

Roadmap



U.S. Citizenship
and Immigration
Services

- Overview of Expedited Removal
- Credible Fear Standard
- Credible Fear Process
- Special Considerations

What is Expedited Removal?



U.S. Citizenship
and Immigration
Services

- An immigration enforcement process where certain noncitizens arriving at the United States border or a port of entry are summarily ordered removed from the United States without further hearing or review.
- Noncitizens subject to ER are generally detained in detention facilities and ordered removed from the U.S. without a hearing before an IJ.

Expedited Removal



U.S. Citizenship
and Immigration
Services

ER provisions became effective April 1, 1997 (INA § 235)

1. Applies to noncitizens arriving at a port of entry who are inadmissible due to fraud or misrepresentation (INA § 212(a)(6)(C)), or
2. Who lack proper entry documents (INA § 212(a)(7))

Expedited Removal



U.S. Citizenship
and Immigration
Services

- ER expanded in 2004 to beyond ports of entry to include noncitizens apprehended within 100 air miles of the border and within 14 days of illegal entry.
- On July 23, 2019, DHS Acting Secretary issued a notice to exercise the full scope of its statutory authority to place all noncitizens apprehended anywhere in the country within two years of illegal entry in expedited removal.

How Does Credible Fear Fit In?



U.S. Citizenship
and Immigration
Services

- In ER, certain noncitizens are immediately removable unless they indicate an intention to apply for asylum, claim a fear of persecution, torture, or return to their home country.
- If a claim of fear or an intention to apply for asylum is made, the noncitizen must be referred to an Asylum Officer for a credible fear interview.
- If after the screening process, the noncitizen establishes a credible fear of persecution or torture, they are taken out of the ER process, and may seek further relief or protection before an immigration judge.

ER/CF Process Overview



U.S. Citizenship
and Immigration
Services

CBP

(Customs and Border
Protection)

Apprehends or
detains noncitizen
pursuant to ER.

ICE

(Immigration and
Customs
Enforcement)

Detains noncitizen. If
noncitizen expresses a
fear of return, noncitizen
must be interviewed by
USCIS.

USCIS

(U. S. Citizenship and
Immigration Services)

Conducts credible
fear screening.

ER/CF Process Overview



U.S. Citizenship
and Immigration
Services

USCIS

Credible fear screening
determinations:

- Positive determination
- Negative determination

EOIR

(Executive Office for Immigration
Review)

Positive CF → § 240 removal
proceedings

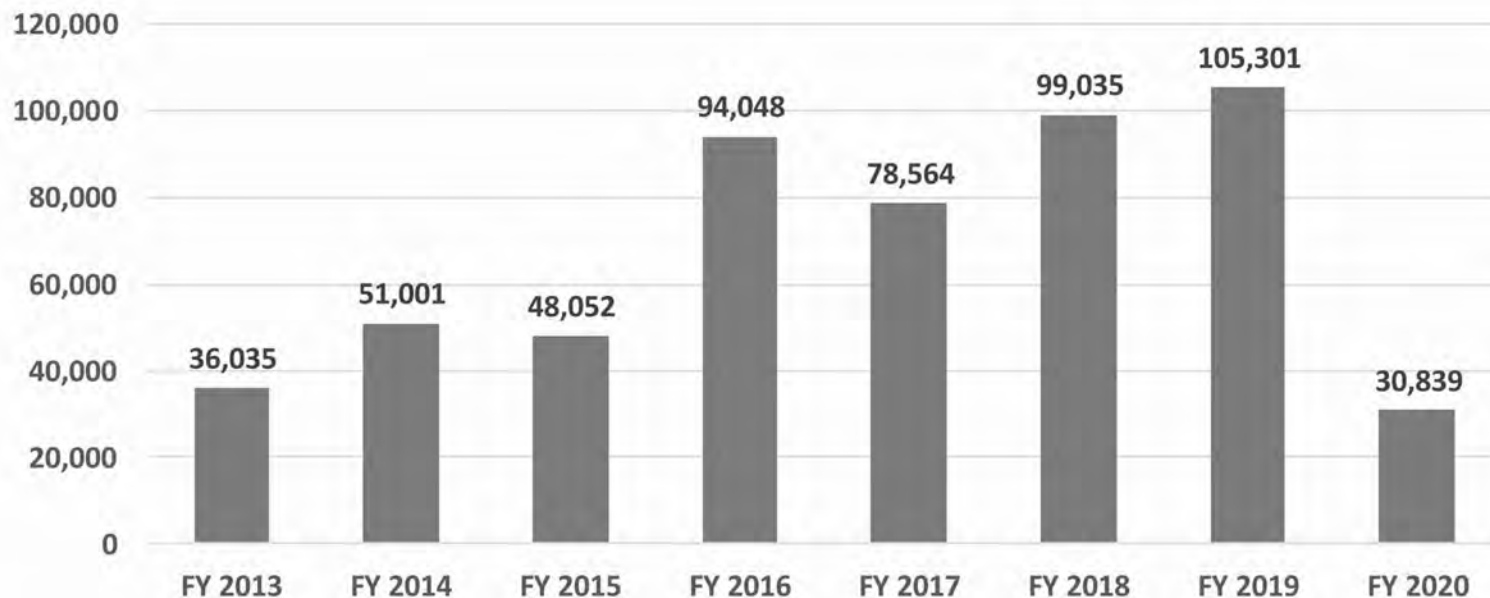
Negative CF → CF review proceedings

CF Receipts



U.S. Citizenship
and Immigration
Services

Yearly CF Receipts – All Asylum Offices



Expedited Removal/CF Receipts



U.S. Citizenship
and Immigration
Services

Fiscal Year	Subjected to Expedited Removal	Referred for a Credible Fear Interview	Percentage Referred for Credible Fear	Percentage Credible Fear Found
2006	104,440	5,338	5%	63%
2007	100,992	5,252	5%	60%
2008	117,624	4,995	4%	64%
2009	111,589	5,369	5%	65%
2010	119,876	8,959	7%	72%
2011	137,134	11,217	8%	82%
2012	188,187	13,880	7%	80%
2013	241,442	36,035	15%	84%
2014	240,908	51,001	21%	73%
2015	192,120	48,052	25%	70%
2016	243,494	94,048	39%	79%
2017	178,129	78,564	44%	76%
2018	234,591	99,035	42%	76%
2019	246,505	105,301	43%	74%
2020	unavailable	30,839	unavailable	38%

Top 5 Nationalities for FY2020



U.S. Citizenship
and Immigration
Services

- **Mexico**
- **Guatemala**
- **Honduras**
- **Cuba**
- **China**



What's the Purpose of CF?



U.S. Citizenship
and Immigration
Services

The credible fear process identifies noncitizens in ER who might be eligible for:

- Asylum (INA 208)
- Withholding of removal (INA 241(b)(3))
- Withholding or deferral of removal under the Convention Against Torture (8 CFR 1208.16, 1208.17)

The Function of CF Screening



U.S. Citizenship
and Immigration
Services

The credible fear process attempts “to quickly identify potentially meritorious claims to protection and to resolve frivolous ones with dispatch.”

- Regulations Concerning the Convention Against Torture; Interim Rule, 64 Fed. Reg. 8478 (Feb. 19, 1999) (effective Mar. 22, 1999).

Bottom Line



U.S. Citizenship
and Immigration
Services

A noncitizen in ER who does not claim a fear of return or establish a credible fear is immediately removed from the U.S. without a full immigration hearing.



Noncitizen in
ER who does
not claim
fear of return

Immediately
removed from
the U.S.



Noncitizen in ER who
claims fear and
receives a POSITIVE
CF Determination

Noncitizen is issued a Notice to Appear and placed in removal proceedings before an IJ

Noncitizen in ER who
claims fear and
receives a NEGATIVE
CF Determination

Noncitizen does not
request IJ Review

Removal from the U.S.

Noncitizen in ER who
claims fear and
receives a NEGATIVE
CF Determination

Noncitizen
requests IJ
Review

IJ can vacate the negative determination (NTA will be issued) OR IJ can affirm the negative decision (noncitizen will be removed from the U.S.)

Burden of Proof



U.S. Citizenship
and Immigration
Services

The noncitizen bears the burden of proof to establish a credible fear of persecution or torture.

AOs are required by regulation to conduct the interview in a non-adversarial manner. Officers must elicit all relevant and useful information bearing on whether the noncitizen has a credible fear of persecution or torture.

Standard of Proof



U.S. Citizenship
and Immigration
Services

The relevant standard of proof specifies how convincing or probative the applicant's evidence must be.

A very low standard requires little probative evidence; a higher standard requires highly probative evidence.

What is the Credible Fear Standard?

Standard Used in Credible Fear



U.S. Citizenship
and Immigration
Services

- A “significant possibility” that the noncitizen could establish eligibility for asylum or withholding of removal under the Convention Against Torture.

The Significant Possibility Standard



U.S. Citizenship
and Immigration
Services

- Requires that the applicant ‘demonstrate a substantial and realistic possibility of succeeding.’ It does not require the applicant to show that he or she is more likely than not going to succeed when before an IJ.
- A claim that has no possibility, or only a minimal or mere possibility, of success, would not meet the “significant possibility” standard.



Standards of Proof	
Beyond any reasonable doubt	Very high
Clearly and beyond doubt ----- AND	Highly probably true
Clear and convincing	Firm belief or conviction
Preponderance of the evidence ----- AND	More than 50% chance
To the Satisfaction of the Adjudicator ----- AND	Probably true
More Likely Than Not/Clear Probability	
Reasonable possibility	One in ten chance
Significant possibility	Substantial and realistic possibility



Credibility



U.S. Citizenship
and Immigration
Services

In making a credible fear determination, AOs must “[take] into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer.” 8 CFR 208.30

Evidence



U.S. Citizenship
and Immigration
Services

- Testimony is evidence; it can be sufficient alone to sustain applicant's burden of proof.
- Assess the credibility of the testimony.
- Take into account "other facts."
- Take into account COI.
- Determine the probative weight of all the evidence.

Testimony may be sufficient evidence



U.S. Citizenship
and Immigration
Services

- The noncitizen’s testimony may be sufficient to sustain their burden of proof if it is “credible, persuasive, and refers to specific facts.”
- “Specific facts” are distinct from statements of belief. When assessing the probative value of a noncitizen’s testimony, you must distinguish between fact and opinion testimony and determine how much weight to assign to any claimed facts.

Past Persecution Elements (significant possibility standard)



U.S. Citizenship
and Immigration
Services

- Harm rising to the level of persecution
- Nexus to a protected ground
- Gov't actor or unable/unwilling to control private actor

Past Persecution Cases



U.S. Citizenship
and Immigration
Services

Significant possibility of *eligibility* based on past persecution

=

Positive Credible Fear

**Do not consider whether asylum would ultimately be granted
in discretion**

Future Persecution Elements (significant possibility standard)



U.S. Citizenship
and Immigration
Services

- Harm rising to the level of persecution
- Nexus to a protected ground
- Gov't actor or unable/unwilling to control private actor
- Possibility of future persecution (PACI)
- Cannot avoid future persecution by internally relocating or not reasonable for applicant to internally relocate

Nexus Differences



U.S. Citizenship
and Immigration
Services



Nexus Similarities



U.S. Citizenship
and Immigration
Services

Nexus Standard – At Least in Part/ A Reason

Similarities		
	“At Least in Part” / “A Reason”	“One Central Reason”
Applicant bears burden of establishing he is a refugee?	Yes	Yes
Can have mixed motives?	Yes	Yes
How much evidence?	Some evidence	Some evidence
What kind of evidence?	Direct or circumstantial	Direct or circumstantial
Need to prove which motive is dominant?	No (<i>Matter of S-P</i> -, 21 I&N Dec. 486, 494 (BIA 1996))	No
Need to prove motive conclusively?	No (<i>Matter of S-P</i> -, 21 I&N Dec. 486, 489 (BIA 1996))	No

Nexus Differences



U.S. Citizenship
and Immigration
Services

Differences		
	“At Least in Part”/ “A Reason”	“One Central Reason”
Protected ground caused persecutory acts	No	Yes
The protected ground, alone, would have led persecutor to act	No	Yes
If protected ground were absent, persecutor would not have been motivated to act	No	Yes

See Parussimova v. Mukasey, 555 F.3d 734, 741 (9th Cir. 2009)

Persecution – Particular Social Groups



U.S. Citizenship
and Immigration
Services

- Analysis whether proposed PSG is cognizable should be evaluated on a case-by-case basis. *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014)
- Officers must analyze the facts under the significant possibility standard using the BIA test for evaluating whether a group meets the definition of a PSG set out by *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014), *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), and reaffirmed by the AG in *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019)

CAT Elements



U.S. Citizenship
and Immigration
Services

Required Elements (significant possibility standard):

1. Severe Harm
2. Specific Intent
3. State Action
4. Custody or Physical Control
5. Not From Lawful Sanctions

Important considerations in CF



U.S. Citizenship
and Immigration
Services

AO should follow all applicable precedents of the AG and BIA, unless they conflict with binding federal court precedent

Where there is disagreement among the Circuit Courts of Appeals as to the proper interpretation of a legal issue, the interpretation most favorable to the applicant should be followed.

Important considerations in CF



U.S. Citizenship
and Immigration
Services

AOs are required by law to consider whether the applicant's case presents novel or unique issues that merit consideration in a full hearing before an IJ.

Overview of CF Process



U.S. Citizenship
and Immigration
Services

- Noncitizen receives a brief orientation about the process from CBP, ICE, or the asylum office
- Asylum office confirms jurisdiction, coordinates with ICE and representative to schedule interview
- Security checks
- AO provides telephonic interpreter
- AO interviews
- 100% supervisory review

The interview: preliminaries



- Method of interview
- Secure an interpreter and place under oath
- Conference in consultant or attorney/representative
- Confirm receipt and understanding of Form M-444
- Explain purpose of CF interview: read 1.28 of I-870 and ask if applicant has any questions
- Administer oath to applicant
- Requests to reschedule
- Dissolution

The Interview: substance



- Go through I-870 questions / background information
- Ask about all past and feared future harm by all actors
- Clarify motives of each and all actors (ask why!)
 - Nexus
 - To be safe, ask about all protected grounds
- Ask if the gov't is able or willing to control the feared individual(s)
- Address reasonable ability to avoid future persecution or torture by internally relocating
- Was the applicant harmed or does s/he fear harm from any “public official”
- Completely explore all consent/acquiescence issues
- Attempt to resolve any relevant credibility issues

The interview: conclusion



- Ask about mandatory bars, utilizing the mandatory bars adjudicator aid
- Is there anything else the applicant or consultant wants to add?
- Are there any important issues you feel are unresolved?
- Compose factual summary of material facts and review with applicant
- Review 3.2 of the I-870 and answer any questions

Mandatory Bar Questions – All Cases



U.S. Citizenship
and Immigration
Services

- Participated in persecution of others
- Convicted by final judgment of a particularly serious crime
- Danger to the security of the US
- TRIG
- Committed serious non-political crime outside the US
- Firm resettlement

Mandatory bars do not apply to the Credible Fear Determination

Post-interview



- Complete I-870 and checklist
- Positive determination = I-862 (NTA)
- Negative determination = I-869 and I-863 as applicable
- Update Global
- SAPSO review
- HQ QA review as required
- Service

***Al Otro Lado*: Metering Considerations**



U.S. Citizenship
and Immigration
Services

On 11/19/19, the U.S. District Court for the Southern District of California issued an order granting provisional class certification and a preliminary injunction in *Al Otro Lado v. Wolf*, a lawsuit that challenges the CBP queue management process known as “metering.” The preliminary injunction prevents DHS from applying the Third Country Transit Asylum bar to individuals who attempted to enter the U.S. before 7/16/19, but were unable to do so due to “metering.”

Al Otro Lado: Provisional Class Definition



U.S. Citizenship
and Immigration
Services

“All non-Mexican asylum-seekers who were unable to make a direct asylum claim at a U.S. POE before July 16, 2019, because of the U.S. Government’s metering policy, and who continue to seek access to the U.S. asylum process.”

***Al Otro Lado, Inc. v. Wolf*, No. 17-cv-02366 (S.D. Cal. Nov. 19, 2019)**

Al Otro Lado



U.S. Citizenship
and Immigration
Services

- Asylum officers must use the “USCIS AOL Preliminary Injunction Class Membership Screening Interview Questions” distributed on March 31, 2021.
- All of the questions must be asked to screen for AOL preliminary-injunction class membership during the credible fear interview, unless the directions direct you to either stop or skip to a later question if the response is “no.”
- AOs must also perform a search of the “lists for class screening” on the ECN in accordance with the instructions distributed by the Asylum Chief on March 5, 2021.

Al Otro Lado



U.S. Citizenship
and Immigration
Services

- Document the metering questions and the individual's responses in Q&A notes.
- Create a summary of the individual's responses to the metering questions and document it in the Q&A.
- Verbally summarize the individual's responses to the metering questions, ask the individual to confirm the accuracy of the summary, and provide the individual the opportunity to make any corrections in the Q&A notes.
- Document in the Q&A notes that the individual was provided the summary, was provided the opportunity to make corrections, and confirmed the accuracy of the summary.
- If the individual establishes that he or she is more likely than not a class member, inform the individual and document the class determination in the Q&A notes.
- Also document the class determination on the I-870 by writing: "Individual [established/did not establish] that it is more likely than not that he or she meets the class definition in *Al Otro Lado v. Wolf*" in the ADDITIONAL INFORMATION/CONTINUATION section.
- Document the AOL class membership determination in Global, using the "NO BAR – AOL" special group code for class members, or by writing "NOT AN AOL CLASS MEMBER" in the Decision Notes for non-class members.

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 1:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 1:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 2:

(b)(7)(E)

A large, empty rectangular box with a black border, intended for the user to provide an answer to the question.

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 2:

(b)(7)(E)

A large, empty rectangular box with a black border, intended for the user to provide an answer to Question 2.

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 3:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 3:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 4:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 4:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 5:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 5:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 6:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 6:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 7:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 7:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 8:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 8:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 9:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

(b)(7)(E)

Question 9:

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 10:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 10:

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Special Circumstances

Families and Children



U.S. Citizenship
and Immigration
Services

Dependents

- Spouse and/or child under 21 and unmarried
- Arrived in the U.S. concurrently with the principal applicant and is also in ER
- Desires to be included in the CF application

Family processing will be discussed in more depth in a subsequent module.

Issuing an NTA Without a Determination



U.S. Citizenship
and Immigration
Services

- Unable to effectively communicate
- Rare language

Safe Third Country Threshold Screening



U.S. Citizenship
and Immigration
Services

- **Bilateral agreement with Canada**
- **Applies to noncitizens at a land border POE with Canada or elsewhere in the US, but only when an individual is being removed from Canada and transiting through the US (e.g., connecting flights)**
- **AO conducts Threshold Screening Interview to determine if person is subject to the STCA, and if an exception applies**
 - **Exception → CF determination**
 - **No Exception → No CF determination**

Screening for ABC benefits



U.S. Citizenship
and Immigration
Services

A “registered ABC class member” who filed for asylum with the INS/USCIS or the EOIR by a certain date (Guatemalans: by 1/3/95; Salvadorans: by 2/16/96) and the I-589 is still pending adjudication pursuant to ABC is entitled to the following benefits:

1. Cannot be detained unless certain conditions exist;
2. Entitled to an automatic stay of removal;
3. Entitled to have I-589 adjudicated pursuant to ABC

UNLESS:

- Convicted of an aggravated felony (at any time), or
- “Apprehended at time of entry” after 12/19/1990

INS entered into settlement agreement in the class action case American Baptist Churches [ABC] v. Thornburg, 760 F. Supp. 796 (N.D. Cal. 1991).

NACARA screening in Credible Fear



U.S. Citizenship
and Immigration
Services

NACARA 203 covers:

- A) Certain ABC class members;
- B) Certain nationals of the former Soviet Union and of Soviet-dominated countries who were in U.S. on or before 12/31/1990;
- C) and certain family members of A and B

Qualified Family Member (QFM): a spouse, or a child or unmarried son/daughter (the relationship must have existed at time the Stand-alone is/was granted LPR status under NACARA 203 as a Stand-alone).

If there is a pending I-881, that application needs to be adjudicated or otherwise resolved: talk with your SAPSO or ABC/NACARA Coordinator

ABC/NACARA and Protection Screening



U.S. Citizenship
and Immigration
Services

Screening process	ABC	NACARA
Safe 3rd	Loss of ABC eligibility	not applicable
CF - ABC Class Member apprehended at time of entry	Loss of ABC eligibility (continue CF processing)	Ineligible, unless qualifies independent of ABC eligibility
CF - ABC Class Member apprehended between POEs	Not subject to ER – consult with ABC Coordinator Retains eligibility - unless deemed to have been “apprehended at time of entry” (<u>contact HQ if questionable</u>) Detention restrictions apply USCIS must adjudicate asylum request pursuant to Settlement	Adjudicate NACARA as usual
RF – based on aggravated felony conviction – INA 238(b)	Loss of benefits (continue RF processing) - consult ABC/NACARA Procedures Manual on how to proceed	Ineligible (continue RF processing)
RF – based on Reinstatement – INA 241(a)(5) - and has aggravated felony conviction	Loss of benefits (continue RF) - consult ABC/NACARA Procedures Manual on how to proceed (30 day automatic stay)	Ineligible (continue RF)
RF – based on Reinstatement – INA 241(a)(5)	Retains eligibility – USCIS must adjudicate asylum request pursuant to Settlement	<u>Not subject to reinstatement – stop RF – return case to ICE/CBP for issuance of NTA</u>

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 11:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 11:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 12:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 12:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 13:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 13:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 14:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 14:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 15:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 15:

(b)(7)(E)

A large, empty rectangular box with a black border, intended for the user to provide an answer to the question.

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 16:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 16:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 17:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 17:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 18:

(b)(7)(E)

Knowledge Check



U.S. Citizenship
and Immigration
Services

Question 18:

(b)(7)(E)

About this Presentation



U.S. Citizenship
and Immigration
Services

Author(s): Asylum Division Quality Assurance & Operations Branches

Date of last revision: 05/18/2021

This presentation is current only as of the date of the last revision.

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.

Disclaimer



U.S. Citizenship
and Immigration
Services

This training module is intended solely as 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.

***Mendez Rojas v. Wolf* Settlement Agreement & Procedural Changes**



Asylum Division

1/13/2021

Objectives

- Provide an overview of the Mendez Rojas final settlement agreement
 - Background
- Explain class membership and benefits
- Describe procedural changes for processing cases with a previously issued NTA
 - Uniform Procedural Mechanism
 - Previously issued NTAs but not in immigration court proceedings
 - Grace Period cases
 - Previously issued NTAs and in immigration court proceedings



Mendez Rojas Settlement Agreement

Background

- In 2016, a group of organizations filed a class action lawsuit against DHS, USCIS, ICE, CBP, and EOIR alleging that defendants did not provide proper notice of the asylum one-year filing deadline to individuals who were apprehended at the border.
- The suit also alleged that defendants did not provide these individuals with an adequate mechanism to file Form I-589, Application for Asylum and for Withholding of Removal, to meet the asylum one-year filing deadline because DHS failed to timely file Notices to Appear (NTAs) with EOIR and EOIR failed to timely enter the filed NTAs into its case management system. As a result of these failures, individuals who were issued an NTA who tried to file a Form I-589 with an immigration court were told the court had no record of their case, and individuals who then filed affirmatively with USCIS were generally told the Asylum Division did not have jurisdiction over their Forms I-589 and their Forms I-589 were administratively closed.
- On March 29, 2018, the U.S. District Court for the Western District of Washington held that the government's failure to provide adequate notice of the asylum one-year filing deadline constituted a violation of the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), and class members' due process rights under the Fifth Amendment. In addition, the court held that the government's failure to provide a uniform mechanism through which class members can timely file their Forms I-589 also violated the INA and the APA.



Mendez Rojas Settlement Agreement

Background

- The court ordered the government to provide notice to class members of the asylum statutory one-year filing deadline and to adopt, publicize, and implement a “uniform procedural mechanism” to ensure that class members are able to file their Form I-589 in a timely manner.
- On August 2, 2018, the parties entered into a joint interim stay agreement while the parties pursued resolution of the litigation through mediation. The interim stay agreement provided that the government would treat as timely filed all pending and newly filed Forms I-589 from class members who did not have final orders of removal.
- On November 4, 2020, the district court issued final approval of the parties’ proposed settlement for implementing the court’s order.



Previous Actions Taken by the Asylum Division

- Interim Stay Agreement – 2018: Notice for Asylum Seekers About the Filing Deadline for Asylum Applications
 - Asylum offices posted the notice in their lobbies and waiting rooms to provide public notice of the interim stay agreement and benefits for class members, specifically the exception to the one-year bar for certain asylum seekers; and
 - Asylum offices provided a copy of the notice to any pro se asylum applicants who had an NTA in the A-file which had not been filed with EOIR, or who had a positive credible fear determination but who were not in removal proceedings, and who appeared for an asylum interview.
 - These requirements ended on November 4, 2020, when the district court approved the final settlement agreement, as explained in the December 8, 2020 email Mendez-Rojas Final Settlement Agreement update and guidance.
- Updated Form I-862, Notice to Appear (NTA)
 - USCIS and DHS counterparts updated the NTA to more explicitly inform individuals of the one-year filing deadline for applying for asylum.
 - Updated February 2020 – in use since June 5, 2020
- USCIS added information about the one-year filing deadline to the M-444



***Mendez Rojas* Final Settlement Agreement**

Overview

- DHS will provide prospective notice on Form I-862, Notice to Appear (NTA), of the asylum one-year filing deadline (in place since June 5, 2020, when the updated NTA was implemented).
- By January 26, 2021 USCIS and EOIR will create and start implementing a uniform procedural mechanism (UPM) for individuals to file their Form I-589.
- USCIS will mail individual notices to the last known addresses of certain potential class members and their attorneys of record, if any, informing them of the asylum one-year filing deadline.
- Individuals who meet one of the modified class and subclass definitions in the final settlement agreement are entitled to have USCIS and EOIR treat their Form I-589 as timely filed for purposes of the asylum one-year filing deadline.



Mendez Rojas Final Settlement Agreement

Class Membership

Class A comprises individuals who:

- Were encountered by DHS upon arrival or within 14 days of unlawful entry; were released by DHS after they were found to have a credible fear of persecution or torture; did not receive individualized notice of the one-year deadline to file an asylum application; and,
- Either
 - Have not yet applied for asylum; or
 - Applied for asylum after one year of their last arrival in the United States.

Class B comprises individuals who:

- Were encountered by DHS upon arrival or within 14 days of unlawful entry; expressed a fear of return to their country of origin; were released by DHS upon issuance of a Form I-862, Notice to Appear (NTA), without a credible fear determination; did not receive individualized notice of the one-year deadline to file an asylum application; and
- Either
 - Have not yet applied for asylum; or
 - Applied for asylum after one year of their last arrival in the United States

Both Classes are divided into two subclasses: 1) those who are not in removal proceedings but were issued NTAs on or after June 30, 2016; and 2) those who are or were in removal proceedings on or after June 30, 2016.



**U.S. Citizenship
and Immigration
Services**

Mendez Rojas Final Settlement Agreement

Membership Benefits: One-Year Filing Deadline

- Class members who have pending Forms I-589 or who file on or before April 22, 2022, will have their Forms I-589 treated as timely filed for the purposes of the one-year filing deadline. See 8 CFR 208.4(a).
- Applicants may assert Mendez Rojas class membership either in writing or during an asylum interview. Individuals who believe they are Mendez Rojas class members may use the **sample class membership notice provided by class counsel**, but they are not required to use this sample. We will include any submitted evidence of class membership both in the EOIR court packet and in the A- or T-file.
- ONLY IN CASES WHERE THE ASYLUM OFFICE WILL ADJUDICATE THE FORM I-589 WILL THE ASYLUM OFFICE PERSONNEL DETERMINE IF THE APPLICANT IS A MENDEZ ROJAS CLASS MEMBER.
 - This will occur only in limited instances, such as when the applicant's immigration court proceedings were terminated by the immigration judge due to substantive reasons. See AAPM Section III.L.6.c, Form I-589 Filed by Individual in Expedited Removal Who Is Also Issued an NTA, for more information on making the Mendez Rojas class member determination and on adjudicating Forms I-589 filed by potential Mendez Rojas class members.



Mendez Rojas Final Settlement Agreement

Membership Benefits: Uniform Procedural Mechanism

- USCIS will accept Forms I-589 from the following individuals:
 - DHS previously issued them an NTA and they filed their Form I-589 with USCIS 21 calendar days or fewer after the date their NTA was filed and docketed with EOIR (these are known as “Grace Period” cases),
 - DHS previously issued them an NTA, and their NTA was filed and docketed with EOIR after they filed their Form I-589 with USCIS, or
 - DHS previously issued them an NTA that has not been filed and docketed with EOIR.
- Although USCIS will accept these Forms I-589, USCIS will not adjudicate them. Instead, USCIS will send these Forms I-589 to the appropriate EOIR immigration court for adjudication. The date USCIS received the Form I-589 will serve as the filing date for the purpose of the asylum one-year filing deadline.



Mendez Rojas Final Settlement Agreement

“Docketed” and “EOIR Docketing Date”

Docketed:

- “Docketed” refers to the EOIR Docketed Date, which is when Immigration Court staff enters into EOIR’s case management system, CASE or any successor, the EOIR Received Date and charging document information.
- The EOIR Docketed Date reflects the formal acceptance of a newly filed case onto the court’s docket for case scheduling and processing.
- USCIS personnel should determine when an NTA was docketed by referring to the “EOIR Docketing Date” found in the Summary tab in the PCQS-DOJ-EOIR.

Summary	
Alien Full Name	
Alien Date Of Birth	09-20-2004
Alien Number	
Lead Alien Number	
Nationality	HONDURAS
Case Type	
Rider Relationship	
Rider Indicator	
Base City Address City	SAN FRANCISCO
EOIR Docketing Date	



Procedural Changes – Form I-589 Filing

Uniform Procedural Mechanism

Form I-589 Filing at the Service Centers (SCOPS) or the Asylum Vetting Center (ZGA)

- In certain circumstances, individuals in removal proceedings may file a Form I-589 with USCIS. USCIS will determine whether the Form I-589:
 - Will be accepted as an Affirmative Asylum Case and sent to the appropriate asylum office for adjudication (applicant receives an auto-generated receipt notice (Acknowledgement of Receipt));
 - Will be accepted as a Grace Period Case (applicant receives an auto-generated receipt notice (Grace Period Receipt Notice)); or
 - Will be rejected (applicant receives a manually-generated rejection notice (Form I-589 Rejection Notice)).

Reference:

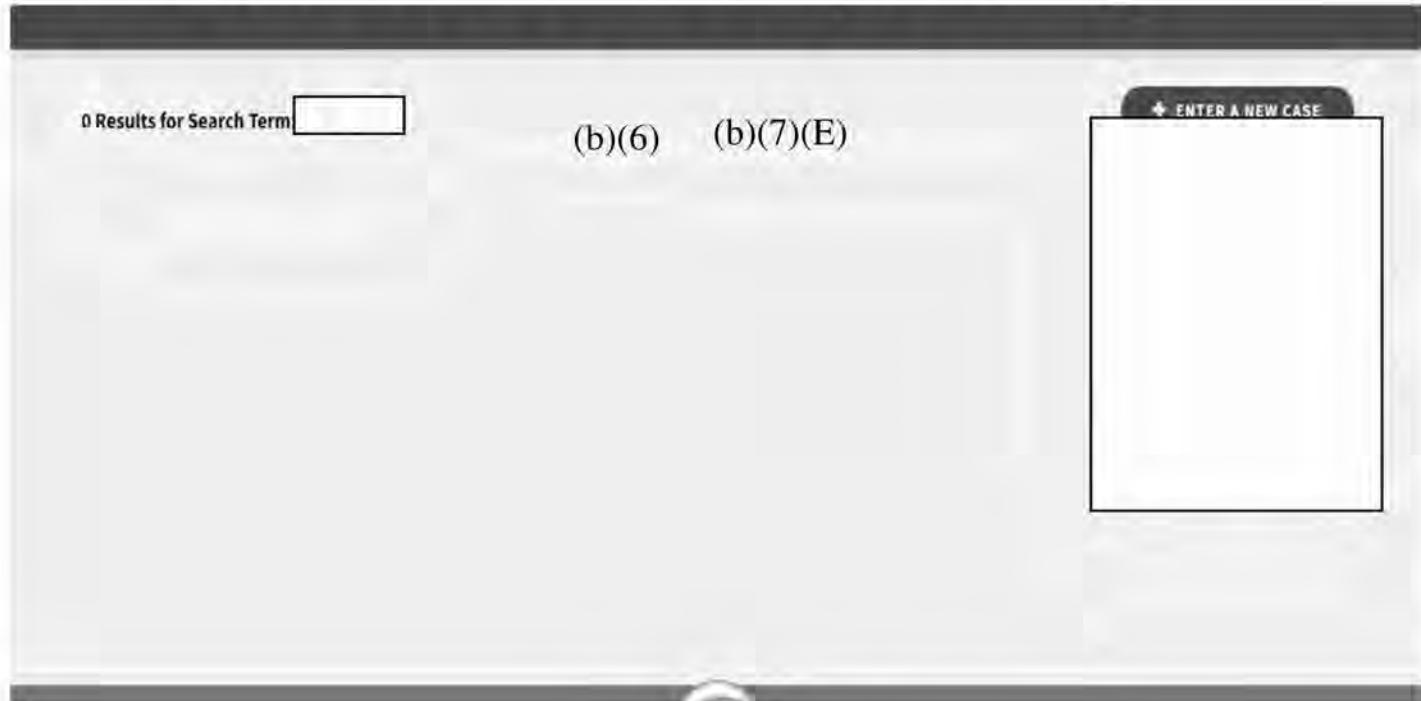
- Memorandum from Andrew Davidson to Tracy Renaud, Updated Service Center Operations Procedures for Accepting Forms I-589, Applications for Asylum and for Withholding of Removal, Filed by Individuals Who Were Previously Issued a Notice to Appear, HQRAIO 120/9.3a, January 11, 2021, and attachments.
- Job Aid – Intake and Transferring of Grace Period Cases at the Asylum Vetting Center



**U.S. Citizenship
and Immigration
Services**

Procedural Changes – Global Grace Period

When SCOPS or ZGA identifies a Grace Period case, they will enter it in Global under the new category of Grace Period cases (not Affirmative cases). Once entered, SCOPS will send the file to the ZGA for further processing.



Procedural Changes – Processing Form I-589 at ZGA

Uniform Procedural Mechanism

Processing Form I-589 at ZGA

- Upon receipt of the Grace Period case from the Service Center, ZGA staff will:
 - execute the transfer to EOIR from Global so that an automatically-generated transfer notice is sent to the applicant,
 - create and transfer to the appropriate immigration court the EOIR court packet and the appropriate cover letter, and
 - send the A- or T-file to ICE OPLA.
- ZGA staff follow similar steps to process Forms I-589 that are directly filed with ZGA.

Reference:

- AAPM Section III.L.1.a.i and ii, and
- Job Aid – Intake and Transferring of Grace Period Cases at the Asylum Vetting Center



Procedural Changes – Grace Period Cases at Asylum Offices

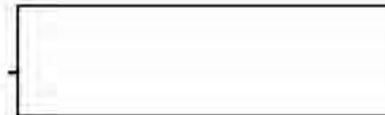
Uniform Procedural Mechanism

- Generally, Grace Period cases will be identified at the Service Centers or ZGA
- If, however, the asylum office discovers a “missed” Grace Period case as described in AAPM Section III.L.1.b.iii.a, the asylum office will process the case according to the instructions outlined there.

Reference:

- AAPM Section III.L.1.b.iii.a, and
- AAPM Appendix 106 (Form I-589 Adjudication Reference Chart)

(b)(7)(E)



Procedural Changes – Previously Issued NTA

Previously Issued NTA Discovered by the Asylum Office – Previous Guidance

- Under previous guidance, if the asylum office discovered an NTA in the A-file but there was no record that the applicant was in immigration court proceedings, the asylum office generally contacted ICE to determine if ICE would file the NTA. In certain scenarios, the asylum office administratively closed the case for lack of jurisdiction;
- Alternatively, if the individual was issued an NTA and Form I-860, but there was no evidence that the NTA was filed with the immigration court, then the asylum office contacted ICE to determine if ICE would file the NTA. If ICE did not file the NTA, then the asylum office treated the case as a credible fear referral, depending on whether the asylum office had the proper referral forms; or
- If the individual was issued an NTA, but not issued a Form I-860 and there was no evidence that the NTA was filed with the immigration court, then the asylum office contacted ICE to determine if ICE would file the NTA. If ICE did not file the NTA, then the asylum office adjudicated the Form I-589.

For further reference, see Memorandum from John Lafferty, Processing Affirmative Applications (Form I-589) Filed by Applicants in Expedited Removal and Processing Credible Fear Cases on Non-Detained Individuals, HQRAIO 120/9.3, March 11, 2016, and Asylum Jurisdiction Reference Chart (attachment to March 11, 2016 memorandum).



Procedural Changes – Previously Issued NTA

Previously Issued NTA Discovered by the Asylum Office – Uniform Procedural Mechanism

- **As of January 26, 2021**, if during A-file review or during adjudication, the asylum office discovers an NTA in the A-file and there is no record that the applicant is currently in removal proceedings, the asylum office will review Appendix 106 (Form I-589 Adjudication Reference Chart) for guidance on handling the Form I-589. Appendix 106 also directs users to specific updated AAPM sections with detailed instructions.
- The 2016 Asylum Jurisdiction Reference Chart has been extensively updated and is now available as Appendix 106 (Form I-589 Adjudication Reference Chart). Asylum offices are no longer required to contact ICE to determine if ICE will file (or re-file) the NTA with the immigration court.

(b)(7)(E)

Reference:

- AAPM Appendix 106 (Form I-589 Adjudication Reference Chart) -



Procedural Changes – Previously Issued NTA

Previously Issued NTA Discovered by the Asylum Office – Uniform Procedural Mechanism

- If the asylum office discovers that an NTA was issued to the applicant, but there is no record in PCQS-DOJ-EOIR that the NTA was filed and docketed with EOIR, in most scenarios (depending on whether the applicant is in Expedited Removal), the asylum office will not adjudicate the Form I-589.
- Instead, the asylum office will:
 - complete the necessary security checks and re-issue the NTA,
 - issue the applicant either Appendix 107 (Notice of Forwarding of Form I-589 to EOIR OR Notice of Transfer of Form I-589 to EOIR) (Non-Expedited Review); Appendix 108 (Notice of Forwarding of Form I-589 to EOIR OR Dismissal of Form I-589 (Expedited Removal)); or Appendix 54, Notice of Lack of Jurisdiction (Non-Transfer/Non-Forward)
 - enter the case in CASE-ISS/DHS Portal,
 - create an EOIR court packet and the appropriate coversheet and forward them to the appropriate immigration court for adjudication, and
 - send the file (A or T) to ICE OPLA.

Reference: Appendix 106 (Form I-589 Adjudication Reference Chart) and applicable AAPM sections for guidance.



***Mendez Rojas* References**

- Memoranda
 - Memorandum from Andrew Davidson to Asylum Division Staff, Updated Asylum Procedures for Accepting and Processing Forms I-589, Applications for Asylum and for Withholding of Removal, Filed by Individuals Who Were Previously Issued a Notice to Appear, HQRAIO 120/9.3a, January 11, 2021
 - Memorandum from Andrew Davidson to Tracy Renaud, Updated Service Center Operations Procedures for Accepting Forms I-589, Applications for Asylum and for Withholding of Removal, Filed by Individuals Who Were Previously Issued a Notice to Appear, HQRAIO 120/9.3a, January 11, 2021
- Job Aid – Intake and Transferring of Grace Period Cases at the Asylum Vetting Center



Mendez Rojas References

- Affirmative Asylum Procedures Manual (AAPM):
 - AAPM Section II.C. USCIS Receives Form I-589
 - AAPM Section II.G. Asylum Office Schedules Interview
 - AAPM Section II.H. Asylum Office Pulls Files for Interview
 - AAPM Section II.R. Post-Service Processing
 - AAPM Section III.B.3. Credible Fear-Screened Affirmative Asylum Applicants
 - AAPM Section III.B.15. Previously Issued NTAs
 - AAPM Section III.E. Dependents
 - AAPM Section III.L. Jurisdiction
 - AAPM Section III.N.4. Applicant Receives Parole and Form I-860



***Mendez Rojas* References**

- AAPM Appendices:
 - AAPM Appendix 59. Notice of Lack of Jurisdiction (Non-Transfer/Non-Forward)
 - AAPM Appendix 106. Form I-589 Adjudication Reference Chart
 - AAPM Appendix 107. Notice of Forwarding of Form I-589 to EOIR OR Notice of Transfer of Form I-589 to EOIR (Non-Expedited Removal)
 - AAPM Appendix 108. Notice of Forwarding of Form I-589 to EOIR OR Notice of Dismissal of Form I-589 (Expedited Removal)
 - AAPM Appendix 109. Coversheet for Cases Forwarded to EOIR Where Application Cannot Be Entered into CASE-ISS/DHS Portal by USCIS
 - AAPM Appendix 110. Denial of Request to Add Dependent to Form I-589
 - AAPM Appendix 111. Email Mendez Rojas Related File Request – ZGA to Asylum Office



Questions?



**U.S. Citizenship
and Immigration
Services**

About this Presentation

(b)(6)

- Author: Asylum HQ Operations Branch
- Date of last revision: January 12, 2021. This presentation is current only as of the date of last revision.
- This presentation contains no sensitive Personally Identifiable information (PII).
- Any references in documents or text with the exception of case law, relates to fictitious individuals.
- All images in this presentation: Screenshots of systems (Global, PCQS-DOJ-EOIR), USCIS image library.



U.S. Citizenship
and Immigration
Services

Disclaimer

- This training module is intended solely to provide internal training to DHS/USCIS officers. 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.



Dissemination

- This presentation may not be reproduced or further disseminated without the express written consent of Asylum HQ Operations Branch Chief, Elizabeth Mura.
- Please contact the Asylum HQ Operations Branch for additional information.





U.S. Citizenship
and Immigration
Services



Non-Detained Asylum Pre- Screening Officer (APSO) Procedures

FOR OFFICIAL USE ONLY (FOUO)

Last Updated: May 2021

Overview & Roadmap



U.S. Citizenship
and Immigration
Services

Explain procedures at each stage of the non-detained APSO screening process:

- Referral (slides 3 to 4)
- Scheduling (5 to 6)
- APSO preparation (7 to 13)
- Interview (14 to 16)
- Adjudication (17)
- Supervisory review (18)
- Service (19 to 20)
- COVID-19 considerations (6, 9, 20)

Referrals



U.S. Citizenship
and Immigration
Services

In some instances, ICE or CBP does not detain individuals in expedited removal, reinstatement, or Final Administrative Removal Order. Those individuals who express a fear or intention to apply for asylum are referred to as non-detained APSO cases.

The screening process begins when ICE sends the required referral documents to the Asylum Office (as discussed in the Credible Fear Procedures Manual and the Reasonable Fear Procedures Manual) or when an applicant contacts USCIS (such as by filing an I-589).

Credible Fear	Reasonable Fear
I-860 I-867A&B M-444 (can be served at interview)	I-871, including the prior order of removal (with Decision, Order and Officer's certification at the bottom signed) or I-851A (with signed Certificate of Service)

Referrals: Special Considerations



U.S. Citizenship
and Immigration
Services

Special considerations in the non-detained context:

- Each member of a family unit should have all referral documents, including children. A child's I-867A&B should have his or her name and A number (not the name and A number of a parent). See the Family Processing training for further information on processing family units.
- If the applicant has not been oriented or does not recall or understand the orientation they received, the AO should complete it at the time of interview, using the most recent version of the M-444 (CF) or M-488 (RF).

Scheduling



U.S. Citizenship
and Immigration
Services

Asylum office staff schedules non-detained interviews:

- Non-detained G-56 interview notice mailed to applicant approximately 21 days in advance of the interview.
 - Include AR-11, List of *Pro Bono* Legal Services Providers, and M-444 or M-488.
 - Scheduling is coordinated with consultant or representative, where possible.
- Interviews may take place at the asylum office or at another location (e.g., ICE ERO office, USCIS FOD office).
- Staff should be mindful about personally identifiable information (PII) when communicating with representatives via email.

Scheduling: COVID-19 Considerations



U.S. Citizenship
and Immigration
Services

During the COVID-19 pandemic, asylum personnel use interview notices that specifically address the precautions USCIS takes:

- Non-detained CF G-56
- Non-detained RF G-56

APSO Prepares the Case



U.S. Citizenship
and Immigration
Services

- The APSO reviews the referral documents and ensures referral packages are complete for each applicant.
- Complete security checks for each applicant.
 - Note that non-detained cases occasionally require biometric enrollment and initiation of checks for minors who were under 14 at the time of apprehension.
 - Supervisory Asylum Pre-Screening Officers (SAPSOs) reach out to ICE to arrange fingerprinting when this occurs.

APSO Prepares the Case



U.S. Citizenship
and Immigration
Services

- Identity verification is required for non-detained applicants who are interviewed in person at a USCIS office.
- The APSO documents the results on the Credible Fear/Reasonable Fear Background Identity and Security Checklist (CF/RF BISC).
- If the interview is completed at an ICE office, ICE will confirm the applicant's identity. This will not be documented on the CF/RF BISC.

Identity Verification (Required For All Non-Detained Applicants Interviewed in person at a USCIS Office)	
Date/Initials	<input type="checkbox"/> CPMS-IVT Biometric Verification Completed
	<input type="checkbox"/> Visual Verification Completed (Under age 14 ONLY)
	<input type="checkbox"/> Identity Mismatch (screen(s) attached) – cannot be interviewed without resolution. Explain steps taken to resolve below:

APSO Prepares the Case: COVID-19



U.S. Citizenship
and Immigration
Services

APSOs should adhere to COVID-19 guidance:

- Non-detained CF
- Non-detained RF
- Obtaining signatures

APSO Prepares the Case: Linked Cases



U.S. Citizenship
and Immigration
Services

- The APSO reviews Global to identify any linked family members, such as an applicant's spouse or child under 21.
- EARM may also provide evidence of family members who arrived concurrently with the applicant and were also placed in the CF process.
- The APSO should also inquire in the interview whether the applicant arrived with any family members.

APSO Prepares the Case: Linked Cases



U.S. Citizenship
and Immigration
Services

CF applicant's family member received a positive

- Consult the Family Processing training to determine whether their cases can and should be joined.

CF applicant's family member received a negative

- Complete the adjudication.
- If positive, consult the Family Processing training and your SAPSO to determine whether their cases can and should be joined.

APSO Prepares the Case: Linked Cases



U.S. Citizenship
and Immigration
Services

Upon arrival or apprehension, different family members may be processed for removal proceedings (NTA), RF, or CF, depending on their respective immigration and criminal histories, if applicable, as well as their most recent manner of arrival.

Example: A mother and father, who are legally married in their home country, and their two children, ages 11 and 18, are apprehended while crossing. They all assert a fear of return to their home country. The father has been removed previously and is processed for reinstatement and referred for RF. The mother and 11-year-old child are processed with NTAs due to lack of bedspace. The 18-year-old child has never been to the U.S. before and is processed for expedited removal and referred for CF.

APSO Prepares the Case: Linked Cases



U.S. Citizenship
and Immigration
Services

- Additionally, ICE may make different detention determinations for different family members. Keep in mind that family units – if otherwise eligible to be joined – may be processed together by the Asylum Office regardless of detention status pursuant to the Family Processing guidance.
- If you encounter family members in different jurisdictions, alert your SAPSO, who will coordinate with the other Asylum Office(s).

Interview: Getting Started



U.S. Citizenship
and Immigration
Services

- Identity verification is completed when applicant(s) arrive.
- The case is clocked into the Global case management system only if the interview moves forward.
- If applicable, the AO connects to the interpreter service, and consultant or representative, in accordance with headquarters and local office procedures.
- If needed, the AO orients applicant using either the M-444 or M-488, as appropriate.
- An AO must see everyone in the non-detained family unit, no exception.

Interview: Reschedules & Dissolutions



U.S. Citizenship
and Immigration
Services

- Reschedule requests will be evaluated on a case-by-case basis. Consult with your SAPSO to determine if a request may be approved. Reschedule requests should not unreasonably delay the process.
- Dissolutions or withdrawals are processed for each family member. The AO should speak to each member of a family unit to confirm they wish to dissolve. Children age 14 and older should sign their own documents. The parent can sign for children age 13 and younger.

Interview: Failure to Appear



U.S. Citizenship
and Immigration
Services

If an applicant fails to appear for the non-detained interview, asylum personnel should review systems to confirm that the G-56 interview notice was sent to the correct address.

All non-detained family members, including young children, must be present for the interview to proceed. The interview should be rescheduled for all family members to appear.

Yes, the G-56 notice was sent to the correct address.

- Notify ICE ERO of failure to appear.
- Update Global.
- Issue "No Show" memo.

No, the G-56 notice was sent to an incorrect or outdated address.

- Reschedule the interview and send a G-56 to the correct address.

Adjudication



U.S. Citizenship
and Immigration
Services

- The AO prepares the decision documents.
- Verify the correct EOIR immigration court address based on the applicant's residence.
- Update the Global case management system and use the appropriate district code for the applicant's place of residence.

Supervisory Review



U.S. Citizenship
and Immigration
Services

- The AO should convey to the reviewing SAPSO when the case is ready to be reviewed.
- The SAPSO reviews and signs off on the case (or returns for revisions if needed), updates Global, and sends the case for service by Asylum support staff.

Service



U.S. Citizenship
and Immigration
Services

Asylum support staff, such as Legal Administrative Specialists, complete services in most cases.

- Global is updated to reflect the decision service and the clock stops.
- In many cases, services are completed the day of interview.
- The decision is explained to the individual(s). If negative, they have the opportunity to ask questions and request review by an IJ.
- At times, AOs may be needed to facilitate services.

Service: COVID-19 Procedures



U.S. Citizenship
and Immigration
Services

COVID-19 credible fear and reasonable fear procedures provide guidance on completing services during the pandemic:

- Both positives and negatives can be served in person on the day of the interview.
- Positives may also be served via mail.
- Negatives may be served via telephone and mail. Prior to mailing the decision documents, asylum office personnel call the applicant to explain the determination and to ask if the applicant requests IJ review. An APSO or SAPSO must be available to answer any questions and to speak to the applicant if he or she does not request IJ review. If mailed, the service packet must include a credible fear or reasonable fear notice regarding the negative determination.

Questions?



U.S. Citizenship
and Immigration
Services

About this presentation



U.S. Citizenship
and Immigration
Services

- **Date of last revision: May 2021**
- **This presentation is current only as of the date of the last revision.**
- **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 this presentation were identified as free to modify, share, and use commercially through Microsoft's Bing® search engine.**

Dissemination



U.S. Citizenship
and Immigration
Services

This presentation may not be reproduced or further disseminated without the express written consent of the Asylum Division Headquarters. Please contact the Asylum Division Operations Branch for additional information.

Disclaimer



U.S. Citizenship
and Immigration
Services

This presentation is intended solely for informational purposes. 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**

FOUO-For Official Use Only

March 26, 2020

HQRAIO 120/9.15a

Memorandum

To: Asylum Office Directors
Asylum Office Deputy Directors
Asylum Office Section Chiefs
Supervisory Asylum Pre-Screening Officers
Asylum Pre-Screening Officers
Quality Assurance/Training Asylum Officers

From: Andrew Davidson ANDREW J
DAVIDSON Responsible pursuant to 501(c)(3) 508(c)(7) for
information
Chief, Asylum Division

Subject: Updated Guidance on Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable

I. Purpose

The purpose of this memorandum is to provide updated guidance on processing Credible Fear cases when a rare language interpreter is unavailable or, if available, cannot be scheduled in a timely manner. These procedures are effective immediately and supersede the procedures outlined in the June 14, 2013 memo, "Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable." If you have any questions regarding the guidance in the attached procedures, please contact the Asylum Division Headquarters Operations and Management Branches.

II. Background

To comply with 8 CFR section 208.30(d)(5), the Asylum Division has contracted interpreter services for the purposes of providing applicants with direct interpretation for credible fear interviews. While many languages are required under this contract, certain languages are difficult to fill due to a lack of cleared interpreters. There may be no interpreters available or a limited number of interpreters available for these languages. These languages are considered to be rare languages.

Asylum Division Headquarters Management Branch has created a list of interpreters/languages that are currently available under the asylum contract. This list will be posted on the ECN and updated

FOUO

regularly. For all cases involving rare languages, Asylum Offices must contact all interpreter services when attempting to secure/schedule an interpreter and document the attempts to schedule the interpreter in the interpreter log. The purpose of the interpreter log is to track calls made by staff of the Asylum Division in order to reconcile invoices as well as to provide feedback to the contractors regarding interpreter/monitor performance. This is a requirement even if the language is not listed as being available as language access can vary on daily basis.

III. Implementation

A. Language Not Serviced because No Available Interpreter on Asylum Contract

When an Asylum Office encounters an individual requiring a credible fear interview and there is evidence that the individual speaks a language for which there is no available interpreter under contract, the Asylum Office must: 1) contact all of the interpreter providers to confirm that no interpreter is available for that language and document the calls in the interpreter log; and 2) schedule the individual for an interview to determine if, in addition to the rare language, the individual is able to communicate in another language. For example an applicant who speaks Ixil may be able to adequately communicate in Spanish. An individual whose native language is Pakistani Pashtu may also speak Afghani Pashtu, Punjabi or Urdu.

If the individual claims not to be able to communicate in another language besides the rare language, but there is evidence that the individual communicated in a different language during the initial processing by CBP or ICE, then the Asylum Pre-Screening Officer (APSO) must confirm whether the individual is able and willing to proceed with the interview in the language used when being processed by CBP and ICE. This confirmation must be reflected in the interview notes.

If the APSO determines that the individual is able to fully participate in a credible fear interview in another language, for which there is an interpreter available, and the individual agrees to proceed with the interview in that language, the APSO should confirm at the conclusion of the interview that the individual understood the contents of the interview and was able to testify accurately and completely. This confirmation that the individual understood the contents of the interview and was able to testify accurately and completely must be reflected in the interview notes.

If the APSO is unable to communicate with the applicant in any language for which there is an available interpreter, the Asylum Office must issue Form I-862, Notice to Appear (NTA), without making a credible fear determination. This charging document is known as a Rare Language NTA, and its issuance requires the concurrence of the Asylum Office's leadership at the Section Chief level or higher. Once concurrence is received, the Asylum Office must immediately or as soon as is practicable issue the NTA, placing the individual in Section 240 proceedings.

When issuing the Rare Language NTA, please note that on page 1 of the NTA the following box should **not** be checked as no credible fear determination has been made:

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

For tracking purposes, the Asylum Office must create a memorandum to file documenting the steps taken to secure an interpreter and explaining why a Rare Language NTA was issued. The Asylum Office must then email the memo to file to Asylum Division Headquarters at

(b)(6) [redacted] The Operations and Management Branches will monitor this inbox. Asylum Office leadership at the Section Chief level or higher must be copied on the email. This memorandum to file must be placed in the A-file with a copy placed in the Asylum Office's physical or electronic work file.

The case must then be closed in GLOBAL under the Adjudication Tab, selecting "Rare Language" as the reason for closing the case.

B. Language Serviced Under Contract but there are a Limited Number of Interpreters Available

When the language the individual speaks is serviced under the contract but there are a limited number of interpreters available, the Asylum Office must contact all interpreter services to attempt to schedule an interpreter within the next 10 calendar days and document the calls on the interpreter log. If an interpreter cannot be secured/scheduled within ten calendar days, the Asylum Office must document the steps taken to attempt to secure/schedule an interpreter in a memorandum to file. The Asylum Office must then email the memorandum to file to Asylum Division Headquarters at

(b)(6) [redacted] This action requires the concurrence of the Asylum Office's leadership at the Section Chief level or higher. Additionally, the Asylum Office's leadership must be copied on the email to Asylum Division Headquarters. The Asylum Division Headquarters Management and Operations Branches will monitor the inbox. The Management Branch will confirm with the interpreter service providers that an interpreter is unavailable and if so, notify the Asylum Office within two business days. Once concurrence is received from Asylum Division Headquarters, the Asylum Office must issue a Rare Language NTA according to the procedures outlined above.

C. Situations in Which Issuing a Rare Language NTA is Not Appropriate

Rare language NTAs may only be issued in the two situations above after following the outlined procedures. Offices may not issue Rare Language NTAs in the following situations:

1. If an individual has been interviewed in a rare language and the case requires a re-interview, it is not appropriate to issue a Rare Language NTA if an interpreter is unavailable for the re-interview, regardless of the time it takes to schedule an interpreter.
2. For family groups whose members enter concurrently but are detained at separate detention facilities, if a family member is interviewed in a rare language and found negative, it is not

FOUO

Updated Guidance on Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable
Page 4

appropriate to issue a Rare Language NTA to other members of the family who speak the same rare language.

3. CF processing pilots may be exempt from these procedures. Please seek guidance from Asylum Division Headquarters prior to issuing a Rare Language NTA to individuals in the pilots.
4. Asylum Offices may not issue Rare Language NTAs for common languages that may have a limited number of interpreters (for example, Turkish, Portuguese, Haitian Creole, and Mandarin) unless directed to do so by Asylum Division Headquarters.

If any of the above issues arise and there are challenges with securing an interpreter, please contact the Asylum Headquarters Management Branch POCs for the interpreter services contract for assistance with scheduling.

IV. ECN Updates

The Asylum Division Management Branch will post a list of all languages that are currently available under the contract in the resource materials section of the interpreter log page in the ECN. The Management Branch will monitor this site and update it as needed. Asylum Offices are responsible for checking the ECN site for updates on a regular basis and confirming current availability with the interpreter service providers.



U.S. Citizenship and Immigration Services

Choose the correct Box here. Ensure that the appropriate checklist is completed based on which box is chosen.

- HQ notification only (Complete Checklist A)
- HQ concurrence requested (Complete Checklist B).
 - HQ concurrence received on: [DATE]

MEMORANDUM

TO: A-FILE
FROM: Officer, Asylum Office
DATE: [Date]
RE: Unavailability of interpreter for:

Ensure all applicant information in these lines is correct and accurate.

A#: 000 000 000

Name: [Applicant Name]

Insert correct language here

The above referenced individual/FAMU was scheduled for a Credible Fear interview and requested **[Insert Language]** as the language for the interview. Interpreter providers were contacted to secure/schedule an interpreter for the interview. However, an interpreter was not available at the requested time, nor could arrangements be made to secure/schedule an interpreter within case processing deadlines.

To avoid further delays, a discretionary NTA will be issued to the individual/FAMU to appear in Immigration Court.



Rare Language Checklist A

Use this checklist when the requested language is not serviced because there are no available interpreters on either of the asylum contracts.

A list of the 47 languages available under the Primary Interpreter Contract can be found in the resource materials section of the Interpreter Services page in the ECN. An updated list of all languages currently available under the Rare Language contract can be found in the same location.

(b)(6)

Submit the checklist and the memorandum above to [Redacted]

Copy the supervisor and section chief identified in the checklist on the email. Verify that all requested information has been provided and appropriate boxes have been marked prior to HQ submission.

Ensure this is filled out correctly:
Double check language and Supervisor's name

Asylum Officer	Officer, Asylum Office
Supervisory Asylum Officer	
Applicant's Primary Language:	[Insert Language]
<input checked="" type="checkbox"/> The office verified that the individual is not willing or able to proceed in a language other than the individual's primary language.	
<input checked="" type="checkbox"/> The office confirmed that the language requested is not one of the 47 languages available under the Primary Contract.	
<input checked="" type="checkbox"/> The office confirmed with Language Line that the language requested is not serviced under the Rare Language Contract and documented the call(s) with Language Line in the interpreter log.	
Name of concurring leadership (Section Chief level or higher) for this rare language NTA request:	
[Redacted]	

Ensure the correct boxes have been checked

Put concurring official here

Prior to issuing the rare language NTA, please make sure that the individual/FAMU does not fall within a situation in which issuing a rare language NTA is not appropriate, as outlined in Section III C of the 2020 Updated Guidance on Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable.



Rare Language Checklist B

Use this checklist when the requested language is serviced under one of the asylum contracts, but there are a limited number of interpreters available.

A list of the 47 languages available under the Primary Interpreter Contract can be found in the resource materials section of the Interpreter Services page in the ECN. An updated list of all languages currently available under the Rare Language contract can be found in the same location.

(b)(6)

Submit the checklist and the memorandum above to _____

Copy the supervisor and section chief identified in the checklist on the email. Verify that all requested information has been provided and appropriate boxes have been marked prior to HQ submission.

Ensure this is filled out correctly:
Double check language and Supervisor's name

Asylum Officer	Officer, Asylum Office								
Supervisory Asylum Officer									
Applicant's Primary Language:	[Insert Language]								
<input checked="" type="checkbox"/> The office confirmed that an interpreter is not available within the next 10 calendar days from the date of the first interview and documented the call(s) in the interpreter log.									
The office contacted the following interpreter providers (check all that apply):									
<table border="1"> <thead> <tr> <th>Primary Interpreter Contract</th> <th>Rare Language Contract</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/> Language Line</td> <td><input checked="" type="checkbox"/> Language Line</td> </tr> <tr> <td><input checked="" type="checkbox"/> Lionbridge</td> <td></td> </tr> <tr> <td><input checked="" type="checkbox"/> TransPerfect</td> <td></td> </tr> </tbody> </table>	Primary Interpreter Contract	Rare Language Contract	<input checked="" type="checkbox"/> Language Line	<input checked="" type="checkbox"/> Language Line	<input checked="" type="checkbox"/> Lionbridge		<input checked="" type="checkbox"/> TransPerfect		Ensure the correct boxes have been checked
Primary Interpreter Contract	Rare Language Contract								
<input checked="" type="checkbox"/> Language Line	<input checked="" type="checkbox"/> Language Line								
<input checked="" type="checkbox"/> Lionbridge									
<input checked="" type="checkbox"/> TransPerfect									
Date of first interview: [Insert Date]									
Date of interpreter availability:	Review these dates for accuracy.								
<table border="1"> <thead> <tr> <th>Primary Interpreter Contract</th> <th>Rare Language Contract</th> </tr> </thead> <tbody> <tr> <td>Language Line:</td> <td>Language Line:</td> </tr> <tr> <td>Lionbridge:</td> <td></td> </tr> <tr> <td>TransPerfect:</td> <td></td> </tr> </tbody> </table>	Primary Interpreter Contract	Rare Language Contract	Language Line:	Language Line:	Lionbridge:		TransPerfect:		
Primary Interpreter Contract	Rare Language Contract								
Language Line:	Language Line:								
Lionbridge:									
TransPerfect:									
Name of concurring leadership (Section Chief level or higher) for this rare language NTA request: _____									
Put concurring official here									

Prior to requesting HQ concurrence, please make sure that the individual/FAMU does not fall within a situation in which issuing a rare language NTA is not appropriate, as outlined in Section III C of the 2020 Updated Guidance on Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable.

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No. A 000 000 000

In the Matter of:

Respondent: LAST NAME, First Middle currently residing at:
(Name and address of facility OR alien's non-detained address)

(Number, street, city, state and ZIP code)

(Area code and phone number)

- You are an arriving alien.
You are an alien present in the United States who has not been admitted or paroled.
You have been admitted to the United States, but are removable for the reasons stated below.

Ensure information here is all accurate and spelled correctly

The Department of Homeland Security alleges that:

- 1) You are not a citizen or national of the United States;
2) You are a native of COUNTRY and a citizen of COUNTRY;

Verify that highlighted text is correct

you entered the United States [unknown or POE] on or about [date of entry];
you did not then possess or present a valid immigrant visa, reentry permit, border crossing
documentation card, or other valid entry document;
you were not then admitted or paroled after inspection by an immigration officer.

As a result of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Section 212(a)(6)(A)(i) of the Act, as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General.

Do not check this box

These should be checked if the I-860 is executed.
Ensure information here is all accurate

This notice is being issued after an asylum officer has found that the respondent is persecuted or tortured.

Section 235(b)(1) order was vacated pursuant to: 8CFR 208.33 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

(Complete Address of Immigration Court, including Room Number, if any)

on (Date) at (Time) to show why you should not be removed from the United States based on the

charge(s) set forth above. Supervisory Asylum Officer

(Signature and Title of Issuing Officer) (Sign in ink)

Date City and State of Adjudication

(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a removal order, you must surrender for removal to your local DHS office, as listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you fail to appear for removal, you may be considered to have failed to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to depart the United States as required. If you fail to appear for removal, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

Do not complete anything in this section.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office of Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled

Before:

(Signature of Respondent) (Sign in ink)

Date: _____

(Signature and Title of Immigration Officer) (Sign in ink)

Certificate of Service

This Notice To Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person by certified mail, returned receipt # _____ requested by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent if Personally Served) (Sign in ink)

(Signature and Title of Officer) (Sign in ink)

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

This NTA is for training purposes only. ASM has separate POE and INL NTAs that have the allegations pre-filled.

Rare Language Guidance

This guidance is based upon the 3.26.2020 Guidance from Asylum HQ email entitled "Updated Guidance on Processing Credible Fear Cases when a Rare Language Interpreter is Unavailable." Document may be accessed through the link below:



OCC_3.9.20_Updated
Guidance on Processi

Steps for determining a Rare Language:

- 1) Contact all 3 interpreter providers to confirm that no interpreter is available (language not serviced), document in interpreter log and interview notes.
- 2) Determine if, in addition to the rare language, applicant is able to communicate in another language and whether applicant is willing to proceed.
 - Review whether applicant has communicated in a different language during the initial processing by CBP or ICE. Follow up during interview with questions about that interaction, familiarity with second language, etc.
 - The applicant is not required to proceed in second language, it is applicant's decision whether she/he would be comfortable to proceed – the best practice is to capture the applicant's response as to why the applicant is unwilling to proceed in a second language.
 - Capture in notes applicant's responses or lack of responses that indicate misunderstanding, as well as any comments from the interpreter.
- 3) a) If applicant is able and willing to continue in another language:
 - Ensure notes capture applicant's confirmation that she/he understood the interview and was able to testify accurately and completely.
- b) **If applicant is unable or unwilling to continue in another language:**
 - AO prepares Rare Language Memo and checklist and reaches out to SAPSO.
 - The SAPSO will contact Section Chief POC for Rare Language NTA concurrence, attaching AO's Rare Language Memo, Rare Language checklist, and interview notes.
 - Note: Issuance of Rare Language NTA and Memo requires the concurrence of the Asylum Office's leadership at the Section Chief (SC) level or higher.
 - Upon SC concurrence, the AO will:
 - (1) Issue Rare Language NTA
 - (2) Prepare document packet for SAPSO review:
 - Document packet to include: Security Checks, Interview Notes, Rare Language Memo, Rare Language checklist, and NTA.
 - SAPSO will email Rare Language Memo to: (b)(6)
 - (3) Create interview card in Global, but NOT a decision card
 - SAPSO will close case on Global, selecting Rare Language as reason for closing case.

← ADD A CASE EVENT

Set Case Details EDIT

Interview Date EDIT

Interview Location EDIT

Means of Establishing Identity
 Record
 Statement

Method of Interview
 In Person
 Telephonic
 Video-Recorded Interview

Interview Performed By

Representative Present
 Attorney
 Consultant

Outcome

USCIS Interpreter

Interview Notes

LOG INTERPRETER/MONITOR

Language Serviced, but No Available Interpreter

- Reschedule following procedures outlined above.
- If interviewing officer(s) are unable to secure interpreter within 10 calendar days of initially scheduled interview:
 - AO reaches out to SAPSO and AO prepares Rare Language memo and Rare Language checklist, documenting attempts to secure an interpreter. Please review Global Adjudications tab and Documents for uploaded notes to reference prior attempts in memo.
 - SAPSO will direct the memo, Rare Language checklist, and interview notes to Section Chief POCs.
 - After securing SC approval, the SAPSO will email the memo to file to Asylum HQ at [REDACTED] (b)(6)
 - Asylum HQ will confirm interpreter is unavailable, and if so, informs the office within 2 business days.
 - Once Asylum HQ concurrence is received, the office can proceed with issuing Rare Language NTA.

Rare Language NTAs are NOT available for:

- RF Cases
- Re-interviews when interpreter was found for prior interviews. (10-day rule does not apply, will need to continue to re-schedule until interpreter becomes available)
- Family members who entered together at the same time, but are detained in separate facilities
 - If one member was interviewed in the rare language and is found negative, do not issue RARE LANGUAGE NTA to other family members who speak the same RARE LANGUAGE.

FOUO

- CF Processing Pilots – *May* be exempted from updated RARE LANGUAGE NTA procedures, need to seek guidance from Asylum HQ prior to proceeding
- Common languages that have limited number of interpreters available, unless directed by Asylum HQ to do so.

Rare language interpreter is **AVAILABLE**:

After the language provider confirms that they are able to schedule an interpreter:

- Update Global
 - Add Interview Card, selecting "Needs reschedule"
 - State in interview notes "Reschedule approved by SAO [F. Last Name] for rare language."
 - Enter interpreter reservation information in "Scheduling Description" section of Entry tab.
 - *Date interpreter is scheduled, Language interpreter scheduled @ Time; interpreter service used, Reference number*
 - Upload interpreter schedule email
 - Upload interview notes

Rare language interpreter is **NOT AVAILABLE**:

- If a certified interpreter cannot be scheduled within the date/timeframe set out above, a Rare Language NTA may be issued.

Required Documents Aid (APSO): Single Applicants

<u>Credible Fear (CF)</u>		<u>Reasonable Fear (RF)</u>	
<i>Positive</i>	<i>Negative</i>	<i>Positive</i>	<i>Negative</i>
I-870 Checklist Q&A NTA (I-862) BISC Sec. Checks	I-870 Checklist Q&A I-863 I-869 BISC Sec. Checks	I-899 RF Checklist Q&A I-863 BISC Sec. Checks	I-899 RF Checklist Q&A I-863 I-898 BISC Sec. Checks
<p>*Remember to include adverse information memos for all mandatory bars other than firm resettlement.</p> <p>** These are documents that the AO fills out for final determination. Not all these documents are served on the applicant.</p>			

FOR OFFICIAL USE ONLY

LAST UPDATED: April 14, 2021

AUTHORS: ASYLUM QUALITY ASSURANCE BRANCH AND OPERATIONS BRANCH, USCIS HQ



U.S. Citizenship
and Immigration
Services

APSO Security Checks

RAIO Foundations: APSO Module

Last updated: January 2021

Learning Objectives



U.S. Citizenship
and Immigration
Services

- 1. Identify which biographic and biometric security checks are required in APSO processing**
- 2. Discuss where to find evidence that security checks were initiated**
- 3. Discuss how to use security checks systems and how to process results**
- 4. Introduce the APSO Background, Identity and Security Checklist (BISC)**

APSO BISC

(b)(7)(E)

Credible Fear/Reasonable Fear Background Identity and Security Checklist

Name (LNI, LNZ, Fo, Mn):			
Aliases or Alternate DOBs (if any):			
A-Number(s):		Date of Birth:	
Memo of Adverse Information Completed:	<input type="checkbox"/> NO <input type="checkbox"/> YES	Results Pending at Time of Decision:	
Mandatory Bar Flagged in Adjudication Tab	<input type="checkbox"/> NO <input type="checkbox"/> YES	Reason:	

BIOGRAPHIC CHECKS

TECS - Must be completed for individuals age 14 and over on the primary name and DOB only.

--

FBI Name Check - Must be initiated for individuals age 14-79 on the primary name and DOB only.

--

BIOMETRIC CHECKS

FBI Fingerprint Check - Must be initiated for all individuals age 14 and over.

--

DHS-IDENT Encounter Search (access through CPMS-IVT): FIN or All search must be completed for all individuals age 14 and over.

--

Identity Verification (Required For All Non-Detained Applicants Interviewed in person at a USCIS Office)

--



U.S. Citizenship and Immigration Services

BISC Header



U.S. Citizenship
and Immigration
Services

Credible Fear/Reasonable Fear Background Identity and Security Checklist

Name (LN1, LN2, Fn, Mn):			
Aliases or Alternate DOBs (If any):			
A-Number(s):		Date of Birth:	
Memo of Adverse Information Completed:	<input type="checkbox"/> NO <input type="checkbox"/> YES	Results Pending at Time of Decision:	
Mandatory Bar Flagged in Adjudication Tab	<input type="checkbox"/> NO <input type="checkbox"/> YES Reason:		

- Name = **Form I-860** (b)(7)(E)
- Date of Birth = **Form I-213**
- Update Aliases or Alternate DOBs after harvesting the referral documents, security checks, and questioning the applicant
- A Number = **Form I-213**. Update as needed after running security checks
- Memo of Adverse Information Completed and Mandatory Bar Flagged in Adjudication Tab **also flagged** in Forms I-870/I-899 and in Global
- Per the Identity and Security Checks Procedures Manual (ISCPM), APSO cases **do not** need to wait for the results of fingerprint checks or FBI name check hits before processing a credible fear or reasonable fear determination

Adverse Information Memo

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

A large, empty rectangular box with a black border, intended for the content of the Adverse Information Memo.

FOR OFFICIAL USE ONLY

TECS



U.S. Citizenship
and Immigration
Services

- CBP System that stores enforcement and inspection lookout records. Used to look up TECS *and* NCIC (National Crime Information Center) records.
- Formerly known as IBIS (Interagency Border Inspection System)

PURPOSE: To identify whether the applicant is the subject of any lookouts, wants, or warrants; to review entry/exit and secondary inspection information; to determine whether applicant is a known or suspected terrorist or other type of national security or public safety concern

BASIC SEARCH REQUIREMENTS FOR ASYLUM PERSONNEL:

- Required on the **primary name and DOB only** for those aged 14 and over (b)(7)(E)

-
-
-

Where To Find Evidence Of TECS Checks



U.S. Citizenship
and Immigration
Services

Form I-213

U.S. Department of Homeland Security

Continuation Page for Form I213

Alien's Name SMITH, JANE	File Number A: SIGMA Event: Event No: SYE	Date 07/13/2016
RECORDS CHECKED		
<div style="border: 1px solid black; width: 100%; height: 100%;"></div>		
TECS <div style="border: 1px solid black; width: 50px; height: 20px; display: inline-block;"></div>	(b)(7)(E)	
SECTION CODES ----- 212e7Aii		

Where To Find Evidence Of TECS Checks



U.S. Citizenship
and Immigration
Services

Global

(b)(7)(E)

How To Resolve Conflicting TECS Results



U.S. Citizenship
and Immigration
Services

(b)(7)(E)

-
-

How To Run Manual TECS Checks



U.S. Citizenship
and Immigration
Services

(b)(7)(C) (b)(7)(E)

TECS Home Screen

(b)(7)(C) (b)(7)(E)



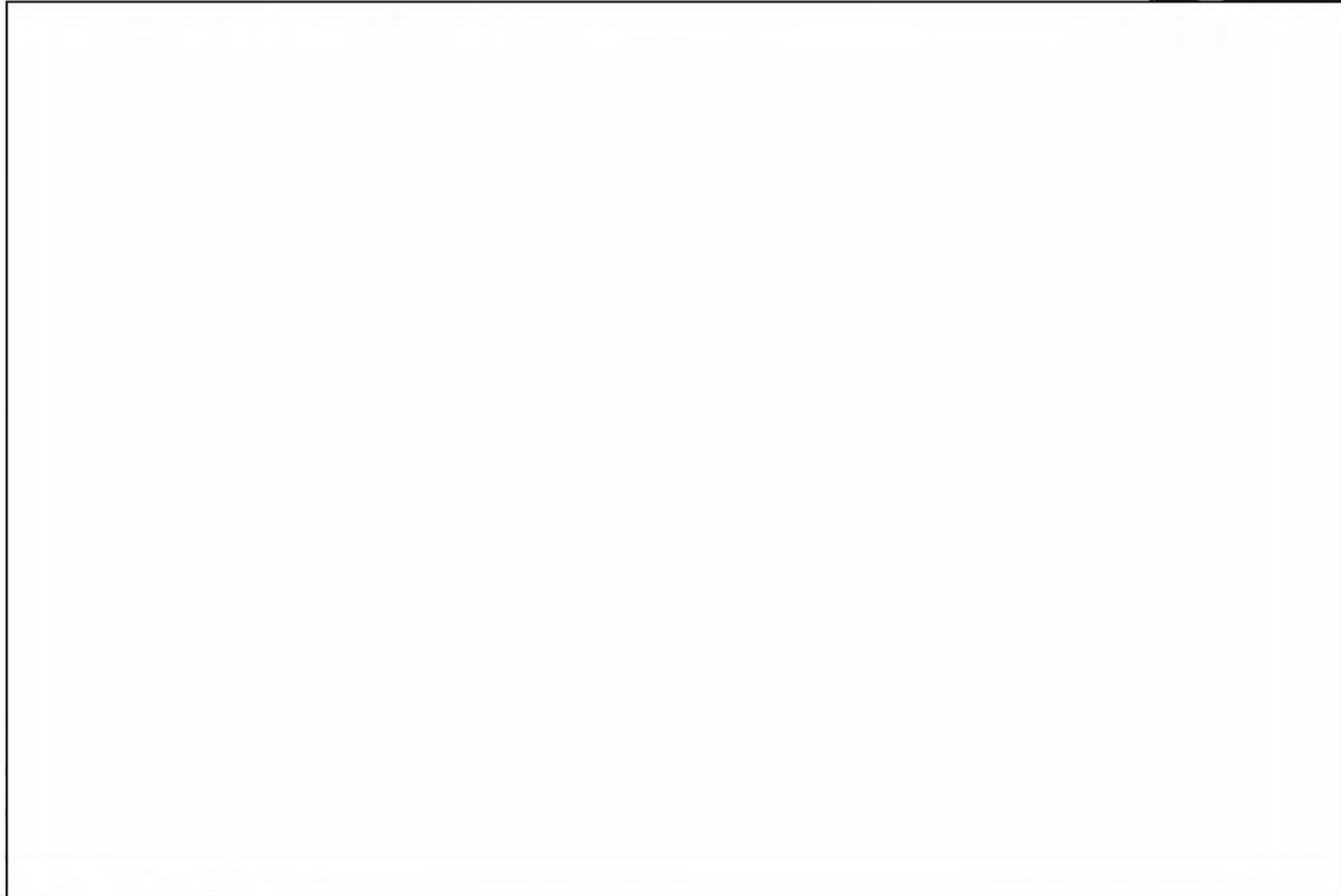
U.S. Citizenship
and Immigration
Services

TECS Person Query

(b)(7)(E)



U.S. Citizenship
and Immigration
Services



(b)(7)(E)

TECS Results:



U.S. Citizenship
and Immigration
Services

(b)(7)(C) (b)(7)(E)

NCIC Results:



U.S. Citizenship
and Immigration
Services

NCIC Results Printout



U.S. Citizenship
and Immigration
Services

(b)(7)(C) (b)(7)(E)



TECS Results



(b)(7)(C) (b)(7)(E)



U.S. Citizenship
and Immigration
Services

TECS Result:



U.S. Citizenship
and Immigration
Services



U.S. Customs and Border Protection
U.S. Department of Homeland Security
TECS - Person Query

(b)(7)(C) (b)(7)(E)

02/03/2017 11:16 AM EST

Generated By:

Page 1 of 3





How to Complete a ROIT

- All Manual TECS searches must be recorded on a ROIT

FOR OFFICIAL USE ONLY
Do Not Distribute Beyond DHS without Prior Authorization from the

Record of Inquiry - TECS (ROIT)

A-Number of _____ XXX XXX XXX

#	Last Name, First Name	DOB	NO MATCH	DNR	RELATES	Resolution Memo Completed?
1	LAST NAME, First Name	mm/dd/yy	04/19/13 ZXX#	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/> A <input type="checkbox"/> P <input type="checkbox"/> B <input type="checkbox"/> D <input type="checkbox"/> R	2nd Check				
	Last Name, First Name				RELATES	Resolution Memo Completed?
	<input type="checkbox"/> A <input type="checkbox"/> P <input type="checkbox"/> B <input type="checkbox"/> D <input type="checkbox"/> R	2nd Check				
		3rd Check				
#	Last Name, First Name	DOB	NO MATCH	DNR	RELATES	Resolution Memo Completed?
	<input type="checkbox"/> A <input type="checkbox"/> P <input type="checkbox"/> B <input type="checkbox"/> D <input type="checkbox"/> R	2nd Check				
		3rd Check				

Include the name searched here.

Add the A number here:

Make sure the most derogatory result is recorded in the accurate column

Check the "Resolution Memo Completed?" box when there is a HIT that requires a resolution memo

Check Box A for Principal Applicant

Check Box D for Dependents

Include the DOB searched here

Include the DATE you completed the Person Query AND your ID # or initials

How to Complete a TECS Resolution Memo

(b)(7)(E)

U.S. Department of Homeland Security
P. O. Box 670626
Houston, TX 77267



U.S. Citizenship
and Immigration
Services



U.S. Citizenship
and Immigration
Services

How to Document TECS Hit in Global

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

How to Document TECS Results on the BISC

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

How to Document TECS Results in your Case Paperwork



U.S. Citizenship
and Immigration
Services

- Completed and signed BISC
- Form I-213
- Global Checks tab marked FOUO
- A TECS cover sheet before any manual TECS checks, ROIT, and Resolution Memo

FBI Name Check



U.S. Citizenship
and Immigration
Services

- Biographic check of FBI investigative files

PURPOSE: To determine whether FBI records contain any derogatory information about the individual

BASIC REQUIREMENTS FOR ASYLUM PERSONNEL:

- When cases are entered into Global, search is automatically initiated on the **primary name and date of birth** for individuals age 14-79
- Confirm that the check was **initiated**, document results if available. However, **results are not required**
- Determination should not be delayed to await letterhead memorandum (LHM) on a positive response

Where To Find Evidence Of FBI Name Check

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

- Global Checks tab will display name check results

How to Document FBI Name Check Results on the BISC

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

How to Document FBI Name Check Results in your Case Paperwork



U.S. Citizenship
and Immigration
Services

- Completed and signed BISC
- Form I-213
- Global Checks tab marked FOUO
- Any FBI records for positive responses, if available and unclassified

FBI Fingerprint Check



U.S. Citizenship
and Immigration
Services

- ICE ERO conducts a fingerprint check at the time of initial book-in to detention for all individuals age 14 and older.

PURPOSE: To determine if the individual has a criminal history.

BASIC REQUIREMENTS FOR ASYLUM PERSONNEL:

- Confirm that CBP or ICE **initiated** a fingerprint check for all individuals age **14 or older** prior to making a determination
 - o If there is no evidence of a fingerprint check, contact ICE for confirmation.

Where To Find Evidence of FBI Fingerprint Check Was Initiated



U.S. Citizenship
and Immigration
Services

Form I-213

(b)(7)(C) (b)(7)(E)

U.S. Department of Homeland Security

Continuation Page for Form I213

Alien's Name SMITH, JANE	File Number A: SIGMA Event: Event No: SY8	Date 07/13/2016
-----------------------------	---	--------------------

RECORDS CHECKED

[Redacted]

IAETS

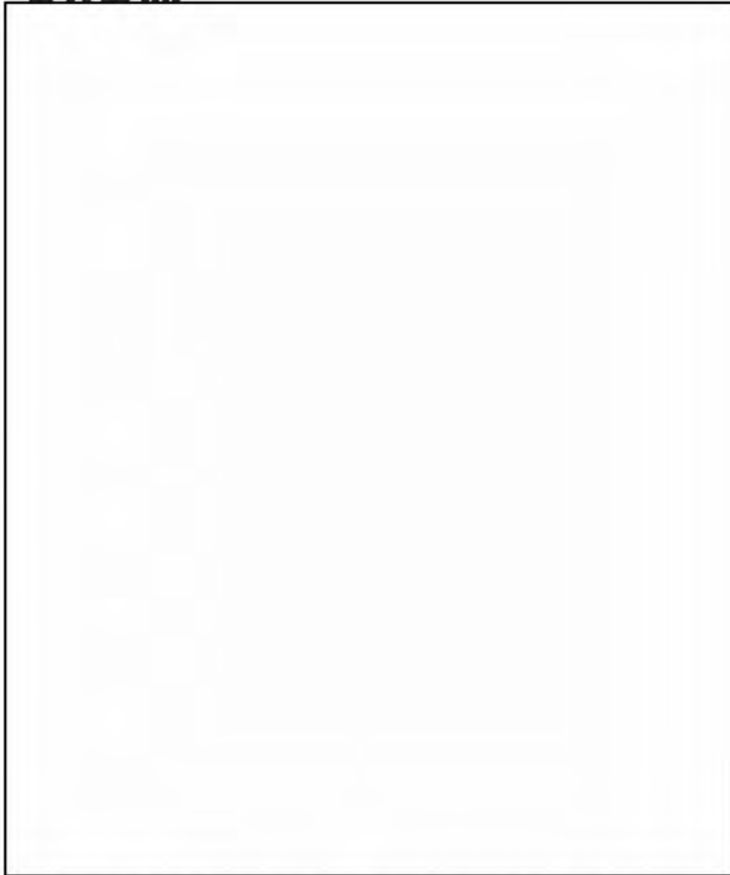
[Redacted]

Where To Find Evidence of FBI Fingerprint Check Was Initiated

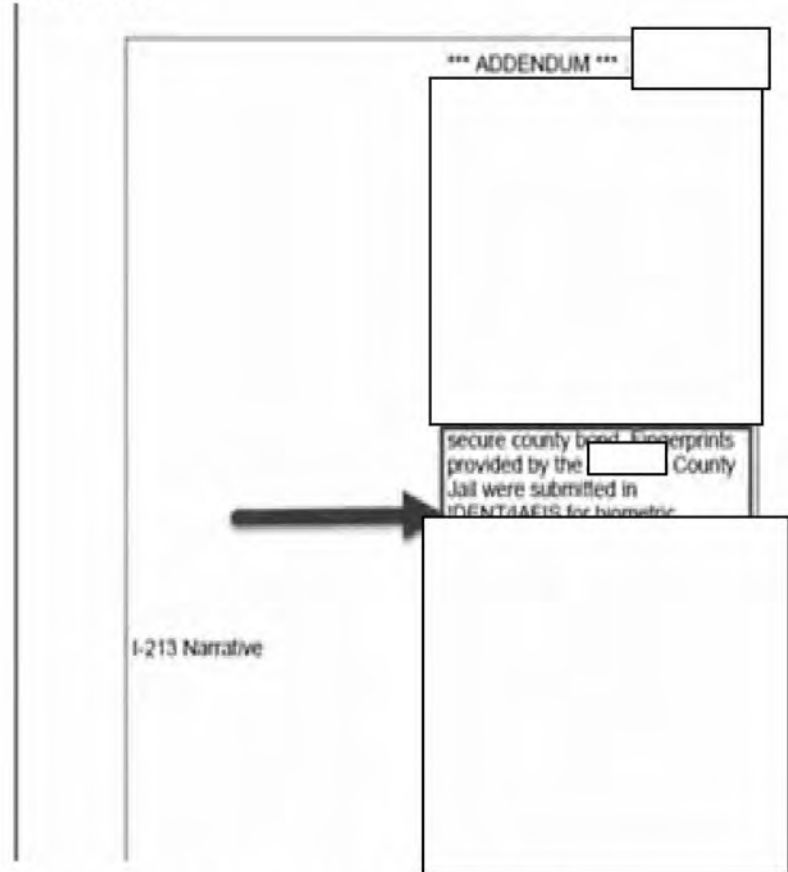


U.S. Citizenship
and Immigration
Services

EARM



(b)(7)(E)



- Reference to prior arrests/criminal history in the EARM Record of I-213 narrative

Where To Find Evidence of FBI Fingerprint Check Was Initiated



U.S. Citizenship
and Immigration
Services

DHS-IDENT

(b)(7)(E)

Where To Find Evidence of FBI Fingerprint Check Results



U.S. Citizenship
and Immigration
Services

U.S. Department of Homeland Security

Continuation Page for Form 1213

Alien's Name

SMITH, JANE

File Number A:

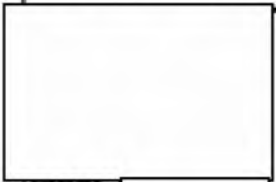
SIGMA Event:

Event No: SYE

Date

07/13/2016

RECORDS CHECKED



(b)(7)(E)

TAPTS



How to Document FBI Fingerprint Check Results on the BISC

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

How to Document FBI Fingerprint Check Results in your Case Paperwork



U.S. Citizenship
and Immigration
Services

- Completed and signed BISC
- Form I-213
- Global Checks tab marked FOUO
- Any EARM or DHS-IDENT records used to determine that FBI Fingerprint checks were initiated.

DHS-IDENT & CPMS-IVT



U.S. Citizenship
and Immigration
Services

CPMS-Identity Verification Tool (IVT) is a web-based application owned by USCIS that interfaces with the DHS Automated Biometric Information System (DHS-IDENT). CPMS-IVT is the USCIS interface that we use to access DHS-IDENT (Replaced USVISIT).

PURPOSE: To gain awareness of other biometric encounters with the US Government (DOS visa, CBP air entries, DHS apprehensions); to view any associated derogatory information (alternate identities, watchlist or recidivist hits)

BASIC REQUIREMENTS FOR ASYLUM PERSONNEL:

- APSO must confirm enrollment in IDENT by conducting an encounter search in CPMS-IVT using applicants FIN #
 - If applicant is not enrolled in IDENT, must coordinate enrollment with ICE (rare)
- DHS-IDENT encounter record must be reviewed, printed, and retained in the file
- Information that may indicate a mandatory bar must be documented on the Memo of Adverse Information
- *Must use CPMS-IVT to conduct biometric verification for all Non-Detained applicants who are interviewed in person at a USCIS office

CPMS-IVT Encounter Search



U.S. Citizenship
and Immigration
Services

(b)(6)

(b)(7)(E)

First click here to access the menu

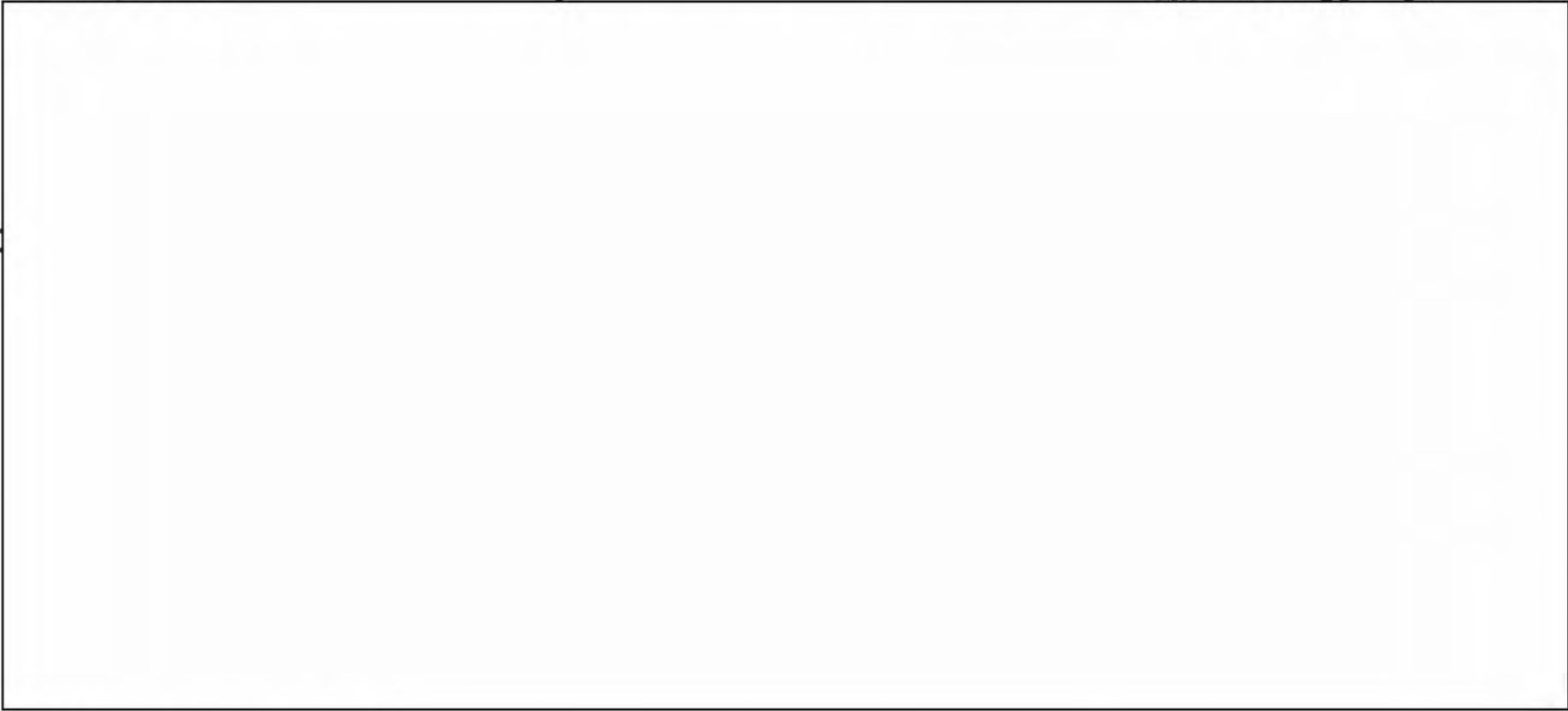


Click here to access CPMS-IVT

Groups: Asylum Users



U.S. Citizenship
and Immigration
Services



DHS-IDENT Encounter Results

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

(b)(7)(E)

DHS-IDENT



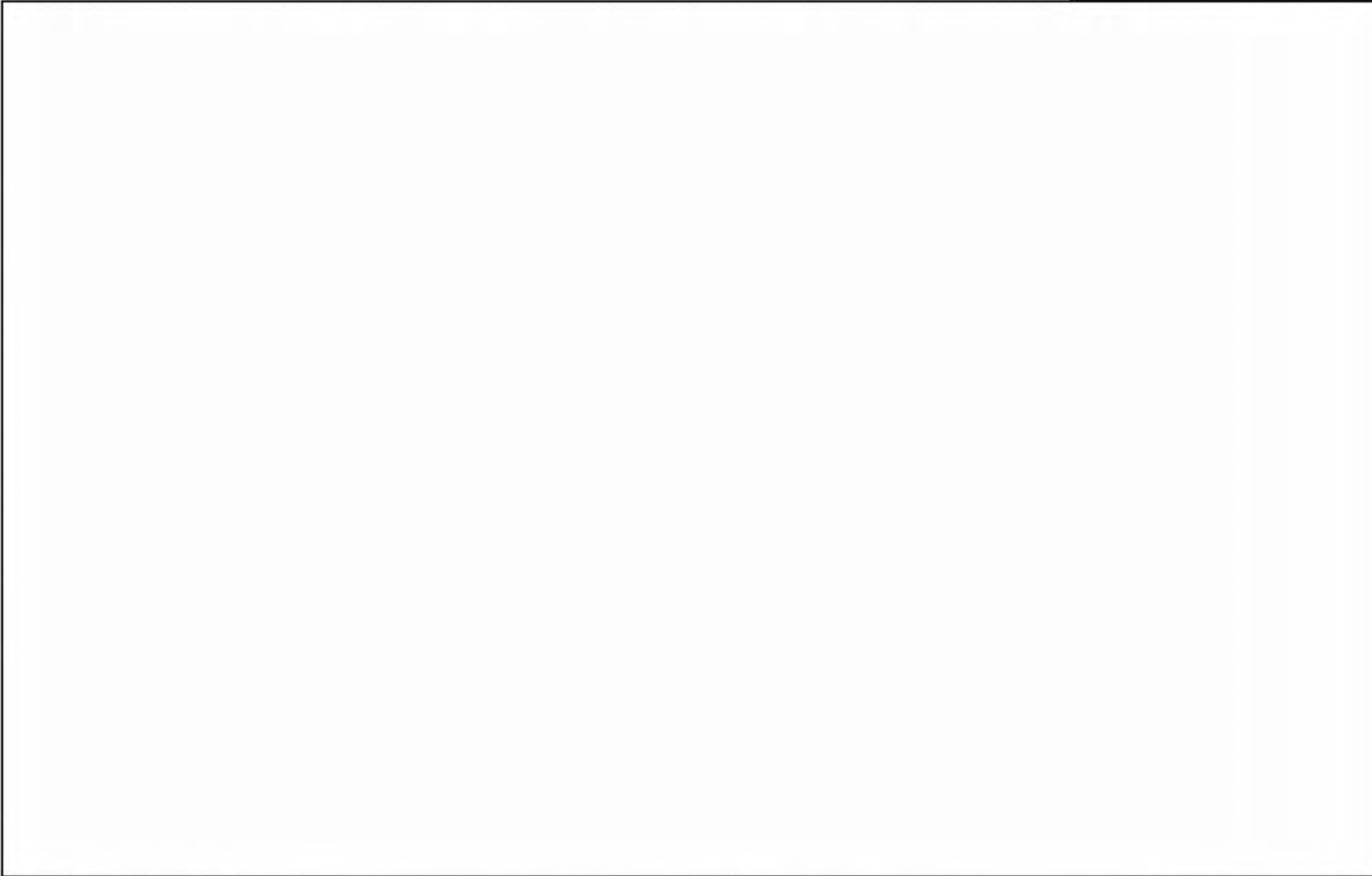
U.S. Citizenship
and Immigration
Services

(b)(7)(E)

DHS-IDENT Recidivist Encounter



U.S. Citizenship
and Immigration
Services



How to Document DHS-IDENT Encounter Search Results on the BISC

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

How to Document Identity Verification Results on the BISC



U.S. Citizenship
and Immigration
Services

(b)(7)(E)

*This section is not required for detained APSO cases

How to Document DHS-IDENT Encounter Search Results in your Case Paperwork



U.S. Citizenship
and Immigration
Services

- Completed and signed BISC
- DHS-IDENT records
- Any CCD records

Consolidated Consular Database (CCD)

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

- CCD is a Department of State database that contains information regarding visa applications.

CCD

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

R

CCD

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

CCD: NIV Application

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

ENFORCE Alien Removal Module (EARM)



U.S. Citizenship
and Immigration
Services

- EARM is an ICE system that tracks information about individuals in immigration detention and removal proceedings.

Purpose: It contains information about the circumstances under which an individual was placed in detention, the security checks done at the time of initial book-in, the dates of detention, the case history and status, and additional biographic data collected by CBP and ICE.

- EARM search is **not required** for CF/RF screenings, **but you may need the information in this system** to complete security checks
- USCIS officers have read-only access

EARM Query

(b)(7)(C) (b)(7)(E)



U.S. Citizenship
and Immigration
Services

(b)(7)(C) (b)(7)(E)

EARM Result:



U.S. Citizenship
and Immigration
Services

EARM Result:



U.S. Citizenship
and Immigration
Services

(b)(7)(C) (b)(7)(E)

EARM Result:



U.S. Citizenship
and Immigration
Services

(b)(7)(C) (b)(7)(E)

PCQS-ENFORCE



U.S. Citizenship
and Immigration
Services

- PCQS-ENFORCE is a USCIS database contains immigration records.

Purpose: It contains information about had prior contact with immigration enforcement partners, for example prior removals or immigration detention

- This search is **not required** for CF/RF screenings, **but you may need the information in this system** to complete security checks
- Compliments an EARM A# search

PCQS – ENFORCE Query

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOR OFFICIAL USE ONLY (FOUO) - (2016-11-02 20:16:58 CDT)

[Accessibility Statement](#)

PCQS-ENFORCE Result

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

PCQS-ENFORCE Result

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

CF Sample Case Security Checks



U.S. Citizenship
and Immigration
Services

(b)(7)(C) (b)(7)(E)

SAMPLE - FOR TRAINING PURPOSES ONLY

Credible Fear/Reasonable Fear Background Identity and Security Checklist

A large, empty rectangular box with a black border, occupying the central portion of the page. This box represents a redacted checklist, as indicated by the text above it and the redaction codes to its right.

Role of FDNS



U.S. Citizenship
and Immigration
Services

- FDNS may pre-screen APSO cases and include a pre-screening memo in the file.
- FDNS-IOs **do not** perform routine security checks, but must be consulted when security checks reveal national security, egregious public safety, or fraud concerns.
- If there is a TECS hit that relates with instructions to contact the record holder, you **MUST alert FDNS** who will reach out through the appropriate law enforcement channels.

Resources



U.S. Citizenship
and Immigration
Services

- Identity and Security Checks Procedures Manual (ISCPM)
- USCIS National Background Identity and Security Checks Operating Procedures (NaBISCOP)
- Memoranda on Background, Identity and Security Checks section of Asylum ECN

About this presentation



U.S. Citizenship
and Immigration
Services

(b)(6)

- Authors: Asylum Operations Branch ()
- Date of last revision: January 2021
- This presentation is current only as of the date of the last revision.
- 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.

Dissemination



U.S. Citizenship
and Immigration
Services

This presentation may not be reproduced or further disseminated without the express written consent of the Asylum Operations Branch. (b)(6)

Please contact the Asylum Operations Branch for additional information

Disclaimer



U.S. Citizenship
and Immigration
Services

This training module is intended solely for informational purposes. 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.

Implementation of the U.S.-Canada Safe Third Country Agreement

Encounter: Land Border Port of Entry with Canada

- Individual presents a fraudulent or invalid document, or no document and expresses fear of persecution or torture, or seeks asylum
- CBP issues I-860 and prepares I-867A/B (Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act and Jurat).

Encounter: Anywhere in the U.S. while that person is being removed from Canada through the U.S., en route to their country

- Individual expresses fear of persecution or torture, or seeks asylum
- CBP revokes parole, issues I-860 and prepares I-867A/B (Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act and Jurat).

CBP issues Notice of Threshold Screening Interview (Form M-621), informing the individual of the STCA process, rights and consequences (Orientation) and refers case to APSO. The individual is detained.

APSO reviews I-860, I-867A/B and I-213 to determine that the individual is in expedited removal and was encountered at a land-border POE with Canada, or elsewhere in the U.S. while en route to being removed from Canada. If the evidence shows that the individual was encountered in a different manner, after consulting with SAPSO, APSO documents that finding in a memo to file and proceeds with the CF process.

Asylum office schedules threshold screening interview at least 48 hours from detention date, unless 48-hour waiting period is waived.

THE THRESHOLD SCREENING INTERVIEW (TSI)

- APSO ensures individual understands the process and is willing to proceed with the threshold screening interview.
- APSO elicits testimony to determine:
 - Is the individual subject to the Safe Third Country Agreement and, if so
 - Is the individual eligible for an exception to the STCA bar. The Exceptions:
 - **Citizen of Stateless last habitually residing in Canada**
 - **Family Member with Lawful Immigration Status or a pending asylum application in the U.S.**
 - **Arrived with validly issued U.S. visa or was not required to have a Visa**
 - **In the Public Interest**
- The testimony is recorded in Q&A format and read back to the individual. The APSO must make any requested corrections, before the asylum seeker signs the sworn statement.

The Asylum Officer then completes the [threshold screening adjudication worksheet](#).

THE DETERMINATION: The standard of proof is “preponderance of the evidence.”

1. SAPSO Review
2. Mandatory QA Review

Individual qualifies for an Exception:

1. HQ QA concurs
2. APSO serves the STCA determination.
3. **THE STCA CASE IS COMPLETE**

APSO proceeds to conduct credible fear interview

Individual does not qualify for an exception

1. HQ QA concurs
2. APSO signs order portion of Form I-860, returns case to ICE
3. Expedited removal order is effected and individual is returned to Canada.

THE STCA CASE IS COMPLETE

The STCA Determination is not subject to review. USCIS decision is final.

Dissolution: The individual may dissolve at any time during the process. The same dissolution rules apply as in credible fear.

Student Guide – Unable to Effectively Communicate

If the Asylum Pre-Screening Officer (APSO) believes that a noncitizen is unable to effectively communicate in the credible fear interview, the APSO must alert the Supervisory Asylum Pre-Screening Officer (SAPSO).

Often, the most difficult part of this process is determining when a noncitizen is indeed unable to effectively communicate. There are three common points in time at which an APSO may question the noncitizen's ability to effectively communicate and be required to initiate the procedure outlined above. These points in time include:

- 1) before the credible fear interview, the APSO receives notification that the noncitizen may be unable to effectively communicate;
- 2) during the credible fear interview, the APSO suspects that the noncitizen is unable to effectively communicate; or
- 3) following the credible fear interview, but before the final decision has been served on the noncitizen, the APSO has reason to believe that the noncitizen's testimony was materially impaired by a physical or mental condition.

If ICE has already advised the asylum office that there may be a mental or physical impairment, the asylum officer should still attempt to interview the noncitizen, documenting the interview both in Q&A form and by entering an interview card in Global.

Once the APSO has alerted the SAPSO, the SAPSO, program coordinator, or other designated POC, will confer with ICE ERO and, in particular, the ICE Health Services Corps (IHSC) for any input that ICE may have concerning the noncitizen's physical or mental health state as it pertains to the noncitizen's ability to effectively communicate in the credible fear interview.

If, based on that consultation with ICE, the APSO and SAPSO conclude that the noncitizen is unable to effectively communicate in the credible fear interview, the procedures are as follows:

- ✓ Draft a Memo to File containing the information from ICE and describing any relevant behavior exhibited by the noncitizen, with a disclaimer reading as follows: "Any determination by USCIS that a noncitizen is unable to effectively communicate during his or her credible fear interview is intended only to pertain to the credible fear adjudication process, does not necessarily serve as indicia of mental incompetency, and does not constitute a legally binding finding of mental incompetency for purposes of proceedings before the Executive Office for Immigration Review." Please cut and paste this language exactly.
- ✓ Complete Form I-870, but do not complete any portion of Section IV, Credible Fear Findings, because it would be inconsistent for the APSO to adjudicate the credible fear claim of a noncitizen who is unable to effectively communicate. The APSO may complete Sections I, II, III and V, as applicable. The APSO must also complete boxes 2.19 through 2.21 in Section II of Form I-870, which concern noncitizens who have medical conditions.
- ✓ Do not complete the credible fear determination checklist.

- ✓ Prepare a Form I-862, Notice to Appear (NTA), initiating removal proceedings before an immigration judge, pursuant to section 240 of the INA.¹ List the expedited removal charges but do not allege that the noncitizen is a public charge. Do not check the field that indicates that the NTA is being issued following a positive credible fear determination, as no such finding is being made.
- ✓ Close the case in Global.

The screenshot displays two forms in a case management system. The top form is titled 'Case Close' and has an 'EDIT' button. It contains fields for 'Close Date *' (01/12/2021), 'Performed By' (redacted), and 'Close Reason *' (with a dropdown menu). Below these is a 'Notes' section with the text: 'Following interview, case was flagged to HQ for concerns that applicant was unable to effectively communicate. On 01/12, HQ concluded applicant was unable to effectively communicate based on testimony and documentation from ICE.' The bottom form is titled 'Interview' and also has an 'EDIT' button. It contains fields for 'Interview Date *' (01/06/2021), 'Interview Location' (redacted), 'Means of Establishing Identity' (Document and Statement), 'Method of Interview' (In Person, Telephonic, Video teleconference), 'Interview Performed By *' (redacted), 'Representative Present' (Attorney, Consultant), 'Interview Language' (English), and 'Outcome' (Completed). There is also a 'USCIS Interpreter' field and an 'Interview Notes' section. Three numbered callouts are present: '1' points to the '+ ADD A CASE EVENT' button, '2' points to the 'Interview' title, and '3' points to the 'Case Close' title.

¹ The BIA has held that the DHS has the authority to initiate section 240 removal proceedings, at its discretion, against an arriving noncitizen who is otherwise subject to expedited removal proceedings under section 235(b)(1)(A)(i). See Matter of E-R-M- & L-R-M-, 25 I&N Dec. 520, 520-24 (BIA 2011).



U.S. Citizenship
and Immigration
Services

HQRAIO 120/9.15a

Memorandum

TO: Asylum Office Directors and Deputy Directors
Quality Assurance and Training Asylum Officers
Supervisory Asylum Officers
Asylum Officers

FROM: John L. Lafferty
Chief, Asylum Division

SUBJECT: Credible Fear – Aliens Unable to Effectively Communicate

The purpose of this memorandum is to announce the issuance of revised section III.E.10., *Aliens Unable To Effective Communicate*, of the Credible Fear Procedures Manual (CFPM).¹ The revised section provides procedures that Asylum Officers must follow in credible fear cases when they encounter an alien who appears unable to effectively communicate² due to a physical or mental condition. The revised section also provides more detailed guidance to assist Asylum Officers in recognizing physical or mental conditions that may affect an alien's ability to effectively communicate in the credible fear process.³

Asylum Officers are neither trained nor expected to evaluate an asylum seeker's mental health or determine mental incompetency, and should not render evaluations or make determinations in this regard. However, Asylum Officers are expected to make a judgment regarding the alien's ability to effectively communicate in his or her credible fear interview.

These procedures are effective immediately and will be incorporated into the CFPM on the ECN.

¹ This memorandum also supersedes the 2001 Memorandum, *Mentally Incompetent Aliens in the Credible Fear Process*, Sept. 20, 2001.

² "Unable to effectively communicate" means unable to effectively communicate orally, in writing, or, in the case of some deaf aliens, by sign language.

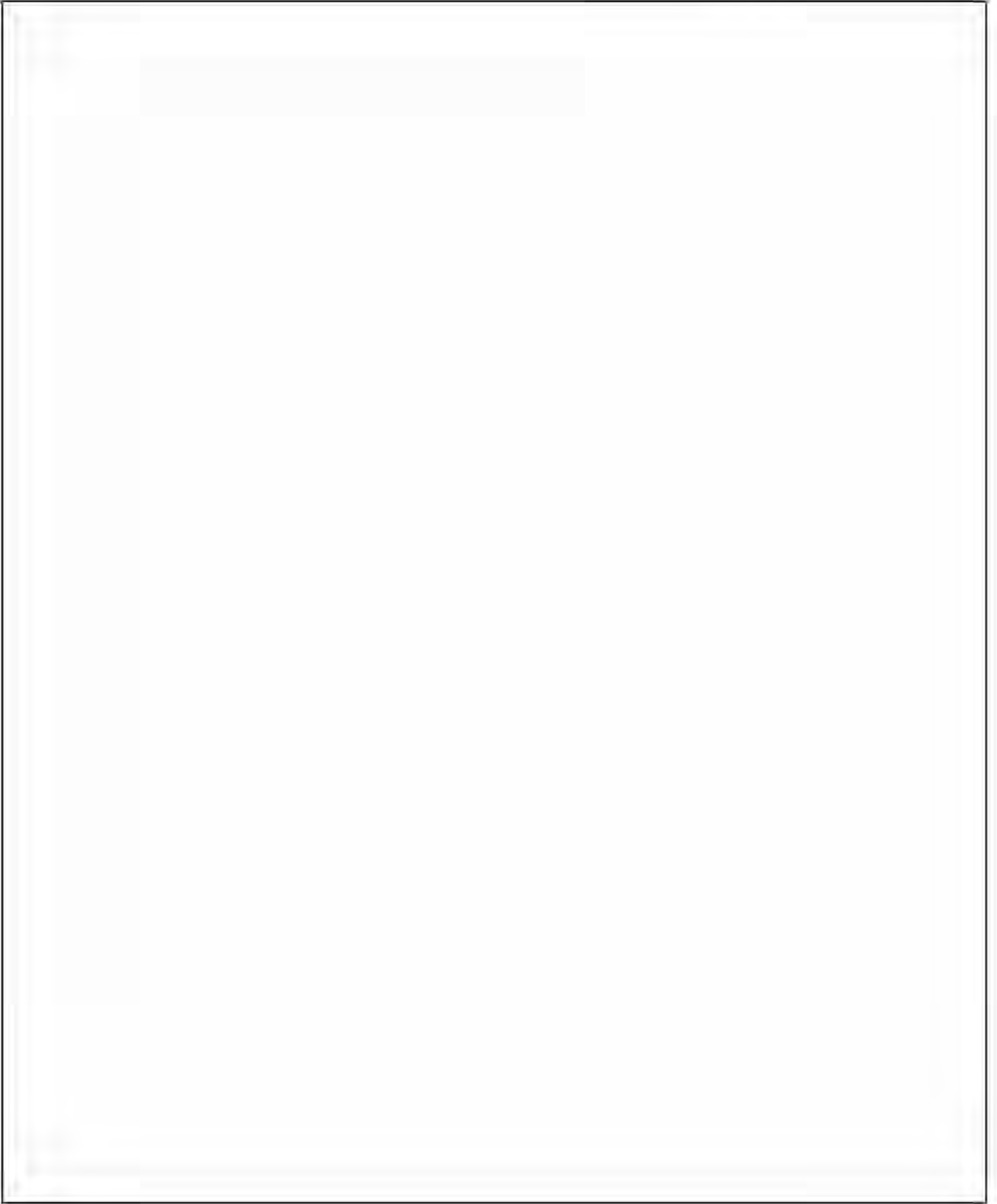
³ Not all mental conditions are relevant to one's ability to effectively communicate, and the mere presence of a mental condition does not necessarily implicate the procedures set forth herein. Conversely, the fact that an alien has not been formally diagnosed with a mental condition is not dispositive; behavior indicating the existence of a mental condition should also be considered.

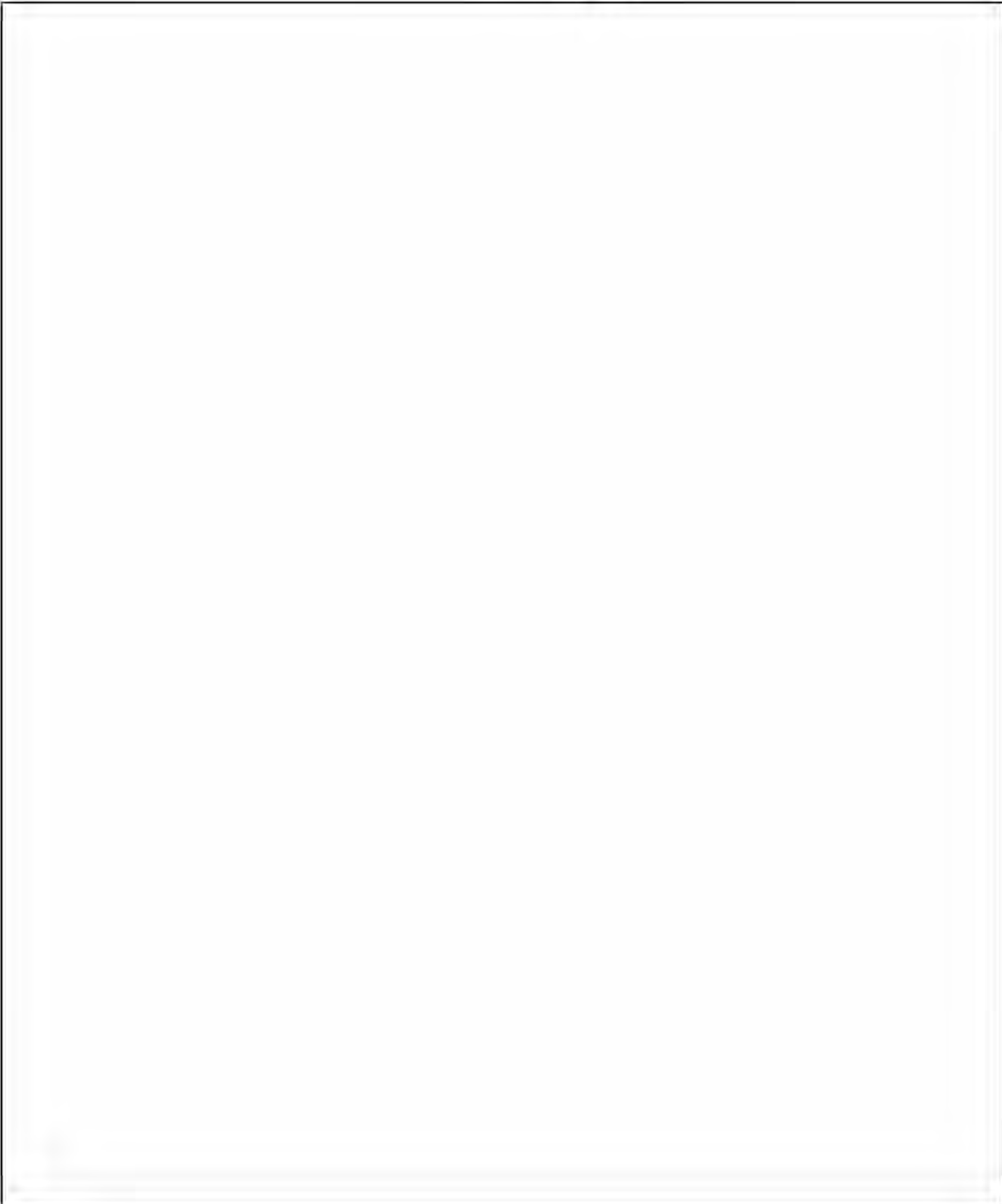
Credible Fear – Aliens Unable to Effectively Communicate
Page 2

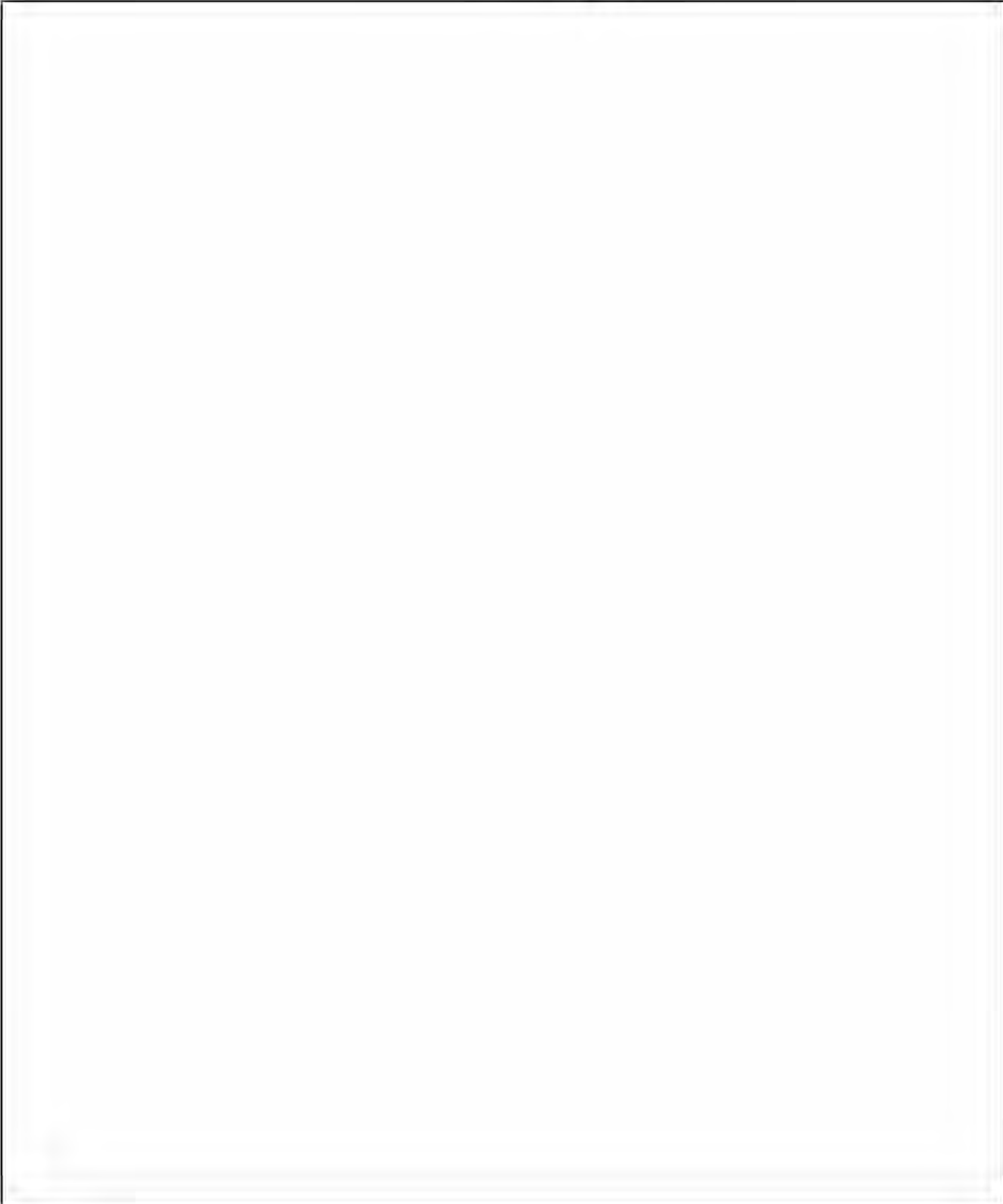
If you have any questions regarding the guidance in the attached procedures, please contact the HQASM Operations Branch.

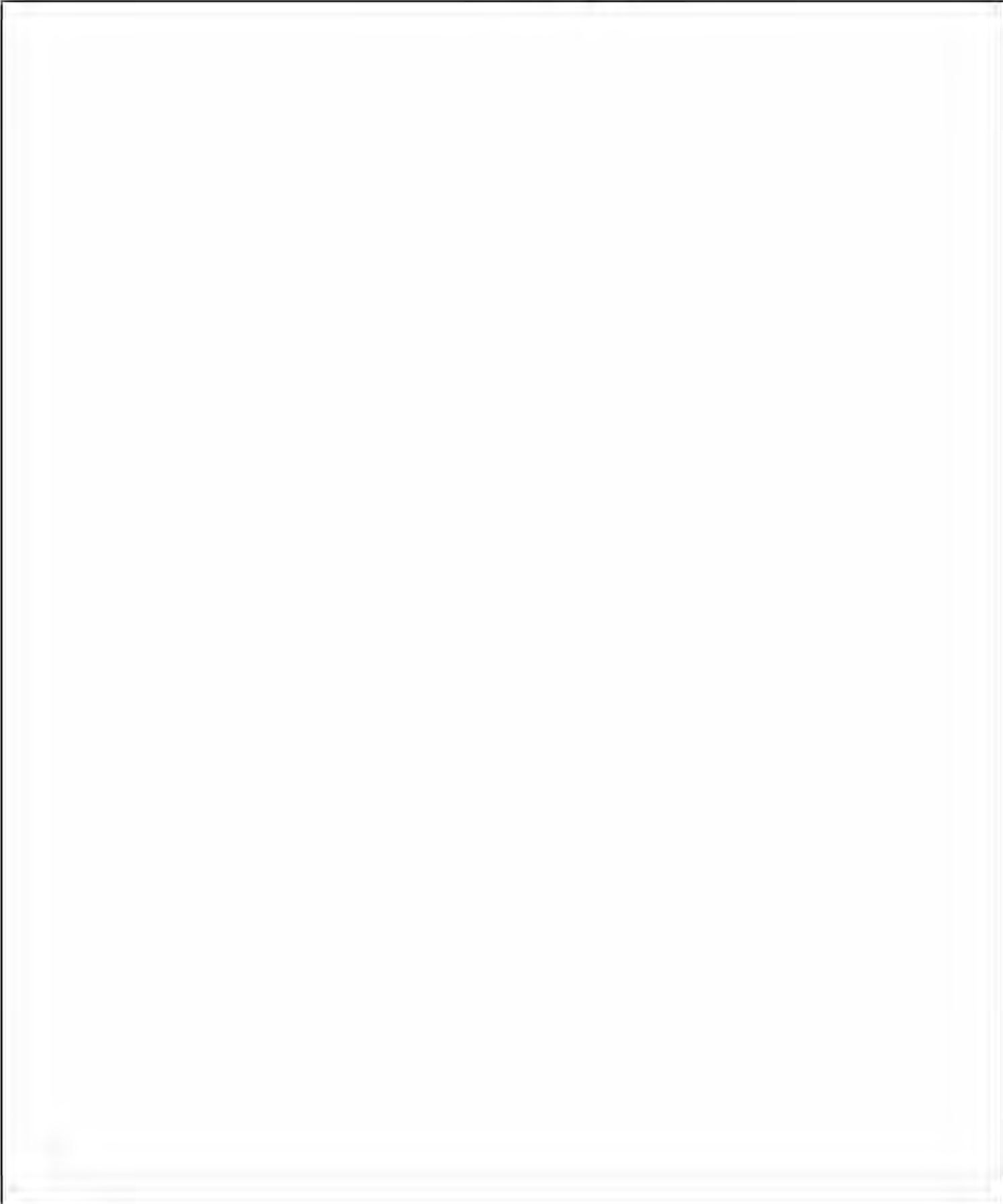
cc: ICE

Attachment









HQ Asylum Sexual, Gender-Based, and Domestic Violence Training FY21

Possible Lines of Inquiry for Interviewing Survivors TIPS AND TRICKS FOR ESTABLISHING RAPPORT

Remind applicant of confidential nature of interview, explain confidentiality.

Confirm that the applicant understands why they are present.

Use a warm, welcoming tone during the introduction.

Engage in light small talk at the beginning of interview to encourage rapport.

Introduce everyone in the room.

Explain the structure and purpose of interview, and give the applicant several opportunities to ask questions. This sets expectations for the interview.

Environmental comfort for in-person interviews

- Ensure confidentiality
 - Doors are closed
 - Ensure voices do not carry
- Seating and office setup
 - Lower your chair so you're on eye level with the applicant
 - If able to do so, switch out your chair for the same type they are sitting on
 - If able to do so, arrange your chair to face out of the office, with the applicant's back to the office door
 - Bring in paper and crayons for child applicants or dependent children

Remote interviewing puts additional distance between you and the applicant.

- Consider spending a few extra minutes trying to make the applicant comfortable.

Use terms that the applicant uses.

- If the applicant says: "He made me be intimate with him" continue to use "made you be intimate" instead of "rape".
- If the applicant refers to themselves as homosexual, gay, queer, trans, etc., use the term they use regardless of what term you as the officer would prefer.

With LGBTQI+ applicants, ask what names and pronouns they prefer to use during the interview and then honor that request.

Give the applicant the opportunity to regulate who is in the room during sensitive testimony. A mother may not want her children in the room to hear about a violent act, or a child may or may not want his or her family member in the room while he or she testifies.

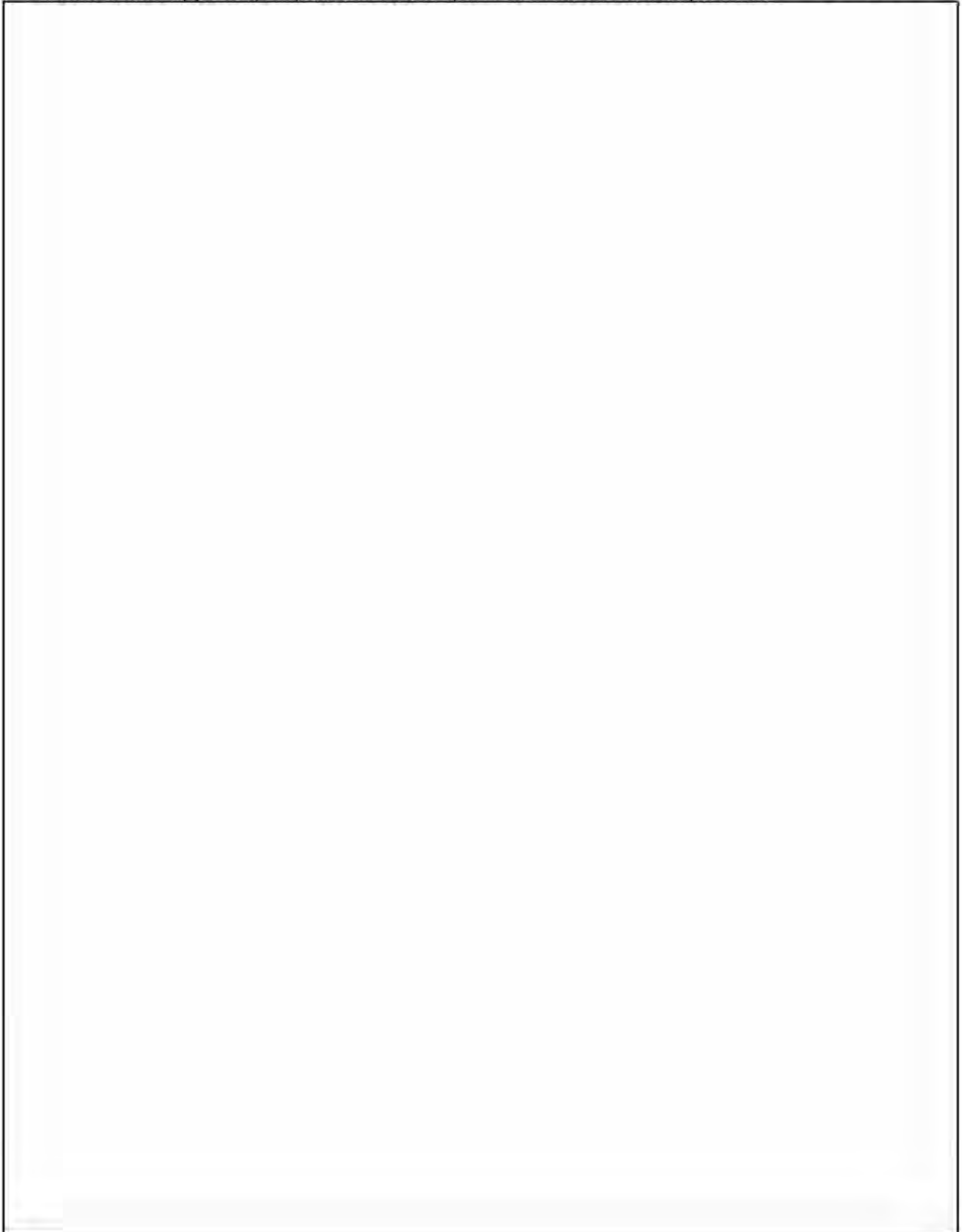
GENERAL LINES OF INQUIRY REGARDING SEXUAL, GENDER-BASED, AND DOMESTIC VIOLENCE

**HQ Asylum Sexual, Gender-Based, and Domestic Violence Training
FY21**

Possible Lines of Inquiry for Interviewing Survivors

These questions are not inclusive. Please elicit all appropriate testimony.

Tell me what happened, in your own words, with as much detail as possible. (b)(7)(E)



HQ Asylum Sexual, Gender-Based, and Domestic Violence Training FY21

Possible Lines of Inquiry for Interviewing Survivors

ADDITIONAL LINES OF INQUIRY FOR CHILD SURVIVORS

These questions are not all-inclusive. Please elicit all appropriate testimony.

(b)(7)(E)

INSTEAD OF THAT, ASK THIS:

A non-adversarial tone and nonjudgmental line of questioning is critical for eliciting useful testimony and preventing re-traumatization of your applicant.

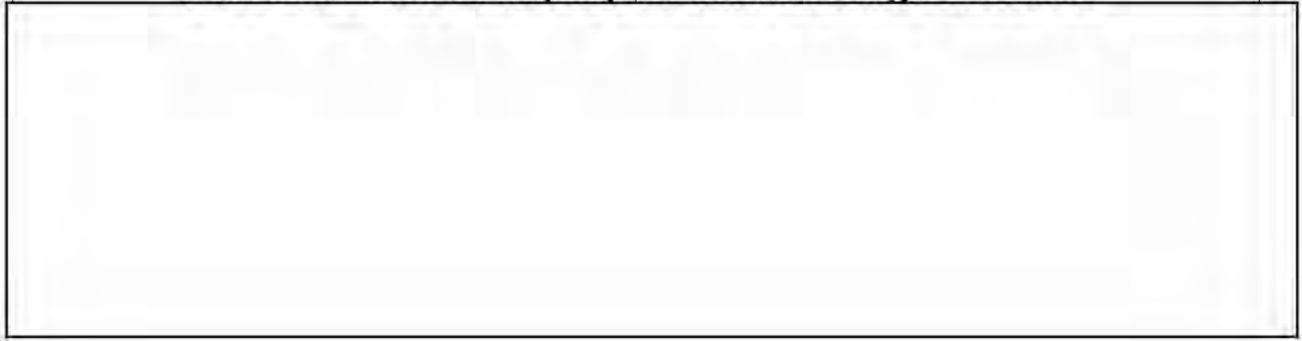
(b)(7)(E)

Instead of...	Try This....

**HQ Asylum Sexual, Gender-Based, and Domestic Violence Training
FY21**

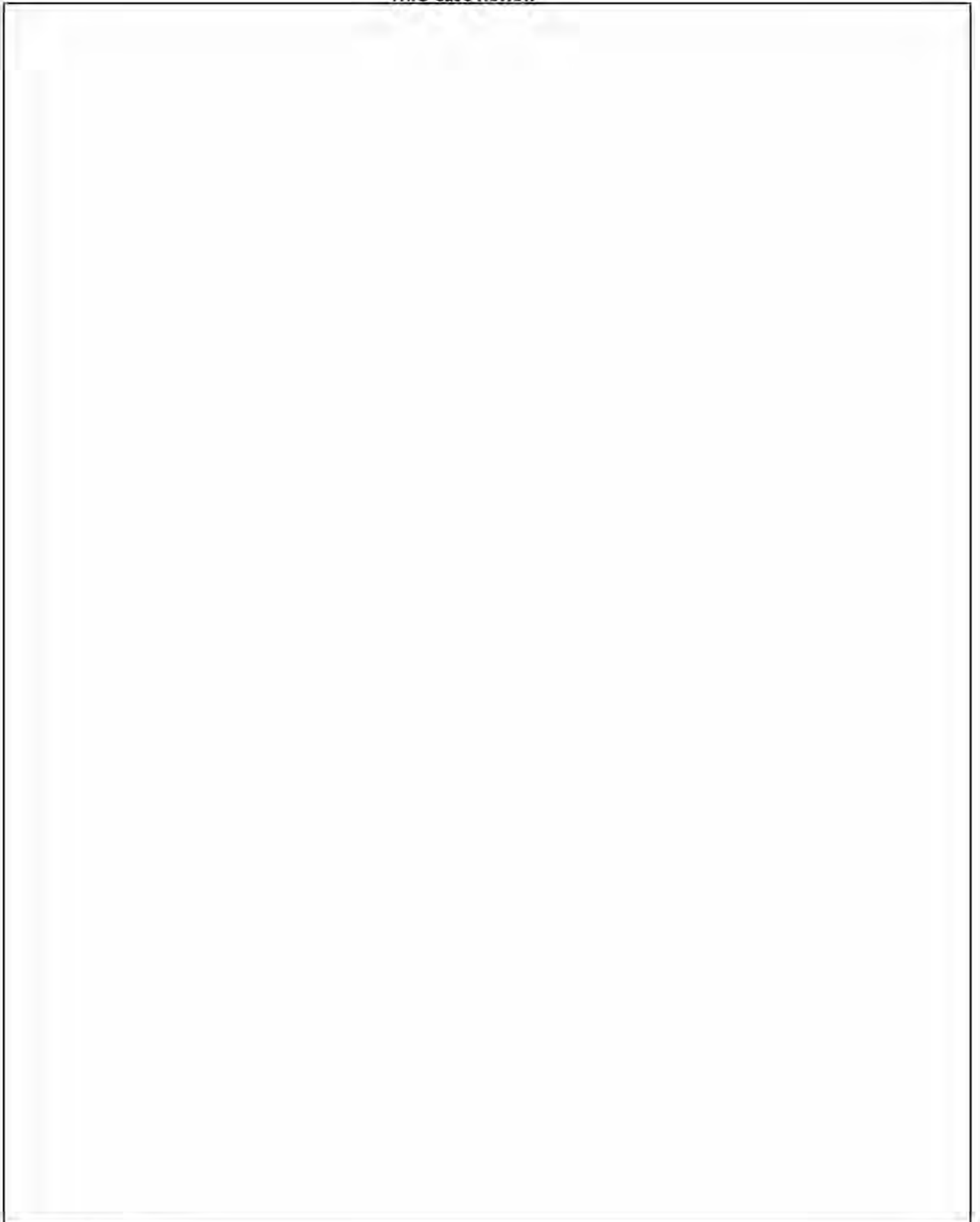
Possible Lines of Inquiry for Interviewing Survivors

(b)(7)(E)



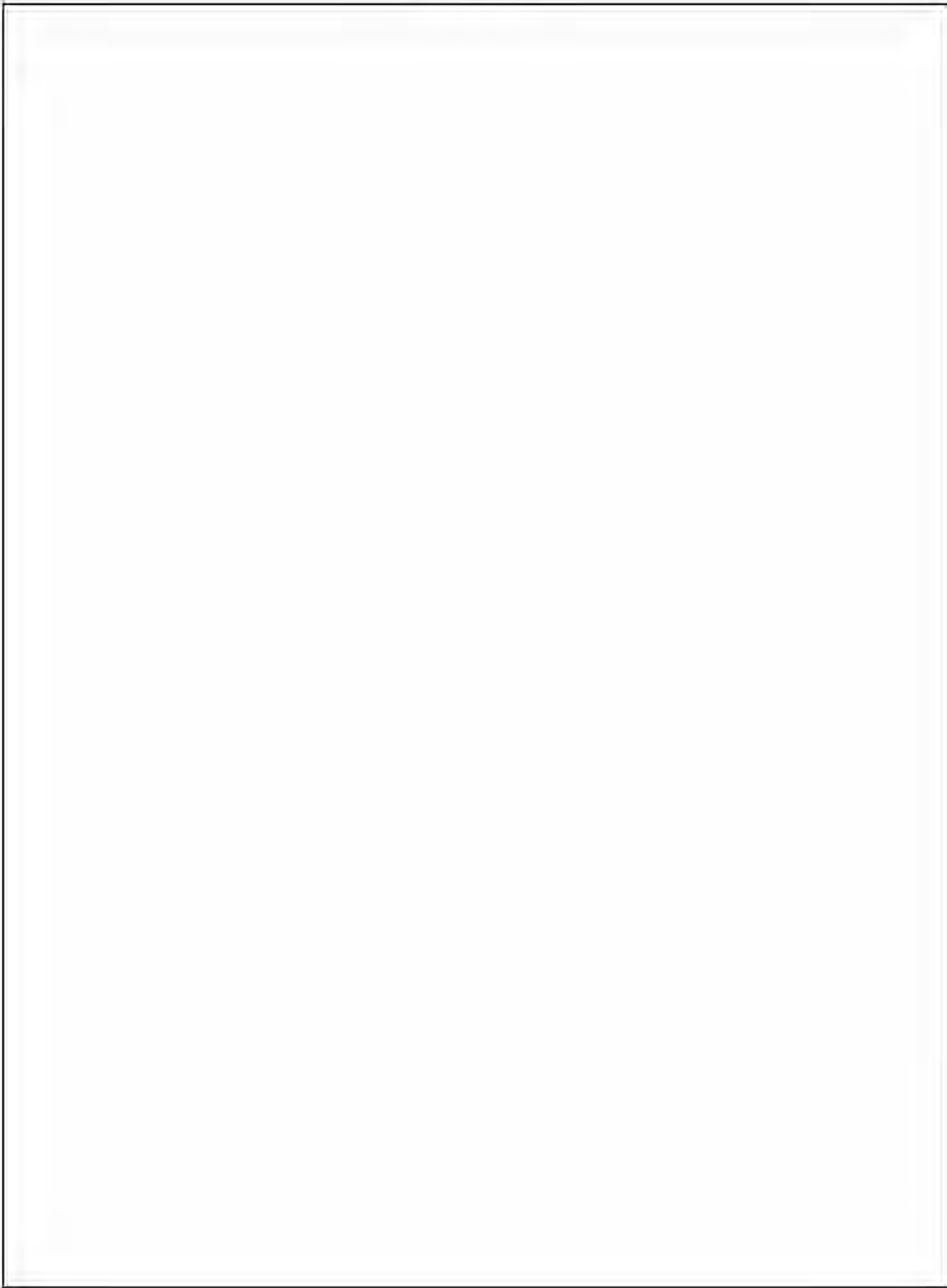
(b)(7)(E)

TRIG Case Review

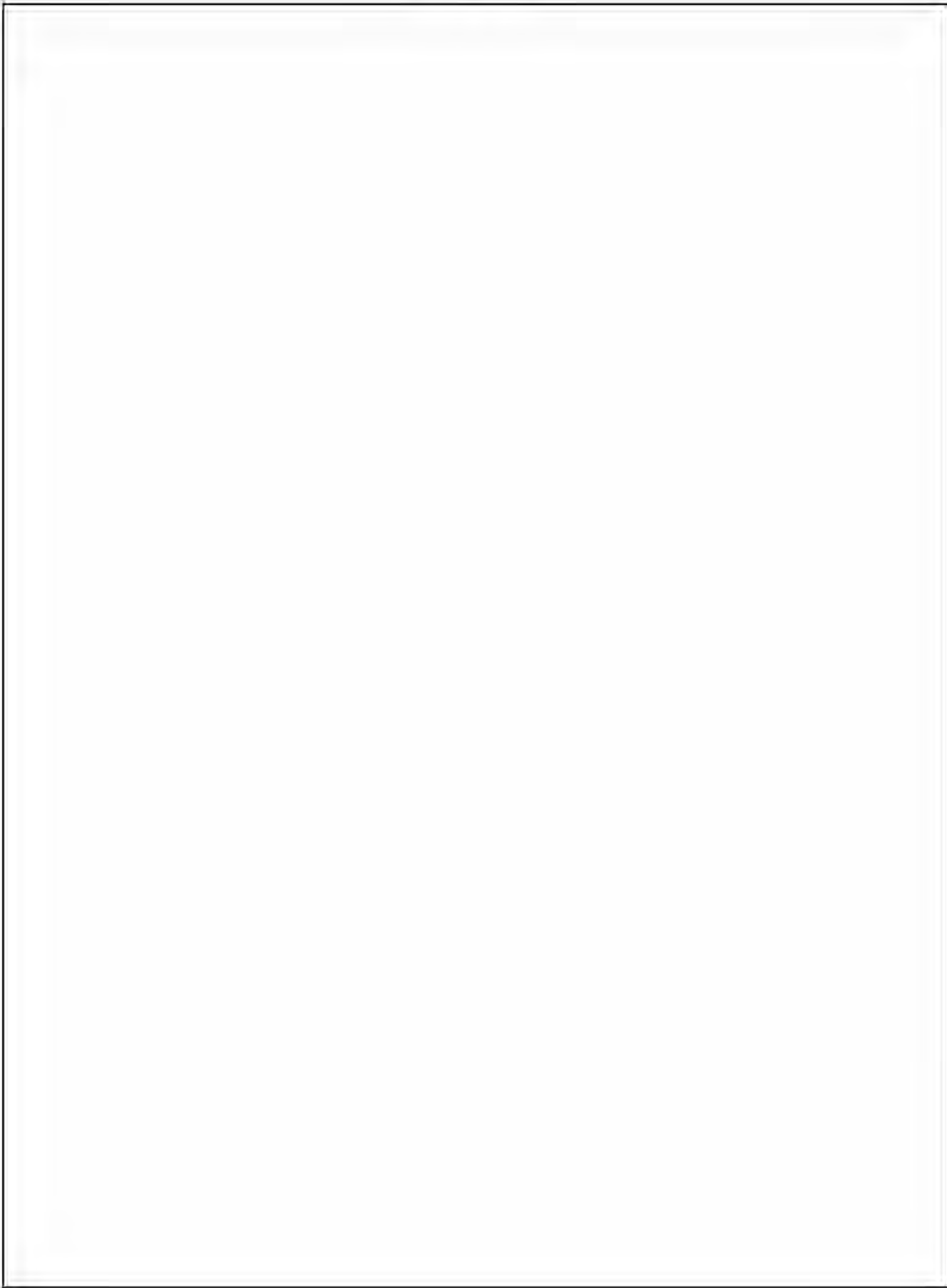


(b)(7)(E)

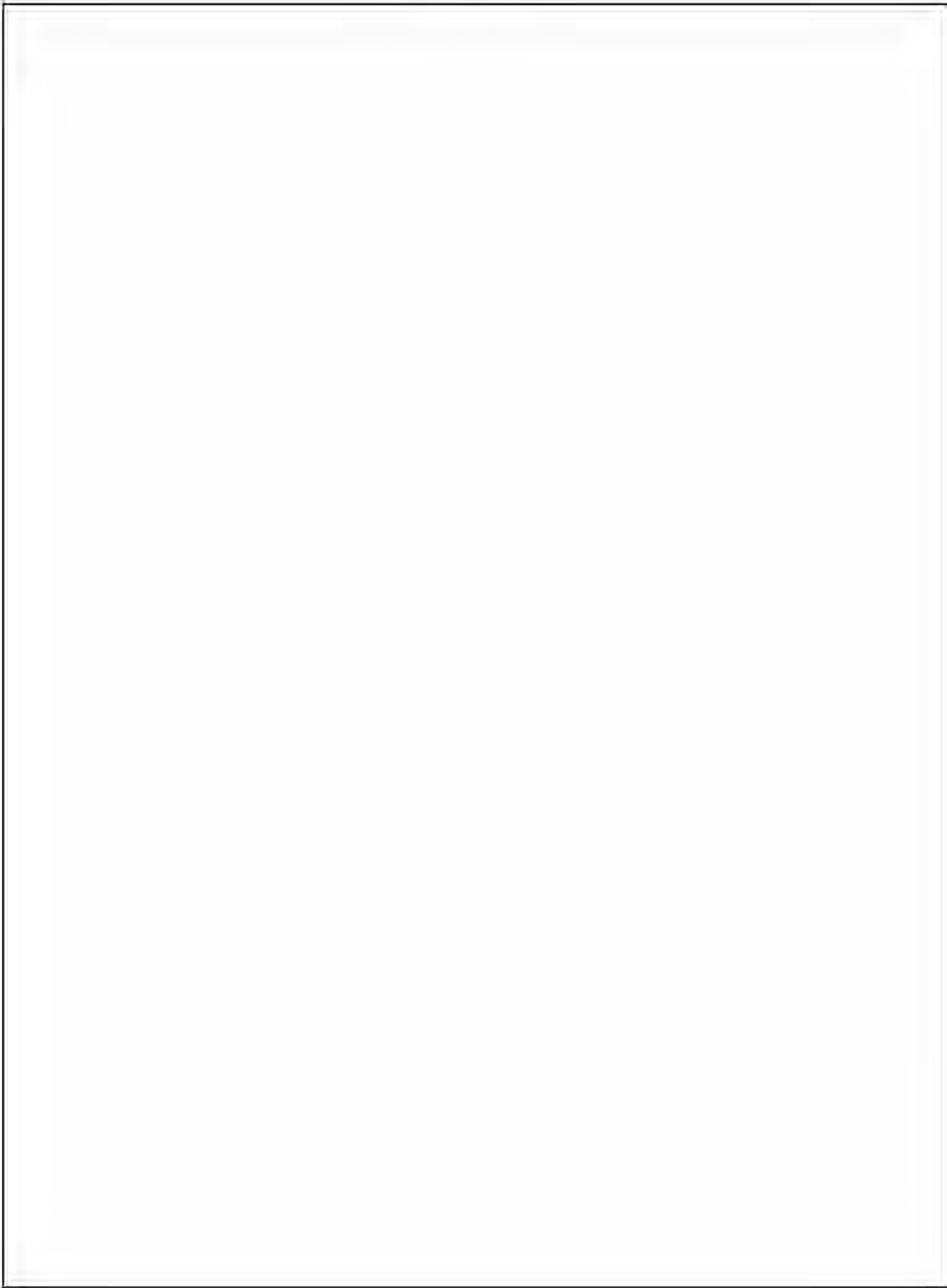
(b)(7)(E)



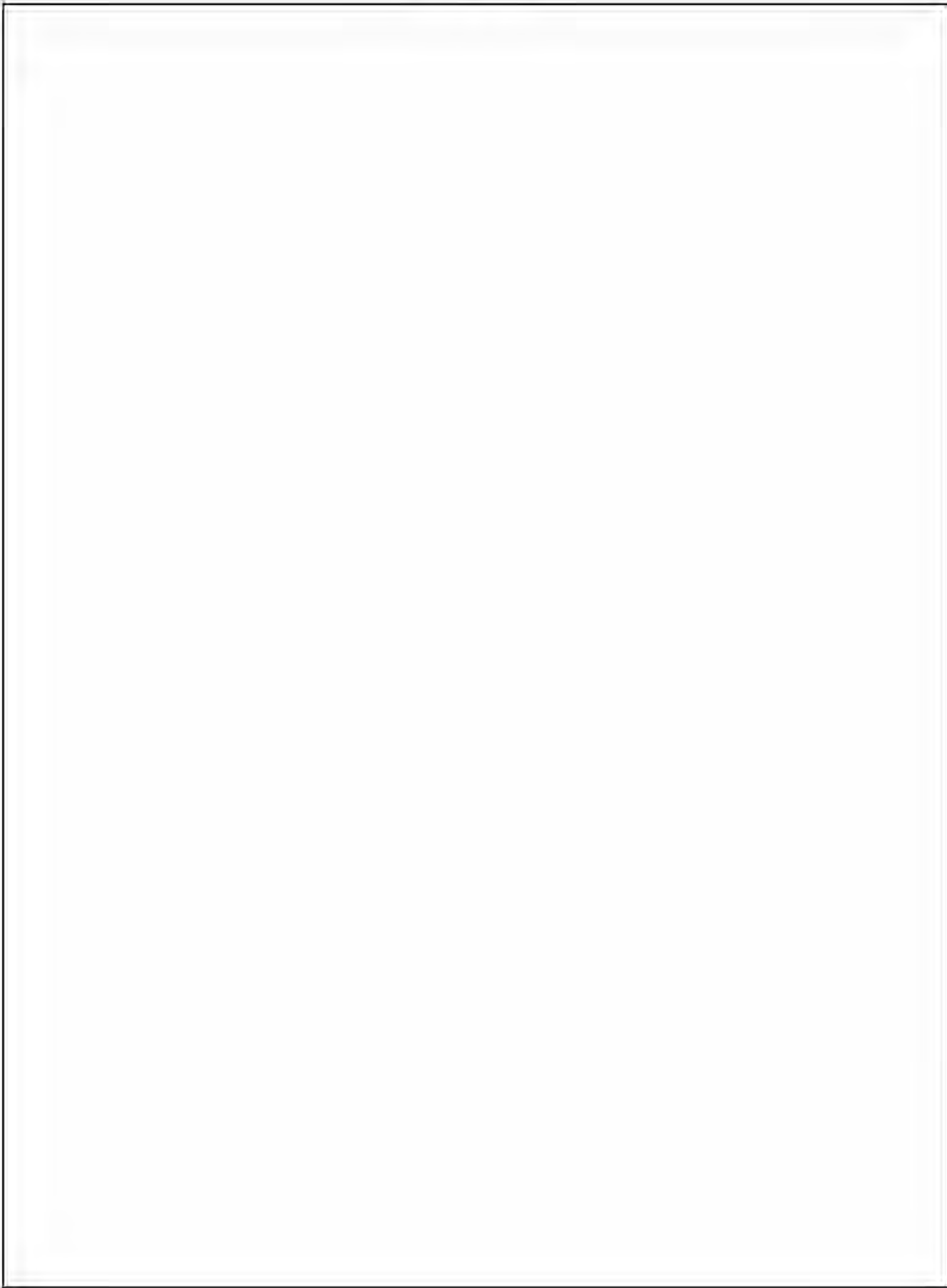
(b)(7)(E)



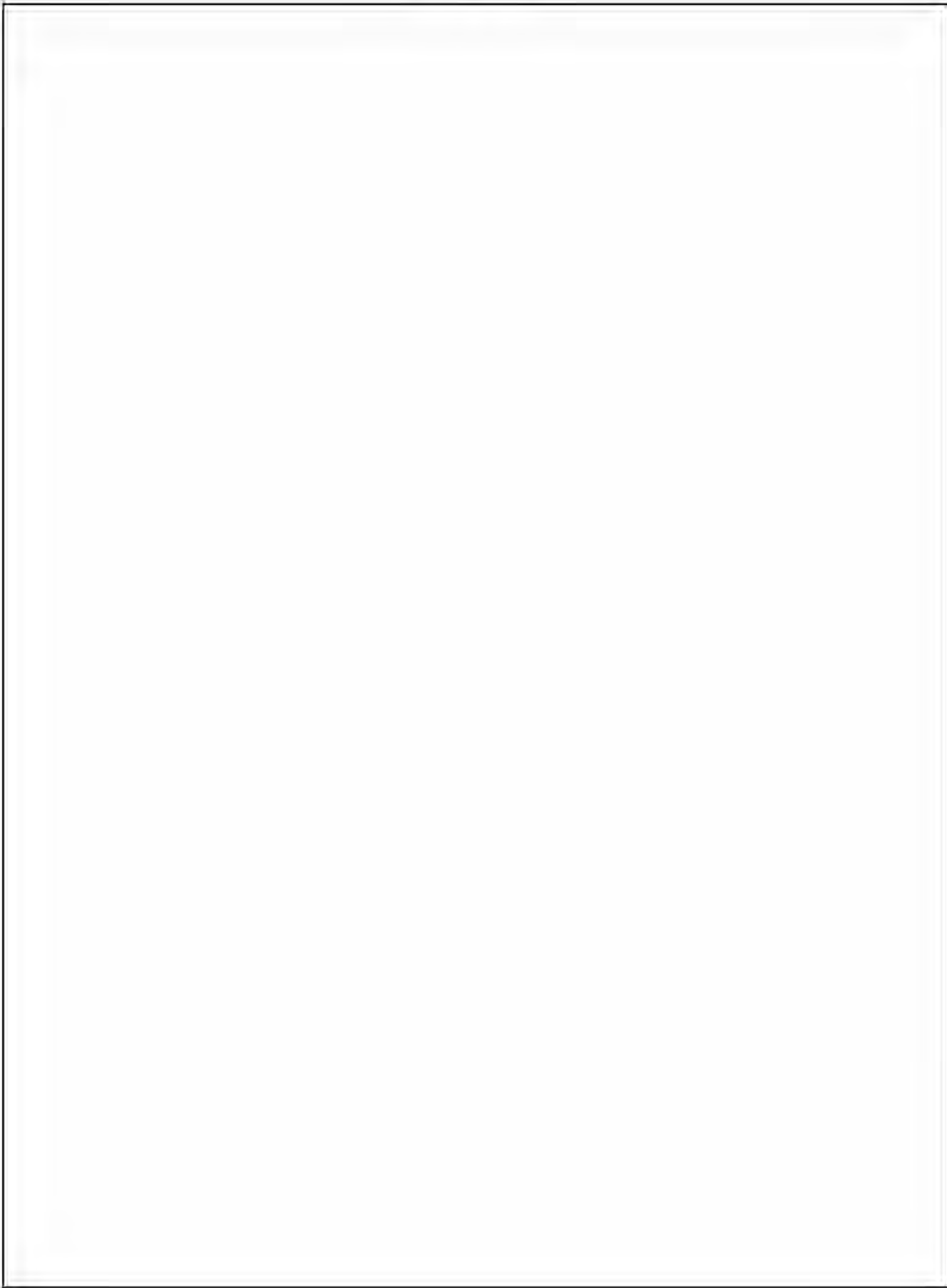
(b)(7)(E)



(b)(7)(E)



(b)(7)(E)

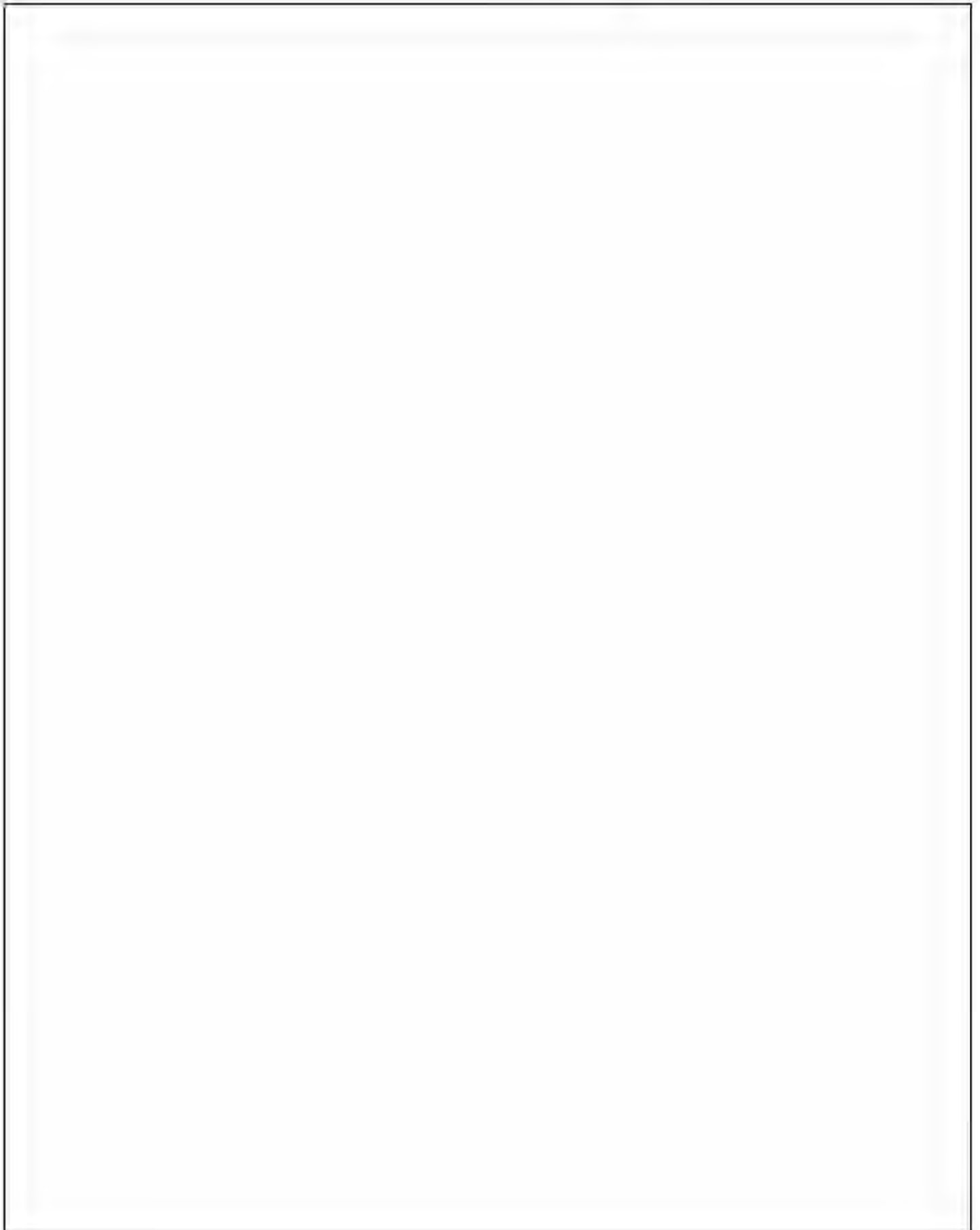


(b)(7)(E)

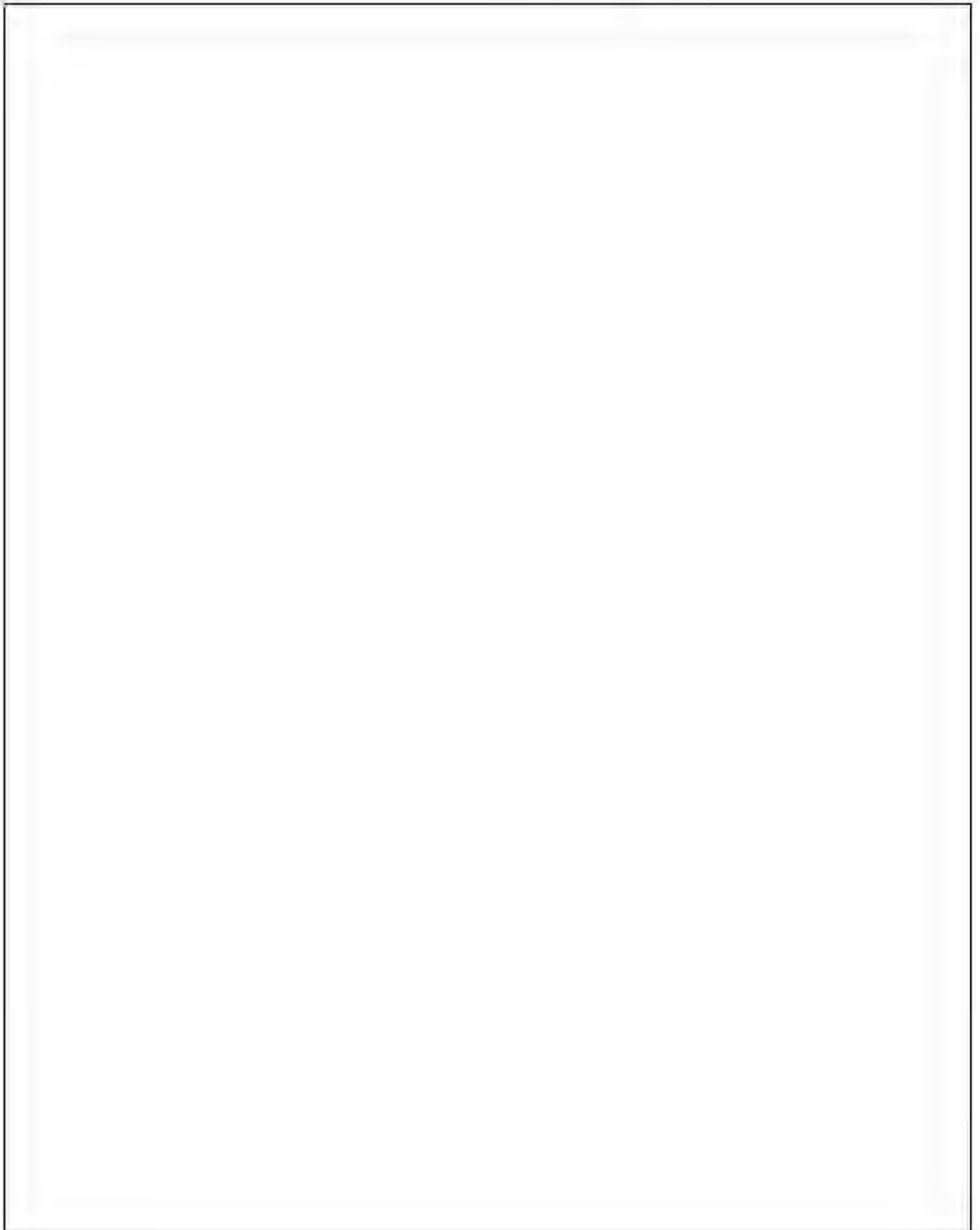
TRIG Case Review

A large, empty rectangular box with a thin black border, occupying most of the page. It is intended for a case review.

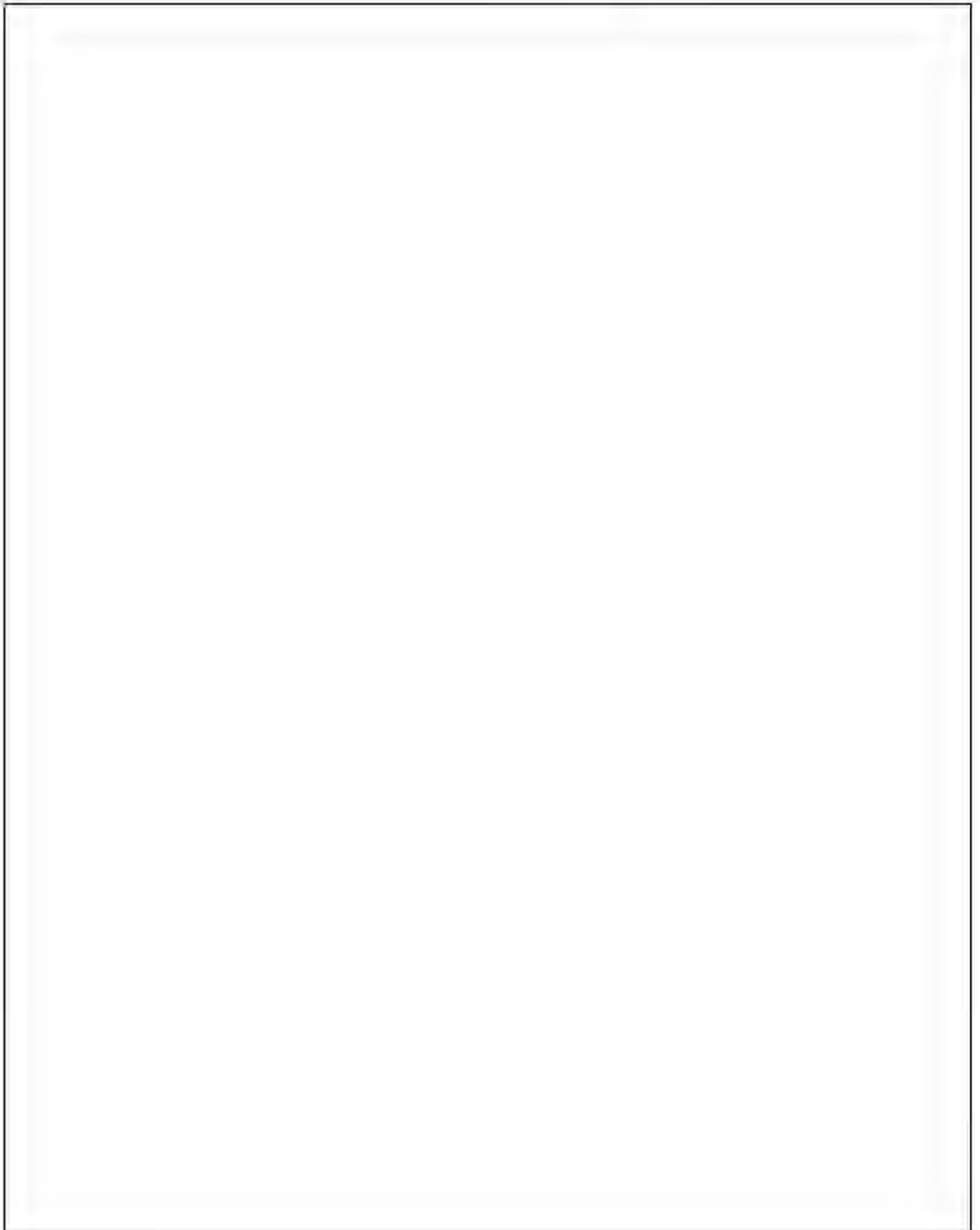
(b)(7)(E)



(b)(7)(E)



(b)(7)(E)



Overview

QA BRANCH generated resources

Ecuador Country-Specific Training

QA Branch, Training Branch, SAOs (ZBO, ZCH, ZNK, ZOL), June 2021.

Research unit resources

Resource Guide: Ecuador

RAIO Research Unit – Additional Resources (RU ECN Page containing additional sources, including country reports)

external resources

Ecuador

Encyclopedia Britannica (retrieved on 26 May 2020)

The World Factbook: Ecuador

Central Intelligence Agency, Updated 31 Jul 2020

Ecuador: In Brief

Congressional Research Service, 13 Feb 2018

Ecuador: An Overview

Congressional Research Service, 19 May 2019 (2-page summary)

Ecuador Profile: Timeline

BBC News, 07 Feb 2018

Politics & Protests

BACKGROUND

Ecuador: Government

Michigan State University – Global Edge (retrieved on 20 May 2020)

ElectionGuide: Ecuador

International Foundation for Electoral Systems (IFES) (retrieved on 4 Aug 2020)

List of Approved Political Organizations (Spanish)

National Electoral Counsel (Updated Occasionally) (all registered parties and movements, national and local. Right-click on list to download a PDF copy.)

See also Resource Guide: Ecuador - Politics & Human Rights

RAIO Research Unit

Parties and Elections

Conservative Ex-Banker Headed to Victory in Presidential Election in Ecuador
New York Times, 11 Apr 2021

Ecuador Just Voted Against Populism, but Its Democracy Is Far from Healthy
Foreign Policy, 15 Apr 2021

Ecuador weighs two very different economic visions in election
Al Jazeera, 9 Apr 2021

From Rafael Correa to Lenin Moreno: Ecuador's Swing to the Right
Council on Hemispheric Affairs, 02 July 2019

Elected Left, Governing Right
The North American Congress on Latin America (NACLA), 13 Mar 2019

Ecuador's Former President Convicted on Corruption Charges
The New York Times, 07 Apr 2020

The country shows an atomized political spectrum for the 2019 elections (Spanish)
El Telegrafo, 9 Jan 2019

Alianza PAIS - About Us (Spanish)
Alianza PAIS (retrieved on 20 May 2020)

Wikipedia Links (Spanish): While Wikipedia should not be cited to as a source, the following links may have information providing a direction for further research or links to citable sources.

- A list of regional political parties

- Summary of March 2019 local elections, including links to specific results in Azuay, Cuenca, Azogues, and other locations

- A list of the winners of the 2019 local elections

October 2019 Protests

Report of the Special Commission for Truth and Justice Regarding the events that Occurred in Ecuador Between October 3 and 16, 2019 (Spanish PDF),
Defensoria del Pueblo (Ecuador), March 2021

IACHR Issues Observations Following Visit to Ecuador
Organization of American States - Inter-American Commission on Human Rights, 14 Jan 2020

State of emergency in Ecuador: 3 questions to understand the violent protests over the rise in fuel prices
BBC, 4 Oct 2019

Protests on October 8, 2019 left 19 wounded, according to the Ministry of Government (Spanish)
El Comercio, 8 Oct 2019

Anti-Austerity Protests and Strikes Shut Down Quito, Ecuador
The Atlantic, 9 Oct 2019

Seven Days of Unrest and Counting: Thousands Stream into Ecuador's Capital

The New York Times, 9 Oct 2019

Ecuador Unrest: What Led to the Mass Protests?

Al Jazeera, 10 Oct 2019

Protests leave 435 policemen injured and 108 patrollers damaged in Ecuador (Spanish)

El Mercurio, 15 Oct 2019

Ecuador's Unlikely Revolution

Slate, 16 Oct 2019

Ecuador: Lessons from the 2019 Protests

Human Rights Watch, 6 Apr 2020

Rights group: Justice awaits for Ecuador protest violence

Associated Press, 6 Apr 2020

Oct 2019 Protests in Cuenca

Cuenca closes the day of protests, breaking the silence with which it dawned (Spanish)

El Mercurio, 3 Oct 2019

Excesses in the streets of the historic center of Cuenca in a day of paralysis (Spanish)

El Universo, 3 Oct 2019

National Strike: Protests in Cuenca Escalate (Spanish)

El Mercurio, 9 Oct 2019

Protests leave destruction in the center of Cuenca (Spanish)

El Mercurio, 9 Oct 2019

Four injured protesters and twelve beaten police officers after the 7th day of national strike in Cuenca (Spanish)

El Universo, 9 Oct 2019

Injured during protests in the center of Cuenca (Spanish)

El Mercurio, 10 Oct 2019

Justice processes 26 crimes related to protests; 48 arrested in final week of national strike (Spanish)

Canar Television, 16 Oct 2019 (summary of arrests and charges in Cuenca)

May 2020 Protests

Coronavirus: Ecuador Protests Against Cuts Amid Pandemic

BBC News, 26 May 2020

Police Beat and Injure Ecuador's Covid-19 Protesters

Human Rights Watch, 25 May 2020

Students, workers and social sectors mobilized on May 25 against government measures (Spanish)

El Comercio, 25 May 2020

Police, Local Politics, and Corruption

Research unit resources

Ecuador: Local Corruption in Azuay & Cañar Provinces

RAIO Research Unit, June 25, 2020 (specific evidence of police and political corruption in these two provinces in recent years)

Ecuador: Police Structure and Oversight

RAIO Research Unit, June 19, 2020

Ecuador: Ability of the Government (Including Police) to Track Individuals

RAIO Research Unit, June 24, 2020

Ecuador: Jurisdiction and Policing in Indigenous Communities

RAIO Research Unit, June 19, 2020

See also Resource Guide: Ecuador - Politics & Human Rights; Crime & Security Forces

RAIO Research Unit

External Resources

Ecuador Profile

InSight Crime, last updated 26 Jun 2018

The Experiment to Stop Latin America's Carnage

Wall Street Journal, 31 Dec 2018 (information on police reform in Ecuador)

Police Corruption Scandals Hit Well-Regarded Forces in Ecuador, Chile

InSight Crime, 16 Oct 2017

Police and guards among the detainees of the alleged gang that operated in the Turi prison in Cuenca (Spanish)

El Universo, 11 Jun 2020

Ecuador National Police – Complaint System (Spanish)

Accessed 21 April 2021

Do you know where to report crimes and violations? (Spanish)

El Comercio (story appears to be from 2014, includes list of relevant police divisions, unclear if still relevant)

Municipal Police Websites (Examples):

Quito Municipal Police

Guayaquil Municipal Police

Cuenca Municipal Police

Most local governments have websites with information (in Spanish) about current elected officials (Examples):

Government of Azuay Province

Accessed 4 Aug 2020

Government of Cuenca (Canton and City)

Accessed 4 Aug 2020

Government of Baños Parish

Accessed 4 Aug 2020

research unit generated resources

Gangs & Criminal Organizations in Ecuador: Los Solocos; El Negro Holmer; Los Falcones; La Banda del Vecino; Los Tisis/Los Ticis; Las Truchas; Alias El Tovi; Cicuta

RAIO Research Unit, Mar. 19, 2021

Ecuador: Gangs in Azuay & Cañar

RAIO Research Unit, Jun. 23, 2020

Ecuador: Sombra Negra Gang

RAIO Research Unit, Apr. 20, 2020

See also Resource Guide: Ecuador - Gangs; Crime & Security Forces

RAIO Research Unit

External Resources

Ecuador 2020 Crime & Safety Report: Guayaquil

DOS Overseas Security Advisory Council (OSAC), 3 Mar 2020

Ecuador 2020 Crime & Safety Report: Quito

OSAC, 3 Mar 2020

Ecuador: A Cocaine Superhighway to the US and Europe

InSight Crime, 30 Oct 2019

InSight Crime's 2020 Homicide Round-Up

InSight Crime, 29 Jan 2021

Capital Murder: 2019 Homicide Rates in Latin America's Capital Cities

InSight Crime, 5 Mar 2020

Ecuador Profile

InSight Crime, last updated 26 Jun 2018

4 Security Challenges Awaiting Ecuador's Next President

InSight Crime, 20 Apr 2021

Details released of expat murder; City remains on track for record low number of murders

CuencaHighLife, 18 Dec 2019

Officials push back against claims of a crime wave, say murder and violent assault are down

CuencaHighLife, 22 Jul 2019

Ecuador and Cali, Colombia show Latin America how to reduce the murder rate

CuencaHighLife, 6 Jan 2019 (low murder rates in Guayaquil and Cuenca)

Gangs

Ecuador 'Legalizes' Gangs and Slashes Murder Rate

BBC News Mundo, Nov. 29, 2018 (translated by InSight Crime)

Ecuador legalized gangs. Murder rates plummeted.

Vox, 26 Mar 2019

Inside Ecuador's Surprising Gang Violence Strategy

Inter-American Development Bank (retrieved 4 Aug 2020)

The Experiment to Stop Latin America's Carnage

Wall Street Journal, 31 Dec 2018

Bloody fight for the control of the drug business and the hitman is evident in prisons (Spanish)

Primicias, 2019

Local mafias vie for spaces to operate with Mexican cartels

Ecuador Times, 1 May 2021

Morocho Quigua in the sights of the Police (Spanish)

El Tiempo, 12 Jan 2017 ("The history of Morocho Quigua related to being the refuge of criminal organizations goes back decades, even in the Cuenca community there was talk that the Police itself was suspicious of entering the area.")

Sombra Negra

Transnational Menace in Black & White

Voices of NY, 29 Apr 2015

"Sombra Negra" Gang Transcends Borders (original Spanish version)

El Diario, 21 Apr 2015

Minister Romo visits Cañar to strengthen actions for security (Spanish)

Ministry of Government, 9 Mar 2019 (Evidence that at least some members of Sombra Negra have "legalized")

Indigenous issues

Research unit generated resources

Indigenous Groups in Guatemala and Ecuador Training

RAIO Research Unit, June 1, 2020

Ecuador: Jurisdiction and Policing in Indigenous Communities

RAIO Research Unit, June 19, 2020

See also Resource Guide: Ecuador – Indigenous Peoples & Afro-Ecuadorians

RAIO Research Unit

External resources

Indigenous Peoples in Ecuador

International Work Group for Indigenous Affairs (IWGIA) (retrieved 4 Aug 2020)

Indigenous World 2020: Ecuador

IWGIA, 11 May 2020

World Directory of Minorities and Indigenous Peoples – Ecuador

Minority Rights Group International, May 2018

Category: Nationalities – Sierra (Spanish)

CONAIE (retrieved 4 Aug 2020) (Information about Indigenous groups in the Sierra region.)

Visit to Ecuador: Report of the Special Rapporteur on the rights of indigenous peoples

OHCHR, 4 July 2019

4912 Police belong to indigenous peoples and nationalities of the Country (Spanish)

Ministry of Government, 12 Oct 2018

Indigenous communities & police coexist amid a tense relationship after the October strike in Ecuador (Spanish)

El Comercio, 2 Feb 2020

Ecuador's Legal Authorities Target Practitioners of Indigenous Justice

NotiSur, 11 Aug 2017

Ecuador's indigenous justice system on trial

BBC, 27 Jul 2010

Other Claims

research unit generated resources

Ecuador: Discrimination, Tension, and Violence between Catholics and Evangelicals

RAIO Research Unit, 9 Oct 2019

Ecuador: LGBTI

RAIO Research Unit, Sep. 16, 2019

See also Resource Guide: Ecuador – Sexual Minorities; Religion

RAIO Research Unit

External resources

International Religious Freedom Report for 2019 - Ecuador

U.S. Department of State, 10 Jun 2020

Ecuador's LGBT+ community seen suffering deadliest year in a decades

Reuters, 21 Jan 2020

ECUADOR ONE-PAGE REFERENCE GUIDE

Historical context snapshot:

- About the size of Nevada, Ecuador is divided by the Andes into 3 geographic regions. Most CF applicants come from the Sierra region; ~65% come from Azuay or Cañar province.
- Ecuador has 24 provinces, 221 cantons (similar to counties), and 1499 parishes or *parroquias*, which can be either a rural village or a subdivision of a city.
- Local elected politicians include prefects of provinces, mayors of cantons/canton seats, members of the canton council, and parish councilors. Local politicians may be affiliated with a national party/movement, an entirely local party, or a coalition of these.
- Alianza PAIS came to power in 2006 under Rafael Correa; Correa's VP Lenin Moreno became president in 2017. Moreno took steps to reduce corruption that had grown under Correa. His pursuit of neo-liberal economic policies led to massive protests in Oct. 2019. Guillermo Lasso of the CREO Party won the 2021 presidential elections.
- The National Police handles criminal matters. They are paid higher salaries, and are perceived as less corruptible, than police in many other parts of Latin America.

Common claims and issues to probe: (b)(7)(E)

- Possession of protected ground
 - Establishing that applicant is in fact Indigenous, including specific Indigenous group he/she may associate with.
 -
- Gangs and Crime
 - Most street gangs are likely small and local. Sombra Negra, based in Biblián, Cañar, was one of the biggest street gangs but appears to have little recent activity (although COI is limited on this and other gangs).
 -
- Police and political corruption
 - Which police force was involved – National Police or municipal?
 - Did the applicant report what happened to other authorities or civil society groups who might help, e.g.
 -

Additional common issues to consider:

- Legal pluralism in Indigenous areas may limit the police's ability to intervene.
- The context of claims within the applicant's community should be explored.
- In the CF context, AOs must check the I-867A/B and confront on any inconsistencies.

(b)(7)(E)

Asylum Country-Specific Training: Ecuador

COI, Case Trends, and Eliciting Testimony
June 2021



U.S. Citizenship
and Immigration
Services



Road Map

Introduction to Ecuador

Types of Claims: Background, considerations, and eliciting testimony

- Politics and Protests
- Police, Local Government, and Corruption
- Drug Trafficking, Crime, and Gangs
- Indigenous Issues
- Other Claims

TRIG and Fraud Issues

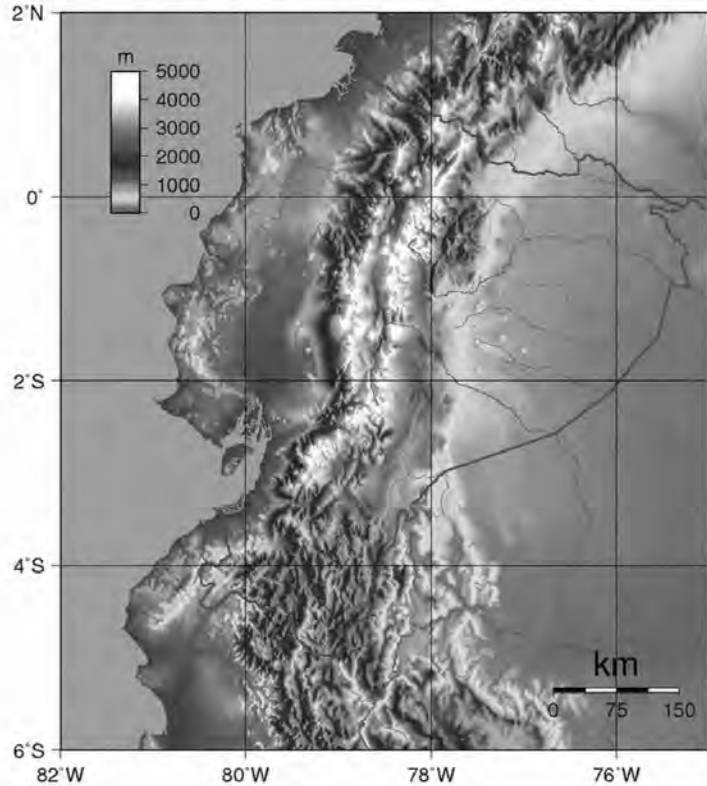


U.S. Citizenship
and Immigration
Services



FOUO

Introduction: Geography



U.S. Citizenship and Immigration Services

Introduction: Patterns of Migration



■ Azuay: Cuenca & Gualaceo



■ Cañar: Azogues & Cañar



■ Chimborazo: Riobamba



■ Morona-Santiago: Morona (Macas) & Gualaquiza



U.S. Citizenship
and Immigration
Services

Introduction: Demographics of Ecuador

Ethnicities of Ecuador:

- Mestizo 71.9%
- Montubio 7.4%
- Amerindian 7%
- White 6.1%
- Afro-Ecuadorian 4.3%
- Mulatto 1.9%
- Black 1%

Languages:

- Spanish (Castilian) 93% (official)
- Quechua 4.1%
- Other indigenous 0.7% (including Shuar)
- Foreign 2.2%

Religion

Roman Catholic 74%,

Other 6.4%

Evangelical 10.4%,

Atheist 7.9%

Jehovah's Witness 1.2%



U.S. Citizenship
and Immigration
Services

COI: Availability & Limitations

In general, the COI for Ecuador is limited in content and quality, especially compared to other countries in the region.

- There may be limited or no COI in support of certain claims made by refugee or asylum applicants.
- Other countries in the region may have more comprehensive COI that covers topics more relevant to refugee and asylum claims.

Possible reasons for a lack of COI?

- The type of events described does not occur.
- The type of events described occurs but has not been reported on in available COI or at all.

**** Remember - the absence of evidence is not evidence of absence!**



U.S. Citizenship
and Immigration
Services

Introduction: Types of Claims

- Politics and Protests
- Police, Local Government, and Corruption
- Gangs, Drug Trafficking, and Other Crime
- Indigenous Issues
- Other Claims: religion, sexual minorities



U.S. Citizenship
and Immigration
Services



Politics & Protests



U.S. Citizenship
and Immigration
Services

Politics & Protests: Two Main Claim Types

- 1) Applicant attacked by members of a rival party, usually for one of three reasons:
 - i) Failure to support a specific candidate.
 - ii) Failure to support the party in an upcoming election.
 - iii) Applicant left party and joined a rival party.
- 2) Applicant attacked at a protest by police and police continue to want to harm applicant.
 - Usually Oct 2019 gasoline protests, but also Aug 2019 mining or university protests.
 - May eventually see claims related to May 2020 protests.
- Claims may also include references to the applicant's race or religion.



Politics & Protests: Political Background

- **Rafael Correa** of leftist party/movement **Alianza PAIS** elected in Nov 2006.
 - Current constitution approved in 2008.
 - When reelected in April 2009, became first president since 19th C. to serve a second term.
 - Poverty and crime decreased; corruption increased.
- President **Lenin Moreno** won a close election in 2017, with the support of Correa.
 - Moreno quickly distanced himself from Correa's corruption and swung to the right.
 - In January 2018 Correa and his supporters formed Movimiento Revolución Ciudadana, then merged with "Fuerza" party, and later joined UNES coalition.
 - In April 2020, Correa was convicted of bribery in absentia.
- **Spring 2021 election:** Moreno did not seek re-election; Guillermo Lasso won election over Correa ally Andrés Arauz.



U.S. Citizenship
and Immigration
Services



Politics & Protests: Voting

- Voting is compulsory for most literate individuals aged 18-65. Individuals may only belong to one political party/movement.
- Ecuador requires certain steps to change party affiliation
 - (1) fill out a form at the local electoral office
 - (2) list the party they are officially leaving
 - (3) provide a copy of their national ID card.
- Each party or movement has a list number. Applicants will often refer to the list number in addition to, or instead of, the party or movement name.
- We did not find COI showing generalized political violence occurring between members of opposing parties, but we have seen applicants testify to this.



Politics & Protests: National Parties & Movements

- Unión por la Esperanza (**UNES**): A coalition of 2 large movements and several smaller ones, holds over 1/3 of delegates in the National Assembly
 - Fuerza Compromiso Social (aka Fuerza; List 5): Correa's movement
 - Centro Democrático (CD) (List 1)
- Movimiento de Unidad Plurinacional **Pachakutik** (List 18): Primary Indigenous party, 2nd most delegates after 2021 elections.
- Izquierda Democrática (**ID**) (List 12): Social-democrats, 3rd most delegates
- Movimiento **CREO** (List 21): Center-right
- Partido Social Cristiano (**PSC**) (List 6): Centrist party, popular in the Costa region.
- Alianza PAIS (aka AP, List 35): Former Ruling Party, received few votes in 2021.



Politics & Protests: Oct 2019 Protests against Decree 883

- Protests against the end of fuel subsidies began on Oct 3 and lasted until Oct 13, when Moreno repealed Dec 883.
- Transportation unions began the protests on Oct 3; by Oct 6, the Confederation of Indigenous Nationalities of Ecuador (CONAIE) took the lead. Student groups and other unions also joined.
- Violent actions by both demonstrators and government actors: applicants must be asked about potential involvement in violence.
- Primary protests were in Quito; smaller ones in Cuenca, Riobamba, & Azogues.
- After negotiating with CONAIE, government restored fuel subsidies and protests came to an end.



October 2019 Protests: Aftermath

- Several organizations investigated the government's use of force, including the Ombudsman of Ecuador (Defensor del Pueblo de Ecuador), CONAIE, and Inter-American Commission on Human Rights (IACHR).
- Special Commission for Truth and Justice: 249 cases of human rights violations (200 in Quito, 15 in Azuay, 1 in Chimborazo), mostly by the National Police.
 - 14 deaths related to the protests: 6 deemed extrajudicial executions
 - 22 “attacks against the right to life”; 123 violations of personal integrity
 - ~1900 people treated for injuries (~144 in Azuay)
 - 1192 detentions (55 in Azuay)
- Police indicated a week after the protests that they would be tracking members of 19 far left groups that employed violence during the protests.



Politics and Protests: May 2020 Protests

- Started for a variety of reasons, including austerity measures and government response to COVID-19.
- Reports of violence towards protestors and journalists covering the protests in Guayaquil.
- About 2000 people protested in Quito, while hundreds protested in Cuenca. There were demonstrations in Macas, Morona-Santiago and Azogues, Cañar among other places.



Politics and Protests: Political Opinion

- Possession of a Protected Characteristic
 - General and Specific Political Participation
 - Reasons for choosing one party over another
 - If changed parties, what was the specific reason(s) for doing so? What process was involved?
- On Account Of: Why Targeted? (b)(7)(E)



Politics and Protests: Example Case 1 (b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

Politics and Protests: Example Case 1

(b)(7)(E)

Officer

Applicant

--	--

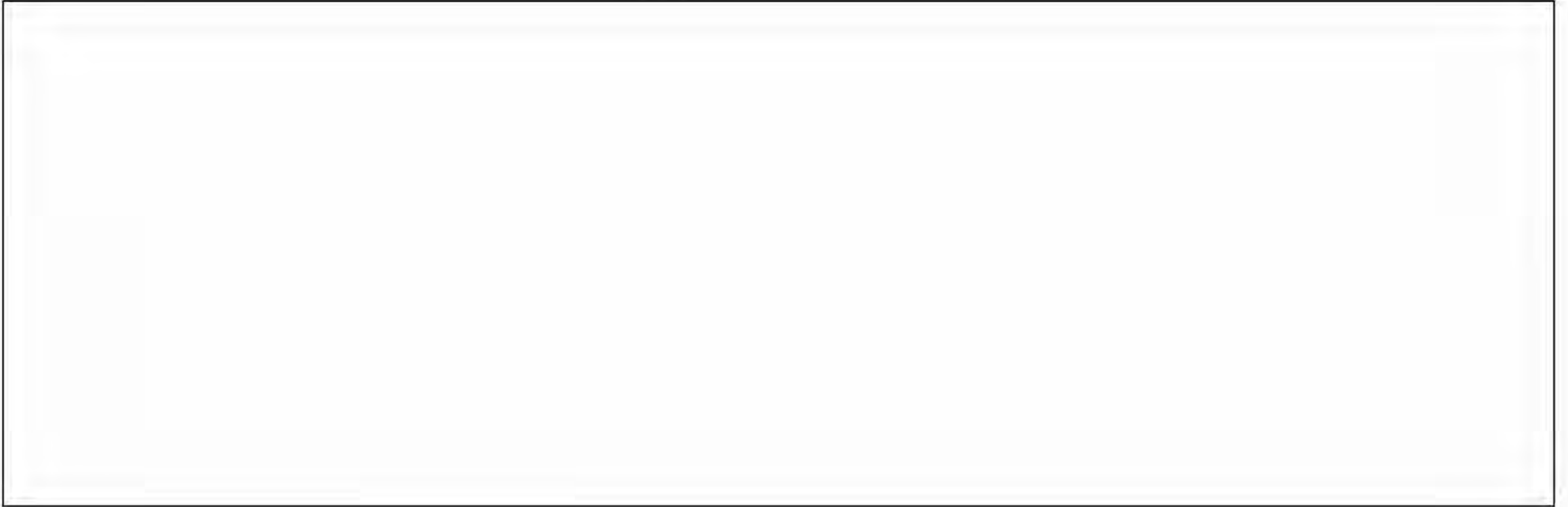


**U.S. Citizenship
and Immigration
Services**

FOUO

Politics and Protests: Example Case 2

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

Politics and Protests: Example Case 2

(b)(7)(E)

Officer

Applicant

--	--



**U.S. Citizenship
and Immigration
Services**

FOUO

Police, Local Government, and Corruption



U.S. Citizenship
and Immigration
Services

FOUO

Police, Local Government, & Corruption: Types of Claims

■ Police cases

- Recruitment and/or extortion, sometimes along with a criminal group.
- Applicant witnessed police breaking law.
- “Personal” cases where perpetrator happens to be a police officer.

■ Local politicians

- Seeks to harm applicant for not supporting him/her in March 2019 local elections.
- Applicant discovers act(s) of corruption by politician, politician seeks to silence applicant.
- Politician involved in drug smuggling, recruits applicant to participate.



Police, Local Government, & Corruption: Organization of Police in Ecuador

- Policía Nacional del Ecuador (National Police of Ecuador) (“NP”)
 - Tasked with all the police work, investigations and arrests for criminal issues (Judicial Police).
 - Control and review of the national camera system throughout Ecuador.
 - Coverage sparse outside major urban areas, low conviction rate for major crimes. “Common for police to take 45-60 minutes to respond to emergencies.”
- Policía Municipal (Municipal Police): Local police force in some municipalities.
 - Different tasks in different places: protection of tourists, traffic management, assisting the National Police, community outreach, enforcing local ordinances.
 - Sometimes have firearms, others have batons and pepper spray.
- Other forces: Ministerial Military Police, Ecuadorian Army.



Police, Local Government, & Corruption:

Police Procedures and the Duty to Intervene

- Members of National Police and Armed Forces are required to apprehend a person caught in the act of committing a crime and inform the suspect of the reasons for the apprehension. Members of armed forces must take the arrestee immediately to the National Police.
- A suspect cannot be held under arrest more than 24 hours without formal charges, and any interrogation must take place in the presence of a public or private attorney.
- There is no bail for major offenses, including crimes subject to imprisonment for more than 5 years & crimes against vulnerable populations (e.g. children, women, family members).

(b)(7)(E)



Police, Local Government, and Corruption: Police Corruption

- Ecuador's National Police has been cited as one of the most professional and trusted law enforcement institutions in Latin America; described as a "model for the region to follow."
 - Relatively high pay, polygraph testing for certain sensitive positions.
 - 2018 survey: 46% trust the police "a lot" or "some"; 54% trust police "little" or "none".
- Moreno took steps to combat corruption, but problems remain.
 - Oct 2019 article indicated police have been caught working with drug traffickers.
 - RU review of Azuay and Cañar found 3 reported examples of NP extortion in the past 5 years: 2 NP were part of an extortion ring based in a Cuenca prison (6/2020), 2 NP killed a shop keeper in his home during a robbery (12/2019), and 6 NP extorted truckers at a checkpoint (2015).
- An online portal to anonymously submit complaints against police officers and government officials has been available since at least 2016.



Police, Local Government, and Corruption: Example Case 1

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Police, Local Government, and Corruption: Structure of Local Government

- Province (24)
 - Prefect (elected along with a Vice-prefect)
 - Provincial Council: elected canton & parish representatives, including mayors
 - Governor (appointed by president): Oversees central government ministries.
- Canton (221)
 - Mayor: Oversees both the canton and the capital city.
 - Cantonal Council: From 5 to 21 members, who appoint a vice-mayor.
 - Political Leader/Political Lieutenant: President's appointed representative.
- (Rural) Parish (788): 5 councilors, led by member with most votes.



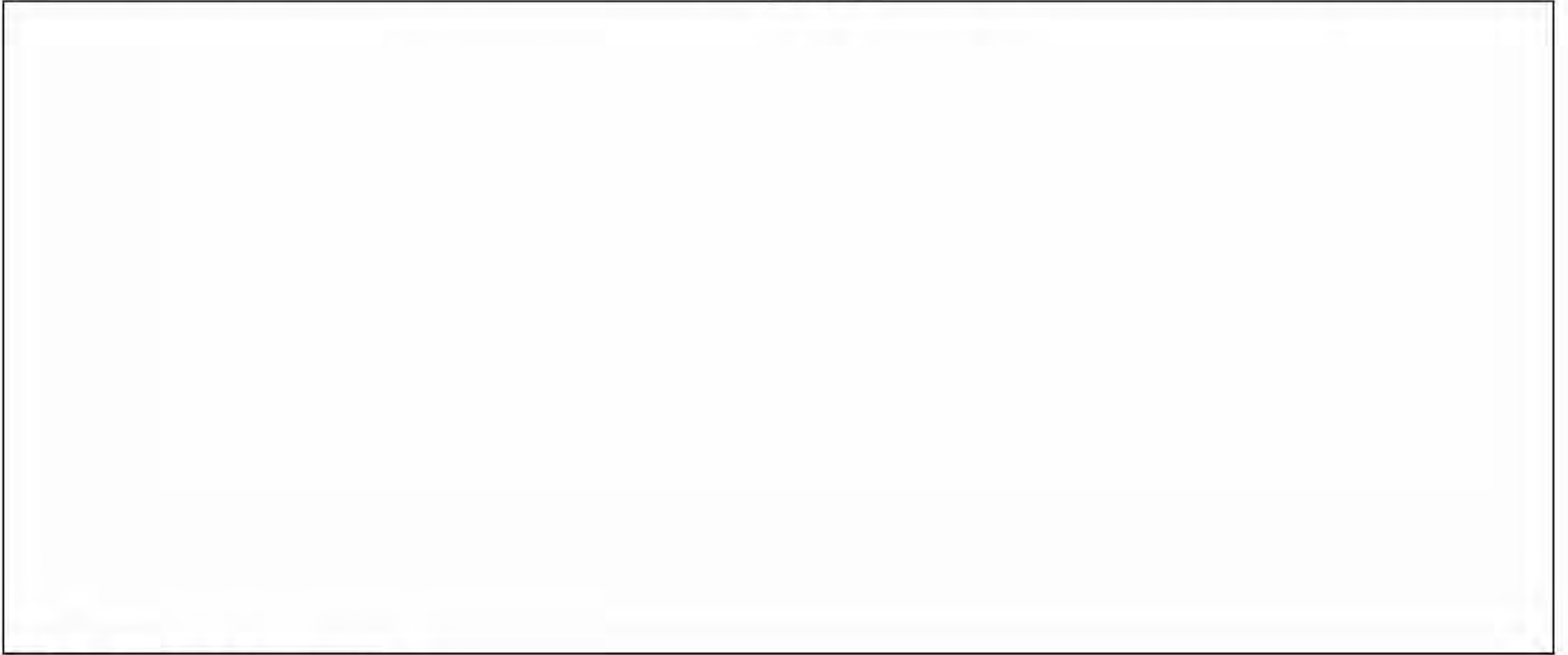
Police, Local Government, & Corruption: Local Politics

- **Local Parties and Movements**
 - In addition to national parties running candidates, local candidates may run as part of an alliance between national parties or with a completely local party.
 - The List number will indicate whether it is a national party or alliance (e.g. List 4-20), or a local party (e.g. List 105 – a canton-level party).
 - Local list numbers may be reused for different localities and elections.
- **The politician involved in claims was typically the mayor of the canton/city.**
 - Officers may be able to verify the information provided on the canton's webpage; Spanish Wiki might also have some information..
 - Per Freedom House, the March 2019 elections took place “without incident.” We were unable to find any reports of violence related to the local elections.
 - RU report on Azuay and Cañar: Isolated reports of financial corruption.
 - Freedom House & DOS: Officials in Ecuador engage in corruption with impunity



Police, Local Government, and Corruption: Example Case 2

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Drug Trafficking, Crime, and Gangs



U.S. Citizenship
and Immigration
Services

FOUO

Drug Trafficking, Crime, and Gangs – Overview

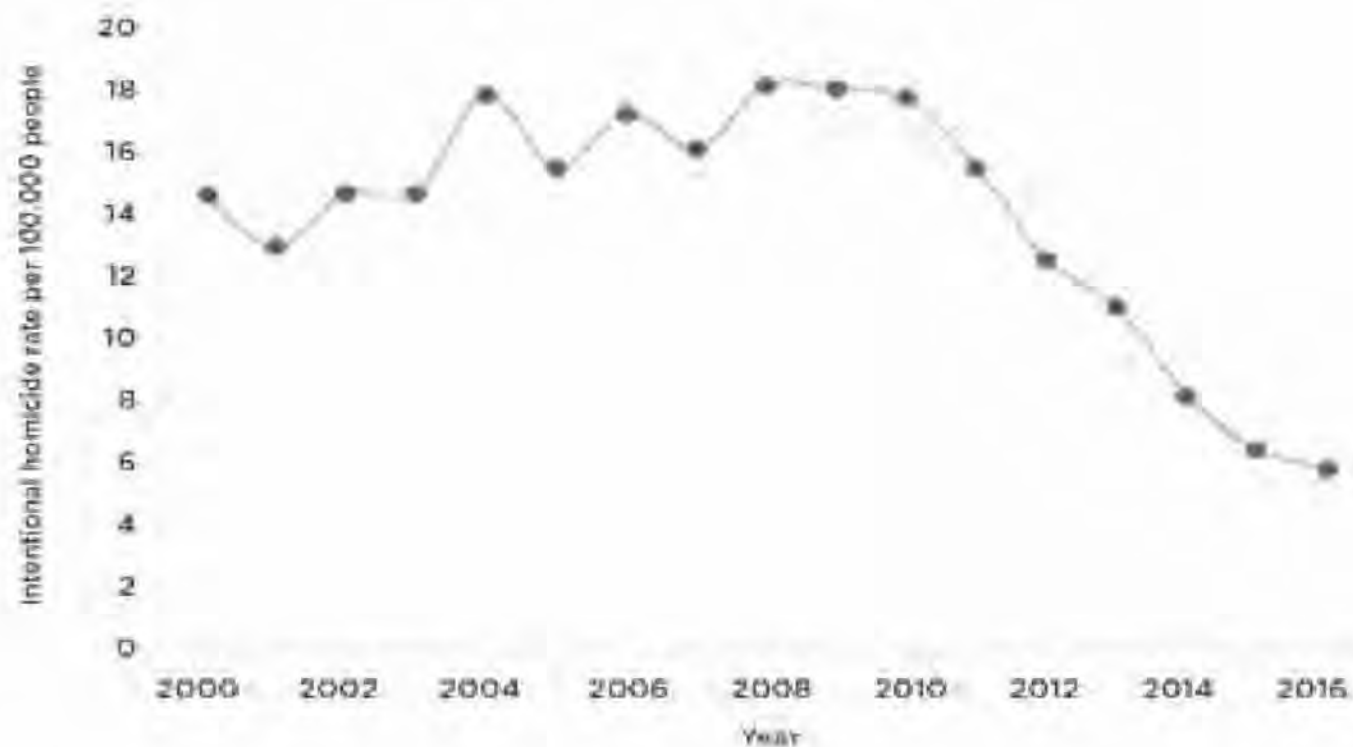
- **The Good**: In 2007, Ecuador legalized gangs, and several years of declining homicide rates followed. Ecuador’s murder rate became one of the lowest in Latin America from 2016-2018, though it rose slightly in 2019 and again in 2020.
- **The Bad**: Smaller local gangs continue to cause problems, but Ecuador generally lacks the type of transnational gangs seen in the Northern Triangle.
- **The Ugly**: Ecuador has long been attractive to foreign criminal groups as a “drug transshipment point and a logistical safe haven.” At the time of a June 2018 Insight Crime article, drug trafficking in Ecuador was on the rise.



Declining Homicide Rate

How much has the intentional homicide rate decreased in Ecuador?

The country has reduced its homicide to almost a third of what it previously was, in less than 20 years.



Source: United Nations Office on Drugs and Crime



U.S. Citizenship
and Immigration
Services

FOUO

Drug Trafficking, Crime, and Gangs: Trafficking Routes



U.S. Citizenship
and Immigration
Services

Drug Trafficking, Crime, and Gangs: Criminal Groups

- “Ecuador’s domestic crime groups have traditionally been fragmented and regionally-based, operating as subcontractors for foreign criminal organizations, particularly Colombian groups and, to a lesser extent, Mexican syndicates, such as the Sinaloa cartel.”
- In 2007, gangs were legalized: Ecuador offered street gangs the opportunity to remake themselves as cultural associations that could register with the government, which in turn allowed them to qualify for grants and benefit from social programming, such as job training.
- Extortion rackets are a particular problem in the northern border area, where kidnappings are also far more likely to occur.



Drug Trafficking, Crime, and Gangs: Sombra Negra

- Formed in the rural region of Biblián, Cañar where there are high emigration rates.
- As of 2016 estimated to have around 400 active members in Biblián canton, but a 2019 post by the Interior Ministry suggests the gang may have “legalized.”
- The gang has a US counterpart operating out of Corona, Queens. Members in Ecuador may wear black, loose clothing, with hats to one side, heavy chains, and tattoos. Bandanas and hats may be black and white, with NY letters that imitate the clothing of Queens members.
- Rival gangs formed in different parishes of Biblian to counter Sombra Negra: Diablos Rojos, Batos Locos, and Los Chikanos.



Drug Trafficking, Crime, and Gangs: 3 Widespread Groups

- Latin Kings: aka Sagrada Tribu Atahualpa Ecuador (STAE)
- Los Choneros: A major prison gang involved in drug trafficking
 - 2020 turf battles against Los Lagartos in Guayas province led to several murders.
 - Ran extortion ring out of prison in Cuenca that targeted family members of prisoners.
 - Involved in February 2021 prison massacre (“23F”)
 - Los Lobos & Los Tiguerones factions may have created “Nueva Generación” group.
- El Negro Holmer: alias of Holmer Melanio Cortez Ramírez
 - Leader of various criminal groups, some operating in Cuenca/Azuay.
 - Active since at least 2001: subjected to 25 arrests, 15 “judicial proceedings”
 - Imprisoned in 2011, 2015, and 2016 but subsequently released each time.
 - Post-2019 imprisonment: continues to run a group that engages in robbery



Drug Trafficking, Crime, and Gangs: Other Gangs

Verified Groups (and Location)

- Los Pepinos (Gualaceo, Azuay; Morona-Santiago?)
- Los Vatos Locos (San Isidro de Patulu, Chimborazo & Azogues, Cañar)
- Los Crazy Boys (Jerusalén, Biblian, Cañar)
- Cicutu (La Troncal, Cañar; Naranjal, Guayas)
- Tren de Aragua: Venezuelan group

Unverified Groups by Location

- Paute: Los Tisis/Ticis, Las Truchas
- Cuenca: Los Solocos, Los Falcones, La Banda del Vecino (Venezuelans)
- Guayas: Alias el Tovi (El Triunfo);

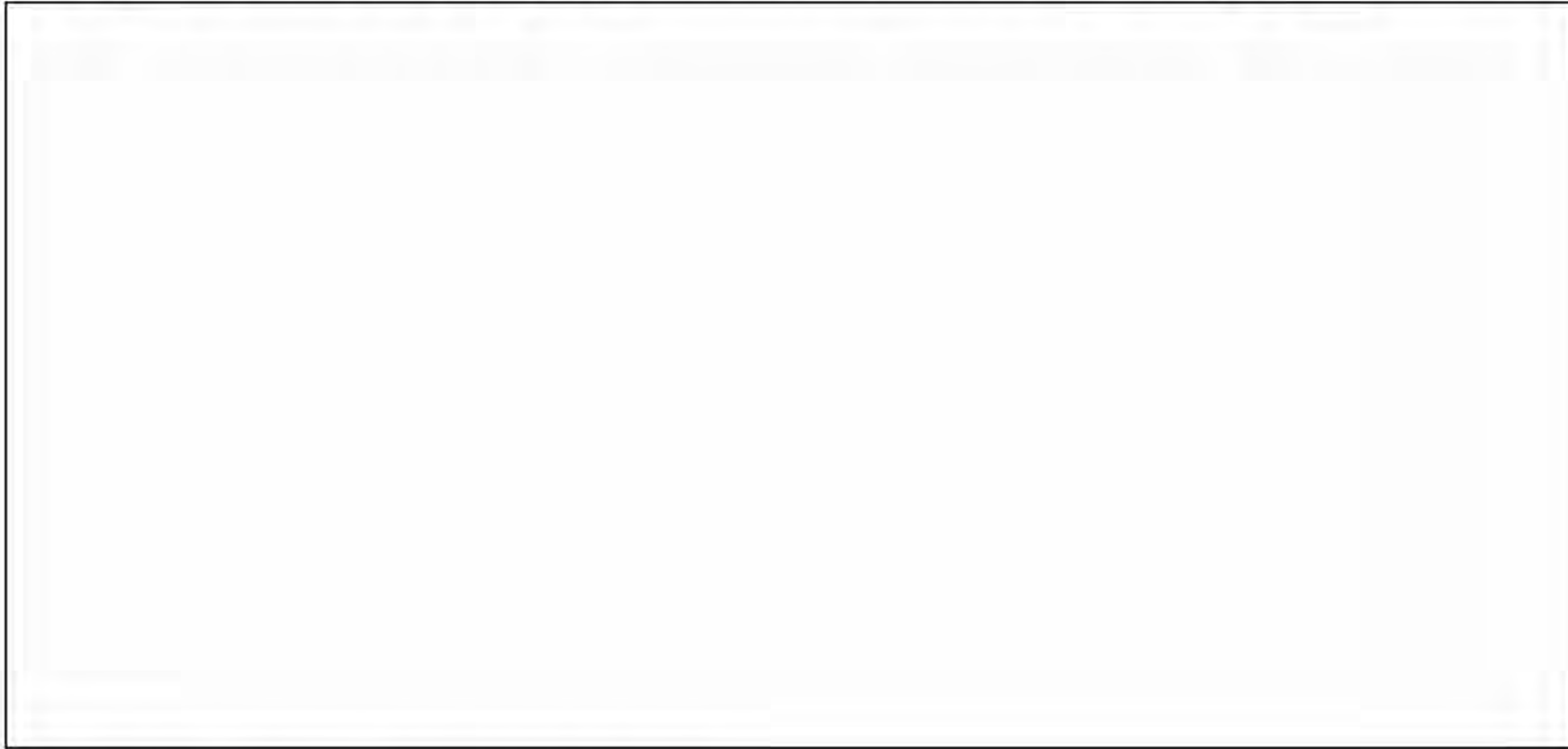
Morocho Quiwa aka Moriches Kiles (Paute & Cuenca, Azuay): Appears to refer to a town, not a gang.



U.S. Citizenship
and Immigration
Services

FOUO

Drug Trafficking, Crime, and Gangs – Example Case 1



(b)(7)(E)

What else would you want to know?



U.S. Citizenship
and Immigration
Services

FOUO

Example Case 1 – Suggested Follow-Up

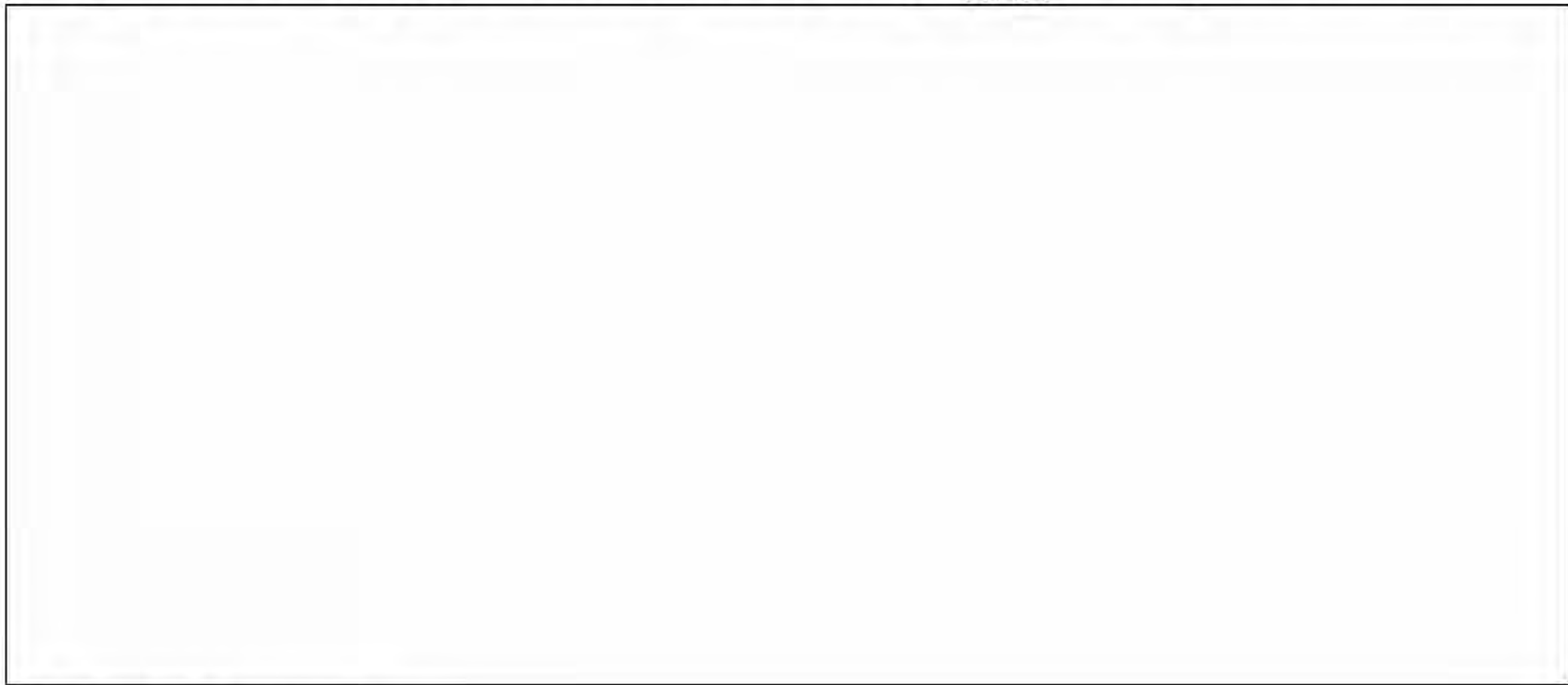
(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Drug Trafficking, Crime, and Gangs – Example Case 2

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

Example Case 2 (cont.)

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Indigenous Issues



U.S. Citizenship
and Immigration
Services

FOUO

Indigenous Ecuadorians

- 1.1 million out of ~17 million inhabitants
- 14 indigenous nationalities, 10 live in the Amazon/Oriente.
 - Most commonly seen in recent cases: Kichwa from Chimborazo, Shuar from Morona-Santiago
- Kichwa people: over 16 sub-groups
 - Kañari people are in Cañar, Puruhá/Puruwá in Chimborazo.
- When relevant, officers should explore the specific indigenous group the applicant identifies with.



Indigenous Interest Groups

- CONAIE: Ecuador's Largest Indigenous organization
 - Took leadership of Oct 2019 protests after the first couple days, negotiated with government.
- Pachakutik Party: formed in 1996
 - 2021: 27 seats in NA, 5 prefects
- Fundación Pachamama: Works with Indigenous groups to protect rain forest
 - Shut down by Correa in Dec. 2013, reopened in 2018.
 - Per HRW, allegations of inciting violence are not supported.



Movimiento de Unidad Plurinacional
PACHAKUTIK



U.S. Citizenship
and Immigration
Services

Quechua dialects



- 2 main groups: Quechua I (central) & Quechua II (peripheral).
 - Quechua II further divided into northern (Kichwa/Quichua) and southern.
 - Speakers from different points within any of the 3 regions can generally understand one another reasonably well.
 - However, speakers from different major regions are not able to communicate effectively.
 - 8 dialects of Kichwa/Quichua in Ecuador.
 - Chimborazo and Imbabura Highland dialects the most common.
- *** Not to be confused with Quiche/K'iche (from Guatemala)!



Claims Seen Involving Indigenous Ecuadorians

APSO

- Political opinion/land rights
- Race – general harm
- DV
- CAT: police or gang issues
- Harmed by indigenous groups, usually those protesting oil/land rights (“colono” = non-indigenous)

Affirmative

- DV
- Political opinion/land rights
- Mostly UACs
- Gang recruitment (Sombra Negra)



Indigenous Issues: Common Challenges

Legal Pluralism/Indigenous Justice

Police protection

Establishing Indigenous Identity

Relocation



U.S. Citizenship
and Immigration
Services

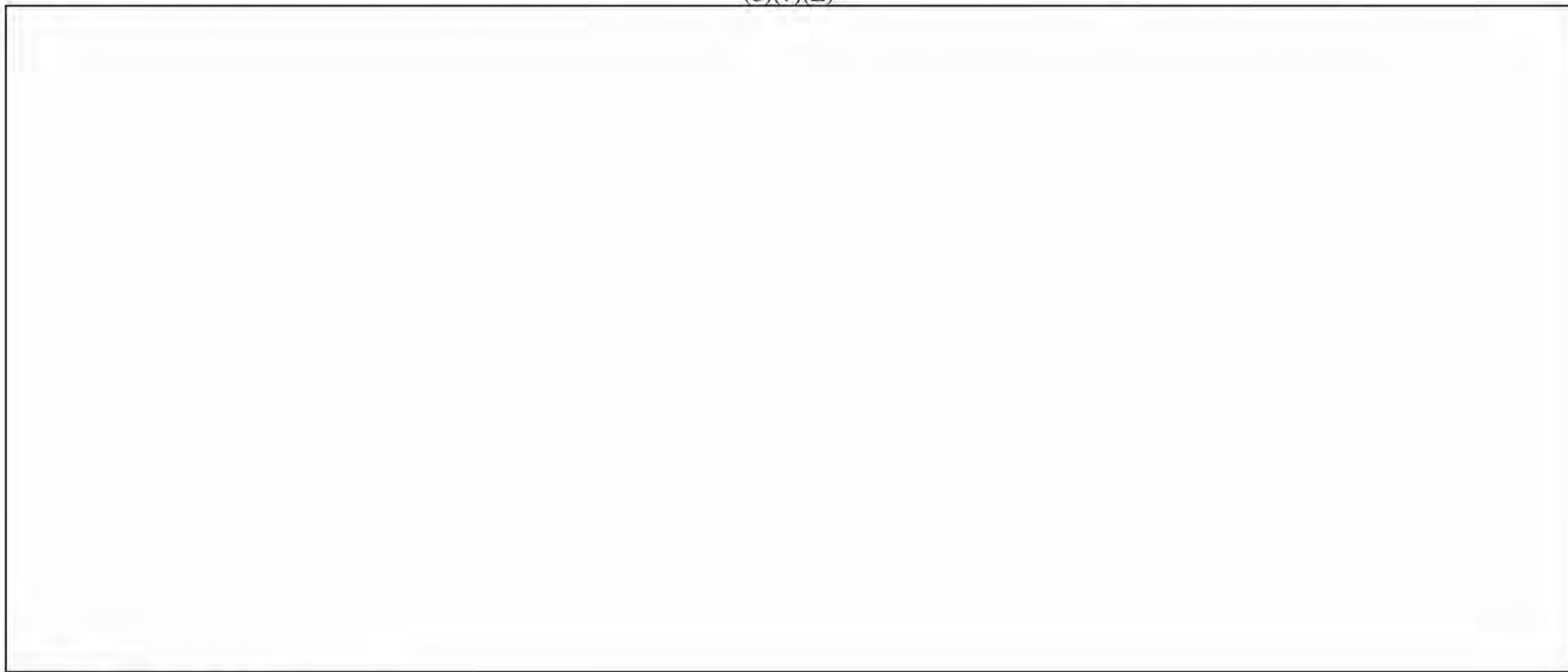
Indigenous Justice & Rule of Law

- 2008 Constitution: right of indigenous peoples to administer justice in their territories in accordance with ancestral traditions (indigenous justice system)
 - Constitutional Court held that Ecuador's ordinary criminal justice system may review decisions of indigenous authorities if those decisions violate or jeopardize the exercise of fundamental rights, such as life or personal integrity
- Police presence in indigenous areas post-2019 protests
 - 2019 protests resulted in many clashes between indigenous protestors & police.
 - Police must be escorted by elders in some areas, and in other areas they are abused by the indigenous population. Some areas they no longer enter.
 - Police are working to rebuild relationships with indigenous population, including holding information events & hiring indigenous officers to patrol indigenous areas.



Suggested lines of inquiry: Establishing Identity

(b)(7)(E)

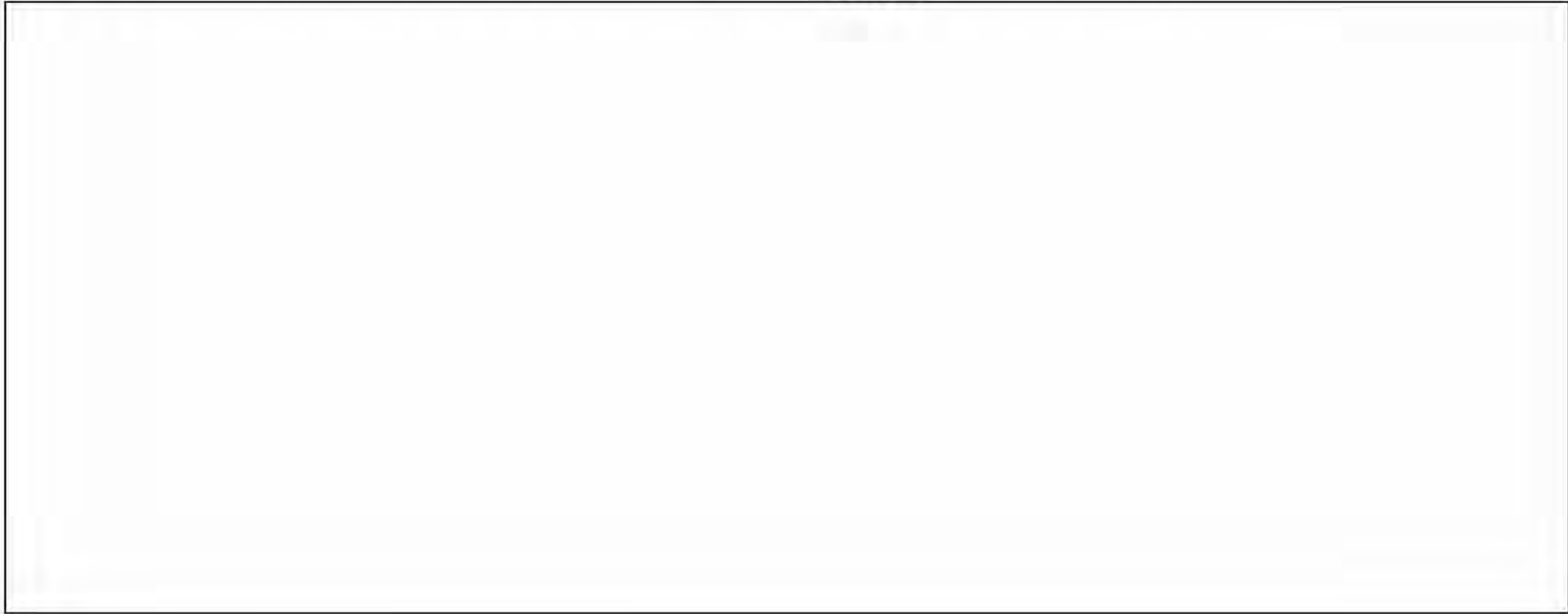


U.S. Citizenship
and Immigration
Services

FOUO

Suggested lines of inquiry: Other Issues

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

Indigenous Issues: Example 1

(b)(7)(E)

Officer	Interviewee

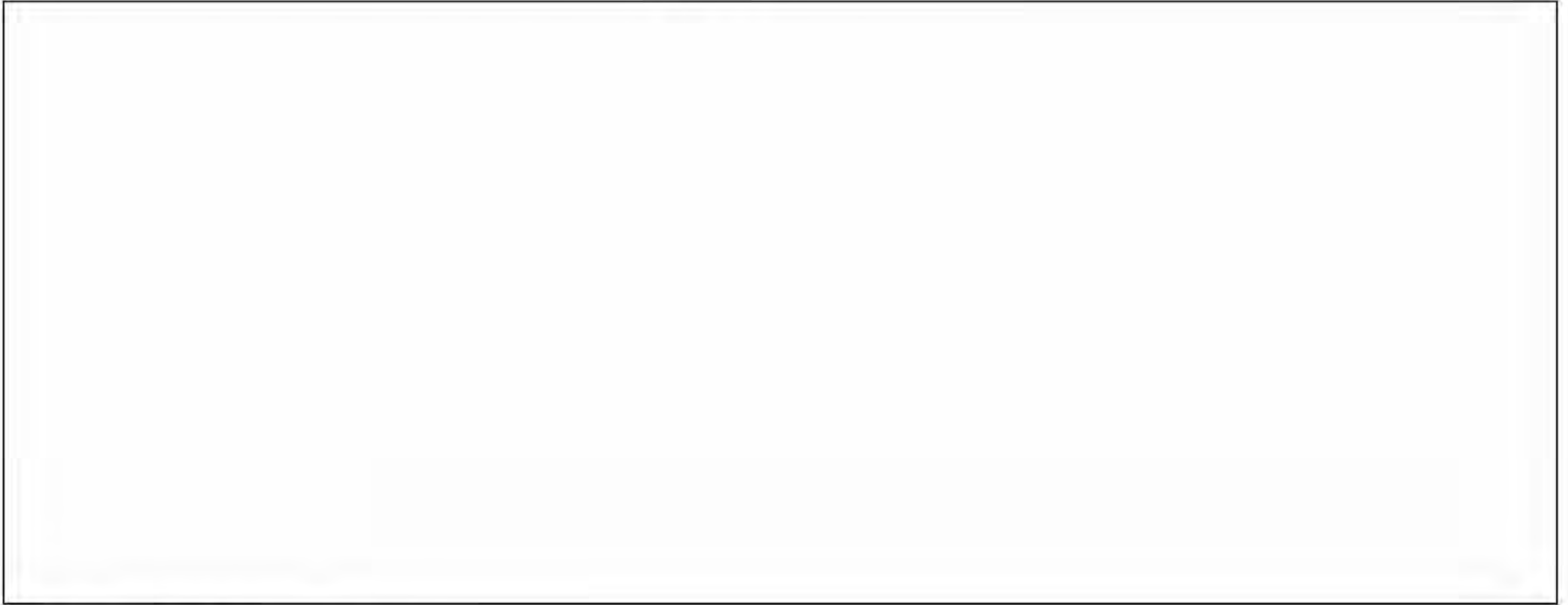


U.S. Citizenship
and Immigration
Services

FOUO

Indigenous Issues: Example 2

(b)(7)(E)

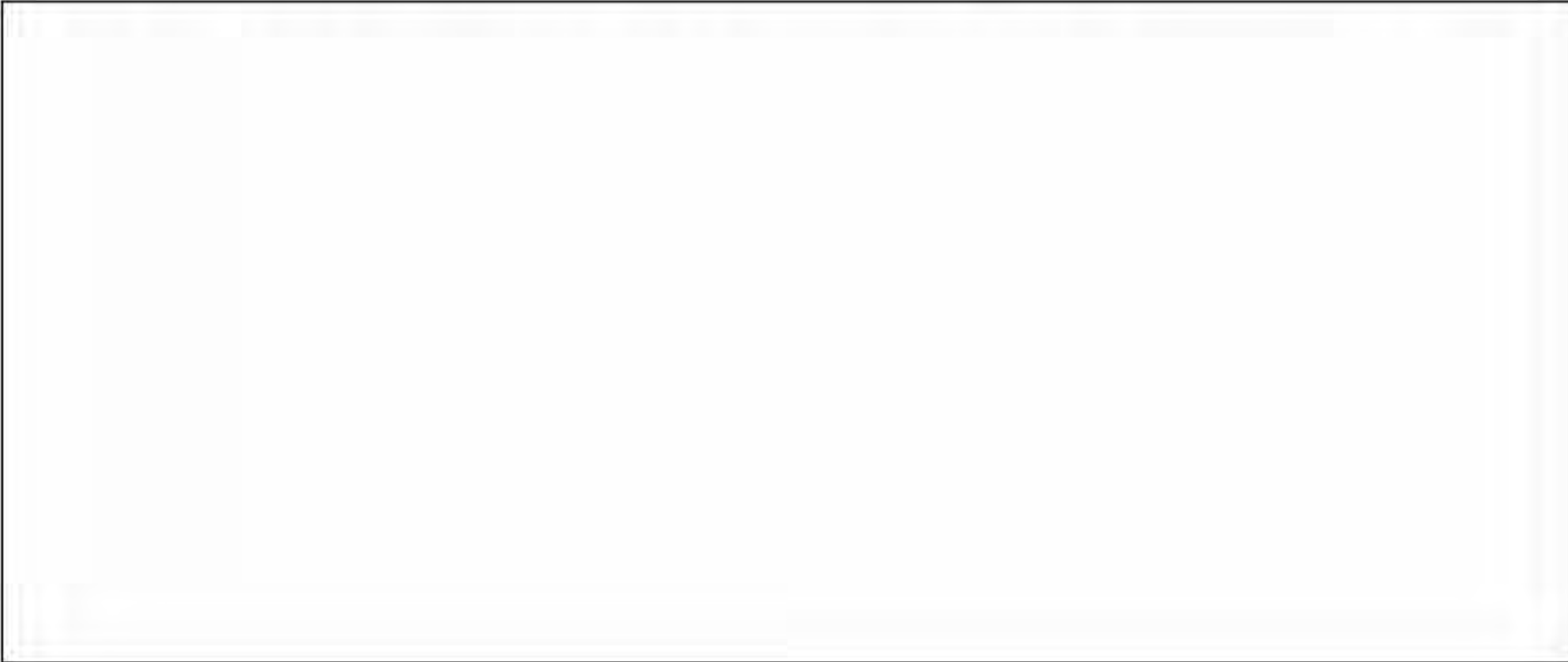


U.S. Citizenship
and Immigration
Services

FOUO

Indigenous Issues: Example 3

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

Indigenous Issues: Example 4

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Indigenous Issues: Example 5

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

Indigenous Issues: Example 6

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

Other claims: Religion and Sexual Minorities

Religion -- Claims typically involved:

- Applicant converted to Evangelical Christianity and is harmed by family and/or the local community.
- Applicant is Catholic and harmed by Evangelicals.
- Also a few cases involving Jehovah's Witnesses being targeted for harm.
- Though there have been incidents of violence between Catholics & Evangelicals in past decades, an Oct 2019 Research Unit review noted a single reported incident of Evangelical-Catholic physical violence from 2006-2019 (which occurred in 2013).
- **Sexual Minorities**
 - 2019: Same sex marriage legalized, but also an increase in murders involving LGBTI people.
 - According to one report there were 16 such murders; most victims were transgender women.



Internal Relocation: Recap

- Unable to find COI suggesting that police sought out non-violent protestors after the October 2019 protests.
- COI indicates that gangs tend to be localized. Officers should explore whether applicants have specific testimony that the gang would be able to locate him/her in another part of Ecuador.
- Indigenous Ecuadorians may face language barriers and discrimination. At the same time, there are numerous Quechuan-speaking communities in cities and towns of the Sierra region.



TRIG Issues

- Unlike its neighbors Colombia and Peru, Ecuador does not have a history of violent insurgencies.
- Ecuadorian Groups
 - 2009 DOS Report lists the following as present in Ecuador but inactive: Marxist-Leninist Party of Ecuador, Revolutionary Militia of the People, Alfarista Liberation Army.
 - Grupos de Combatientes Populares (GCP): 2010 letter bomb, possibly 2011 pamphlet bombs
 - 2011 article about bombings by Armed Revolutionary Insurgent Forces of Ecuador (FAIRE) also mentions Red Sun Communist Party of Ecuador, Guerrilla Coordinator of Ecuador
 - 2017: Unnamed Indigenous group in Morona-Santiago kidnapped 2 soldiers
- Colombian Groups (reported to be active at some point in Ecuador)
 - Ex-FARC: Car bomb in Jan 2018, 3 journalists murdered Mar 2018; both in Esmeraldas.
 - ELN (National Liberation Army)



Fraud and Credibility

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

FOUO

About this Presentation

- Authors: Newark Asylum Office, Chicago Asylum Office, Boston Asylum Office, New Orleans Asylum Office, Asylum HQ Quality Assurance Branch, Asylum HQ Training Branch
- Date of last revision: 6/23/21. This presentation is current only as of the date of last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).



Disclaimer

- This training module is intended solely for informational purposes. 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

Dissemination

- This presentation may not be reproduced or further disseminated without the express written consent of USCIS.
- Please contact the Asylum Division for additional information.



U.S. Citizenship
and Immigration
Services

ASYLUM INTERVIEW NOTES

Applicant:	[REDACTED]
Alien Registration #:	[REDACTED]
Other Names Used:	[REDACTED]
Country of Citizenship	Nicaragua
Sex/Age/DOB:	F / 39 [REDACTED]
Date and Place of Entry:	[REDACTED] 2019 [REDACTED] Valid Until: [REDACTED]
Visa Status:	B2
Date Filed I-589:	[REDACTED] 2019
Dependents:	None
Location of interview:	[REDACTED] One Year Deadline Met: Yes
Language:	English
*Interpreter:	N/A – English
*Attorney:	None
*Monitor ID:	N/A – English
START TIME:	11:58AM
END TIME:	2:40PM

Introduction

Good morning, my name is Officer [REDACTED] and I will be conducting your asylum interview today.

Identification: May I see your IDs/passport? I will return them at the end of the interview.

- 1) Applicant
- 2) Interpreter
- 3) Attorney (Confirm name matches G-28)
- 4) Others present:

Attorney: You have the right to an attorney present during this interview.

IF NO ATTORNEY: I see you don't have an attorney present. would you like to proceed without an attorney?	Continue without an attorney.
---	-------------------------------

Language of Interview:

Are you fluent in English?	I think so.
What is your Native Language?	Spanish.
Language for interview today?	English.
Right to have an interpreter. Warnings re: rescheduling interview if communication issues arise.	Ok.

Purpose:

- The **purpose** of this interview is for you to **share information** with me so that I can **determine** whether you are **eligible** for asylum in the United States. It is also so that I can provide you with **additional information** about the **application process**.
- **Non-adversarial** interview – meaning that no one is here to argue, but instead this is a neutral environment where you can tell me about your claim.
- **My Goal:** **Fully understand details** of your **claim/make a fair decision**.

Confidentiality:

- Everything you say today is **confidential** and will be kept between you and the United States government.
- **Nothing** that you tell me will be **shared** with anyone in **your country**, not even the fact that you have applied for asylum.

Interview Process:

The interview will be conducted in three parts:

1. **First**, I will **review your application** with you to make sure it is complete and accurate. If anything in your application needs to be changed/updated, I will make the changes in red. At the end of the interview, you will have the opportunity to review the changes made.
2. **Second**, we will **discuss** why you applied for asylum, including **why you left** your country and why you **fear returning**. When we are done, **you will have the opportunity** to tell me about anything I did not ask you or that you believe is important for your case[, and **your attorney** will have the opportunity to make a statement].
3. **Third**, I will explain the **possible outcomes** of your asylum claim and how you will receive your decision. You will not receive your decision today, but that is part of the normal process.

Note Taking:

- During the interview I will be taking notes on my computer to have a **record of what was said**. These notes are also **confidential** and they will be used to help me make a fair decision based on all the facts in your case.
- If I am **looking at my computer** and not at you, it does not mean that I am not listening; I just need to make sure that my **notes are accurate** for the record.

Applicant Instructions:

- I may ask you question that are personal or difficult in nature, **but I need to know** this information so that I can make my decision. *If at any time you are finding it difficult to talk about these things and you need a break, just let me know.*
- If you do not know the answer to a question or cannot remember, please do not try to guess the answer or tell me something that you think I want to hear. You can simply say, "I don't know," or "I don't remember."
- If you have a long answer, please break it up into short phrases so I can record everything.
- If you do not understand my question, I will explain it to you.

Administer Oaths:

Before we start, I will place you under oath.

- When I place you under oath it means that you will promise to tell the truth.
 - Once you take the oath you are **legally obligated** to tell the truth. Your words will be used as evidence in your asylum application.
 - There could be legal consequences for making false statements or knowingly submitting false documents. These consequences include imprisonment, fine, and being ineligible for future immigration benefits.

Do you understand my explanation about the oath and the penalties of not testifying truthfully?	Yes.
Do you have any questions so far?	No.

Applicant's Oath:

OATH: (Stand and raise right hand) Do you affirm that the testimony you are about to give will be the whole truth and nothing false?	Yes.
--	------

- **This is a record of oath form.** By signing this form you are confirming you understand that there are serious legal consequences if you knowingly make false statements today.
- **SIGN OATH FORMS**

I-589 Review: Okay, let's begin with your asylum application.

(b)(7)(E)

PRELIMINARY QUESTIONS

Officer

Applicant

--	--

Asylum Interview Notes
Interview Date: [REDACTED]/2019
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]
Applicant Name: [REDACTED]
Country: Nicaragua

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED]/2019
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]
Applicant Name: [REDACTED]
Country: Nicaragua

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED] 2019
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]
Applicant Name: [REDACTED]
Country: Nicaragua

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

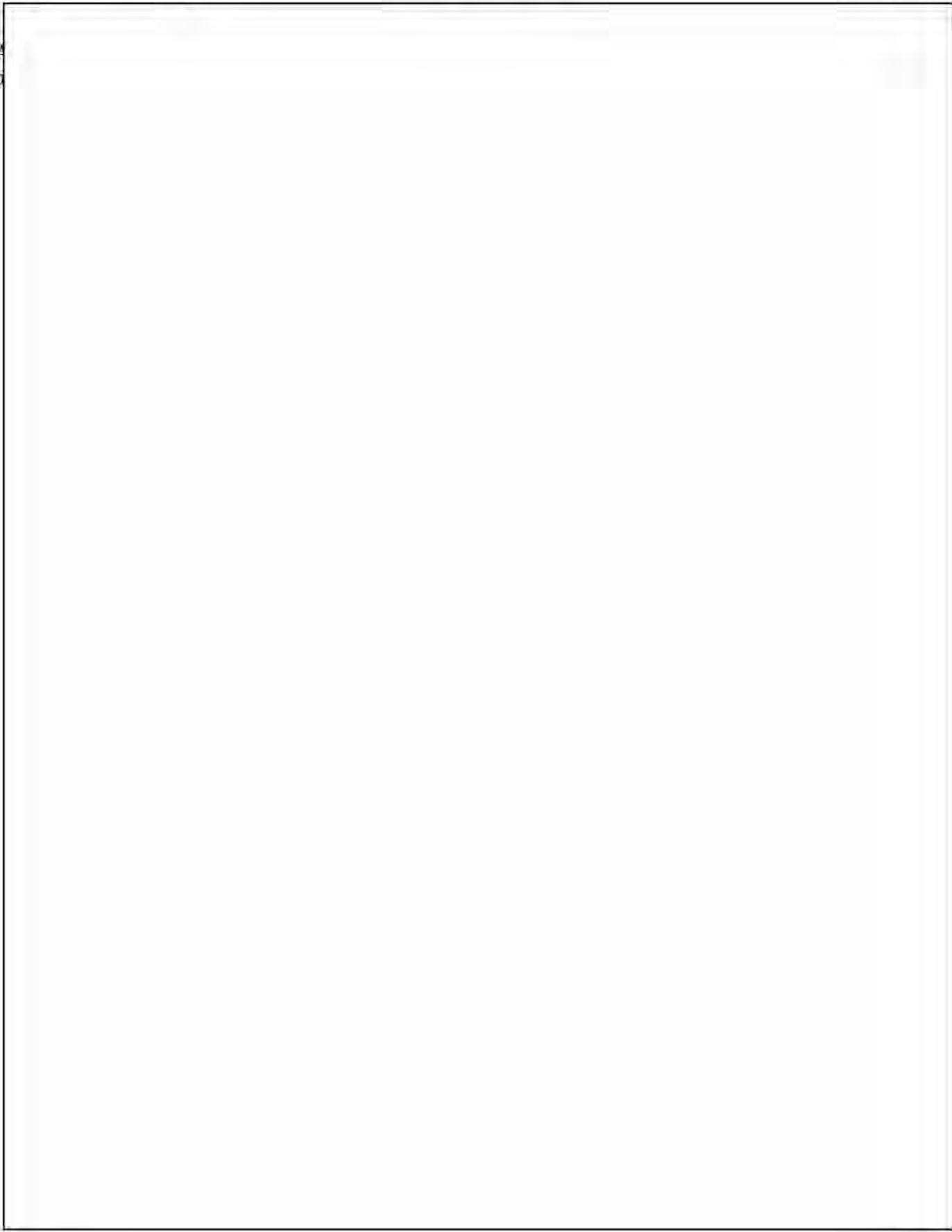
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A
b



[REDACTED]

[REDACTED]

(b)(7)(E)

Asylum Interview Notes
Interview Date: [REDACTED]/2019
AO: [REDACTED]

A#: [REDACTED]

Country: Nicaragua

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Country of Citizenship	Nicaragua
Sex/Age/DOB:	F / 39 / 0 [REDACTED]
Date and Place of Entry:	[REDACTED] 2019 [REDACTED] Valid Until: [REDACTED] 2020
Visa Status:	B2 overstay
Date Filed I-589:	09/26/2019
Dependents:	None
Location of interview:	[REDACTED] One Year Deadline Met: Yes
Language:	English
*Interpreter:	N/A – English
*Attorney:	[REDACTED]
*Monitor ID:	N/A – English
START TIME:	12:19PM
END TIME:	1:59PM

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

Confidentiality:

- Everything you say today is **confidential** and will be kept between you and the United States government.
- **Nothing** that you tell me will be **shared** with anyone in **your country**, not even the fact that you have applied for asylum.

Interview Process:

The interview will be conducted in three parts:

1. **First.** I will **confirm basic information** with you to make sure it is still accurate.
2. **Second.** I will ask follow up questions.
3. **Third.** I will explain the **possible outcomes** of your asylum claim and how you will receive your decision. You will not receive your decision today, but that is part of the normal process.

Note Taking:

- During the interview I will be taking notes on my computer to have a **record of what was said**. These notes are also **confidential** and they will be used to help me make a fair decision based on all the facts in your case.
- If I am **looking at my computer** and not at you, it does not mean that I am not listening; I just need to make sure that my **notes are accurate** for the record.

Applicant Instructions:

- I may ask you question that are personal or difficult in nature, **but I need to know** this information so that I can make my decision. *If at any time you are finding it difficult to talk about these things and you need a break, just let me know.*
- If you do not know the answer to a question or cannot remember, please do not try to guess the answer or tell me something that you think I want to hear. You can simply say, "I don't know," or "I don't remember."
- If you have a long answer, please break it up into short phrases so I can record everything.
- If you do not understand my question, I will explain it to you.

Administer Oaths:

Before we start, I will place you under oath.

- When I place you under oath it means that you will promise to tell the truth.
 - Once you take the oath you are **legally obligated** to tell the truth. Your words will be used as evidence in your asylum application.
 - There could be legal consequences for making false statements or knowingly submitting false documents. These consequences include imprisonment, fine, and being ineligible for future immigration benefits.

Do you understand my explanation about the oath and the penalties of not testifying truthfully?	Yes.
Do you have any questions so far?	No.

Applicant's Oath:

OATH: (Stand and raise right hand) Do you affirm that the testimony you are about to give will be the whole truth and nothing false?	Yes.
--	------

- **This is a record of oath form.** By signing this form you are confirming you understand that there are serious legal consequences if you knowingly make false statements today.
- **SIGN OATH FORMS**

(b)(7)(E)

--

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED]/2020
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]

Country: Nicaragua

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED]/2020
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]

Country: Nicaragua

[REDACTED]

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED] /2020
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]

Country: Nicaragua

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED]/2020
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]

Country: Nicaragua

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED]/2020
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]

Country: Nicaragua

[REDACTED]

Asylum Interview Notes
Interview Date: [REDACTED]/2020
AO: [REDACTED]

(b)(7)(E)

A#: [REDACTED]

Country: Nicaragua

[REDACTED]

ASSESSMENT TO GRANT

Decision type: Past persecution/well-founded fear not rebutted or well-founded fear only

ALIEN NUMBER: A [REDACTED]

ASSESSMENT DATE: [REDACTED] 2020

NAME: [REDACTED]

ASYLUM OFFICER: [REDACTED]

COUNTRY: Nicaragua

REVIEWING SAO: [REDACTED]

LOCATION: [REDACTED]

(b)(7)(E)

I. BIOGRAPHIC/ENTRY OR ARRIVAL/IMMIGRATION STATUS INFORMATION

[REDACTED]

II. BASIS OF CLAIM

[REDACTED]

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

[REDACTED]

IV. SUMMARY OF TESTIMONY

[REDACTED]

(b)(7)(E)

V. AFFIRMATIVE DETERMINATION WORKSHEET (b)(7)(E)

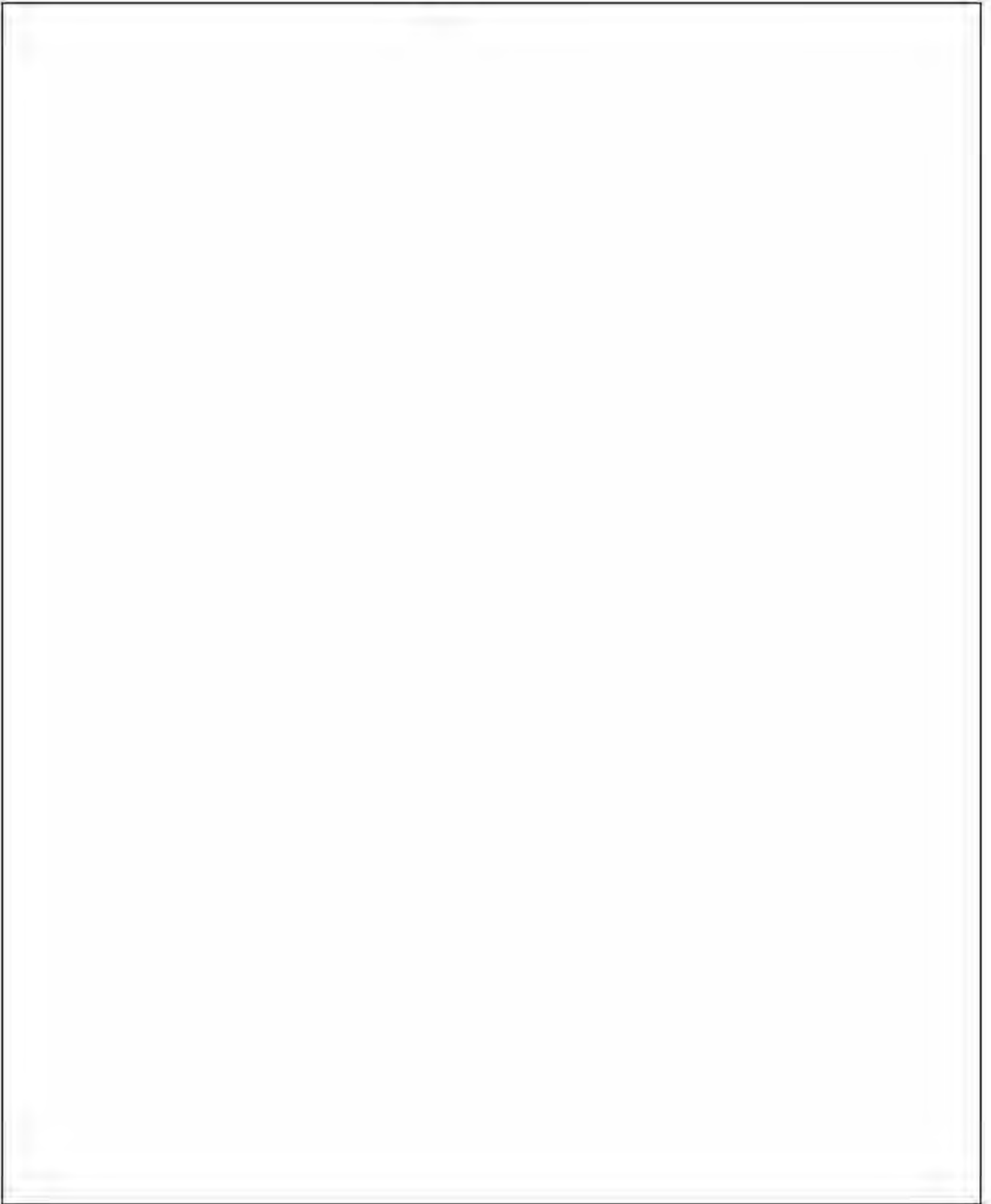
A. Mandatory Bar

The applicant will be referred on the basis of a mandatory bar to asylum. *Skip to Mandatory Bar Analysis.*

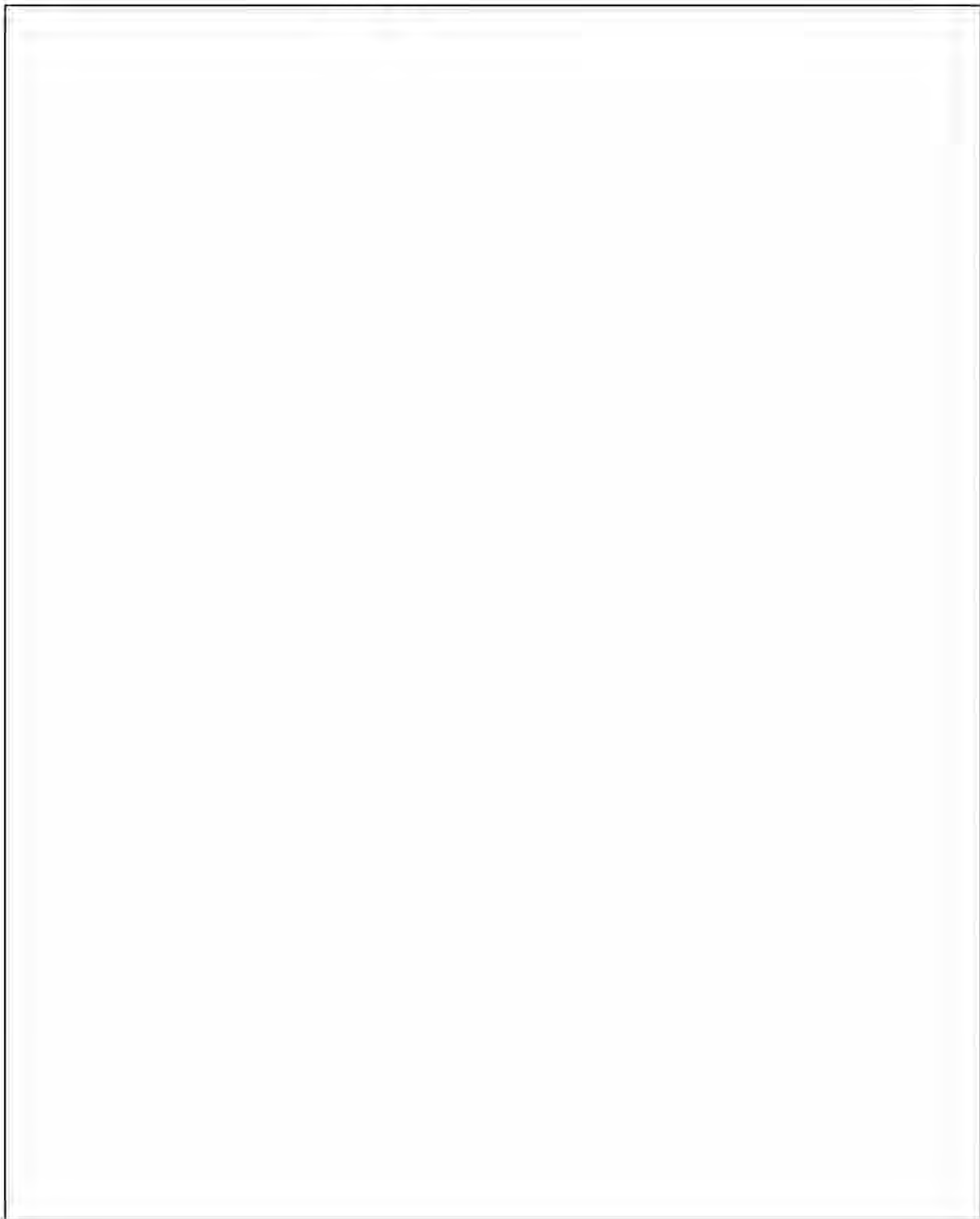
B. Analysis of Credibility / Evidence Assessment

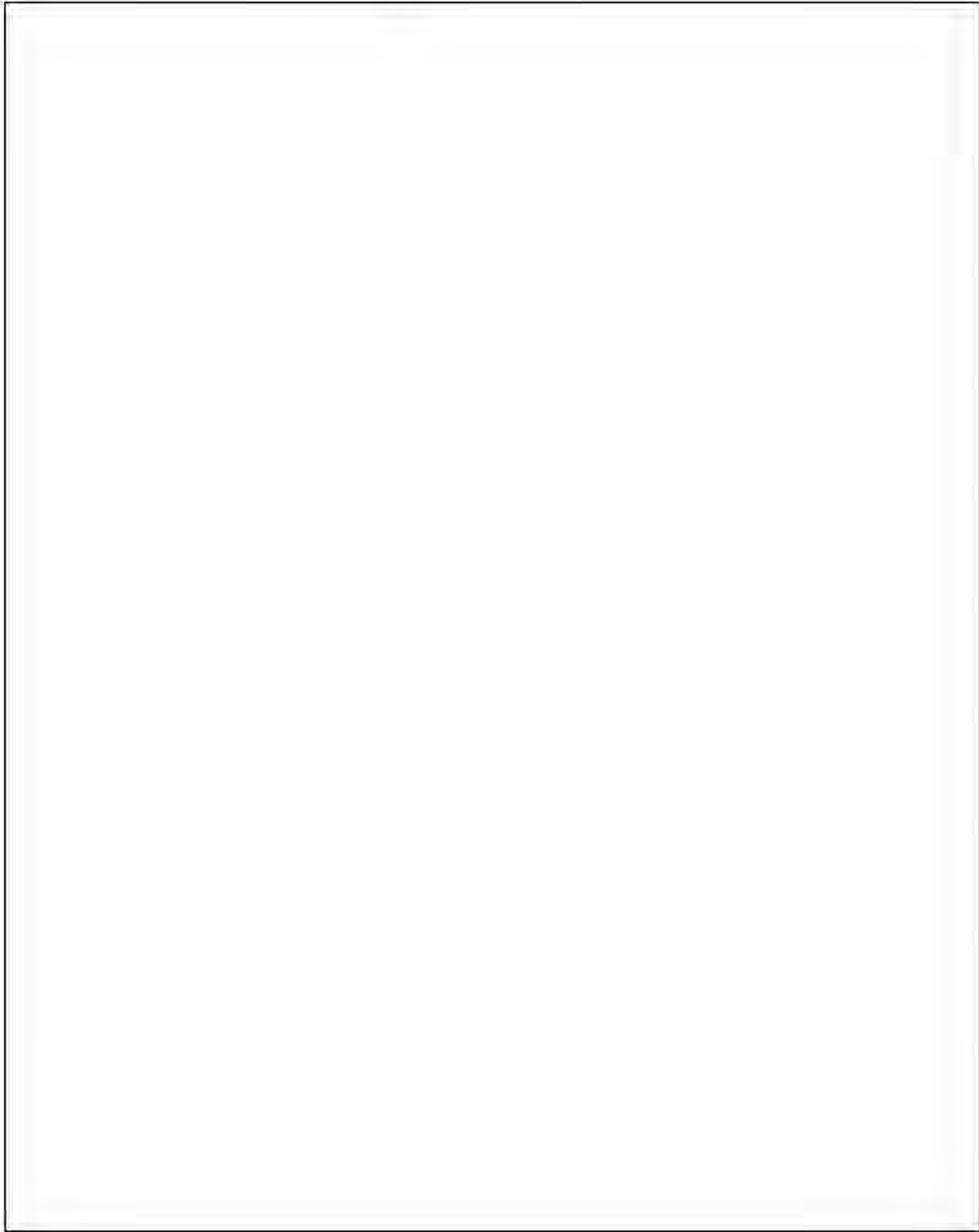
Considering the totality of the circumstances and all relevant factors, the applicant's testimony was found:

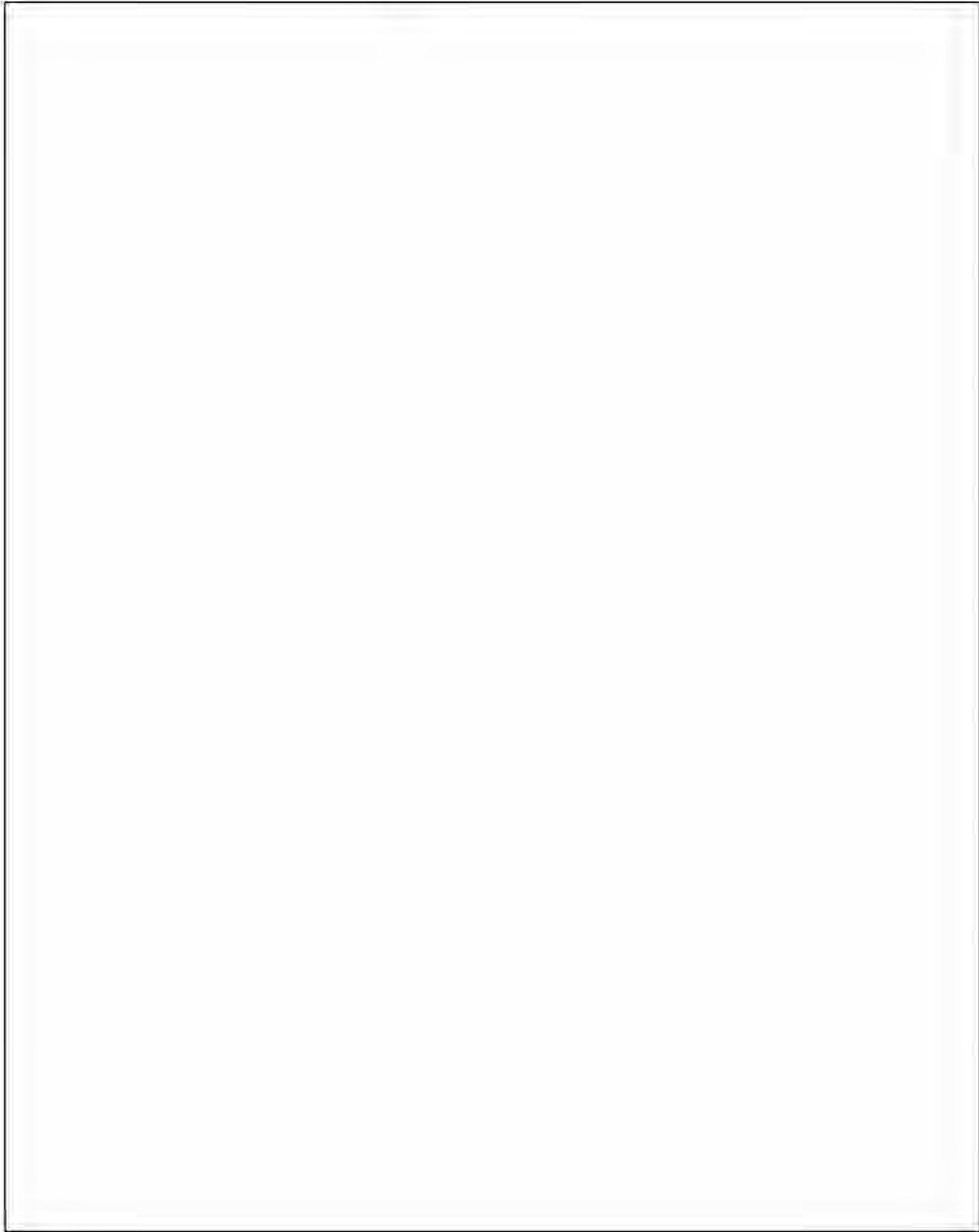
C. Legal Analysis



(b)(7)(E)





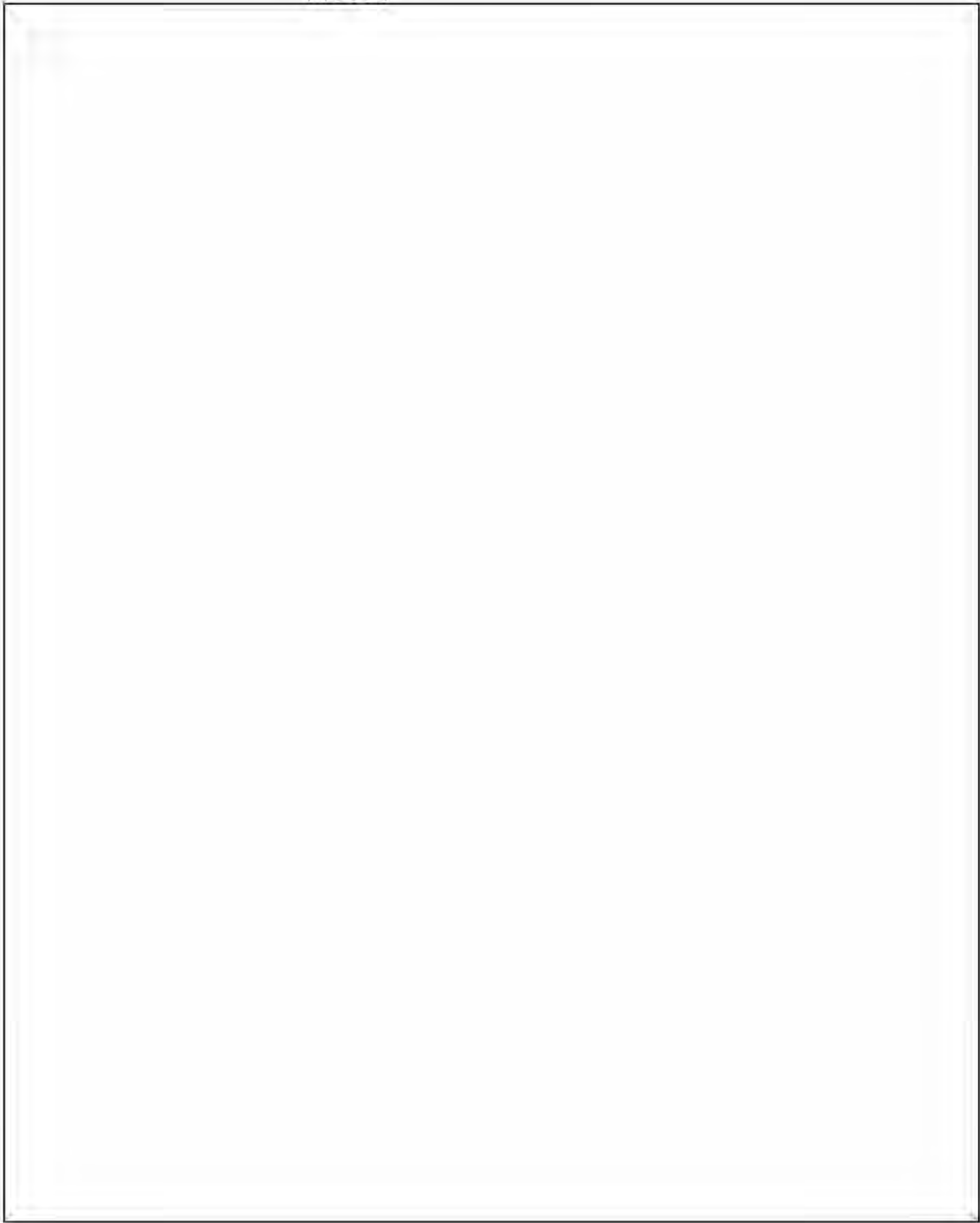


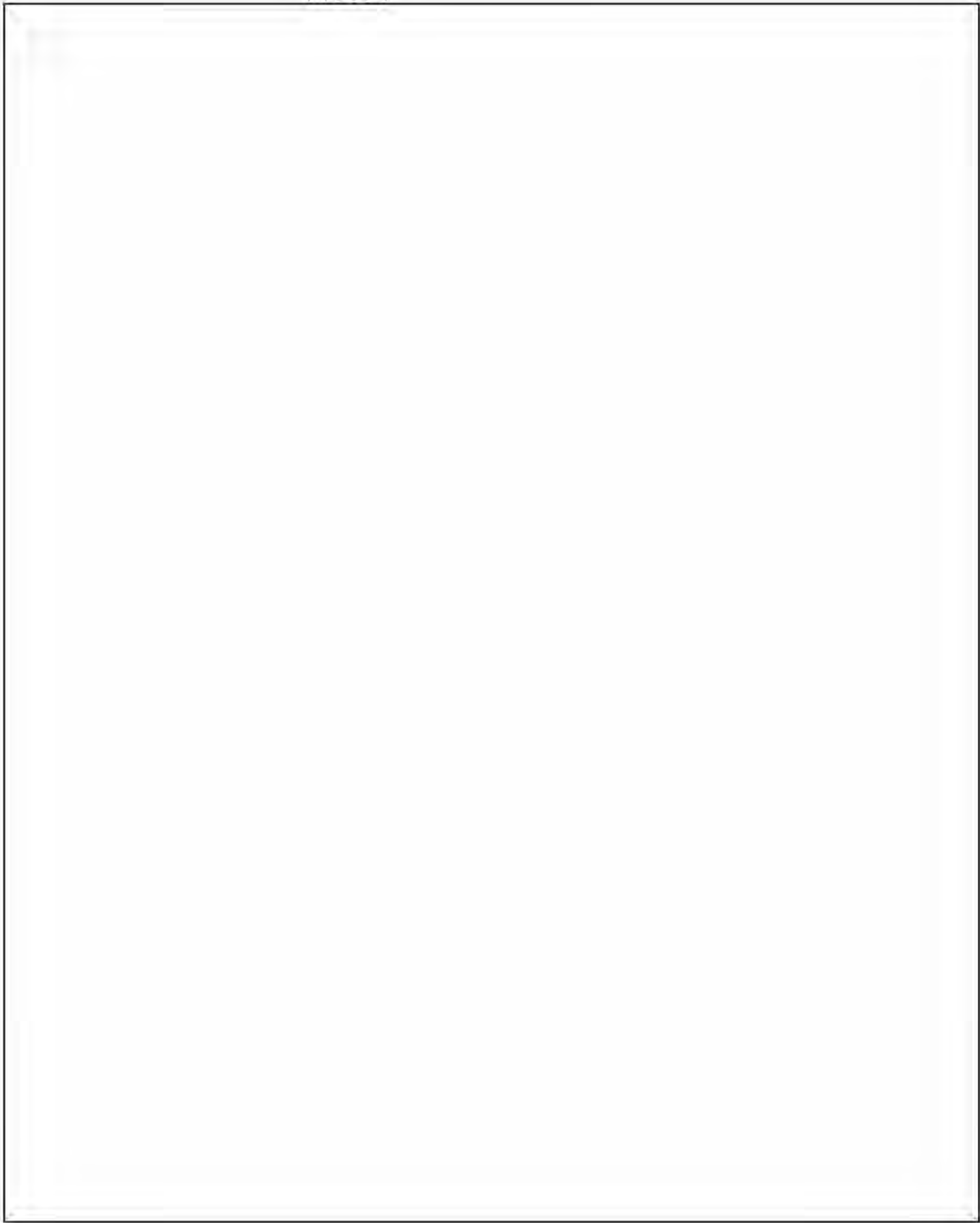
D. Discretionary Factors

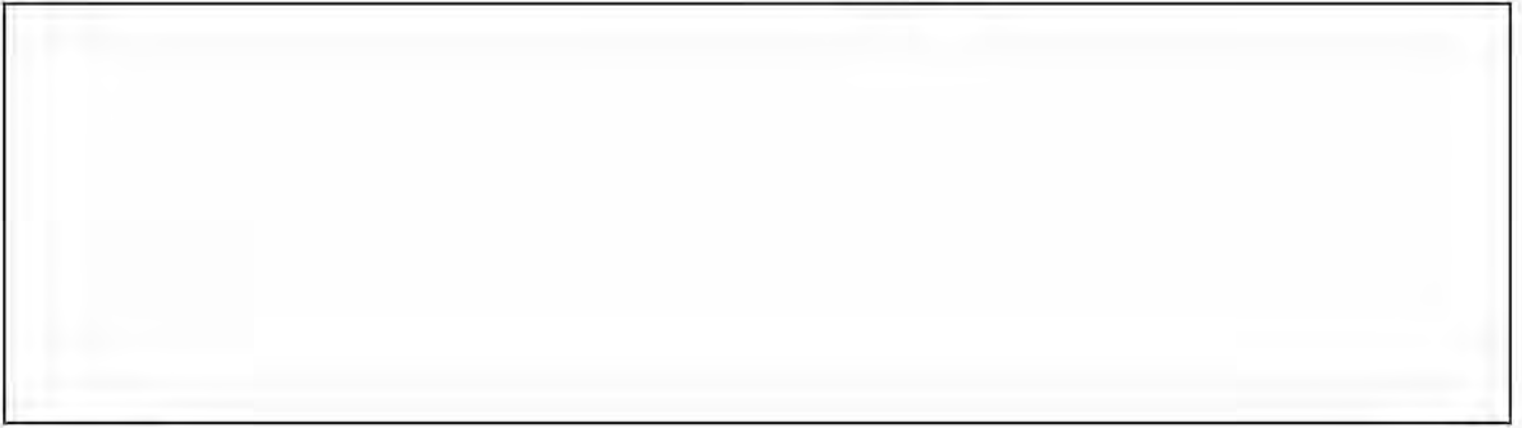
[Redacted content]

E. Mandatory Bar Analysis

[Redacted content]







F. Decision

- Grant
- Refer to the immigration judge

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
RECORD OF SWORN STATEMENT

APPLICANT NAME: [REDACTED] FILE NO. [REDACTED] 802
DATE: [REDACTED]

EXECUTED AT: [REDACTED]

Before the following officer of U.S. Citizenship and Immigration Services:

[REDACTED] Asylum Officer,

in the Spanish language. Interpreter [REDACTED]
 used/not used.

I, [REDACTED], acknowledge that the above named officer has identified herself as a person authorized to administer oaths and take testimony in connection with the enforcement of the immigration and nationality laws of the United States. She has informed me that she desires to take my sworn statement regarding factors which may affect my eligibility for a grant of asylum, should USCIS decide to grant my request for asylum. She has told me that my statement must be made freely and voluntarily. I am willing to make such a statement. I swear/affirm that I will tell the truth, the whole truth, and nothing but the truth.

Being duly sworn/affirmed, I respond to the following questions asked by the above-named officer: (b)(7)(E)

A Number:
Name:
[REDACTED]

UNCLASSIFIED /
FOR OFFICIAL USE ONLY

Page 1 of 8
Date:
Initials: [REDACTED]

A Number:
Name:



**UNCLASSIFIED /
FOR OFFICIAL USE ONLY**

Page 2 of 8
Date:
Initials



A Number:
Name:



**UNCLASSIFIED /
FOR OFFICIAL USE ONLY**

Page 3 of 8
Date:





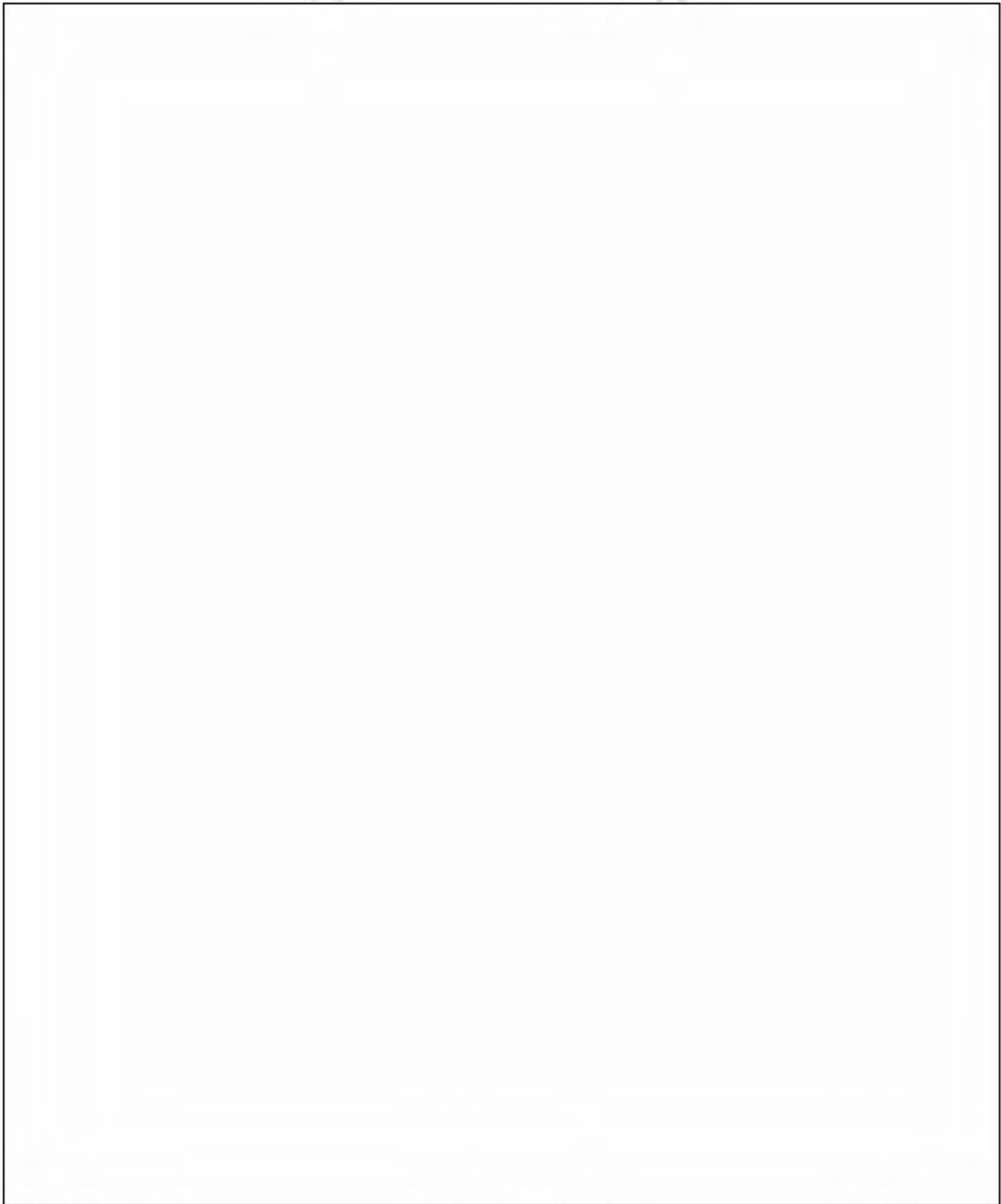
A Number:
Name:



**UNCLASSIFIED /
FOR OFFICIAL USE ONLY**

Page 4 of 8
Date:
Initials:





Q	
A	
Q	
A	
Q	
A	
Q	
A	
Q	
A	
Q	
A	
Q	
A	
Q	
A	
Q	
A	

Finish questioning

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. I understand that information contained in or pertaining to my asylum application shall not be disclosed without my written consent in accordance with CFR section 208.6 or at the discretion of the Secretary of Homeland Security.

Signature of Applicant _____

on this _____ day of _____, 2019. Sworn/Affirmed and subscribed before me:

 Name of USCIS Officer

 Signature of Witness

 Name of Witness

Introduction

Good morning. I am , and I will be conducting your asylum interview.

I need everyone in the room to make sure that their cell phone is turned off please. It cannot just be on silent.

Identification

May I see a form of identification for everyone? I will return it at the end of the interview.

Did you receive any paperwork at the check-in desk?

I see that you do not have an attorney representing you. You have a right to have an attorney present at this interview. Are you comfortable proceeding without an attorney?	That's ok
--	-----------

Language

What is your native language?	Spanish
What language will you use in the interview today?	Spanish
Are you able to understand your interpreter?	Yes
If at any time you do not understand me, please let me know right away and I will ask the question in a different way.	ok

Oaths

Before the interview begins, I will place you and your interpreter under oath. That means that you will promise to tell only the truth today. Once you take the oath you are legally obligated to tell the truth and there are consequences for failing to do so.

Do you understand the oath you are about to take and the penalties of not testifying truthfully?	Yes.
--	------

Asylum Interview Notes
 A Number: -802
 Applicant Name:
 Country: Venezuela
 Interview Date:
 Officer:

APPLICANT OATH: Please stand and raise your right hand. Do you promise to tell the truth, the whole truth and nothing but the truth during the interview today?	Yes I promise
DEPENDENT () OATH: Please stand and raise your right hand. Do you promise to tell the truth, the whole truth and nothing but the truth during the interview today?	I promise

I will now place your interpreter under oath.

Do you promise to interpret accurately, truthfully and completely from English to Spanish and from Spanish to English?	Yes I do.
--	-----------

This is a record of oath form. It is a written version of the oath that you just took confirming that you must tell only the truth today.

Interpreter Monitor

In just a moment I will be calling a federally **certified interpreter monitor** on the phone.

- The interpreter monitor is there to ensure the accuracy of the interpretation today.
- They will also promise to keep this interview confidential.

Monitor START TIME: 8:24am	Reference #: 200261
OATH: You are monitoring the interpretation of an affirmative asylum interview today. Do you affirm that you will truthfully and fully report any misinterpretations observed during the course of this asylum interview?	I do/ I do
Do you affirm that you will immediately notify me if you become aware of your inability to monitor this interview in a neutral and impartial manner?	I do/ I do
Do you affirm that you understand that all matters discussed in this interview are confidential and that you will not share what you hear today with any person?	I do/ I do

Purpose

- The purpose of this interview is for you to share information with me today about why you are afraid to return to your country.
- All the evidence you provide will be carefully considered so that the US government can fairly determine whether you are eligible for asylum in the United States.
- I understand this may be a stressful experience for you, but please think of this interview as a conversation. This interview is also an opportunity for you to ask me questions and for me to explain the next steps in the asylum process.

Confidentiality

- Everything you say today is confidential and will be kept between you and the United States government. This means it will not be shared except on a need to know basis.
- I will be taking notes throughout the interview on the computer to type every question I ask and every answer you give. These notes will help me make a decision on your claim. Even if I am not looking at you, please know that I am listening to what you're saying. These notes are also confidential.
- The interpreter monitor is there to ensure the accuracy of the interpretation today. They will also promise to keep this interview confidential.

Interview Process

- The interview will be conducted in three parts:
- **First**, I will review your application form with you to make sure it is complete and accurate.
- **Second**, I will be asking you questions about your asylum claim and why you left your country of origin.
- **Third**, you will have the opportunity to review the changes we made together and sign your application. I will also explain the possible outcomes of your asylum claim and how you will receive your decision. Please know that you will not receive your decision today, but that is a normal part of the process.

Interpreter Instructions

- Your interpreter should interpret everything that is said, word-for-word, exactly as it is stated.
- Your interpreter should not paraphrase, summarize or add detail to anything that you or I say.
- Please do not ask your interpreter to explain anything. Ask me if you have any questions, and I can rephrase the question.

Applicant Instructions

- It is important that you answer each of my questions completely, honestly, and truthfully.
- You will be asked to describe the experiences you have had. If at any time you are finding it difficult to talk about things or you need to pause, please let me know.
- Please speak one or two short sentences at a time to give me time to accurately type what you said to me. I may pause you if I need a moment to make sure I am typing everything correctly.

- If you do not know the answer to one of my questions, please say I don't know. Please tell me if you need me to repeat a question or do not understand the question and need me to clarify.
- At the end of the interview, you will have time to ask questions and provide me with any additional information related to your claim.

Any questions about what I have said so far?

PART I

Preliminary questions to the applicant

I have reviewed everything you have submitted so far. Everything in your application will be considered even if we do not go over it in the interview.

If there are any more documents you want to give me, you should give them to me now.

Now we'll begin the first part of the interview in which we review your application and declaration.

(b)(7)(E)

Asylum Interview Notes

A Number: -802

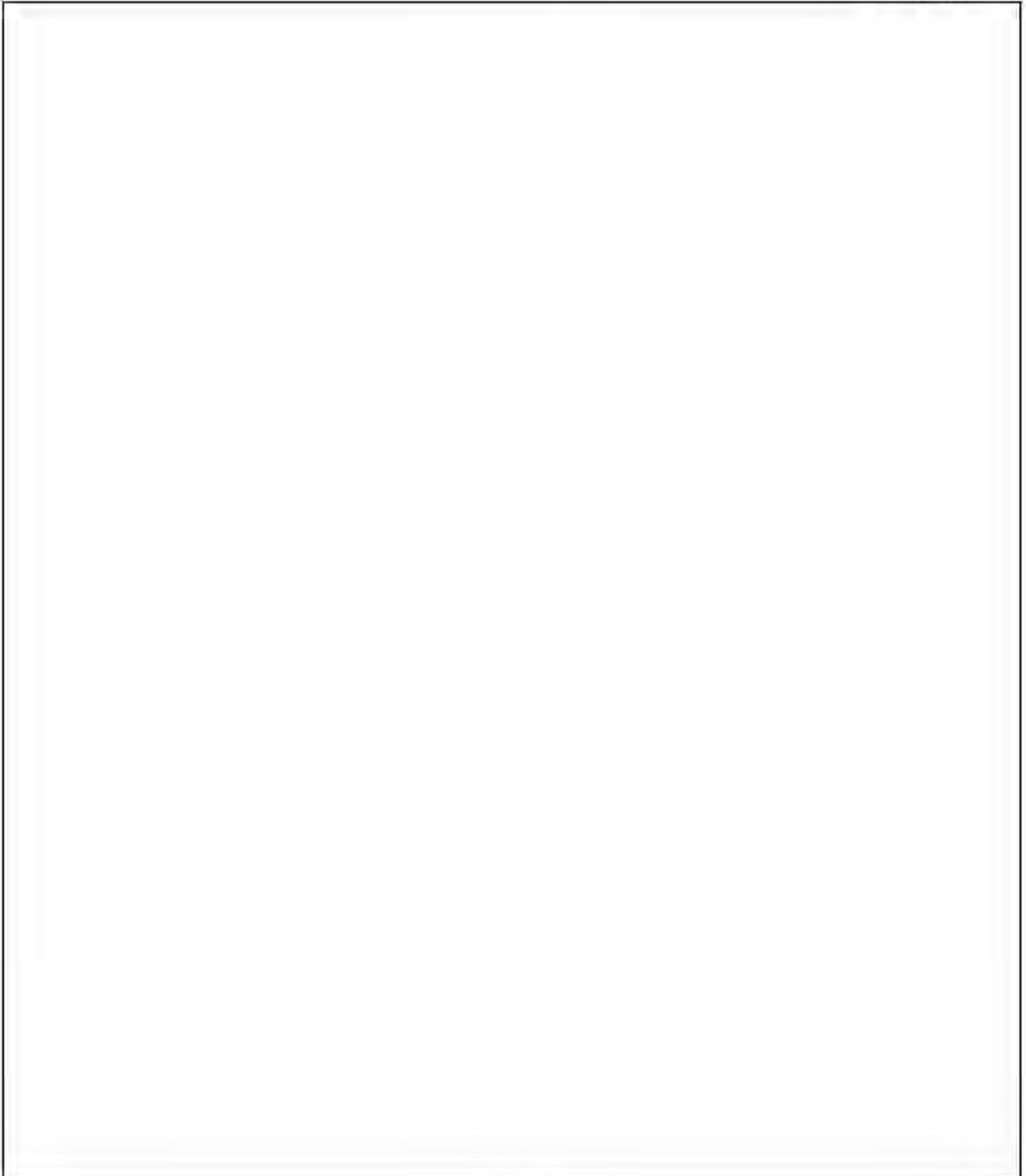
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

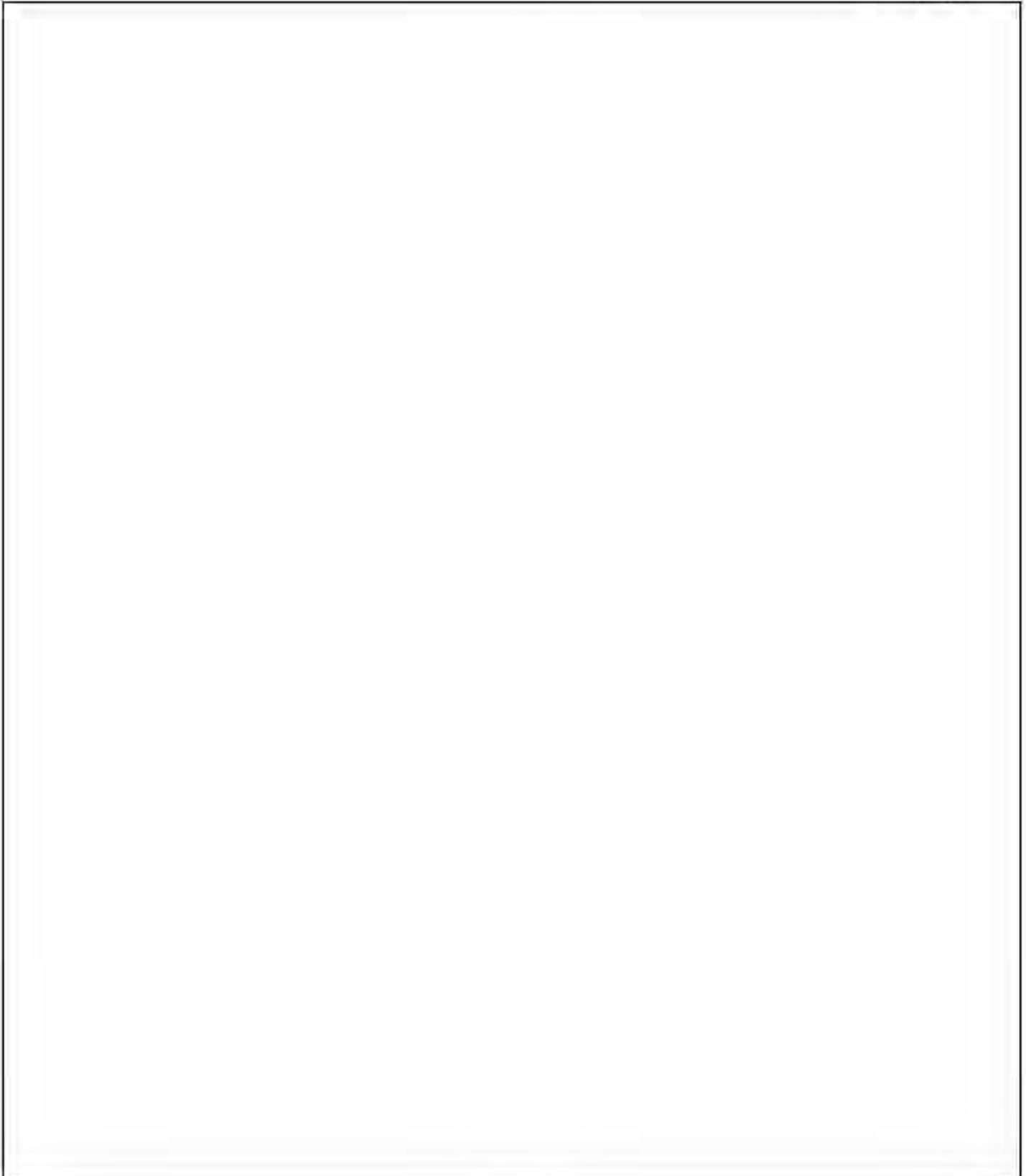
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

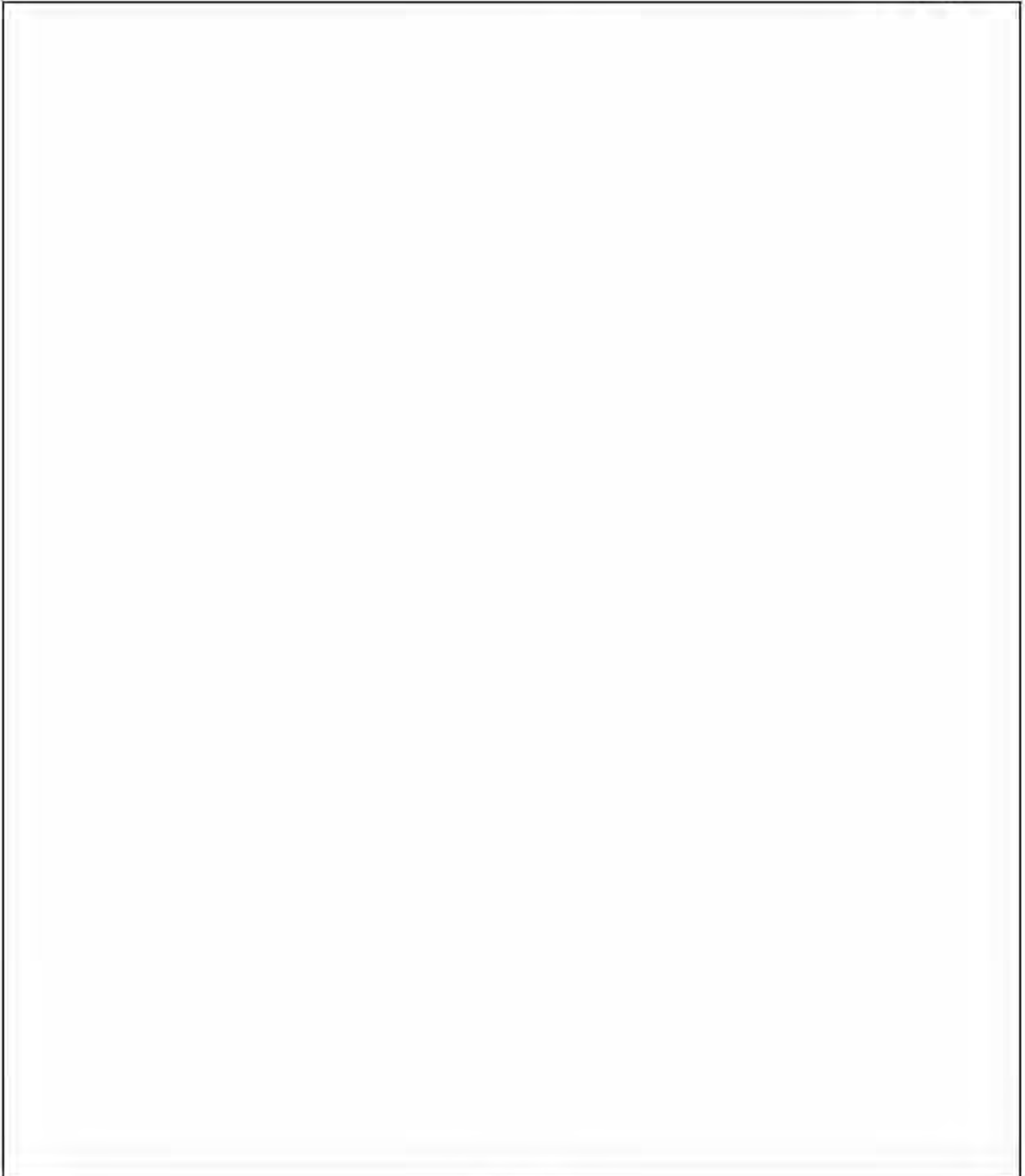
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

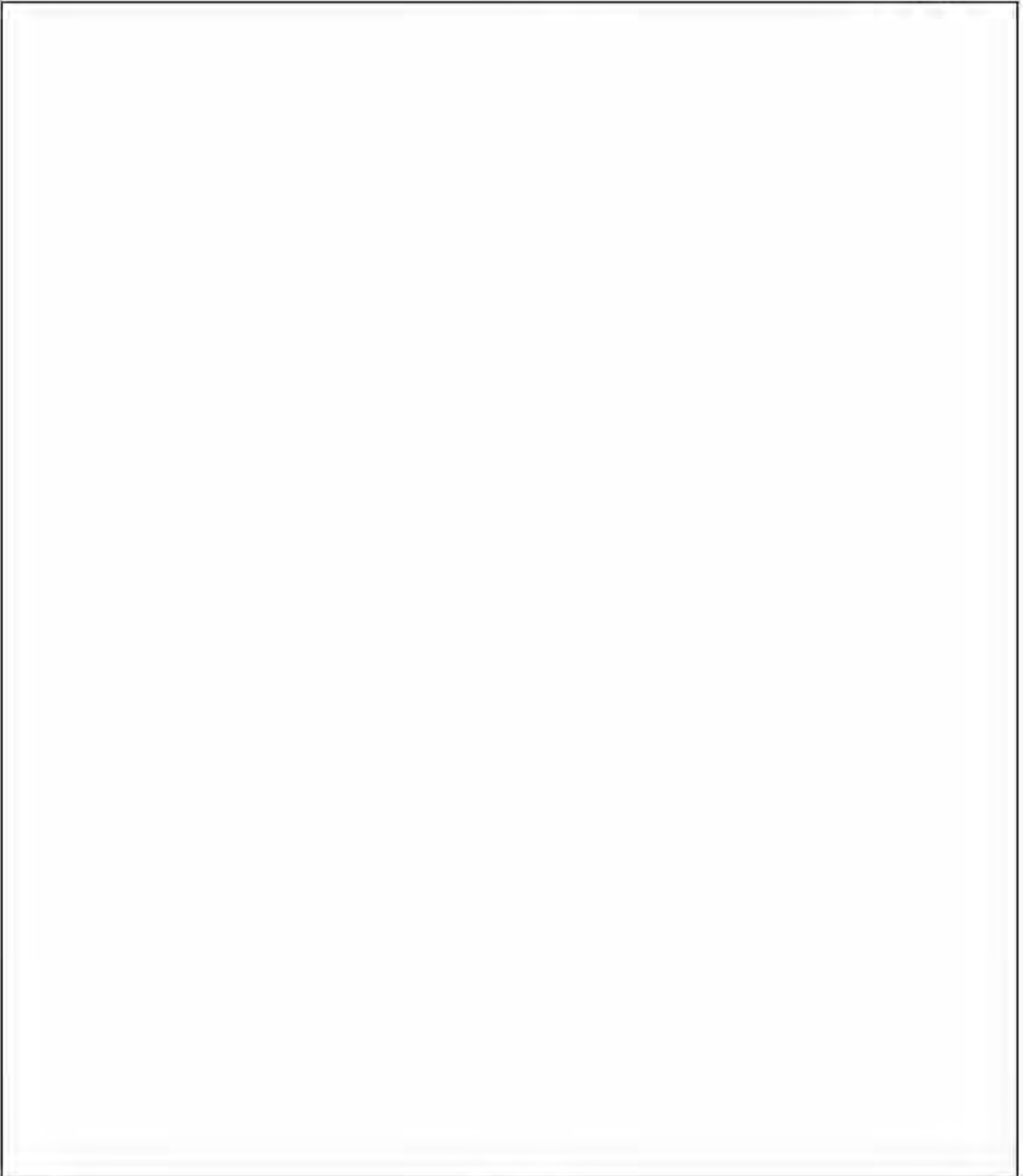
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

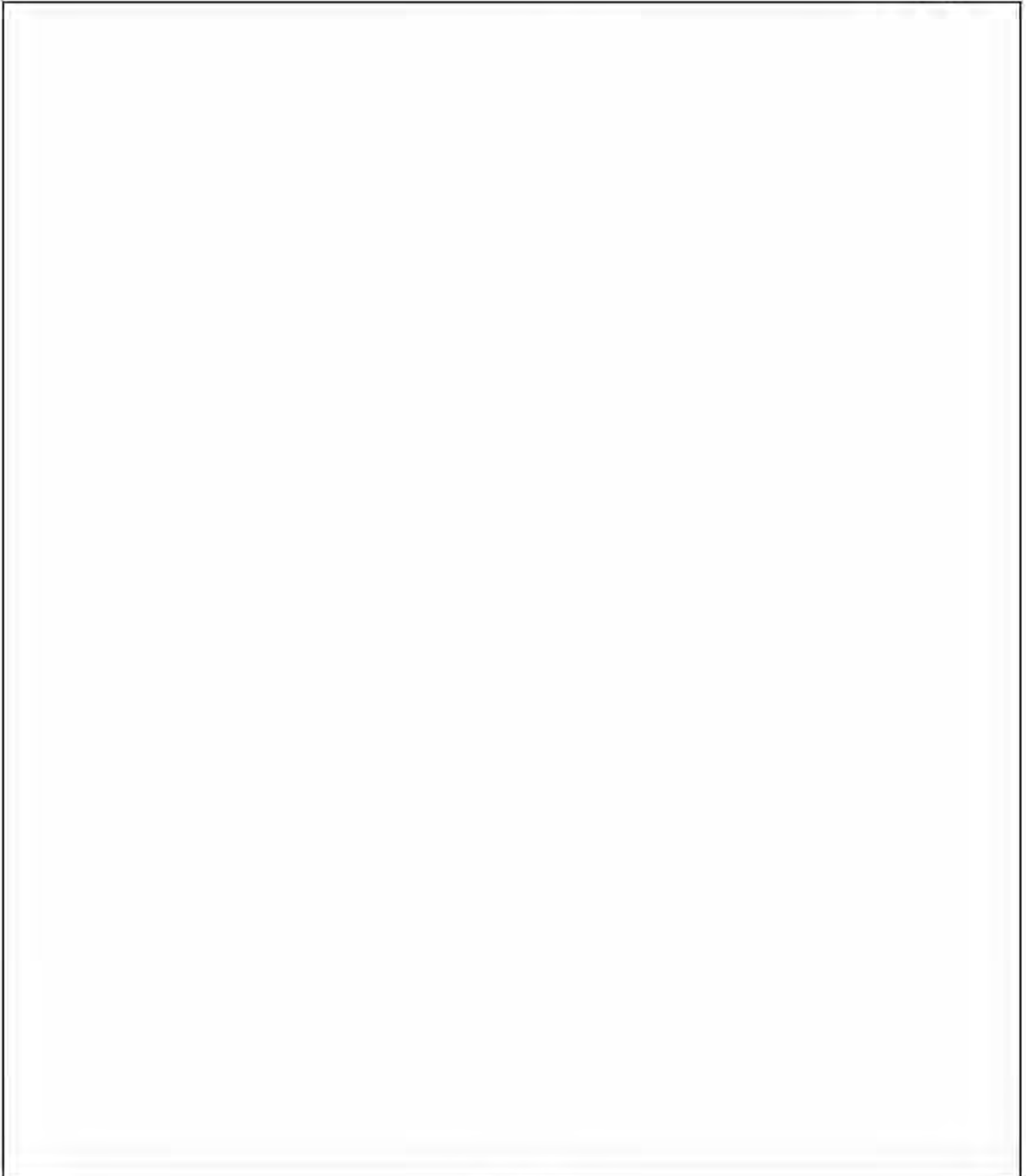
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

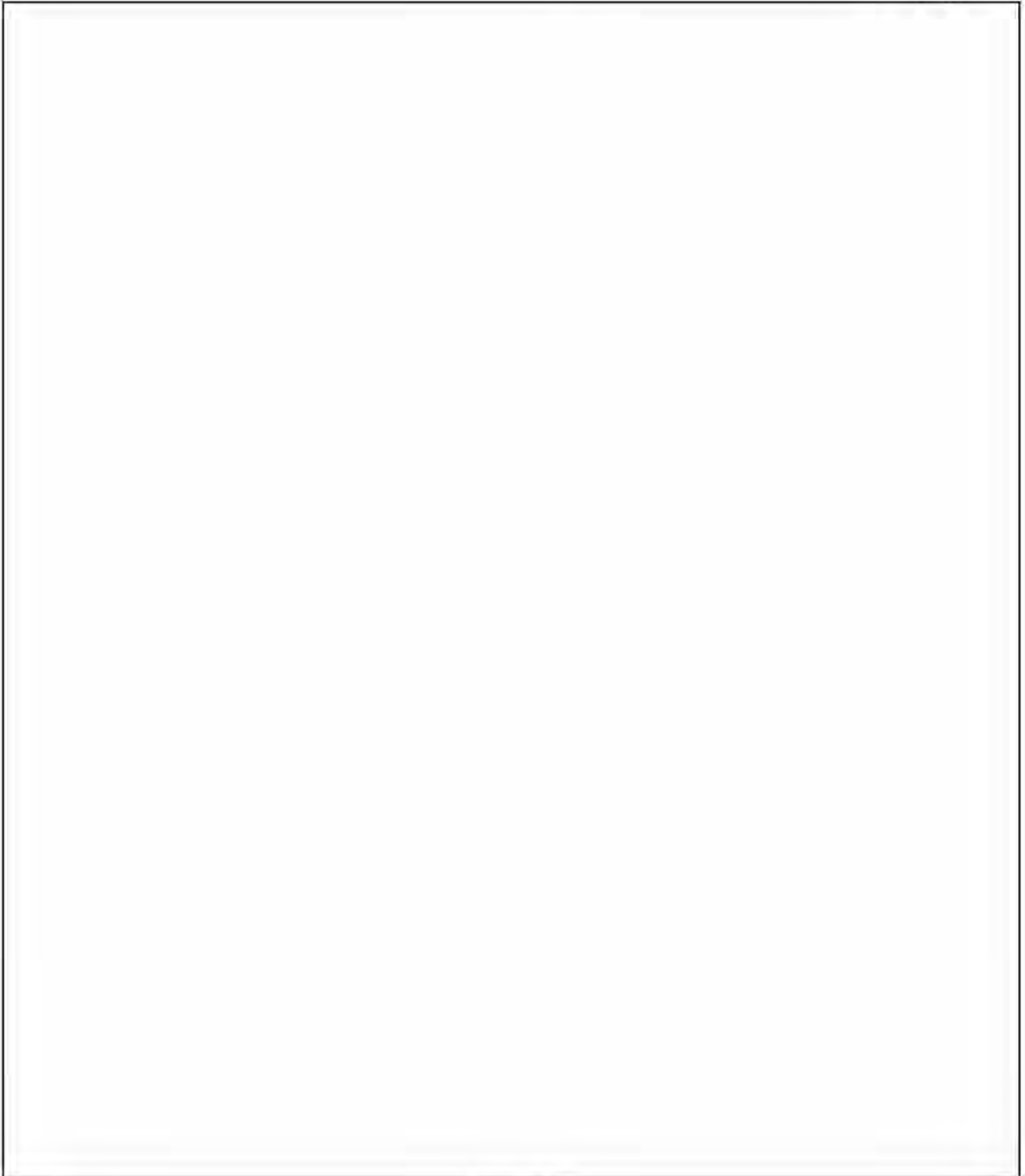
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

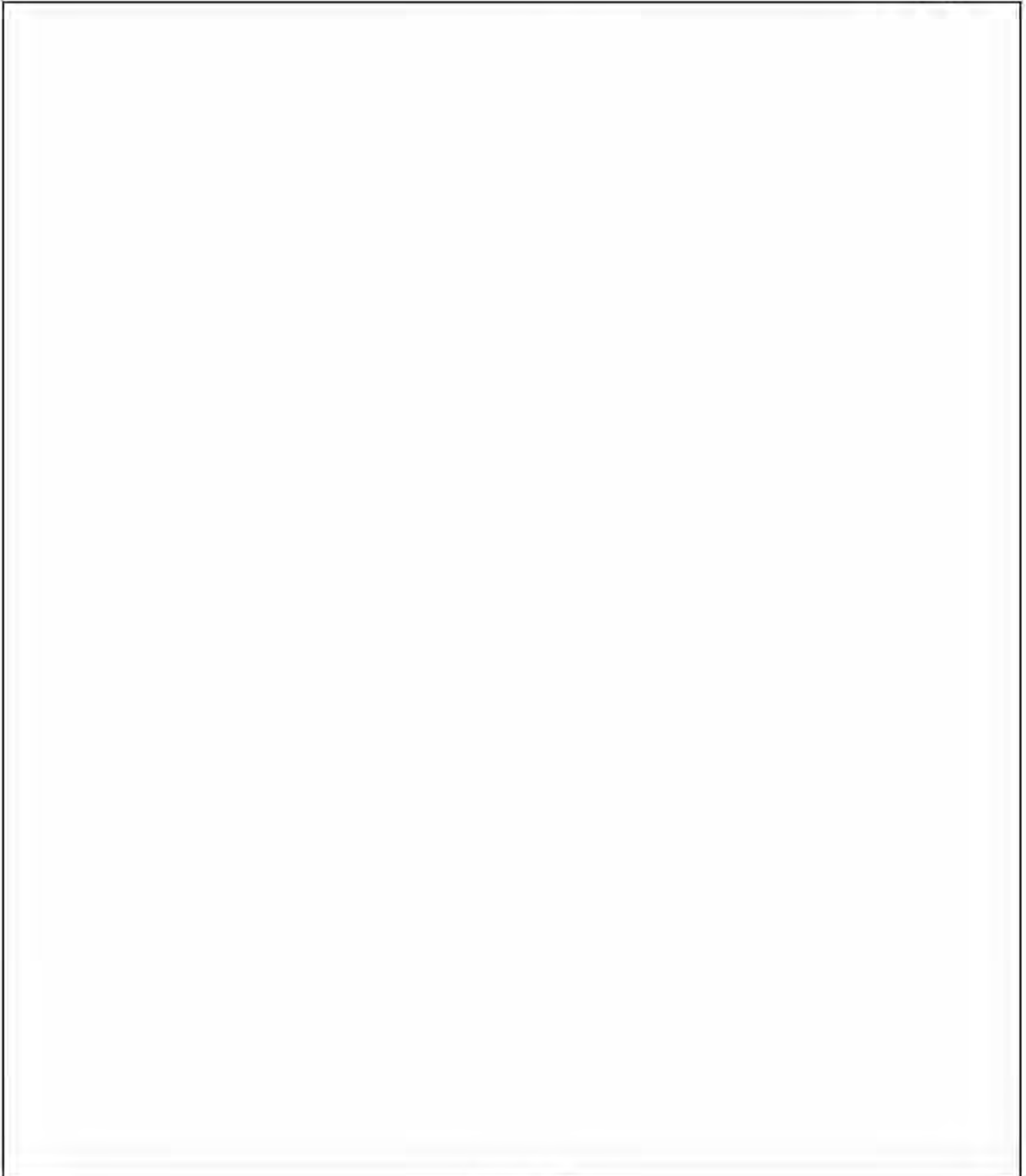
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

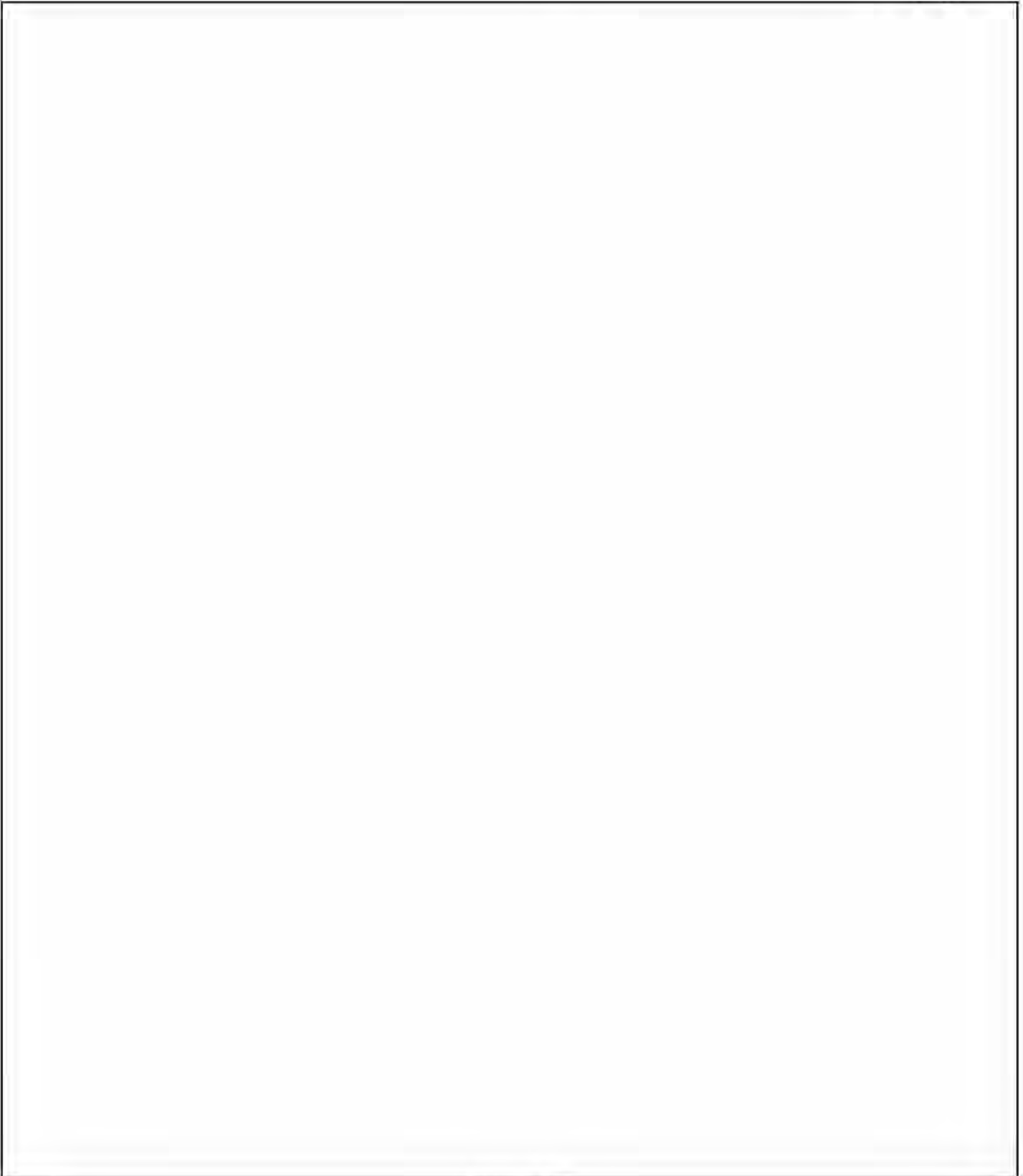
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

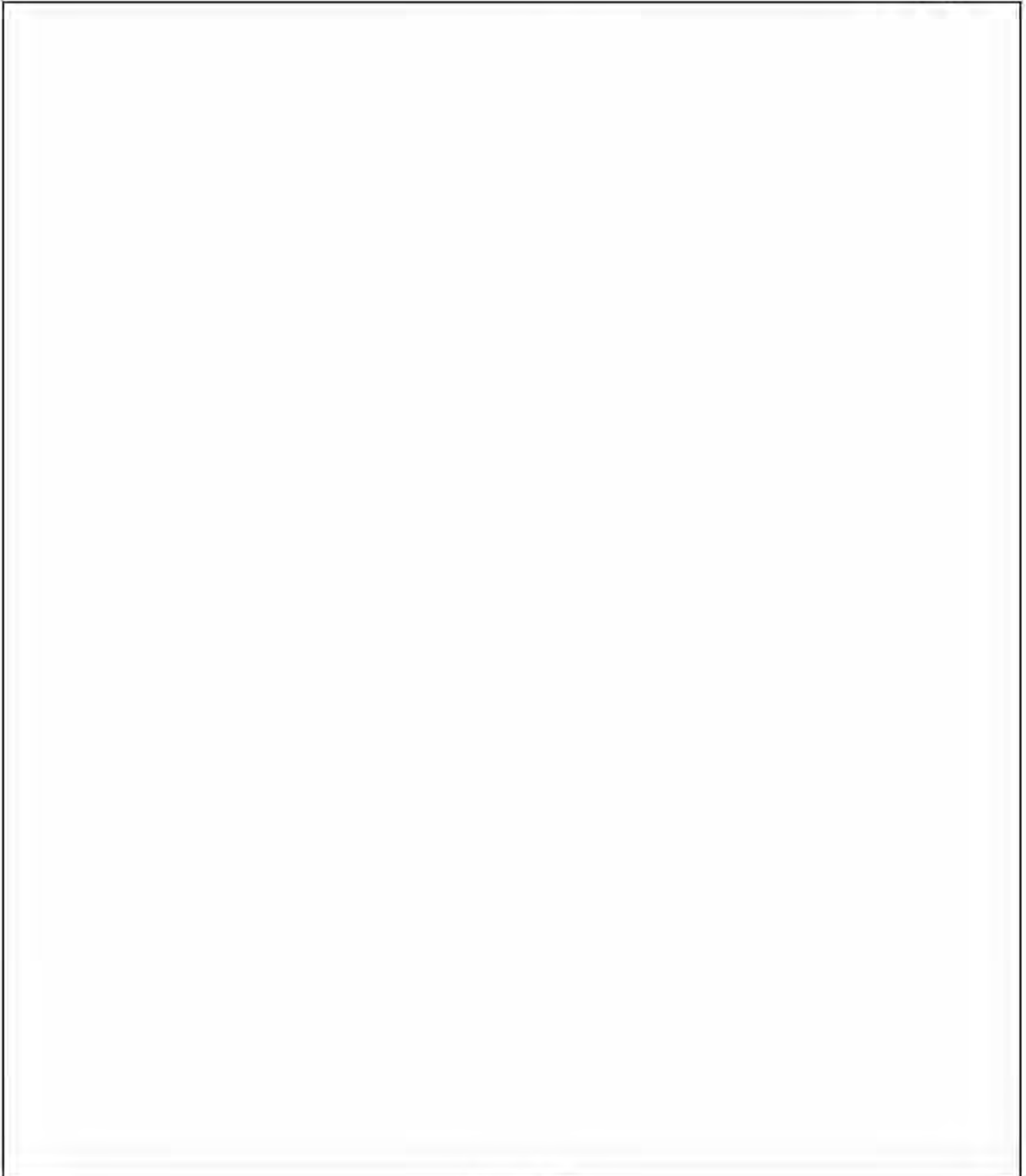
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

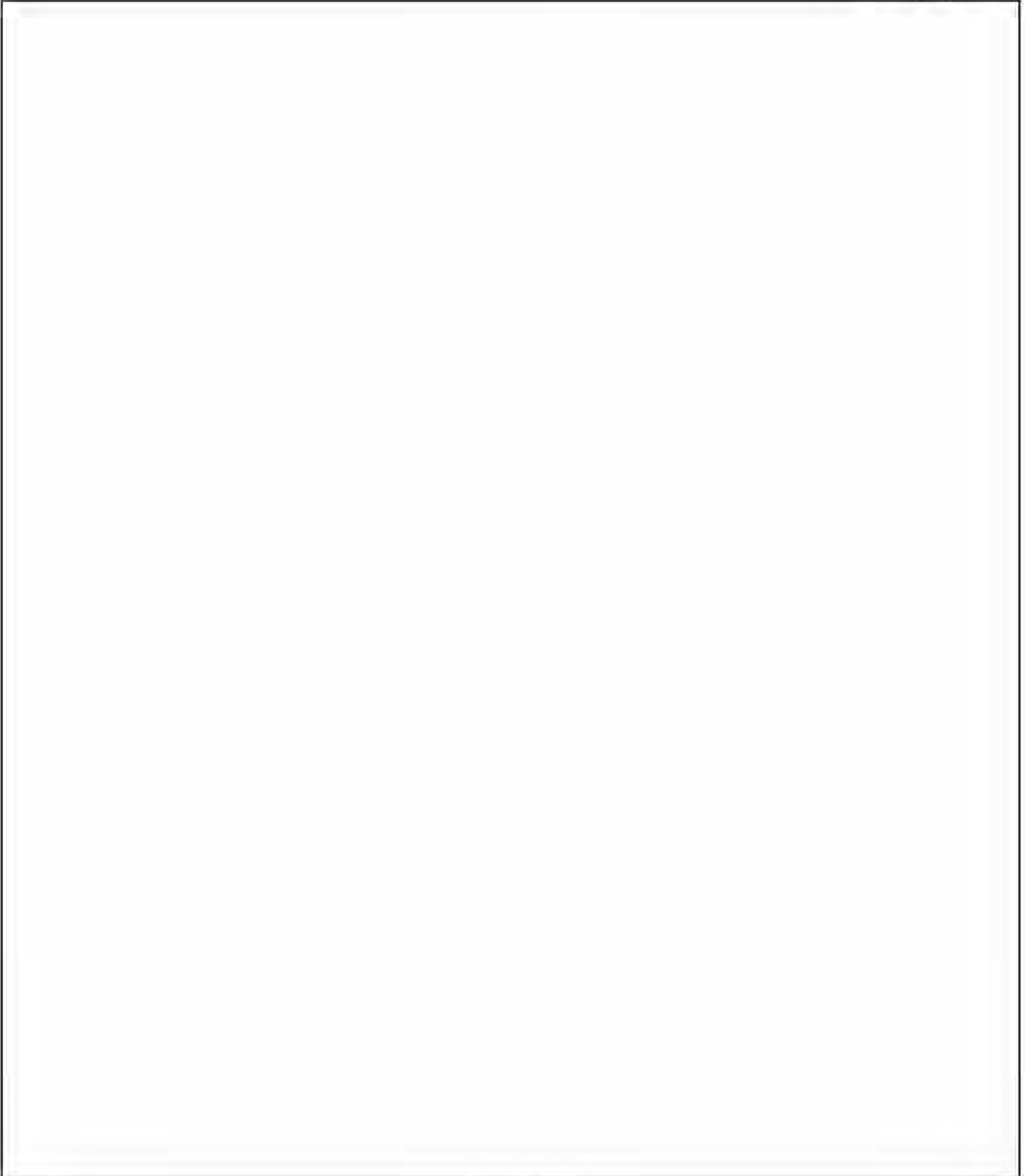
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

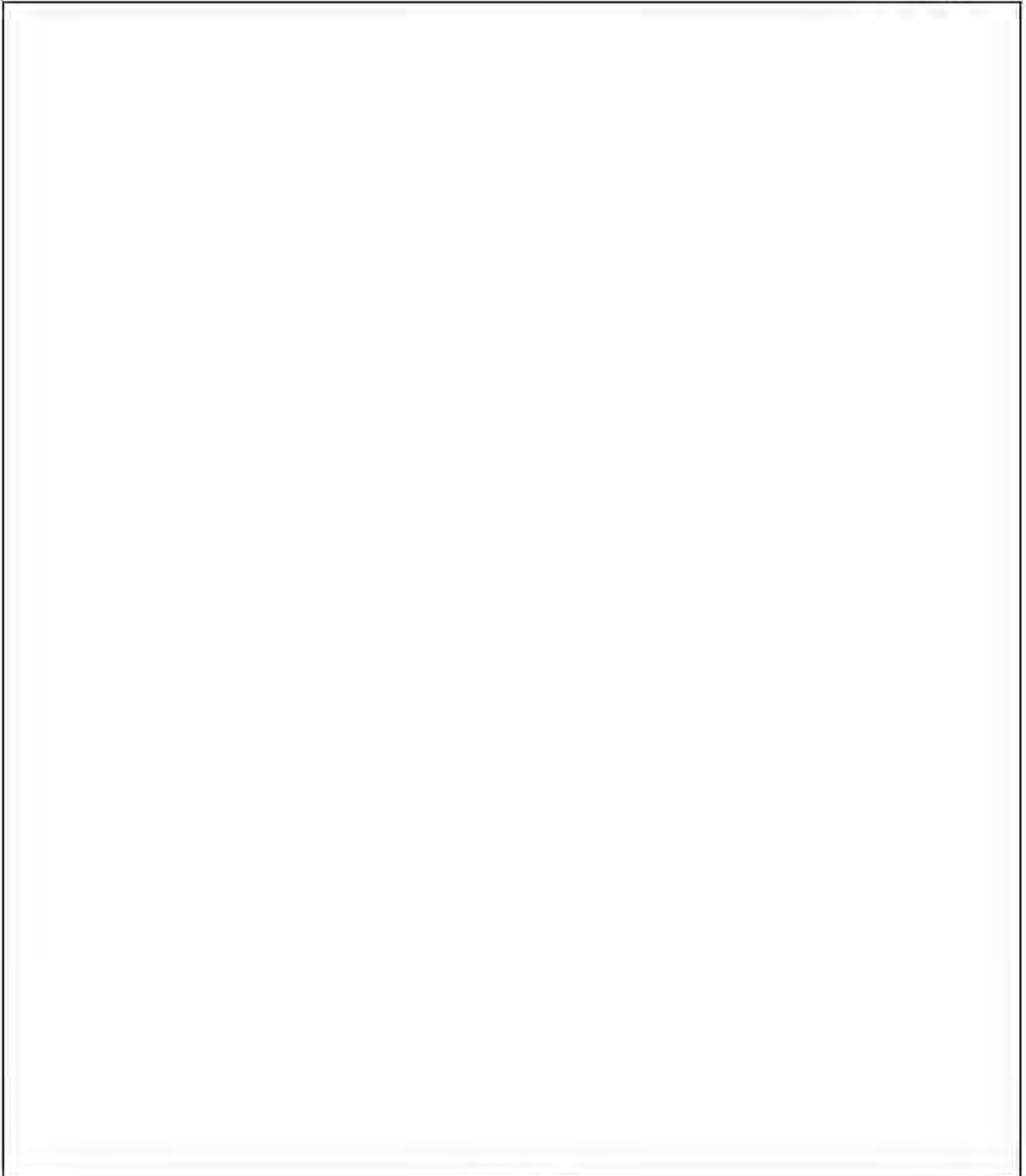
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

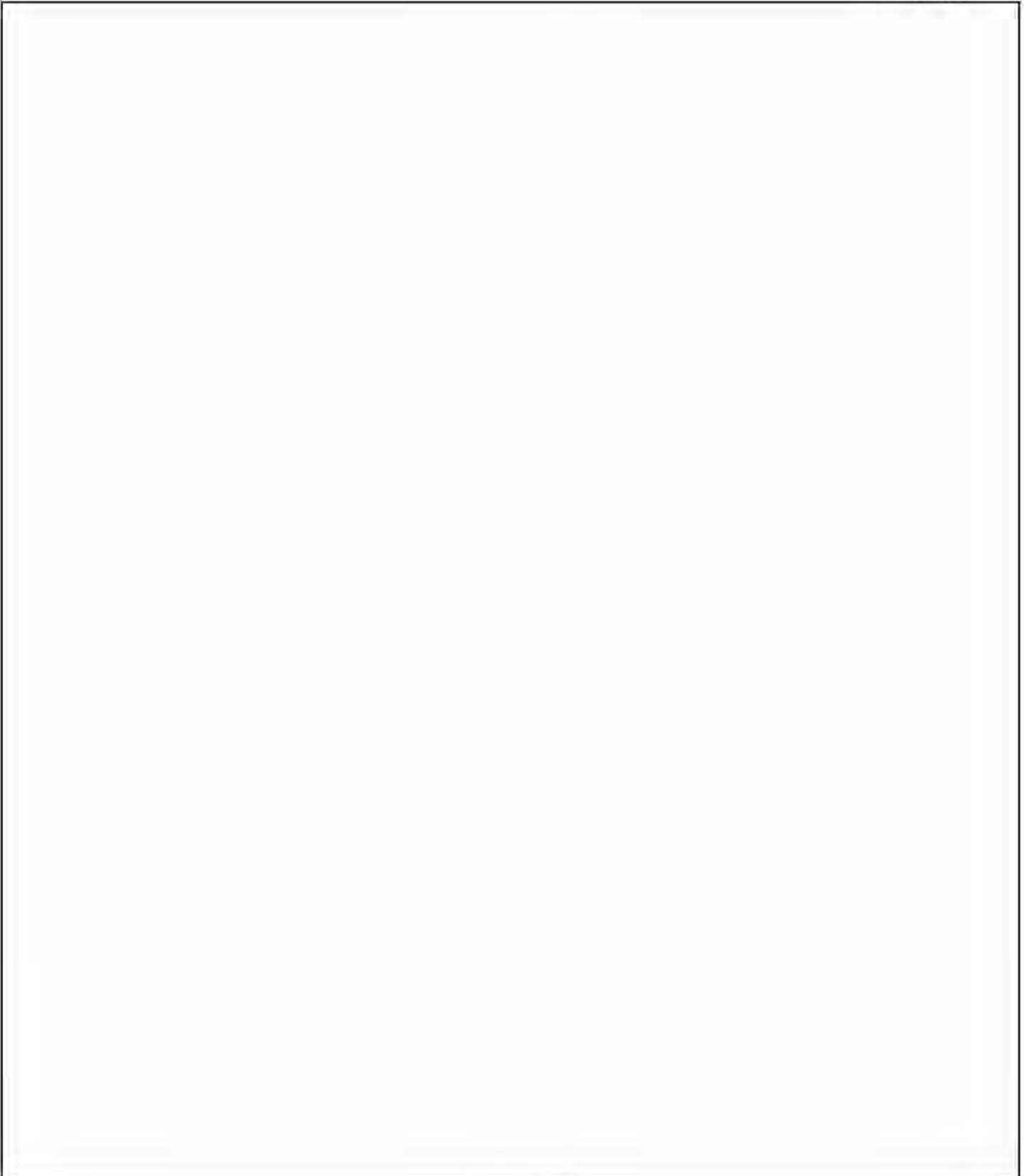
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Asylum Interview Notes

A Number: -802

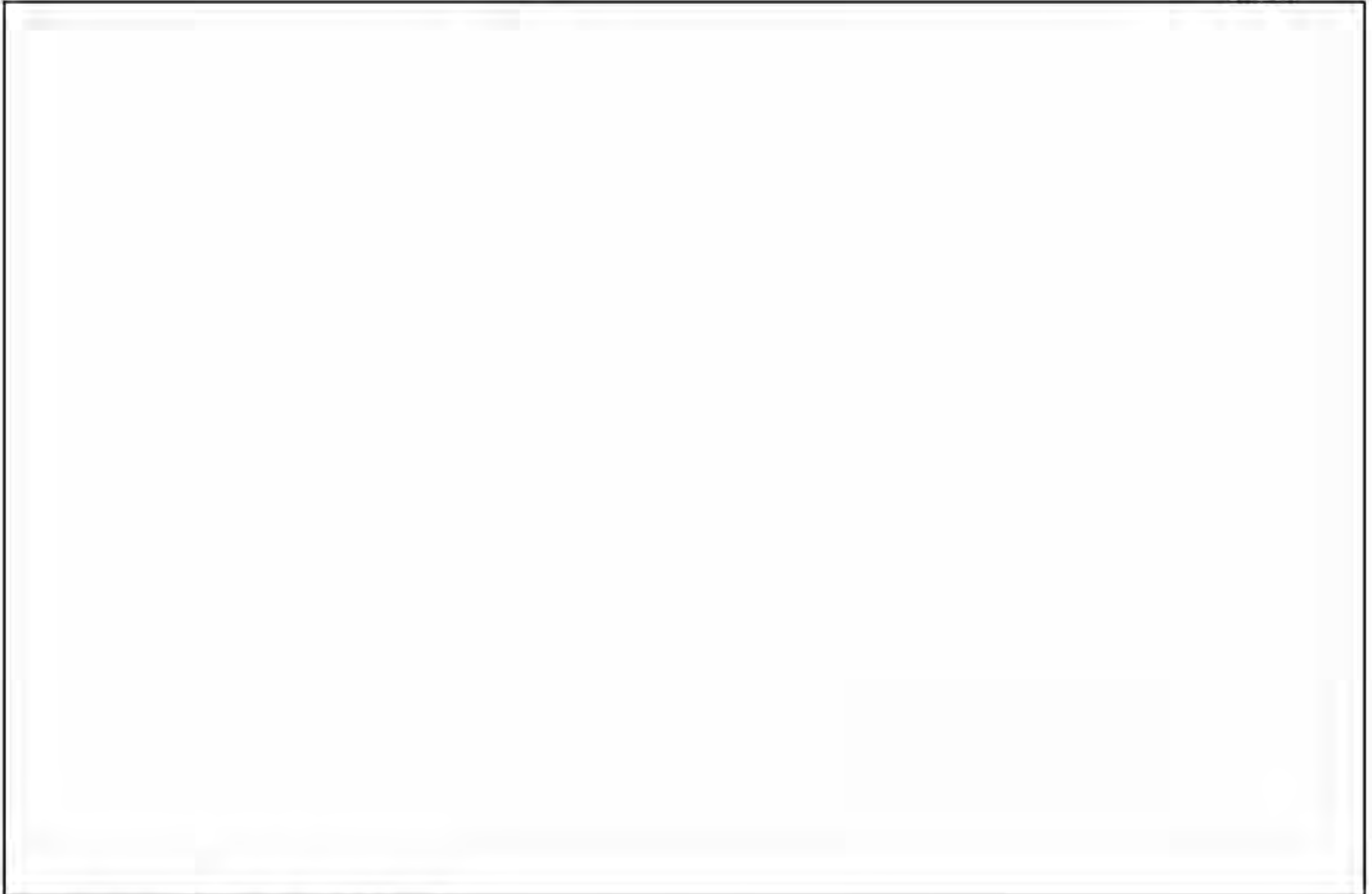
Applicant Name:

Country: Venezuela

Interview Date:

Officer:

(b)(7)(E)



Request for Further Evidence

Passport RFE to be mailed in or submitted at the desk in the next 7 days.

Dismissal of the monitor

Officer	Monitor
Monitor do you have any final corrections or additions?	no
Thank you monitor.	Thank you , have a nice day.
Monitor END TIME:	1:22pm

End of interview notes

HOMELAND SECURITY INVESTIGATIONS

H S I

*INTERVIEWING
TRAUMATIZED CHILDREN &
ADULTS*



(b)(6) (b)(7)(C)



ABOUT HSI

HSI is the principal investigative arm of the U.S. Department of Homeland Security (DHS) responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States.

By targeting transnational threats, both at home and abroad, HSI protects and ensures:



Border
Security



Homeland
Security



Public
Safety



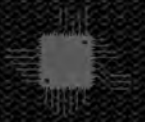
Public
Health



Global
Trade



U.S.
Economy



U.S.
Technology

Homeland Security Investigations (HSI)

(b)(6) (b)(7)(C)

Victim Assistance Specialist

HSI Newark

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

@ice.dhs.gov

- 2009 - present: HSI Victim Assistance Specialist, Collateral Duty Forensic Interviewer
- 2006-2009: Behavioral Health Assistant, Collateral Duty Forensic Interviewer, Dunham US Army Health Clinic,
- 2002-2006: Forensic Interviewer & Child Protection Team Case Specialist for NGO Child Advocacy Centers
- 1997-2002: Behavior Specialist in public school system, ESE classes
- 1993-1997: Social Worker, Family Resource Center



Homeland
Security
Investigations

Law Enforcement Sensitive

Homeland Security Investigations (HSI)

Forensic Interviews

- Fact-finding
- Neutral
- Non-leading
- Non-coercive
- Legally defensible
- Hypothesis testing
- Developmentally appropriate
- Culturally appropriate
- Victim-centered, victim-sensitive



Homeland Security Investigations (HSI)

What is the goal of your interview?

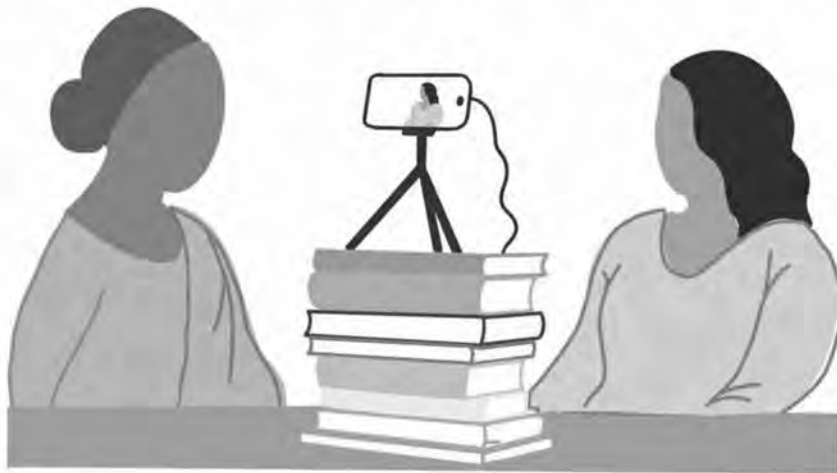
Tell me what really happened,
in your own words, with as
much detail as possible.



Homeland Security Investigations (HSI)

Applicant Friendly Interview Space

Can you arrange seating to reduce the perception of power imbalance?



Homeland
Security
Investigations

Homeland Security Investigations (HSI)

Phased interview protocols

- Introductions
- Guidelines
- **Rapport building**
- Transition to topic
- Clarification
- Closure



Homeland Security Investigations (HSI)

Rapport Building



- Can make or break your interview
- Important for adults and children
- Includes informal developmental/trauma assessment
- Sets up expectations for the rest of the interview
- Narrative event practice begins here

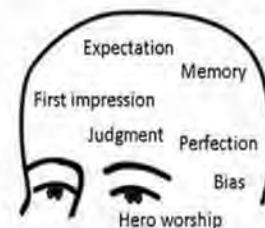


Homeland Security Investigations (HSI)

Trauma

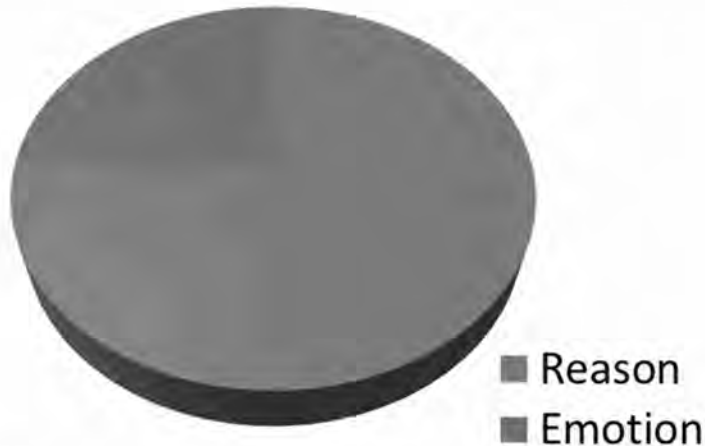
Severe emotional or mental distress caused by an experience or experiences.

- Sleeping disorders/continued nightmares
- Constant flashbacks/intrusion of thoughts
- Extreme tension and anxiety
- Irritability/outbursts of anger
- Non-responsiveness or lack of involvement with the external world
- Prolonged feelings of detachment or estrangement of others
- Memory trouble



Homeland Security Investigations (HSI)

“Normal”



SMALL HIPPOCAMPUS

- Major impact on “story telling” ability
- Difficulty in recounting/recalling events in narrative format
- Reduced ability to combine facts and emotion
- Emotional significance of event not communicated to cortex

Trauma



Homeland Security Investigations (HSI)

Trauma Bonding

Four conditions must be present for the development of Trauma Bonding:

- A person threatens the life of another, possibly through violence.
- The threatened person cannot escape, and thus is dependent on the abuser.
- The threatened person is isolated from others, thereby eliminating any possible alternative relationships and sources of support.
- The abuser shows some degree of kindness to the threatened person.



Homeland Security Investigations (HSI)

Trauma Bonding

Distorted perception of the offender

- Perceives the offender as a positive, supportive person
- Offender's behavior a result of alcohol or drug abuse, marital problems
- Perceives the offender as boyfriend or girlfriend

Distorted perception of self as a victim

- Does not recognize offense as exploitive or violent
- Feels responsible for the abuse
- Feels as though he or she is a partner in the abusive relationship



Homeland Security Investigations (HSI)

Normal Child Development

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



Homeland Security Investigations (HSI)

Developmental Factors Impacting Interview

- Concept of time – ability to sequence events
- Understanding of abstract concepts
- Reality vs Fantasy
- Truth vs Lie
- Attention span
- Source attribution
- Approval seeking



Homeland Security Investigations (HSI)

(b)(7)(E)



Homeland Security Investigations (HSI)

(b)(7)(E)



Homeland Security Investigations (HSI)

Rules / Introduction

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

- Shift the power dynamic of this interaction
 - ✓ The applicant is the expert
- Help applicant understand the parameters of the interview
- Reduce suggestibility in children
- Increase accuracy



Homeland Security Investigations (HSI)

Rules / Introduction



Interviewer should:

- Explain process, roles, and goals
- Answer questions, address concerns
- Repeat as necessary: patience pays off
- Set ground rules of mutual respect
- Empower and engage applicant as active participant



Homeland Security Investigations (HSI)

Rules / Introduction

Emphasize mutual commitments

- ✓ Tell the truth
- ✓ Keep our promises
- ✓ Work together

If something's confusing or unclear, just say so

If something's hard to talk about or remember, just say so

Nothing is 'right' or 'wrong' as long as it's the truth



Homeland Security Investigations (HSI)

Child Applicants & Severely Traumatized Adults

- Correct me if I get something wrong
- If I repeat a question, it's not a trick
- It's okay if you don't know the answer, don't guess
- We are only going to talk about what really happened.



Make a mistake

- *Thank you for correcting me*

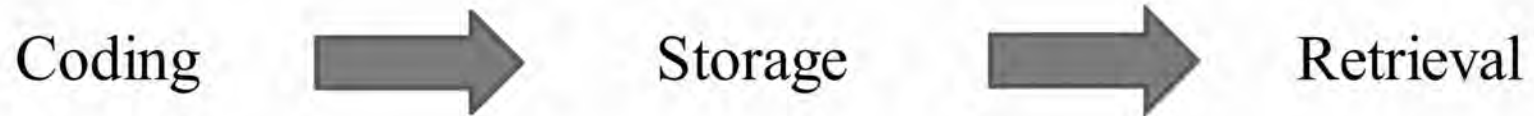
Ask a question for which they can't know the answer

- *It's okay to say you don't know. Remember this isn't a test I know I asked you this already, but I want to make sure I understood correctly*



Homeland Security Investigations (HSI)

Memory



- Young children encode and store less information.
- Young children have more difficulty independently retrieving information.
- Younger children's responses to open-ended questions are more accurate but less detailed, therefore *appropriate follow-up questions* are vital.



Homeland Security Investigations (HSI)

Memory



- Remember impact of trauma on memory.
- Remember impact of trauma on ability to retrieve, recount, sequence.
- It's better to explore / assess potential impact through narrative event practice with a neutral topic than to ask directly if applicant has problems remembering.



Homeland Security Investigations (HSI)

Questioning Techniques

The quality / usefulness / reliability / level of detail of the responses are dependent upon the quality / nature of the questions you ask.



Homeland Security Investigations (HSI)

Open-ended Questions and Narrative Event Practice

(b)(7)(E)



Homeland Security Investigations (HSI)

(b)(7)(E)



Homeland Security Investigations (HSI)

(b)(7)(E)



Homeland Security Investigations (HSI)

(b)(7)(E)



Homeland Security Investigations (HSI)

(b)(7)(E)



Homeland Security Investigations (HSI)

Linguistic Considerations Keep it short! Keep it simple!

- One main idea or concept per sentence
- Use active not passive voice.
- No legal jargon. Use common words and terminology.
- Limit yes or no and forced choice questions. Use your Wh- words.
- Limit use of pronouns.
 - ✓ He/she vs John/Mary or Your father/Your mother
 - ✓ This/That
- Model your language after the applicant's language.



Homeland Security Investigations (HSI)

Building Rapport



The applicant should be talking more
than you are.



Homeland Security Investigations (HSI)

Sensitive Topics and Neutral Stance

Your role is neutral fact-finder



Homeland
Security
Investigations

Law Enforcement Sensitive

Homeland Security Investigations (HSI)

Sensitive Topics and Neutral Stance

Discussing sensitive, potentially triggering topics

-
-
-

(b)(7)(E)



Homeland Security Investigations (HSI)

What if the applicant becomes upset?

- Acknowledge that interviewee is upset, but do not abandon the topic entirely
- Offer activity while continuing to explore the topic at hand
- Go to easier aspect of the topic (where or who)
- Just wait for them to get control
- Let them ask a question
- Take a break

**PLEASE USE
OTHER DOOR**



Homeland Security Investigations (HSI)

Questioning Techniques

Remember your funnel/hourglass techniques

Back out to a more open-ended question as needed

Consider asking directly about what is upsetting the applicant



Homeland Security Investigations (HSI)

So now what?



Homeland
Security
Investigations

Law Enforcement Sensitive

Homeland Security Investigations (HSI)

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/>



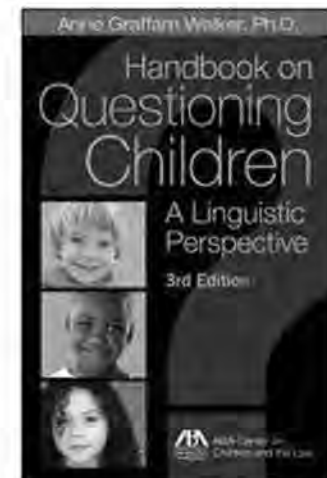
Homeland Security Investigations (HSI)

Resources

Kathleen Coulborn Faller, Ph.D., A.C.S.W., D.C.S.W.
<http://ssw.umich.edu/faculty/profiles/emeritus/kcfaller>

Karen J. Saywitz, Ph.D.
<https://www.semel.ucla.edu/profile/karen-j-saywitz-phd>

Anne Graffam Walker, Ph.D.
Julie Kenniston, MSW, LSW
[Handbook on Questioning Children](#)



Homeland Security Investigations (HSI)

Resources

Patti Toth, J.D.

[Washington State Child Interview Guide](#)

Thomas D. Lyon, J.D., Ph.D

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

Sonja P. Brubacher, Ph.D.

<http://investigativecentre.org/>

David La Rooy, MSc, Ph.D.

<http://www.ibic.org.uk/david-la-rooy>



Q & A



PROTECTING THE HOMELAND WITH HONOR, SERVICE, AND INTEGRITY



Challenges to Eliciting Testimony from Survivors of Domestic, Gender-based, and Sexual Violence



Roadmap



U.S. Citizenship
and Immigration
Services

- **Effects of Trauma to consider in eliciting testimony**
- **Challenges to eliciting testimony**
- **Planning ahead to overcome challenges**
- **Credibility and trauma**
- **Building rapport**
- **Resources**



Effects of Trauma during interviews



U.S. Citizenship
and Immigration
Services

- **Possible challenges remembering events/details**
- **Defensive techniques, PTSD may impact interview: denial, avoidance**
 - Could appear as uncooperative or evasive, impacting perception of credibility
 - May minimize events, impacting testimony on seriousness of harm
 - Shut down, appear to lose interest
- **Irritability, tension, confusion**

FOUO



Challenges to Eliciting Testimony



U.S. Citizenship
and Immigration
Services

- **Distrust of legal system and law enforcement**
- **Fear of judgement**
- **Intersecting minority identity**
- **Uncooperative behavior or hostility**
- **Linguistic challenges**
- **Takes time to develop trust**
- **Ability to testify in detail about harm may be hampered**



Challenges to eliciting testimony, cont.



U.S. Citizenship
and Immigration
Services

- **High levels of trauma**
- **Highly personal – often rape and sexual degradation**
- **May not want to speak with someone of a different sex**
- **Multiple claims**
- **Assessing credibility when discussing traumatic and very personal events**
- **May demonstrate variety of emotions – ex. laughter, crying**
- **Substance abuse or risky behaviors**



Considerations for survivors



U.S. Citizenship
and Immigration
Services

- **Cultural considerations**
 - “Everyone is treated this way, it’s normal”; Gender norms
- **Reassure the applicant we are not judging them or their experiences**
- **Reassure applicant that you will keep what they tell you private**
 - Many potential concerns, including fear of abusers
- **Speak neutrally about perpetrator – may be a family member**



Considerations, continued: LGBTQI+



U.S. Citizenship
and Immigration
Services

- **Face stigma, prejudice, violence, and harassment**
- **Gender norms**
- **When assessing credibility, consider that applicants may have:**
 - **Lived in a place where dangerous to be LGBTQI+**
 - **Extensive past experience with varying degrees of harm**



Plan ahead to overcome challenges



U.S. Citizenship
and Immigration
Services

- **Set the tone for an interview that encourages the applicant to open up**
- **From introduction throughout the interview and the conclusion**
- **Review information submitted by experts who have met with the applicant**
- **If difficulties eliciting sufficient information:**
 - Consult with available witnesses
 - Be familiar with COI and relevant research on this topic
 - Know types of questions useful in eliciting testimony and those to avoid



Consider question types in advance:

Open-ended



U.S. Citizenship
and Immigration
Services

- **“Walk me through what happened the day of the attack”**
- **“Talk through what happened the day of the attack”**
- **“Can you tell me about...?”**
- **“Explain what was said”**
- **“Tell me about the events leading up to the attack”**
- **“What did you do after the attack?”**
- **“Describe what you mean by the word ‘discriminated’”**

FOUO



Consider the environment you create



U.S. Citizenship
and Immigration
Services

- **Give the applicant time to describe events while you just listen**
- **Let the applicant speak at the applicant's own pace**
- **Ask about experiences of others who were with applicant first**
- **Loop back to ask about applicant's experiences**
- **Be accurate – “rape” is not “sex”**
- **How do applicants identify? “Victim,” “survivor,” neither, both?**
- **Carefully monitor your tone of voice, especially when remote**



Rapport is Key



U.S. Citizenship
and Immigration
Services

- **Always treat the applicant with dignity and respect**
- **Thank the applicant for talking with you**
- **Let the applicant “teach” you about their experiences**
- **Prepare the applicant for what happens next during the interview**
- **Sensitivity when applicant is experiencing different emotions**
- **Offer breaks or water**



Domestic Violence PSGs – BIA



U.S. Citizenship
and Immigration
Services

- **Matter of A-R-C-G- (2014) (overruled)**
- **“Married women in Guatemala who are unable to leave their relationship”**
- **Matter of A-B- (2018)**
 - “El Salvadoran women who are unable to leave their domestic relationships where they have children in common”
- **USCIS Guidance**
- **Grace injunction (2018)**



Domestic Violence PSGs, cont.



U.S. Citizenship
and Immigration
Services

- **Remember that Matter of A-B- did not address the other DV PSG formulation mentioned in the lesson plan, namely (Nationality) women viewed as property because of their position within a domestic relationship.**
- **Child DV claims: *Ming Li Hui v. Holder*, 769 F.3d 984 (8th Cir. 2014).**



Is there a domestic relationship?



U.S. Citizenship
and Immigration
Services

Not a member

- *Rivas-Duran v. Barr*, 927 F.3d 26(1st Cir. 2019)
- *Cardona v. Sessions*, 848 F.3d 519 (1st Cir. 2017)



Questions to avoid:



U.S. Citizenship
and Immigration
Services

- **Do you have any problems remembering/memory issues?**
- **Why didn't you have someone accompany you on the day of the attack?**
- **How is it possible you do not know who raped you?**
- **Why did you continue to be with him/her?**
- **Other questions that may be perceived as blaming the victim**
- **Questions about the “worst” harm**



Credibility and Trauma



U.S. Citizenship
and Immigration
Services

- **Complex trauma can cause difficulty/inability to testify with detail given the physiological impacts of the harm.**
- **Does it appear that the applicant understood your questions?**
- **Did you ask the applicant about their understanding?**
- **Is the remainder of the claim sufficiently detailed? Consistent? Plausible?**





Credibility and Trauma, continued

- **Compare explanation to other testimony and submitted documents.**
- **Consider applicant's particular circumstances.**
- **Give the applicant the opportunity to explain.**
- **You must articulate why the explanation is or is not reasonable.**
- **Consider topic that a credibility concern relates to**
 - **Ex: Is inconsistent testimony related to a political opinion unrelated to trauma, or is it about traumatic event?**
- **Consider credibility concerns in the totality of the circumstances.**



Resources



U.S. Citizenship
and Immigration
Services

- **Asylum Division Lesson Plans**

Children's Claims

Interviewing – Eliciting Testimony

Gender Related Claims

Interviewing – Survivors of Torture

LGBTI Claims

Trafficking

- **CDC** Women and Children

- **CDC** LGBTQI+

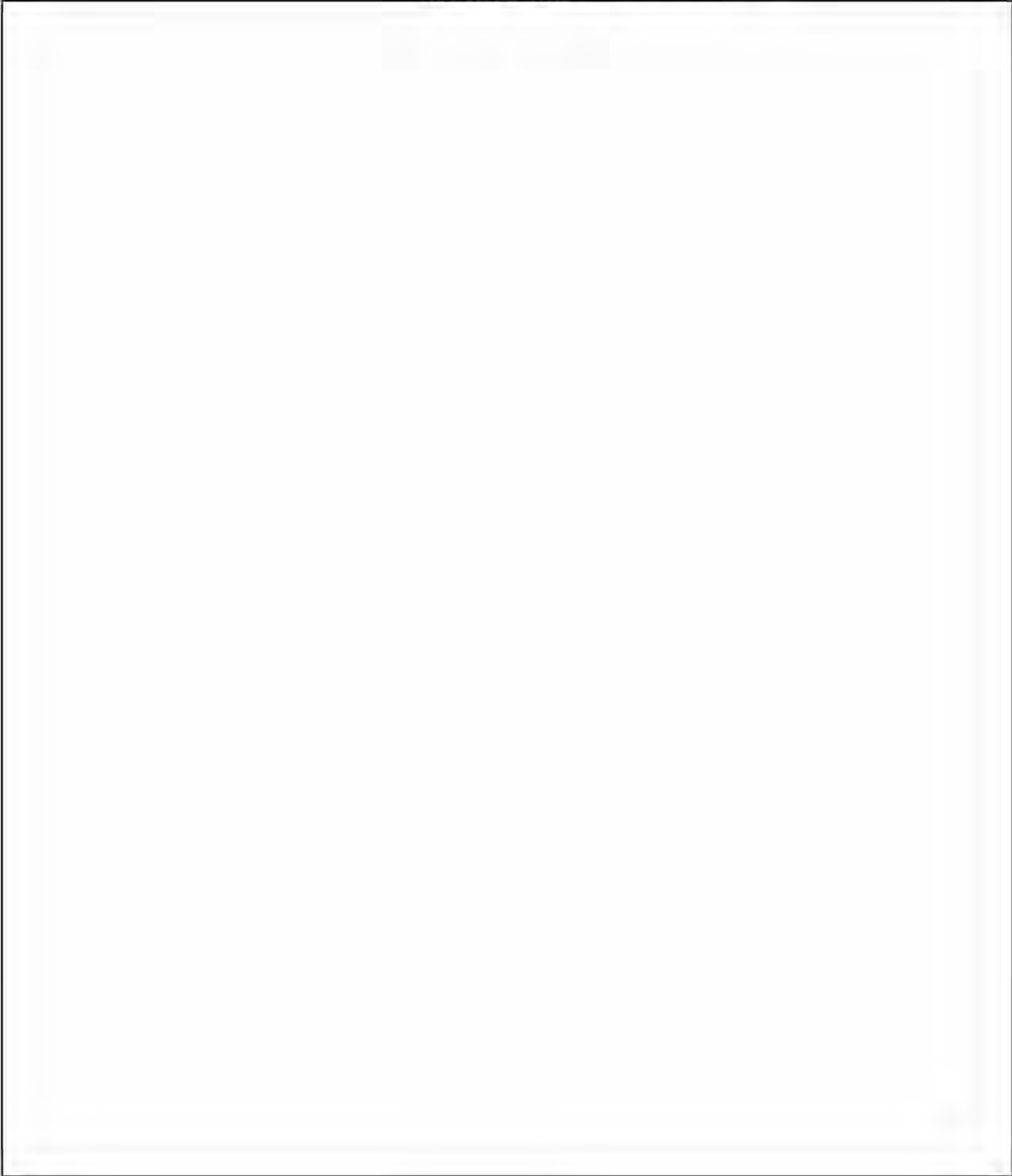
- **The Blue Campaign**

- **World Health Organization**

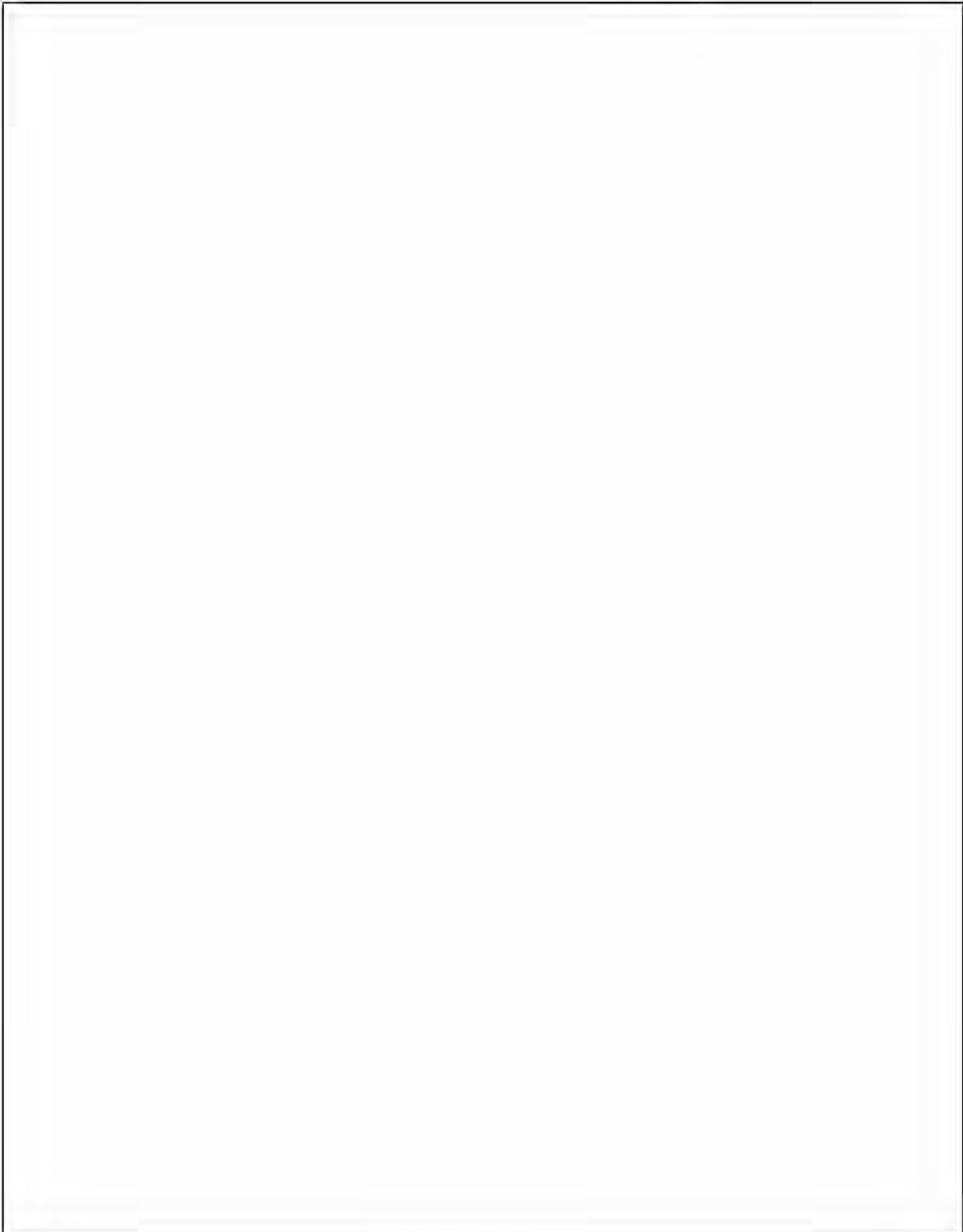
- **UN Women**

- **Center for Gender and Refugee Studies**

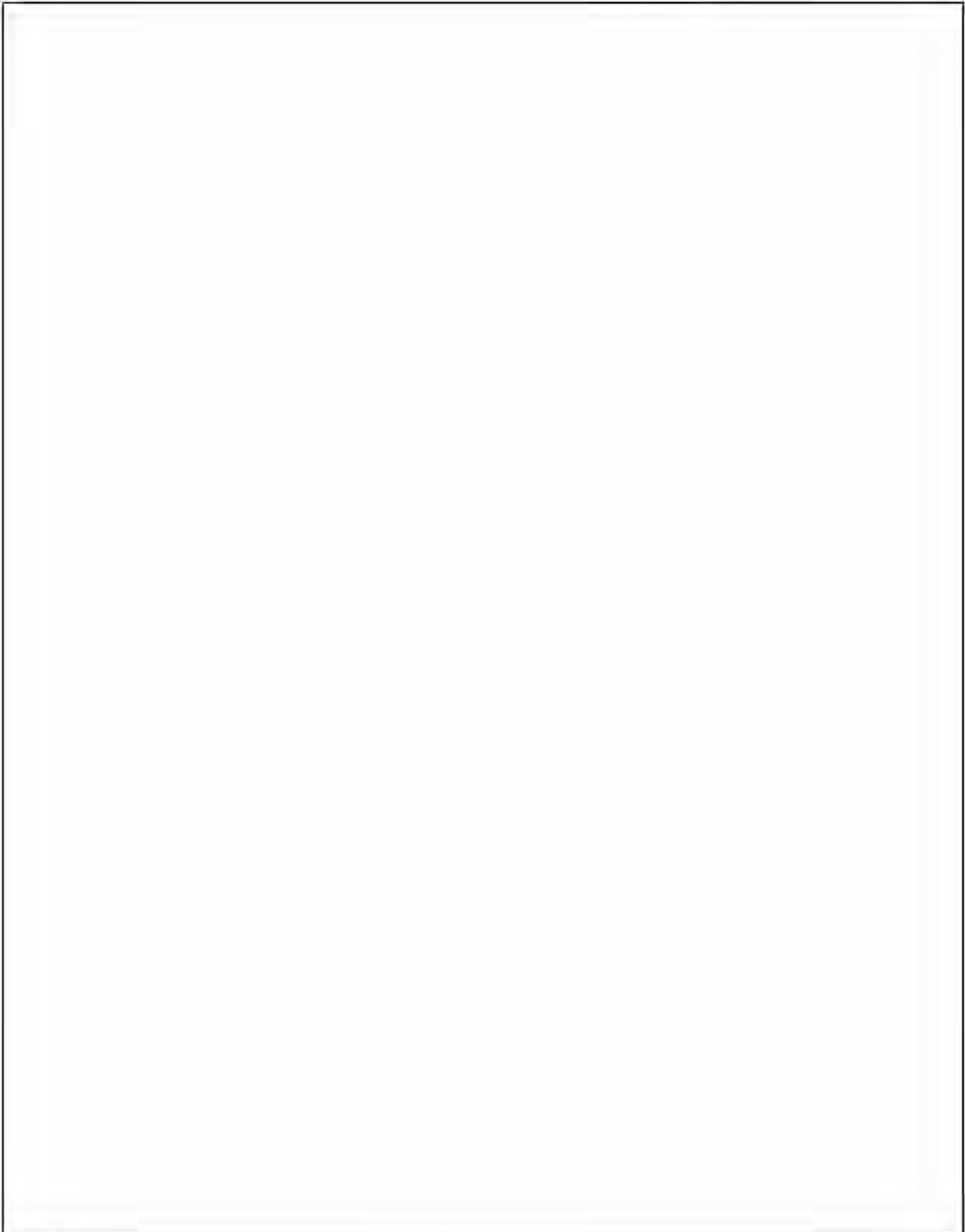




(b)(7)(E)



(b)(7)(E)



(b)(7)(E)

TRIG PRACTICAL EXERCISE FACILITATOR INSTRUCTIONS:

A large, empty rectangular box with a thin black border, occupying most of the page below the header. It is intended for the facilitator to write their instructions for the trigonometric practical exercise.

[Redacted]

(b)(6)

From: Asylum-IDEA
Sent: Friday, July 2, 2021 9:50 AM
To: RAIO - Asylum Field Office Managers; RAIO - Asylum HO; RAIO - Asylum Field Office Staff
Cc: (b)(6) [Redacted] Mura, Elizabeth E; [Redacted]
Subject: address changes in Global and ASC appts

Good morning,

The Global team would like to announce an update to how Global interacts with NASS and ASC appointments after an applicant's address is changed in Global. In the past, it was necessary to update an applicant's address in both Global and NASS so that the ASC Appointment Notice would be sent to the correct address. Although correcting the address in both systems would help if an appointment notice had not yet been sent out, it would not help if the ASC notice had already been sent out, and the applicant never received it because of an address change.

With the changes that have been made, when a staff member enters an address change in Global, the address will now be automatically updated in NASS for that specific biometric appointment request. This action will also cancel the existing future ASC appointment, if one exists, and puts the applicant back into the scheduling queue. A new ASC Appointment Notice will be sent to the newest address on file once the applicant is selected to have their biometrics taken. This update will apply to affirmative, defensive, and NACARA applicants who have not yet completed their required biometric capture when the address change is entered in Global.

For affirmative and NACARA applicants who move **prior to an ASC appointment being scheduled** you will now see this in Global Case Log:

Applicant Info Modified	Residential Address modified from [Redacted]	06/25/2021 09:17:16 AM
	(b)(6)	
Biometric Appointment Address Modified / NASS Update Attempted	[Redacted]	06/25/2021 09:17:16 AM

For affirmative and NACARA applicants who move **after their ASC appointment was scheduled** you will now see this in Global Case Log:

Case Log

EVENT	CLOCK STATUS	DATE	PERF	
Dependent Biometric Appointment Notice Sent	04/18/2021 12:00:00 PM VIEW PDF	<div style="border: 1px solid black; padding: 5px; width: fit-content;"> NASS sends the notices to the new address and schedules the appointment at the new ASC. </div>	03/31/2021 04:20:03 PM	Global
Biometric Appointment Notice Sent	04/19/2021 09:00:00 AM VIEW PDF		03/31/2021 04:19:03 PM	Global
Biometric Appointment Created	00000 AASDFAAA		03/31/2021 04:05:03 PM	Global
ASC Appointment Cancelled	Cancelled at 03/31/2021 04:05:01 PM	<div style="border: 1px solid black; padding: 5px; width: fit-content;"> Once NASS cancels the previously scheduled appointment, a new appointment is made with the new address. </div>	03/31/2021 04:05:03 PM	Global
Biometric Appointment Created	FASBF AAADDFFF		03/31/2021 04:05:03 PM	Global
Requested ASC Appointment be Cancelled (Address Changes)	Principal and Dependent appointments need to be cancelled		03/31/2021 04:04:22 PM	
Requested ASC Appointment be Cancelled (Address Changes)			03/31/2021 04:04:22 PM	
Applicant Info Modified	City modified from HHH to NEW CITY		03/31/2021 04:01:22 PM	

This appears in the Checks card:

(b)(6)

Biometric Appointment

STATUS

Pending Cancellation 03/25/2021 | 13 days

RESULT

Appointment Scheduled 04/12/2021 Not yet returned

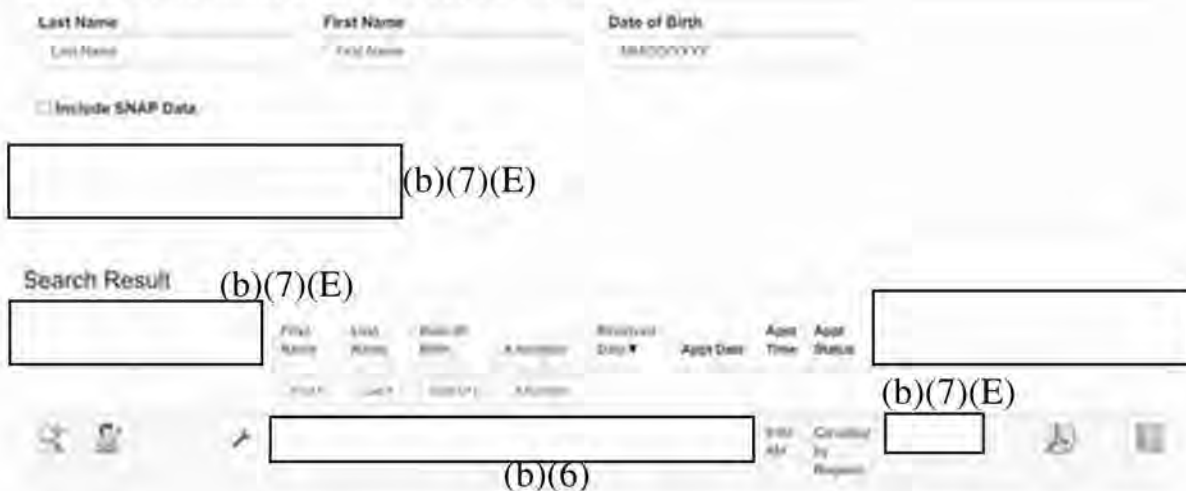
As you can see, Global cancels **any** existing future scheduled appointment so that the address can be updated. The applicant will receive a new notice when their appointment is scheduled for their most recent address. If the appointment has not been scheduled yet, Global will not attempt to cancel the appointment – it will only update the address in NASS so the notice is sent to the correct address. When Global receives the notice that NASS has cancelled the appointment it:

- 1) Puts the case state into ASC APPOINTMENT CANCELLED,
- 2) CANCELS THE ASYLUM INTERVIEW (if the applicant had an upcoming interview), updates the interview outcome to Asylum Requested Reinterview, and
- 3) Requests a new appointment with the new address so it can be put back into the NASS pool.

PLEASE NOTE: If a biometrics appointment gets cancelled by this process, **no automated cancellation notices are sent out**, so it is necessary for asylum office staff to identify these cancellations and **contact the asylum applicant to inform the applicant that the ASC appointment and asylum interview (if scheduled) have been cancelled.** The cancellation may occur very close in time to the scheduled ASC appointment and/or asylum interview date. Although an interview cancellation notice is sent when an interview is cancelled, it may not arrive to the applicant in time prior to the scheduled interview date.

This entire process is expected to occur within a matter of minutes. This cancellation **applies to all changes of address**, even if the move does not affect the location of the ASC.

Below is a screenshot of how this appears in NASS:



We have also created an “Appointment & Interview Cancellations” dashboard to assist in identifying applicants that had appointments and/or interviews cancelled as a result of the address change, the link can be found [here](#). This dashboard will be most helpful in identifying applicants that had an upcoming biometric appointment and interview cancelled in Global as a result of an address change. The bullets below identify how the dashboard should be used and some of its limitations.

- **Dashboard identifies applicants who had a biometric appointment canceled.** All applicants identified in the dashboard had a biometric appointment cancelled, and this is reflected in the “Case State” column. When a biometric appointment is cancelled in this manner, Global will quickly make a new biometric appointment request, and the date of that request will be appear in the “Biometric Appointment Requested” column. As of now, the dashboard will only include cases that had appointments requested on 3/1/2021 or later (this date will be updated on Tuesday to 7/6/2021).
- **Interview was canceled if “Interview Outcome” Column indicates “Asylum Reschedule Request.”** To identify applicants that had their interviews cancelled (as a result of a cancelled biometric appointment), staff should refer to the “Interview Outcome” column. Within this column, the term “Asylum Reschedule Request” signifies that the applicant had an interview that was cancelled/rescheduled.
- **The biometric appointment cancellation date will not appear in this dashboard.** Users will need to refer to the Global case log and possibly NASS in order to identify the date of the cancelled appointment. We expect to make future updates to this dashboard.
- **The dashboard should not be the sole basis for identifying applicants that have had scheduled biometrics appointments or interviews cancelled as a result of an address change.** Whenever a staff member makes an address change on the entry tab, they should refer to the Biometric Appointment card to identify if the principal applicant and any dependents had a scheduled appointment that was cancelled, and if so, proceed to contact the applicant informing them of their cancelled ASC appointment.
- **Asylum staff should contact the applicant to inform them of their cancelled ASC appointment and may have to contact the applicant regarding an interview cancellation.** Whenever an upcoming appointment is cancelled, NASS does not send a cancellation notice to the applicant. Asylum staff may also have to directly contact an applicant regarding an interview cancellation, if the address change and subsequent interview cancellation

occurred a few days prior to the scheduled interview. When using the dashboard, it is recommended that asylum staff refer to it daily, since the case state for an affirmative or NACARA case can quickly change.

Hopefully this will cut down on no shows to ASC appointments, which also affects the ability of interviews to go forward.

If you have any questions, please feel to reach out.

Best,

[Redacted Signature]

(b)(6)

HQ Asylum Officer, IDEA Branch
USCIS RAIO Asylum Division