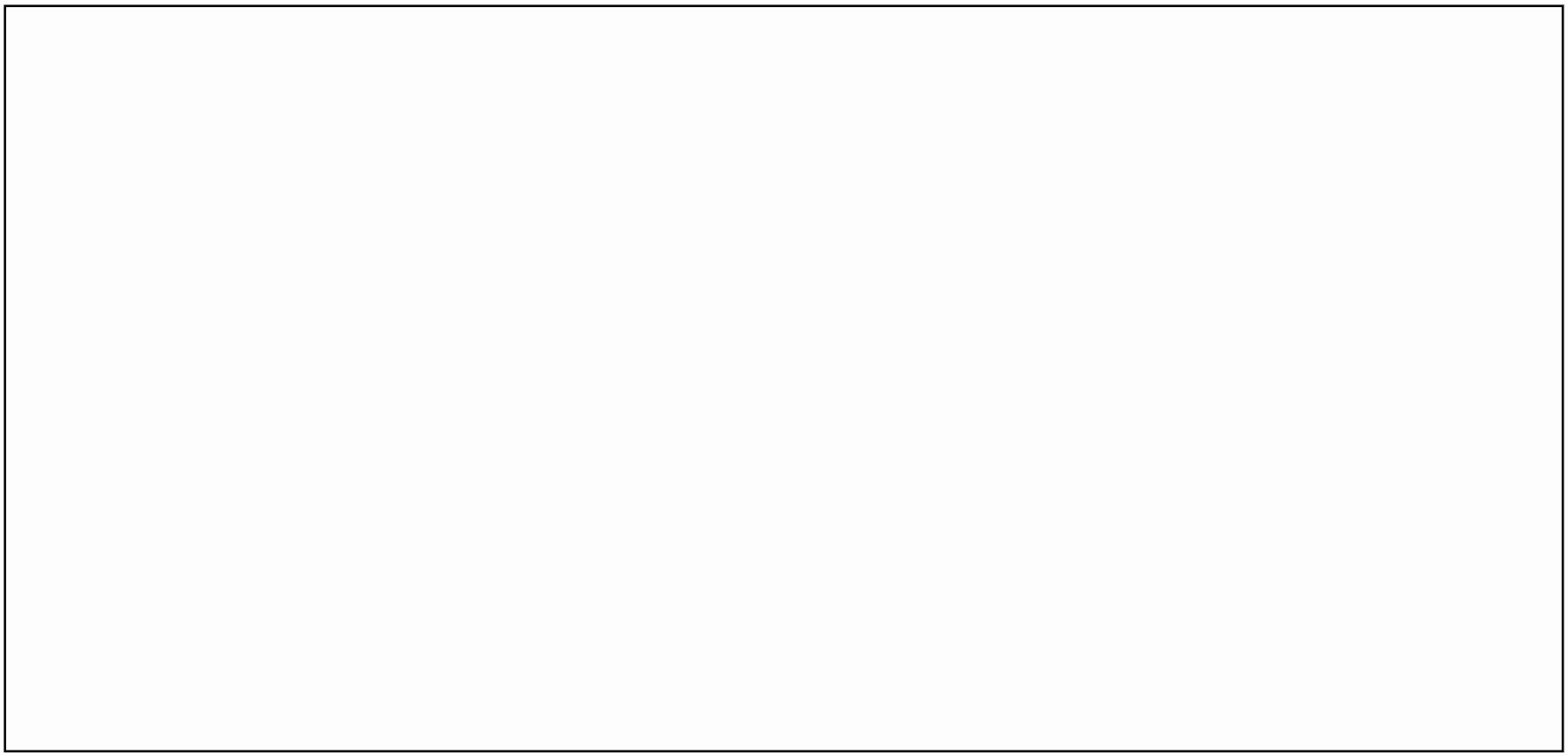

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Practical Exercise:

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U.S. Citizenship and Immigration Services

Practical Exercise: [redacted]

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U.S. Citizenship and Immigration Services

Practical Exercise:

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U.S. Citizenship and Immigration Services

Practical Exercise: [redacted] (b)(7)(e)

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U.S. Citizenship and Immigration Services

Practical Exercise: [redacted]

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U.S. Citizenship and Immigration Services

What to Take Away

- COI is important at all phases of adjudication: pre-interview preparation, eliciting testimony, decision and assessment
- Familiarize yourself with the many resources on the RU ECN Page
- Identify the sources you are referring to using appropriate citations.
- If you have questions, ask the Research Unit: RAIOResearch@uscis.dhs.gov

Submit a Query

Email Us!

RAIOResearch@uscis.dhs.gov

U.S. Citizenship and Immigration Services

Contact Information

(b)(6)

General Inbox (if in doubt, send queries here) RAIOResearch@uscis.dhs.gov

RAIO Research Unit Chief

Senior Administrative Assistant

Asia

Horn of Africa

Europe, Central Asia, Afghanistan

Latin Amer. & Caribbean

Middle-East/North Africa

Sub-Saharan Africa

U.S. Citizenship and Immigration Services

The End

Thanks for participating!

RAIOResearch@uscis.dhs.gov

U.S. Citizenship and Immigration Services

Tuesday, October 15
11AM-12PM

RAIO Remote Welcome and Overview

1. Welcome
   a. [redacted] (b)(6)
      1. Introduction
   b. [redacted]
      1. Introduce ourselves - [redacted]
      2. POCs for RAIO Remote. Our contact information is on the RAIO Remote Schedule on the first page under "Instructions". Please contact us with any questions you have during RAIO Remote. It is our job to provide you with support and assistance throughout this component.
      3. Training Officers: they are there to help support you and can help facilitate communication with HQ

2. Overview of RAIO Remote
   a. Overview of Training Schedule
      1. RAIO CTP DT: Approximately 80-hours of distance training that new officers' complete while in their home office.
      2. ADOTP DT: ASM has additional DT days: ASM + 31 hours
      3. RAIO CTP Remote Training: (all Asylum Officers must attend): a 10-day training that takes place via pre-recorded and live webinars and in-office trainings facilitated by local office staff.
         a. This is where you are now.
      4. ADOTP Remote Training: (all Asylum Officers must attend): a 3-day training that takes place via pre-recorded and live webinars.
      5. Face-to-Face Residential Training (ADOTP): at the Federal Law Enforcement Training Center (FLETC) in [redacted] (b)(7)(e)

         - ADOTP 2001
           - Arriving travel day: Sunday, November 3, 2019
           - Course dates: Monday, November 4 – Thursday, November 21, 2019
           - Departing travel day: Friday, November 22, 2019
         - ADOTP 2002
           - Arriving travel day: Monday, November 4, 2019
           - Course dates: Tuesday, November 5 – Friday, November 22, 2019
           - Departing travel day: Saturday, November 23, 2019

   b. Validation

- Despite recent changes to RAIO CTP and ADOTP, both courses have retained their validation. As we will discuss, officers must successfully complete both courses as a requirement for the position.
- As noted in Deputy Director Kouman's 9/24/19 email: "In response to feedback from officers citing the challenges posed by the lengthy portion of the training held away from their home offices, and in light of new technology and academic approaches, RAIO is currently looking at how it can restructure its training. This restructuring will not reduce the rigor and substance of the curriculum, and will be designed to better meet the needs of our workforce and better prepare officers for the demands of the job."
    - This Q1 training is the first step in this restructuring process
    - The substantive content and the instructors for RAIO CTP remain the same, so this is the same training that is delivered F2F.

c. Certification

As outlined in the RAIO Directorate Officer Training Handbook:

- You were required to read and sign a RAIO Training Certification Statement in your home offices prior to beginning the DT, attesting to your understanding and acknowledgement of these standards and the consequences of failure to achieve these standards. You should have all completed this.
- In signing this certification statement, you attested to their understanding that, for both probationary and non-probationary officers, successful completion of the required course(s) is a **requirement for the position.** As we will discuss, there are exams during the RAIO CTP and the division courses that you must pass.

d. Exams

As outlined in the RAIO Directorate Officer Training Handbook:

- Practice Exam: later today there will be an exam overview and practice test. The purpose of this session is to explain how the exams will be administered and have you take a short practice exam to get accustomed to the format.
- There will be two multiple choice exams administered during the Remote component of the RAIO CTP. These exams will include information from both the DT and the RAIO CTP Remote components.
    - The first exam is October 22nd at 8:00AM local time and the second is October 28th at 8AM local time.
- You must achieve a cumulative score (the average score of the two multiple choice exams) of 70% in order to pass the combined curriculum portion of the RAIO CTP.
- ADOTP: There will be one multiple choice exam during ADOTP and one mock interview exam consisting of a mock interview and a written assessment

of that interview. You must achieve the minimum score of 70% in order to pass the ADOTP.

- You must pass both the RAIO CTP and division-specific training to retain their positions. The test scores for the combined and the division-specific portions of the training are independent of one another. ***Thus, in order to pass the courses, you must achieve a cumulative score of 70% for the RAIO CTP and a cumulative score of 70% for ADOTP. Asylum participants must first pass the RAIO CTP before moving on to the division-specific portion of the training.***
    - In short, you're responsible for your performance and successful completion of this course before you can travel on to FLETC prior to ADOTP.
- ***As noted in RAIO officer vacancy announcements, successful completion of the training programs is a condition of continued employment. Failure to meet these requirements will be grounds for reassignment to a different position, demotion, or removal by appropriate procedures.***

e. Work Schedule: as noted in the Handbook, all participants attending the Remote and F2F residential trainings are required to work a basic work schedule. As noted in Rhonda's welcome email that you received on Thursday and in your schedule instructions, while participating in training, you will work a regular five-day work schedule, 8:00 a.m. – 4:30 p.m. with a half hour for lunch. You may not telework during RAIO Remote or ADOTP remote.

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f. Attendance and Leave
As outlined in the RAIO Directorate Officer Training Handbook and [redacted] welcome email on Thursday:

- The attendance and leave policy begins with the first day of the RAIO CTP Remote component and continues for Asylum Officers through the end of the ADOTP.
- You may accumulate **no more than three days (24 hours) of absences** from the start of the Remote component of the RAIO CTP and throughout the duration of ADOTP. Absences in excess of this ceiling will result in the your failure to complete the requirements of the course and will require you to retake the entire course. Leave taken during DT will not count towards the three-day leave ceiling.
- Annual leave will not be granted while participants are attending the Remote or F2F training, except under exceptional circumstances. Annual leave cannot be taken during multiple choice and mock interview exam hours; exams cannot be taken at alternate times and will not be rescheduled. Leave on days

of practice mock interviews is highly discouraged; practice mock interviews will not be rescheduled and cannot be made up.

- Sick leave will be granted as required and is counted toward the three days (24 hours) total allowable leave.

g. Homework

- DT was organized so that you would have an opportunity to read before the class and to get an initial overview. RAIO Remote provides you with an opportunity to engage in interactive presentations, apply what you learned in DT, and ask questions. **We will not assign you homework**. Your job right is to be fully present during RAIO Remote: you are being paid to learn, to pay attention, and to actively participate in the exercises. Keep in mind that **your job is contingent on passing the exams.**

3. RAIO Remote Schedule
   a. You should have all received the schedule in an email. RAIO Remote will take place starting now until Monday, October 28th
   b. Schedule Overview:
      1. Please review the schedule each day for your assignments. Each day you will be assigned to watch pre-recorded webinars, live webinars, take an exam, or other tasks, such as observing interviews or completing feedback surveys.
      2. You must watch the live webinars at the time designated on the schedule, but the time at which you watch the pre-recorded webinars may vary depending on your time zone. However, everyone will be completing the same tasks each day and everyone will be working an 8AM-4:30 schedule each day.
   c. Composed of the following:
      1. Pre-recorded webinars. Some of these webinars have associated writing exercises or handouts that you will complete during the webinar. The schedule has a link to all of the documents that you will need for each webinar. We envision that you will watch these recordings individually; however, you may watch them in a group with other students in your office if space and resources allow. We want to allow you to have some flexibility and chose the option that will allow you to best learn.
      2. Live Q&A and practical exercise sessions. Each recorded webinar has an associated live webinar component. Some of these live webinars have associated writing exercises or handouts that you will complete during the webinar. The schedule has a link to all of the documents that you will need for each webinar. For the live sessions, we encourage you to complete

these in groups, as some of the sessions involve exercises that are best done in groups. Again, this is dependent on whether or not your office has space available. In addition, we want to emphasize that, throughout RAIO Remote, if at any time you decide to work in a group, you must **each log in to the session with your own computer.** This is necessary in order for us to keep attendance. In addition, there are practical exercises that you will each need to complete individually and upload to your student drop box.

3. Exams: as stated previously, you will have two exams during RAIO Remote.
    1. Exam #1: 8:00AM-9:30AM Tuesday, October 22
    2. Exam #2: 8:00AM-9:30AM Monday, October 28
    3. As noted previously, you must complete and pass these exams in order to travel to the F2F Training.
4. The schedule is structured so that the foundational topics like Ref Def, Persecution, Nexus, WFF, etc. are covered toward the beginning of the course. We then build on those sessions to cover more advanced topics such as TRIG, Fraud and FDNS in the latter part of the course.
5. A quick note about Credibility. Credibility will be addressed specifically in a few sessions. Mon., 10/21 – Read new LP. Thur., 10/24 – Recorded webinar. Fri. 10/25 – Live Q&A to follow up on recorded webinar. Another live Cred. Session during ADOTP Remote focused on interviewing skills. Then PEs during ADOTP F2F at FLETC. That said, don't think of Credibility as a discrete topic that you only need to worry about during these session. It's something than runs through everything we do as AOs, so keep in mind as you approach all the topics we'll cover during this training.
6. Feedback: Throughout the course, we'll be sending your Survey Monkey links for you to complete feedback on the sessions and will also give you time during the schedule to complete feedback. This is very important to us. We've made many changes to the course over the years based on feedback from participants. We really do listen to and value you input. We do ask you to keep in mind the following when providing feedback:
    a. Be timely
    b. Be specific
    c. Focus on changeables
    d. Be non-punishing
    e. Be open to receiving feedback yourself – 2 way street.

d. We hope that you will get a lot out of the training, not just in terms of what you learn but also in terms of the **colleagues you will meet**.

1. I still keep in touch with the colleagues and friends that I made during my RAIO Combined Training. I mention this for a couple reasons:
    1. Your classmates have **incredibly diverse backgrounds** – you are all very talented people and bring a unique perspective to topics we discuss here.
    2. **RAIO is a small place** – everyone moves around- you never know when and where you will cross paths again, you may very well run into them from time to time, perhaps as someone's supervisor, or vice versa – so think about how you conduct yourselves and the impressions that you make while you're here.
    3. Provide an **immediate network** as you progress with your careers.
        a. Many of you will similarly go on details and float around – whether overseas, to asylum offices, or to the border.
        b. You will work together again after this training – so it's useful to get to know each other now and build that network early on.
    4. You will have plenty of opportunity to get to know each other more in person at F2F training, but we really think this concept can start now during RAIO Remote. We encourage you to study together and reach out to each other. This can extend beyond the officers in your own offices. For example, if someone says something during a webinar that you have a question about or simply thought was a great comment, feel free to reach out to them. We want you all to start to develop these relationships now and encourage you to use each other as resources.

4. WebEx instruction reminders
    a. You received WebEx instructions in the RAIO Remote Schedule under "Instructions". Here are some reminders:
        1. For each live webinar, you will receive an email from a session facilitator (either [redacted] (b)(6) prior to the start of the session.
        2. **Every student must log in using their own computer**, even if you are working in a group or sitting with other students.
        3. Please open the email and join the session **at least 10 minutes prior** to the designated start time.
            1. To join the session, follow the directions in the email. The email will contain a link: it will say, "go to…" and then will provide a hyperlink. Click on the hyperlink.
            2. Open the WebEx session using **Google Chrome**.

3. The **first time** you join a meeting, you may have to enable a Chrome extension. If a dialogue box appears in the top-right of your screen asking you to enable an extension, click "enable."
4. Once WebEx has loaded, a dialogue box labeled "Audio Conference" will appear.
    a. **Enter your phone number** and press "call me"
    b. Do NOT click on the "use computer for audio" option. Your audio must always be connected using a landline or cell phone.

4. Once you have entered the WebEx session, you will be on mute. You will be able to hear the session host, but cannot participate verbally, unless the host gives you permission to do so.
5. If you have any questions once you have entered the session, you can use the chat box on the right-hand side.
6. If you have any questions before a session or are unable to get in to the session, please email: [redacted] (b)(6)

5. ECN Overview
    a. Share screen and show:
        1. DT page: classroom links (handbook), drop boxes, etc.
        2. LPs & More: RAIO Remote
6. Questions?

REFUGEE DEFINITION AND PERSECUTION

Refugee Definition

Refugee Definition

U.S. Citizenship and Immigration Services

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

Refugee Definition

U.S. Citizenship and Immigration Services

INA § 101(a)(42)(A)

1. Outside country of nationality or last habitual residence
2. Unable or unwilling to return
3. Unable or unwilling to receive protection of home country
4. Because of persecution or a well-founded fear of persecution
5. On account of race, religion, nationality, membership in a particular social group or political opinion

INA § 101(a)(42)(B)

1. In-country refugee processing
2. Persecutor bar
3. Coercive family planning

Nationality

U.S. Citizenship and Immigration Services

"any person who is outside any country of such person's **nationality**…"

- Nationality ⇨ Citizenship
- Determining Nationality
  - Documents
  - Testimony
- Passport = ***Presumption*** of Nationality

Dual Nationality

U.S. Citizenship and Immigration Services

An applicant must establish past persecution or a well-founded fear in each country of citizenship or nationality.

An applicant who is citizen or national of more than one country but has no fear of persecution in one of those countries does not qualify for asylum.

Statelessness

"a person who is not considered a national by any State under the operation of its law."

- Statelessness does not itself establish eligibility

- Must find past persecution or well-founded fear in country of last habitual residence
  - ➢ Principal, actual dwelling place without regard to intent
  - ➢ Length of time can be a factor
  - ➢ Only one country of last habitual residence

Practical Exercise

(b)(7)(e)

U.S. Citizenship and Immigration Services

U.S. Citizenship and Immigration Services

Persecution

Persecution

- Seriousness
- Motivation
- Persecutor
- Location

Persecution

- Seriousness
- **Motivation**
- **Persecutor**
- **Location**

U.S. Citizenship and Immigration Services

Seriousness

U.S. Citizenship and Immigration Services

- encompasses more than physical harm or threat of physical harm
- involves significant use of force or nonphysical harm of equal gravity
- can include actions less serious than threats to life or freedom
- must rise above unpleasantness, harassment, and even basic suffering

Seriousness

U.S. Citizenship and Immigration Services

One act alone may be enough

Cumulative acts may amount to persecution

No ‘serious injury’ requirement

Types of Harm

U.S. Citizenship and Immigration Services

Physical Harm

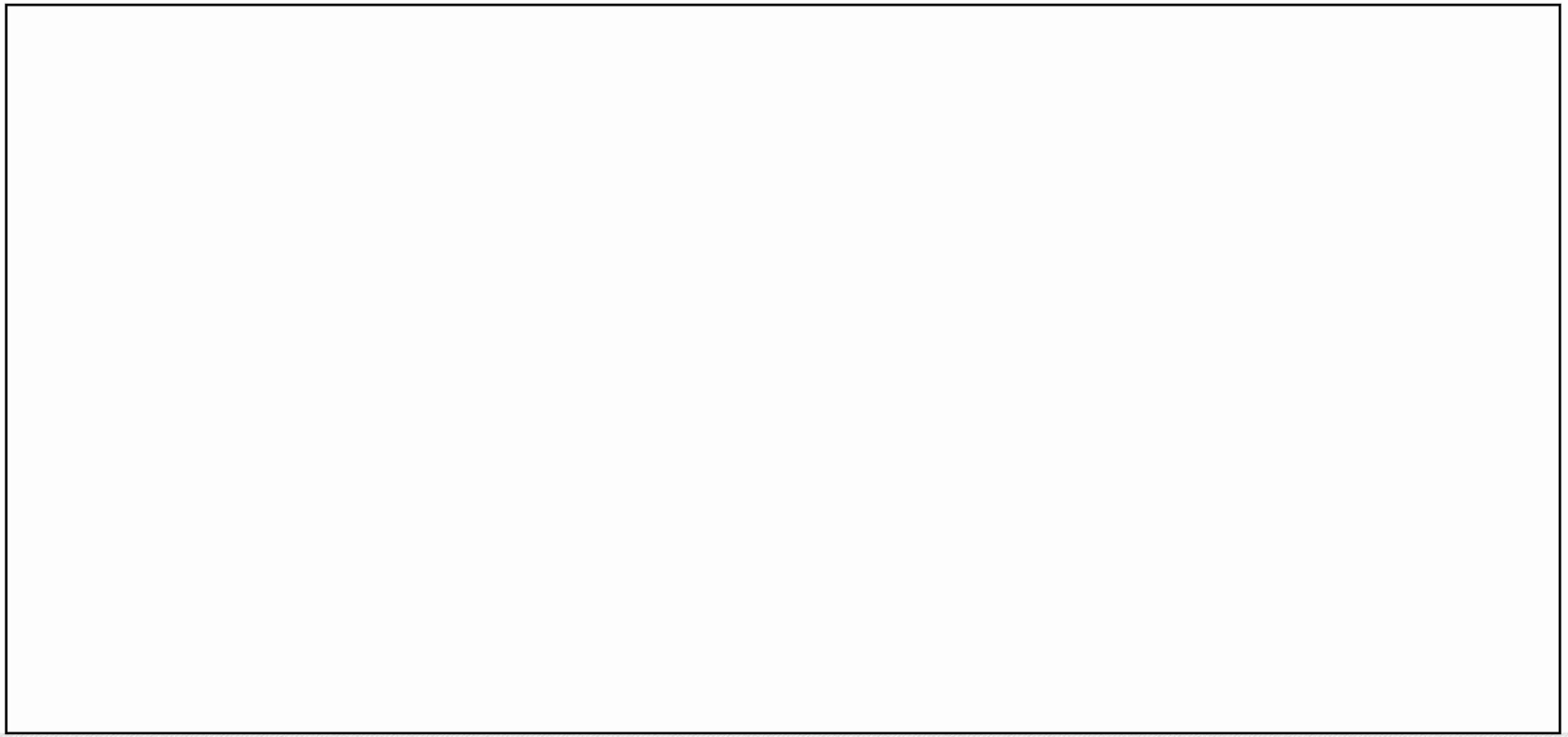
Non-Physical Harm

- Economic
- Psychological
- Harm to Others
- Harassment and Discrimination

Types of Harm

(b)(7)(e)

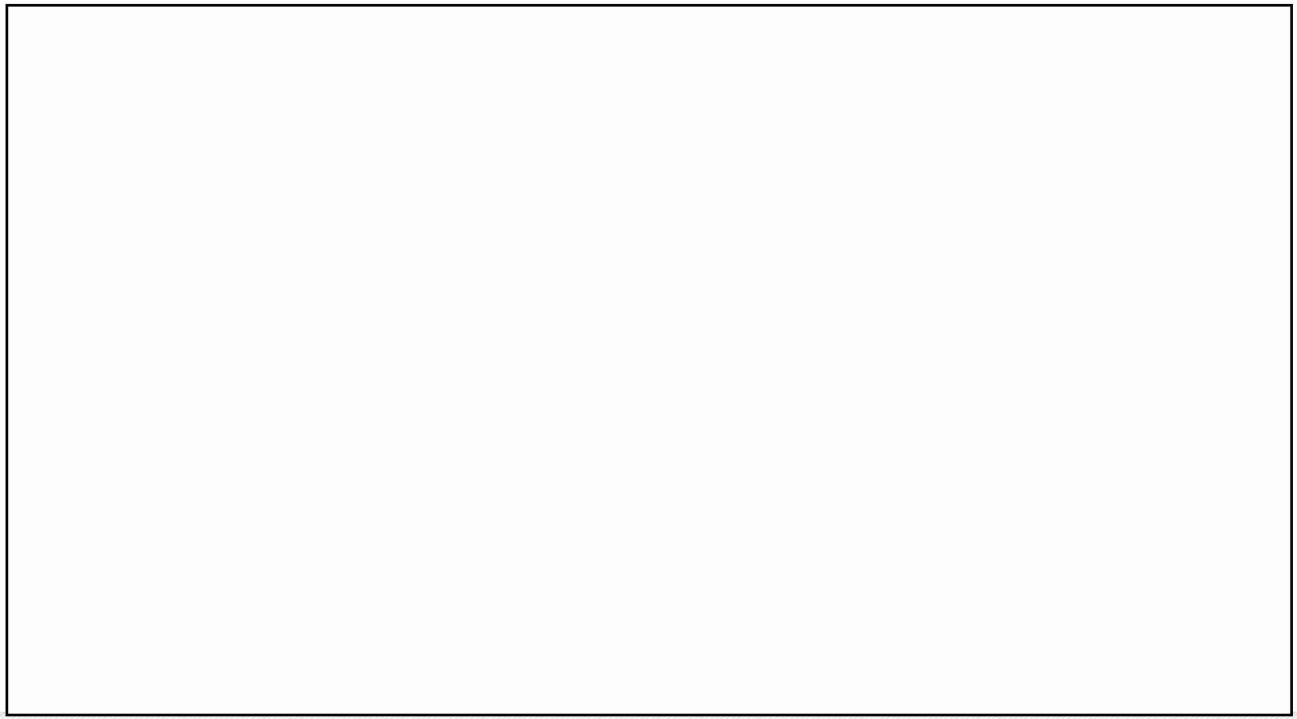
U.S. Citizenship and Immigration Services



Keep in Mind…

(b)(7)(e)

U.S. Citizenship and Immigration Services



Persecution

U.S. Citizenship and Immigration Services

Seriousness

Motivation

Persecutor

Location

Persecution

U.S. Citizenship and Immigration Services

Seriousness

Motivation

Persecutor

Location

Identity of the Persecutor

U.S. Citizenship and Immigration Services

State actor OR **Entity the government is "unable or unwilling to control"**

Unable or Unwilling

Are there reasonably sufficient governmental controls and restraints on the entity[ies] that harmed the applicant?

Does the government have the ability and will to enforce those controls and restraints?

Did the applicant have access to those controls and constraints?

Did the applicant attempt to obtain protection from the government?

Persecution

U.S. Citizenship and Immigration Services

Seriousness

Motivation

Persecutor

Location

Seriousness Motivation Persecutor Location

U.S. Citizenship and Immigration Services

(b)(7)(e)

Seriousness Motivation Persecutor Location

U.S. Citizenship and Immigration Services

(b)(7)(e)

Persecution Interview, Part 2

U.S. Citizenship and Immigration Services

(b)(7)(e)

TVPRA and UAC Determinations

AUGUST 2019

Objectives

1. Define an "Unaccompanied Alien Child" (UAC).
2. Describe the initial jurisdiction provision of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).
3. Describe the TVPRA's other provisions that relate to the Asylum Division.
4. Understand how USCIS has initial jurisdiction over UAC asylum applications
5. Identify procedural issues related to UAC cases.

Why do children come to the U.S.?

- Economic/financial hardship
- Lack of education
- Reunite with family
- Fear of harm in home country
  - Gang recruitment/gang violence
  - Sexual orientation
  - Religion
- Common cases involve non-state actors
  - FGM, forced marriage, domestic violence

Why are children unaccompanied in the U.S.?

- The child's parents remain in the home country.
- The parents may have accompanied the child on the journey and returned to the home country.
- A child may have come to the U.S. unaccompanied in order to reunite with an adult relative who is not a parent or legal guardian.

Number of UACs

- Thousands of unaccompanied children are apprehended each year after crossing the border:
  - FY 2018: 58,660
  - FY 2017: 48,669
  - FY 2016: 70,398
  - FY 2015: 44159
  - FY 2014: 72,750
  - FY 2013: 41,865

- Many of the UACs we see in ORR custody are from Guatemala, El Salvador, Honduras, and Mexico.

Who is a UAC?

- An "Unaccompanied Alien Child" (UAC) is a legal term referring to a child who, at the time of first filing (with EOIR or USCIS):
  - has no lawful immigration status in the US;
  - has not attained 18 years of age;
  - and has no parent or legal guardian in the US, or for whom no parent or legal guardian in the US is available to provide care and physical custody.

Terminology

- Asylum Applicants under 18
  - Minor Principal
  - UAC
  - PRL
  - Unaccompanied minors

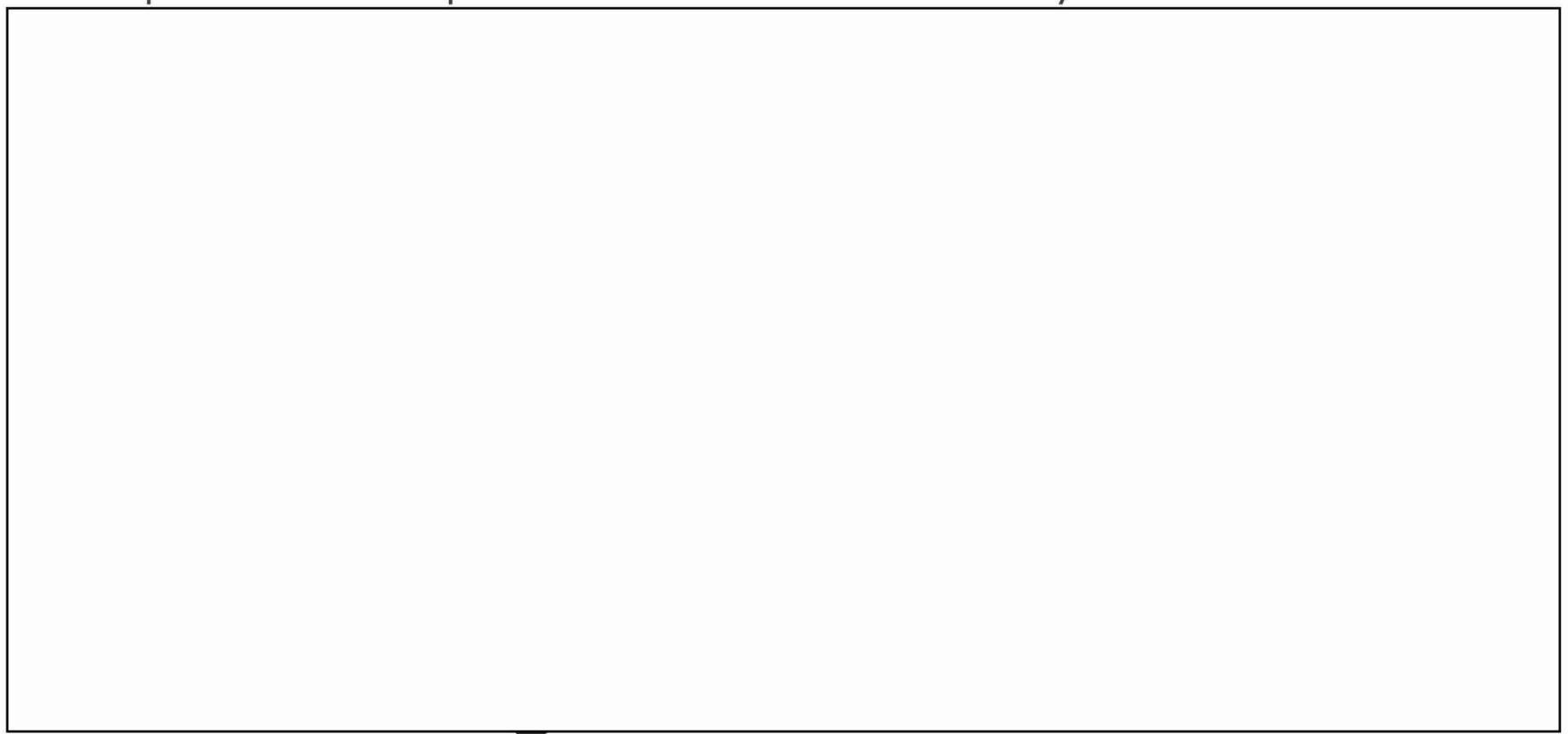
PRL

- PRL refers to those UACs who are currently in removal proceedings (under INA Section 240) in Immigration Court.

- PRL is the special group code entered by the Service Center in Global at the time of I-589 receipt.

PRL

- "Special Group" Field in Global's "Entry" Tab



(b)(7)(e)

TVPRA

- On December 23, 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

- This law took effect on March 23, 2009.

TVPRA-Initial Jurisdiction

- USCIS generally does not have jurisdiction over asylum applications filed by applicants in removal proceedings. Here's a reminder of why USCIS has initial jurisdiction over these cases – because Congress passed the TVPRA in 2008:
  - Signed into law on December 23, 2008. 8 U.S.C.A. § 1232
  - Became effective on March 23, 2009
- Allows children in Removal Proceedings to begin the asylum process in a non-adversarial setting
  - "Initial Jurisdiction"
  - Applies to UACs as of 12/23/08 who had a pending case and asylum claim was not previously adjudicated

Why did Congress create the Initial Jurisdiction provision?

- UACs are vulnerable because they are away from their parents' protection, their traditional community, and their country of origin.

- Children may be at risk of being trafficked due to their dependence on adults and their susceptibility to outside influence.

Why did Congress create the Initial Jurisdiction provision?

- The affirmative process is a non-adversarial interview, rather than a series of adversarial court hearings.

- AOs conducting the affirmative interview are trained in matters relating to children's asylum claims.

Other TVPRA Asylum Provisions

- UACs whom DHS seeks to remove must be placed in 240 removal proceedings.
  - This means UACs do not go through the credible fear or reasonable fear process.
- UACs are not subject to the one-year filing deadline. INA § 208(a)(2)(E).
- Federal agencies must notify ORR upon discovery of a UAC.
- A child advocate may be appointed by ORR.
  - Available particularly vulnerable UACs.

TVPRA – How does it work?

- How does the process of initial jurisdiction work?
- What happens when a UAC files for asylum with USCIS?
- What happens leading up to that?

What happens when a UAC is apprehended?

- CBP or ICE make a determination of UAC status based on the person's age and accompanied status.
- CBP or ICE issue a Notice to Appear, which puts the UAC into removal proceedings.
- CBP or ICE transfers the UAC to ORR custody within 72 hours of making the UAC determination.
- ORR places UACs in a range of different settings until they are released to an adult sponsor or family member.
- UACs are scheduled for immigration court hearings.

Immigration Court Hearing

- UAC appears at Immigration Court master calendar hearing and requests asylum.
- ICE OCC may assert that the applicant is or is not a UAC; If a UAC, IJ continues (postpones) proceedings to allow UAC to file the asylum application (Form I-589) with USCIS.
- UACs who wish to apply for asylum are given a UAC Instruction Sheet by ICE OCC directing them to file Form 1-589 with USCIS
- If not a UAC, IJ instructs applicant to file with the Immigration Court. See *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018)

UAC determinations

- Remember, we are always looking at whether the applicant was a UAC at the time of filing

UAC Determinations

(b)(7)(e)

Scenario 1:

Where to find a previous UAC determination

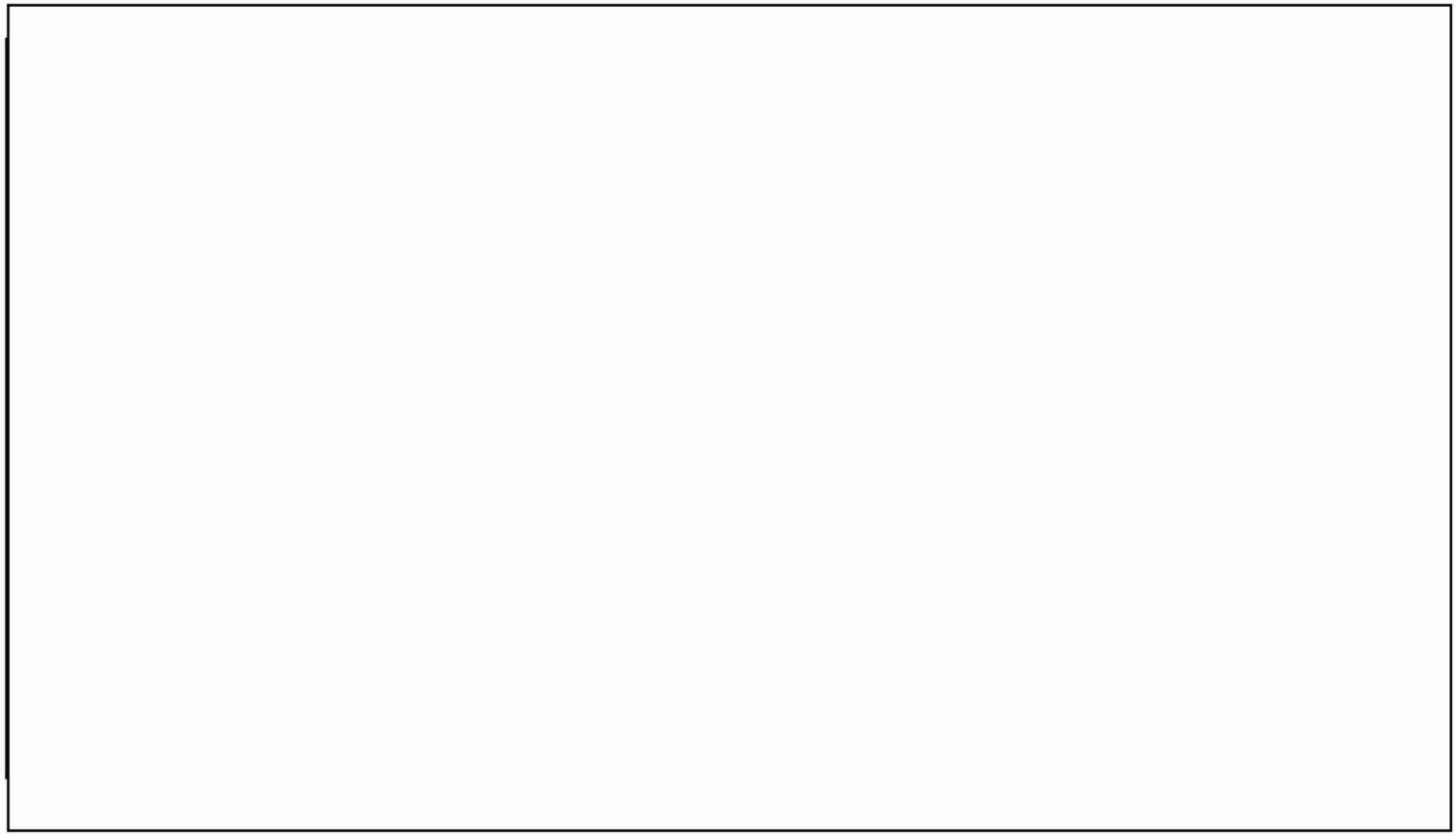
- Form I-213: Record of Deportable Alien
- Form 93: CBP UAC Screening Form
- ORR UAC Initial Placement Referral
- ORR Verification of Release Form
- EARM: Encounters Tab

****The ICE UAC Instruction Sheet is NOT by itself evidence of a prior UAC determination****

(b)(7)(e)

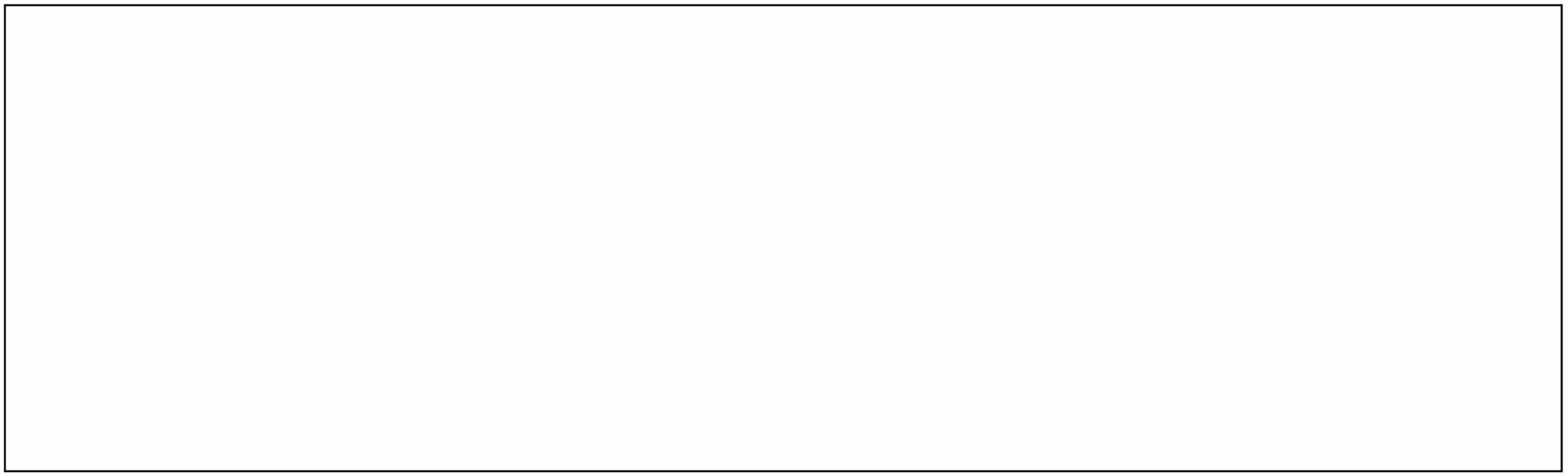
Where to find a previous UAC determination

Form I-213: Record of Deportable Alien



Where to find a previous UAC determination

Form I-213: Record of Deportable Alien (b)(7)(e)



Where to find a previous UAC determination

Form 93: CBP UAC Screening Form

EPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM

Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name: _____ A NUMBER *(if any)* A _____

Credible Fear Determination

Why did you leave your home country or country of last residence?

Do you have any fear or concern about being returned to your home country or being removed from the United States?

Would you be harmed if you were returned to your home country or country of last residence?

Do you have any questions or is there anything else you would like to add?

Human Trafficking

Definition: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion **or in which the person induced to perform such an act is under 18**; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for indicators of human trafficking.

Where to find a previous UAC determination

ORR Initial Placement Referral Form

UAC Initial Placement Referral Form
See Footer for Instructions – Updated, 3/25/08

Processing Officer's Name	Email Address	Desk Phone	Cell Phone

UAC Information

First Name	Middle Name	Last Name	DOB

Additional Names Used:

Gender	Country of Birth	Immigration Status	A#	FINS #
	EL SALVADOR	NTA Issued		

Entry and Apprehension Information

	City and/or Location Code	ST	Date	Time	Type
Entry	SASABE	AZ	12/17/2010	10:00 AM	Entered Without Inspection
Apprehension	SASABE	AZ	12/18/2010	3:00 PM	N/A
Current Location	TUCSON	AZ	N/A	N/A	Processing Center

UAC apprehended with: (Choose more than one if applicable)	Please provide the following for all relatives apprehended with the AUC, if more space is needed, use the *Referral Notes* section at the bottom of the page.		
	Name	A#	Relationship to UAC
☐Parent(s)			
☐Other Related Adult(s)			
☐Related Minor(s)			
☐Smuggler(s)			
☐Non-Related Individual(s)			
☒Alone			

Where to find a previous UAC determination

ORR Verification Release Form

US Department of Health and Human Services

Office of Refugee Resettlement
Verification of Release Form

OFFICE OF REFUGEE RESETTLEMENT
Division of Unaccompanied Children's Services

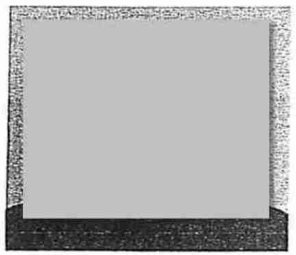
Name of Minor:		**Aliases (if any):**
Minor's Date of Birth:	**Minor's A**	**FINS#:**

Pursuant to Section 462 of the Homeland Security Act, the Office of Refugee Resettlement (ORR) has released from its custody the above-named minor into the care and custody of:

_____

_____

Acknowledgement of Conditions of Release



- **I hereby acknowledge that I have read, or had explained to me in the Spanish language, and I understand the conditions of my release as specified in the Sponsor's Agreement to Conditions of Release, which include among others the following conditions:**
- **I agree to appear at all future proceedings before the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR).**
- **I agree to report to the DHS/ICE office if so ordered.**
- **I agree to notify DHS/ICE if I decide to depart from the United States. I will do this at least 5 days before I actually depart the United States.**
- **I agree to notify DHS/ICE and EOIR within 5 days of a change of address.**

Where to find a previous UAC determination

EARM Encounters Tab

Subject Information

FINS:
A-Number:
Control Name:
First Name:
Middle Name: **N/A**
Maiden: **N/A**
Nickname: **N/A**
Living?: **N/A**
Sex: **M**
Marital Status: **Single**
SSN: **N/A**
Juvenile Verified: **Y**
Occupation: **CHILD**

Criminal Type: **N/A**
Agg Felon: **N - Not an Aggravated Felon**
Primary Citizenship: **GUATEMALA**
Hair: **BLK**
Eyes: **BRO**
Complexion: **MED**
Race: **W**
Origin: **N/A**
Date of Birth:
Age: **20**
Age at Encounter: **17**
Height: **64**
Weight: **130**

Role:
Role Comment: **N/A**
Processing Disposition: **Warrant of Arrest/Notice to Appear**
INS Status: **Inadmissable Alien**
POE: **HIDALGO, TX**
Entry Date: **12/04/2010**
Entry Class: **PWA Mexico**
Apprehension Date: **2010-12-04 05:40:00.0**
Apprehension Location: **HIDALGO, TX**

I-213 Narrative NOTE

(b)(7)(e)

Previous UAC Determination

(effective June 10, 2013)

USCIS **adopts** the previous UAC determination by CBP/ICE/HHS and takes jurisdiction:

- as long as UAC determination was still in place at the date of initial filing of the asylum application;
- **even if** the applicant turned 18 or reunited with a parent after being designated a UAC by CPB/ICE/HHS

Note: under *M-A-C-O-*, if someone first filed the application when 18 or older, the IJ will take jurisdiction.

UAC Determinations

(b)(7)(e)

Scenario 2:

If the applicant is in removal proceedings

In order to determine whether the applicant was a UAC at the time of first filing the I-589 (with EOIR or USCIS) the AO should check the date of first filing the I-589.

Where can you find this?

- PCQS and Global for all filings
- I-589 date stamp

If No Previous UAC Determination is in Place

Did the applicant meet UAC definition at time of first filing:

1. Was the applicant out of status?
2. Was the applicant under 18?
3. Did the applicant lack a parent or legal guardian in the U.S. available to provide care and physical custody?

If No Previous UAC Determination is in Place

Generally, a child living with parent/legal guardian is accompanied.

However, parent/legal guardian that fails to exercise parental responsibilities may not be **available** to provide care and physical custody.

Alternatively, a child may live apart from parent/legal guardian who is still **available** to provide care and physical custody (e.g., child shares meals with and is cared for by the parent). Generally, such a child would be accompanied.

UAC Determination: USCIS has Jurisdiction

- Conduct full interview and write assessment
- Include initial filing date, state that a previous UAC determination in place at the time of filing; OR, if not, that the applicant was a UAC at the time of filing based on factual inquiry.
- State that applicant not subject to OYFD.

Non-UAC Determination

If USCIS does not have jurisdiction because the applicant is in removal proceedings and not a UAC:

- Confirm lack of jurisdiction determination with a UAC POC, SAO, or TO;
- Don't interview on the merits;
- Draft a memo to file explaining lack of jurisdiction;
- Use Notice of Lack of Jurisdiction (non-UAC) to transfer case to ICE

UAC Determinations

Scenario 3:

(b)(7)(e)

Types of UAC decisions

If applicant is in removal proceedings:

- Grant
  - Issue standard grant letter, but copy local ICE OCC.
- Transfer
  - Replace referral notice with UAC Decision Notice for Non-Eligibility.
- Lack of jurisdiction
  - Use Notice of Lack of Jurisdiction (non-UAC). Instead of assessment, draft memo to file explaining lack of jurisdiction.

Background – Process

- March 2009-June 2013:

  AOs always made independent factual inquiries to support UAC determinations.

- June 2013-present:

  AOs adopt prior determinations by CBP, ICE, or HHS that the applicant was a UAC if that determination remained in place at time of filing for asylum.

2019 – Updated Procedures

- In May 2019, the Asylum Division issued an updated Memo that reverted to the previous practice of requiring asylum officers to make independent factual inquiries to determine whether USCIS has jurisdiction over an application filed by an individual in removal proceedings claiming to be a UAC
- On August 3, 2019, the U.S. District Court for the District of Maryland issued a temporary restraining order, instructing USCIS to cease applying the 2019 guidance and resume processing cases under the procedures outlined in the 2013 Memo.
- **Currently, and until further notice, asylum officers are instructed to process cases using the procedures outlined in the 2013 Memo.**

(b)(7)(e)

Practical Exercise 1 – Make a UAC Determination

Practical Exercise 2 – Make a UAC Determination

Questions?

U.S. Citizenship and Immigration Services

Well-Founded Fear

October 2019

Review

- Elements of a Well-Founded Fear
  - Subjective fear
  - Objective fear
- No Requirement of Past Harm
- The Mogharrabi Test

  1) applicant possesses (or is believed to possess) a protected characteristic;

  2) persecutor is aware or could become aware that applicant possesses the characteristic;

  3) persecutor is capable of persecuting applicant; and

  4) persecutor is inclined to persecute applicant.

Review, continued

U.S. Citizenship and Immigration Services

- Pattern or Practice
- Persecution of Family Members or Close Associates
- Threats
- Applicant Remains in Country after Threats or Harm
- Return to Country of Persecution
- Possession of Travel Documents
- Refugee Sur Place
- Internal Relocation
- Country of Origin Information

Practical Exercise

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- Pull up the WFF Practical Exercise (link in schedule)
- Take 10 minutes to read all three [redacted]
- Randomly assigned to a breakout group. Six groups total. Assignments (the title of your break-out session will contain your group number and [redacted]:
  - Groups 1 and 2: [redacted] A
  - Groups 3 and 4: [redacted] B
  - Groups 5 and 6: [redacted] C
- 10-12 minutes in break-out room to discuss ALL elements of PACI for assigned FP
  - One person/group will be randomly assigned to lead (blue circle next to name)
  - Group leader directs discussion of each element, beginning with possession [redacted]
  - Group leader (unless group elects someone else) will be responsible for taking notes and reporting discussion back to the main group.

Q&A

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Well-Founded Fear

RAIO Combined Training Program

Revision date: September 2019

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… any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution

or a well-founded fear of persecution

on account of race, religion, nationality, membership in a particular social group, or political opinion…

Photo by UNHCR

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Well-Founded Fear of Persecution

Objective	Sub-jective	Objective
PACI Reasonable Possibility Standard		

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What are YOU afraid of?

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Photo by UNHCR

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Can applicant have other reasons to leave *besides* fear of persecution?

Photo by UNHCR

Decimation

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Objective Component (PACI) =

Possession

Awareness

Capability

Inclination

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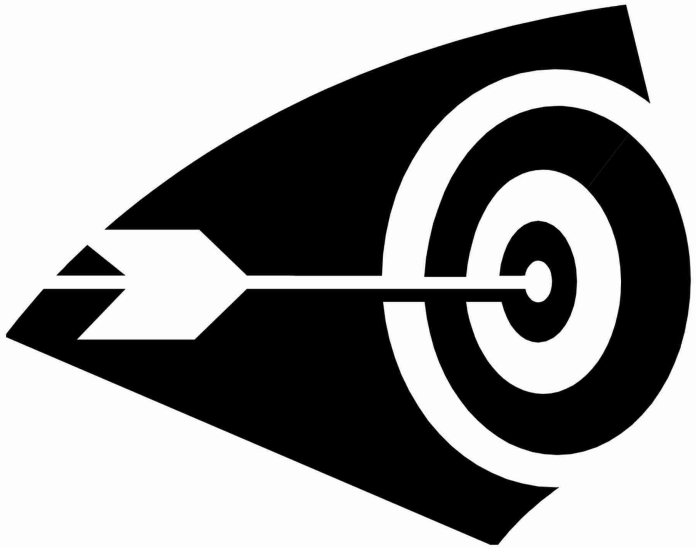

Must the individual applicant be targeted?

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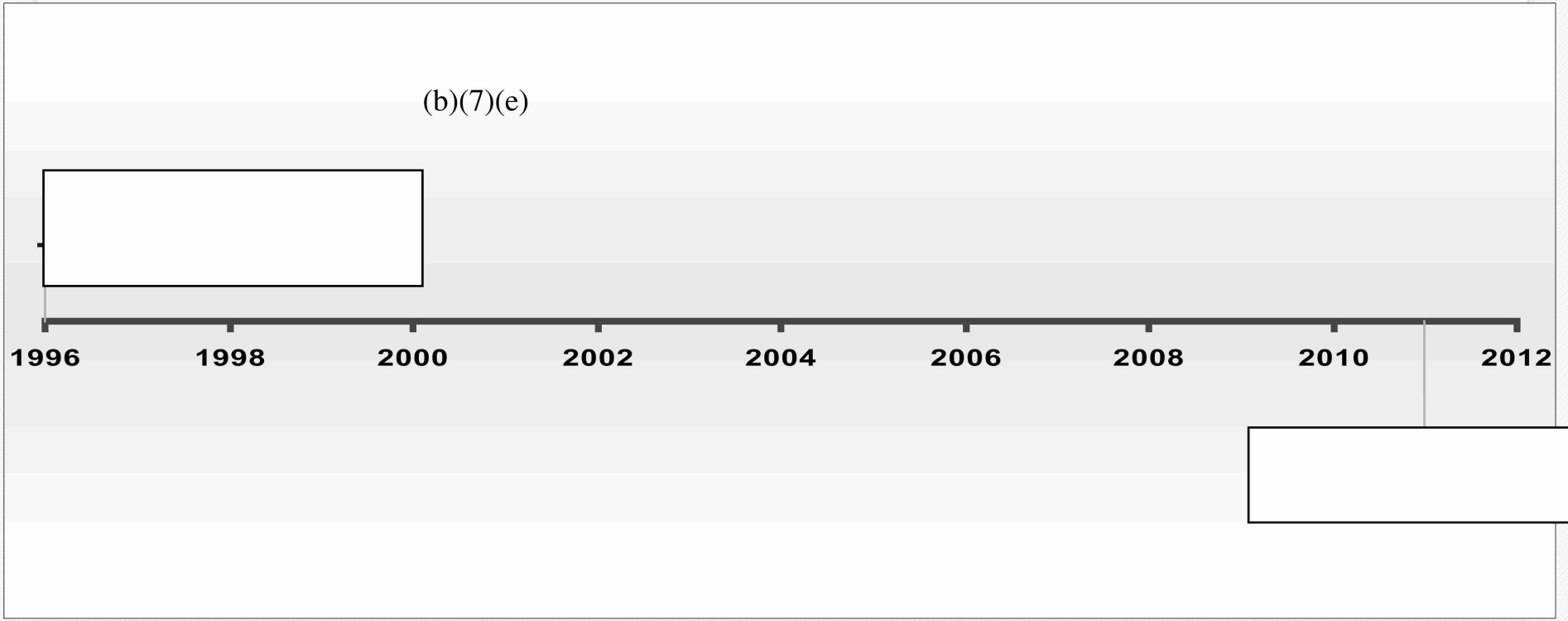

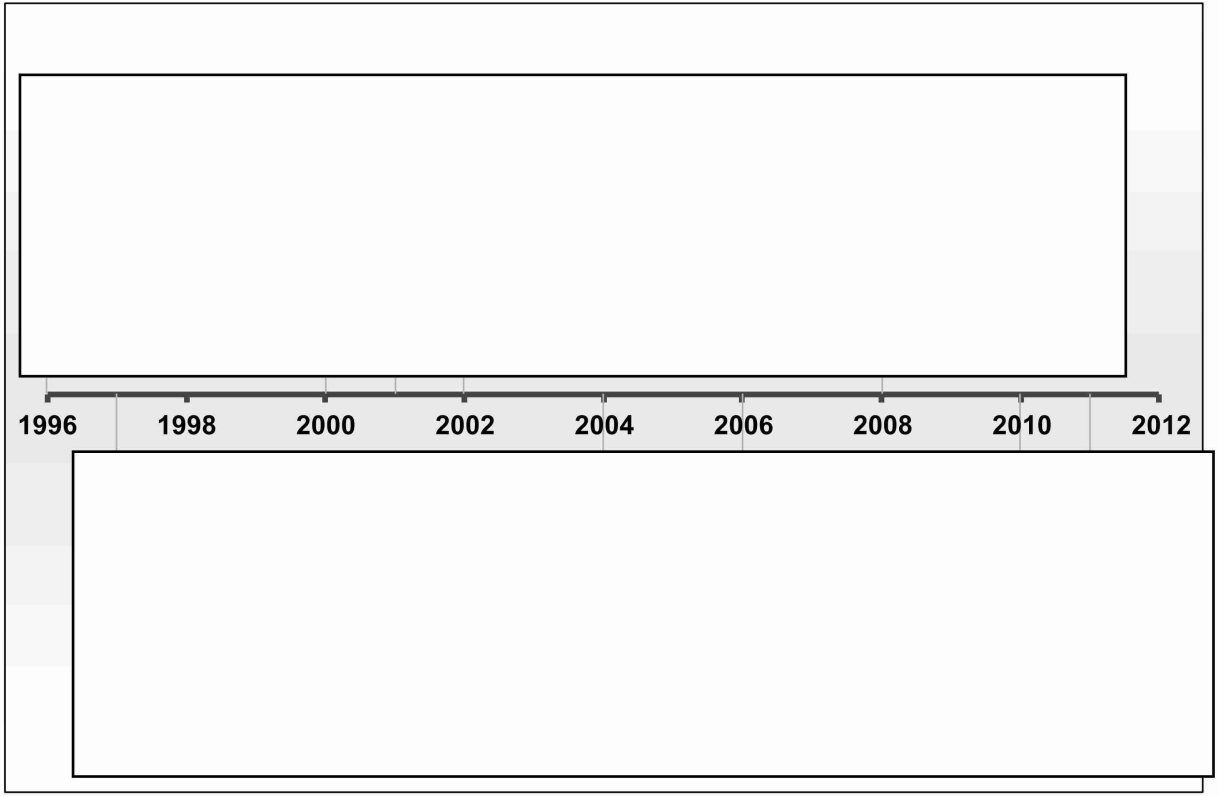

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If **time lapsed** between a threat and an applicant's departure, does that defeat the claim of well-founded fear?

IT DEPENDS

Image by Katy Frank

Internal Relocation

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1. Can the applicant avoid persecution by relocating within their country? If yes,
2. Would it be **reasonable**, under all circumstances, for the applicant to relocate?

   8 C.F.R. § 208.13(b)(2)(ii).

Photo by UNHCR

Internal Relocation

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What if the applicant relocated before fleeing his country of nationality?

Photo by UNHCR

Can an applicant become a refugee while **outside** the country of origin?

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Refugee sur place

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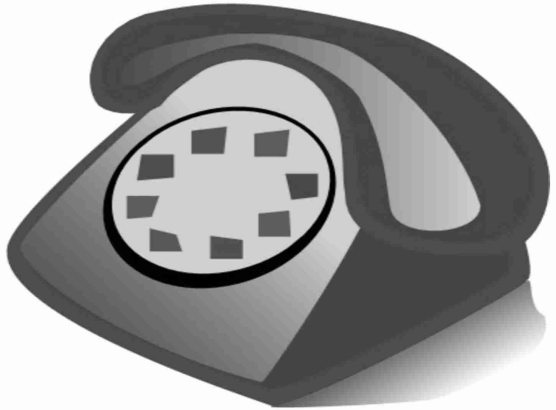

Photos by Katy Frank

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What would make you face your fears?

Photo by Heide Bryan

What if…

your mother was dying and

this was your last chance to see her?

What if…

you had left your child behind?

What if…

you went back because you heard the country was safer?

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If an applicant has **returned** to the country of flight, does that defeat the claim of well-founded fear?

What have we learned?

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- Applicant must show their fear is:
  genuine (the subjective basis) and has an objective basis.
- Applicant need not have suffered harm in the past to establish a well-founded fear.
- Applicant must establish there is a reasonable possibility of suffering persecution in the future.
- Applicant establishes there is a reasonable possibility of future persecution through the PACI test.
- Applicant does not need to show that s/he will be singled out.
- Threats may be sufficient to establish well-founded fear.

What have we learned?

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- A significant lapse in time between the harm/threats and the departure may indicate the fear is not well-founded.
- Applicant's return to their country may weaken the well-founded fear claim, but does not necessarily defeat the claim.
- No well-founded fear if the applicant could avoid future persecution by internal relocation
  - and it is reasonable for the applicant to do so.
- Possession of travel documents may indicate that the government is not inclined to harm the applicant.
- Applicant may become a refugee after leaving their country.