

Presumption of Well Founded Fear - Internal Relocation Analysis



U.S. Citizenship
and Immigration
Services

Internal Relocation Analysis can be a 2 prong analysis:

- 1. Is there anywhere in the applicant's home country the applicant can go to avoid being harmed by the persecutor?**
- 2. If there is somewhere the applicant could possibly relocate, is it reasonable for the applicant to relocate there?**

Internal Relocation—Location: Internal Relocation is Not Possible



U.S. Citizenship
and Immigration
Services

What if internal relocation is not possible—what do I write?

Step 1: Explain and cite current COI that there is no place within the applicant's country where they could avoid harm by the feared persecutor

Step 2: Conclusion

Internal Relocation—Location: Internal Relocation is Not Possible



U.S. Citizenship
and Immigration
Services

INTERNAL RELOCATION: LOCATION

(b)(7)(E)



Internal Relocation not reasonable



U.S. Citizenship
and Immigration
Services

What if there is someplace the applicant could go, but it would not be reasonable to expect the applicant to go there?

What do I need to write?

Step 1: PLACE: Provide the evidence that shows the applicant can internally relocate, i.e., there is someplace in the country where the applicant would not be persecuted. Usually this is COI

Step 2: REASONABLENESS: Provide and examine evidence that shows that *it would NOT be reasonable* for the applicant to relocate to that place

Presumption of Well Founded Fear - Internal Relocation Analysis



U.S. Citizenship
and Immigration
Services

Government persecutor— “Since the government of [insert country] is the persecutor, it is presumed that relocation is not reasonable. The evidence does not rebut this presumption.”

Presumption Rebutted – Fundamental Change in Circumstances (example)

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

The presumption of well-founded fear has been rebutted

Granting Asylum in the “Absence of a Well-Founded Fear” – Where are we in the Template?



The presumption of well-founded fear has been rebutted

Continue to Section VI.B.1.b.i. Exercise Discretion to Grant Based on Past Persecution in the Absence of Well-Founded Fear.

(i) Exercise of discretion to grant based on past persecution in the absence of well-founded fear – Grant of asylum IS warranted:

If past persecution is established and the presumption of a well-founded fear has been rebutted, address whether a grant of asylum is warranted in the absence of a well-founded fear due to the severity of past persecution or the reasonable possibility of suffering other serious harm.

Granting Asylum in the “Absence of a Well-Founded Fear”



U.S. Citizenship
and Immigration
Services

This examination is only done if the Presumption of Well-Founded Fear *has been rebutted*.

Examine whether there are discretionary factors that would warrant a grant of asylum in the absence of well-founded fear:

Severity of Past Harm – Examine the evidence (harm claimed) and consider individual applicant’s circumstances

OR

Other Serious Harm - Examine the evidence of possible other serious harm the applicant could experience.

- Usually requires examination of COI

For example: Compelling reasons



Although it has been determined that the applicant's fear of future persecution is no longer well-founded, the applicant has demonstrated compelling reasons for being unwilling to return due to the severity of the persecution the applicant has suffered. Although the events took place over 30 years ago, the applicant suffers ongoing harm in the form of depression, headaches and nightmares related to the attempt by government soldiers to beat him to death and their killing of his wife and father during that incident.

In Conclusion

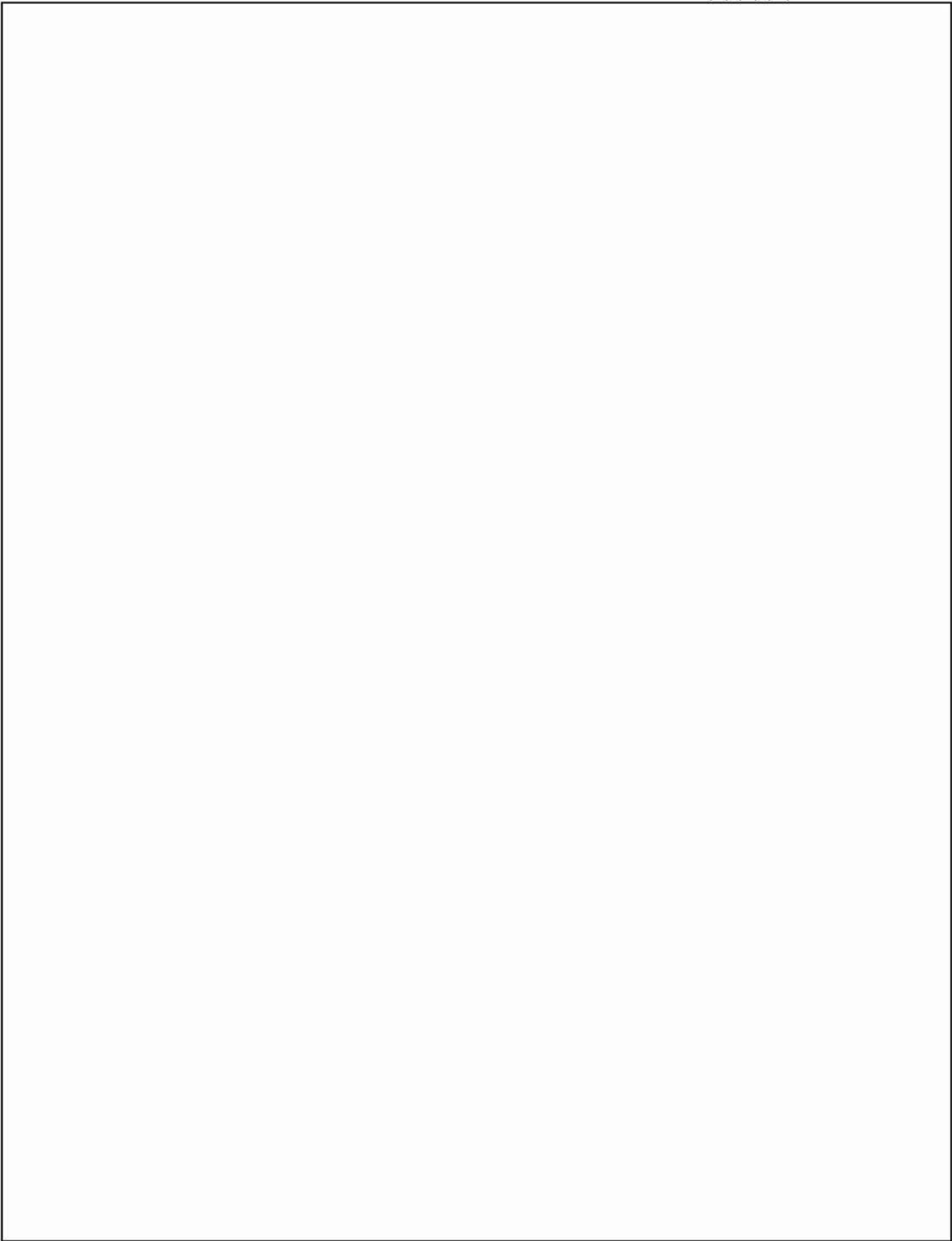


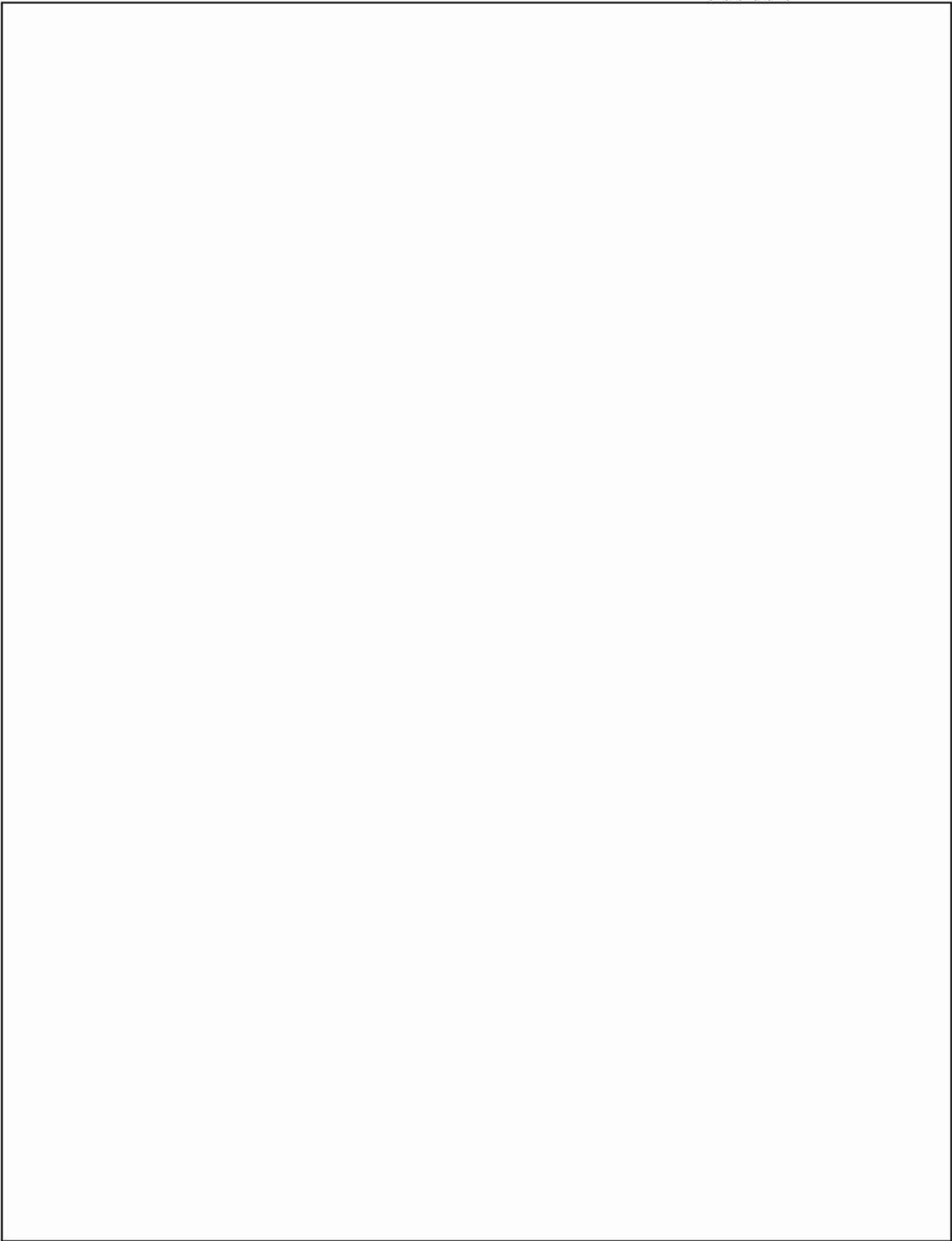
U.S. Citizenship
and Immigration
Services

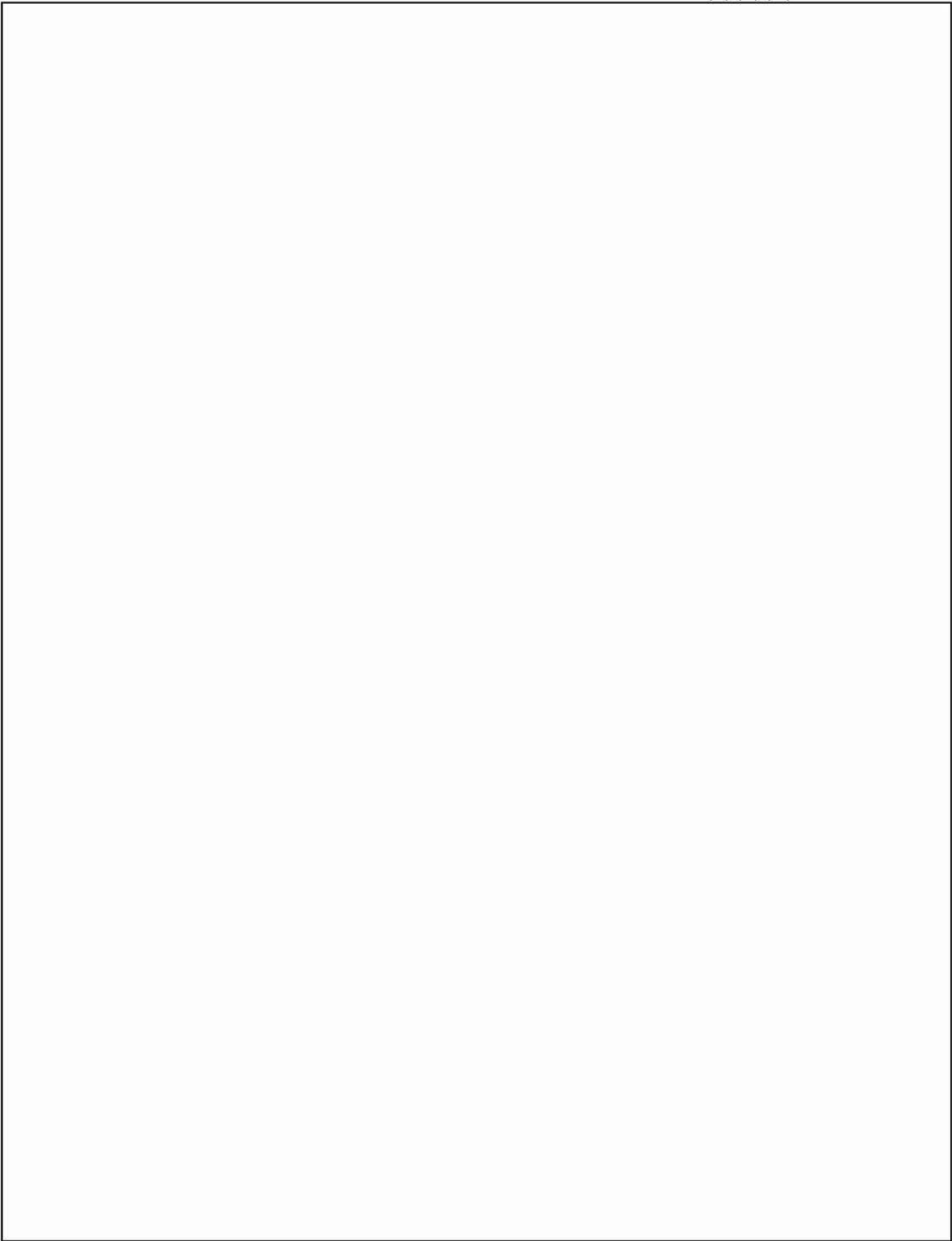
Your adjudication decisions must be made, and where applicable communicated, in a legally sound, professional, and understandable way.

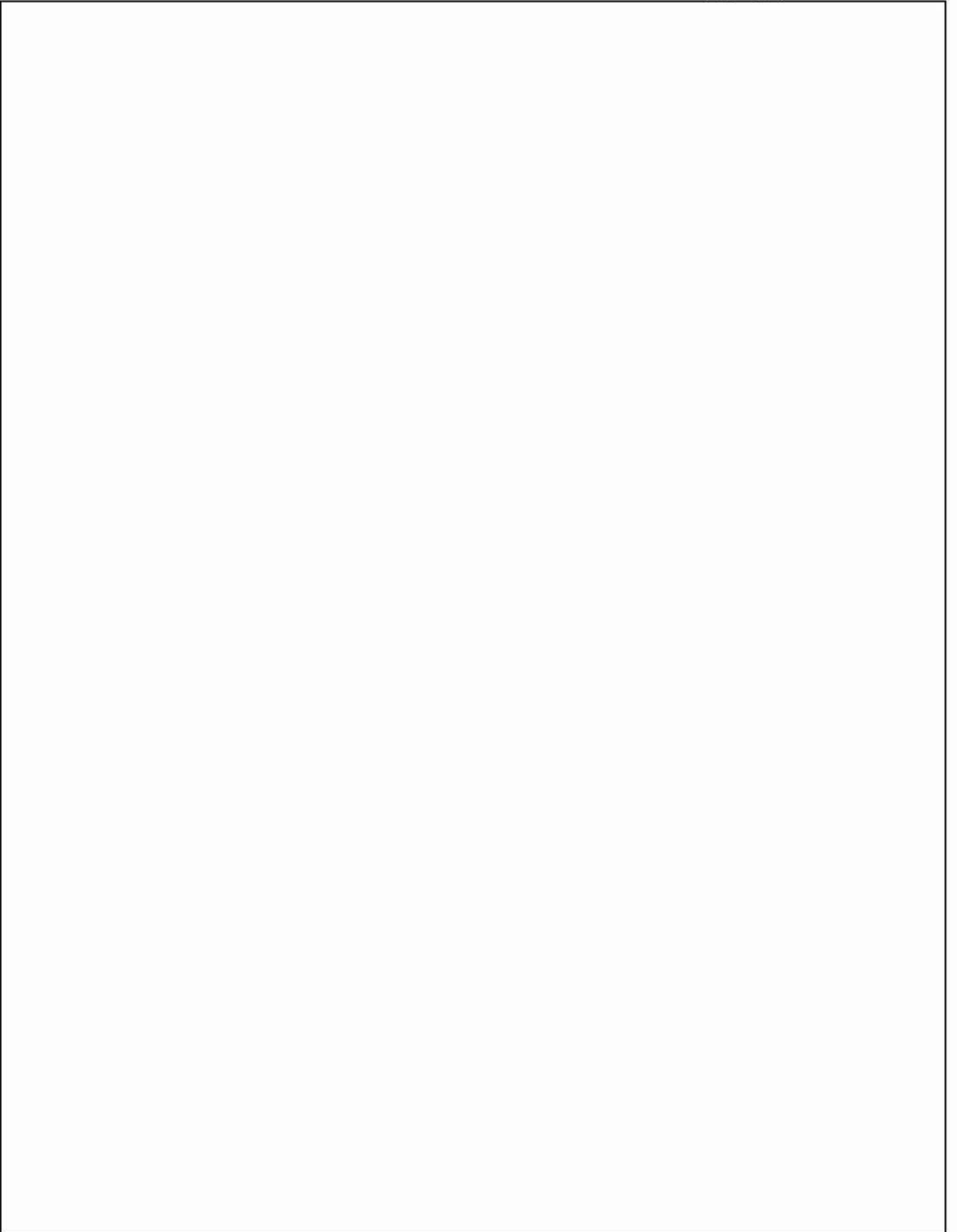
Knowing and using proper legal analysis in your decision making will help ensure this goal.

Consistently well-reasoned decisions that rely on appropriate and permissible considerations bolster confidence in and the integrity of the RAIO Directorate and the U.S. immigration process.









Quick Comparison Chart - Assessments & NOIDS

	Grant Assessment	Referral Assessment	NOID
Document	Internal - in A-file - references applicant as he/she	Internal - in A-file - references applicant as he/she	External - Letter to applicant - addresses applicant as "you"
Result	Applicant receives Asylum status	Applicant is referred to IJ	Applicant has right to rebut
Status	In-status & Out of Status	Out of status - But <i>NOT</i> ABC/Mendez class members	In status <i>and</i> ABC/Mendez class members
Contains	Limited background information (Bio/Entry Data)	Limited background information (Bio/Entry Data)	Limited background information (Bio/Entry Data)
	Basis of claim	Basis of claim	Basis of claim
	Prohibitions against applying for asylum	Prohibitions against applying for asylum	Prohibitions against applying for asylum
	Material facts of the claim (Summary of Testimony)	Material facts of the claim (Summary of Testimony) – <i>if not prohibited against applying</i>	Material facts of the claim (Summary of Testimony) – <i>if not prohibited against applying</i>
	Credibility determination	Credibility determination	Credibility determination
	Focused Legal analysis	Focused Legal analysis (<i>if credible</i>)	Focused Legal analysis (<i>if credible</i>)
	Analysis of Bars/ Discretionary Factors	Analysis of Bars/ Discretionary Factors (<i>if adverse evidence exists</i>)	Analysis of Bars/ Discretionary Factors (<i>if adverse evidence exists</i>)
	Decision - Grant of Asylum	Decision - Referral to IJ	Decision - states that it is the intent of USCIS to deny asylum, and in some cases, withholding of removal
			Limited information about the asylum process
			Citations to statute and case law that may not be always required in an Assessment
			Possible comments from DRL—advisory opinions if relevant and able to be disclosed



U.S. Citizenship and Immigration Services



Fraud in Asylum

ADOTP Training
November 2019

Learning Objectives

- Provide Adjudicators with general understanding of Fraud and USCIS's approach to fraud deterrence
- Enable Adjudicators to identify at least one type of fraud indicator related to asylum, refugee, identity, and relationship fraud in adjudication of benefit
- Enable Adjudicators with knowledge on primary fraud detection resources used in evaluating documents in the file for authenticity
- Familiarize Adjudicators with the FDNS Fraud Referral Process



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Fraud Prevention at USCIS

U.S. Citizenship and Immigration Services

Search our Site

Español | About USCIS | Contact Us

FORMS NEWS CITIZENSHIP GREEN CARD TOOLS

Home > About Us

About Us

Mission Statement

U.S. Citizenship and Immigration Services administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

General Information

USCIS is the government agency that oversees lawful immigration to the United States. We are 19,000 government employees and contractors working at more than 200 offices across the world.

See how much we accomplish on a typical day.

Core Values

Integrity

We will always strive for the highest level of integrity in our dealings with the public, our fellow employees, and the citizens of the United States of America. We review each case before us on its own merit and reach decisions that are based on the law and facts. We will be ever mindful of the importance of the trust the American people have placed in us to administer the nation's immigration system fairly, honestly, and correctly.

Respect

We will demonstrate respect in all of our actions. We will ensure that everyone we affect will be treated with dignity and courtesy regardless of the outcome of their case. We will model this principle in all of our activities with each other and the public. Through our actions, USCIS will become known as an example of respect, dignity, and courtesy.

Innovation

As we meet the challenges to come, we will strive to find the most effective means to accomplish our goals. We will use innovation, resourcefulness, creativity, and sound management principles to strive for world-class results. We will approach every challenge with a balance of enthusiasm and wisdom in our effort to fulfill our vision.

USCIS Mission Statement:

“U.S. Citizenship and Immigration Services administers the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.”



U.S. Citizenship and Immigration Services

Fraud Prevention at USCIS

SOURCE OF AUTHORITY

INA § 212(a)(6)(C)(i)

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure a visa, other documentation, or admission to the U.S. or other benefit under the Act is inadmissible.

INA § 274C

It is unlawful for any person or entity knowingly to: forge, counterfeit, alter, falsely make, use, attempt to use, accept or receive, provide, prepare, file, assist in preparing or filing...any application or document for the purpose of satisfying a requirement or to obtain a benefit under the Act.



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Fraud & Willful Misrepresentation

Fraud is generally defined as: a *knowing* misrepresentation of the truth or concealment of a **MATERIAL** fact in order to obtain a benefit for which one would otherwise not be qualified.

INA 212(a)(6)(C)(i) or 8 USC 1182

A fact is considered material if it had a tendency to influence the decision for the application or petition or shut off a relevant line of inquiry.

See *Kungys v. U.S.*, 485 U.S. 759 (1988)



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Inconsistencies in the Record

- Potential fraud indicators may be based on inconsistencies in the record or responses during interview
 - Consistent written and oral testimony?
 - Consistent with known country conditions?
 - Consistent with other immigration benefit history?
- A Petitioner or applicant must resolve any inconsistencies in the record that are material to eligibility for the requested benefit with independent objective evidence.

-Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988)
- It is possible for a record to have an inconsistency that is not material to the requested benefit.



Potential Perpetrators of Fraud

Direct Recipients of Benefit

- Asylum/Refugee Applicant; Immigrant Visa Petitioner
- Dependents of Applicant; Immigrant Visa Beneficiary

Immigration Service Provider (ISP)

- Someone who assists an applicant/petitioner in or initiates a misrepresentation of the truth or concealment of material fact
 - Attorney
 - Translator/Interpreter
 - Preparer/Notary
 - Smuggler-Middle 'Man'
 - Camp leader/NGO organizations/UNHCR officials



U.S. Citizenship
and Immigration
Services

Potential Types of Fraud in RAIO Adjudications

- Asylum Application
- Document (altering or omitting)
- Relationship and family members
- Identify fraud - multiple claims, multiple identities
- Boilerplate claims
- Jurisdiction or forum shopping
- Legal Representative or preparer
- Interpreter Fraud
- Visa fraud



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Access Fraud

Individuals and organizations purporting to assist applicants may also be committing fraud or in some cases the unauthorized practice of immigration law (UPIL) by:

- Charging fees for services or applications that are otherwise free
- Offering to expedite case processing
- Selling “phantom” dependent slots on applications
- Directing applicants to specific providers to procure supporting documents



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Document Fraud

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Document & Relationship Fraud

(b)(7)(E)

-
-



U.S. Citizenship
and Immigration
Services

Double Dippers: Multiple Claims & Identities

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Boilerplate Claims

(b)(7)(E)

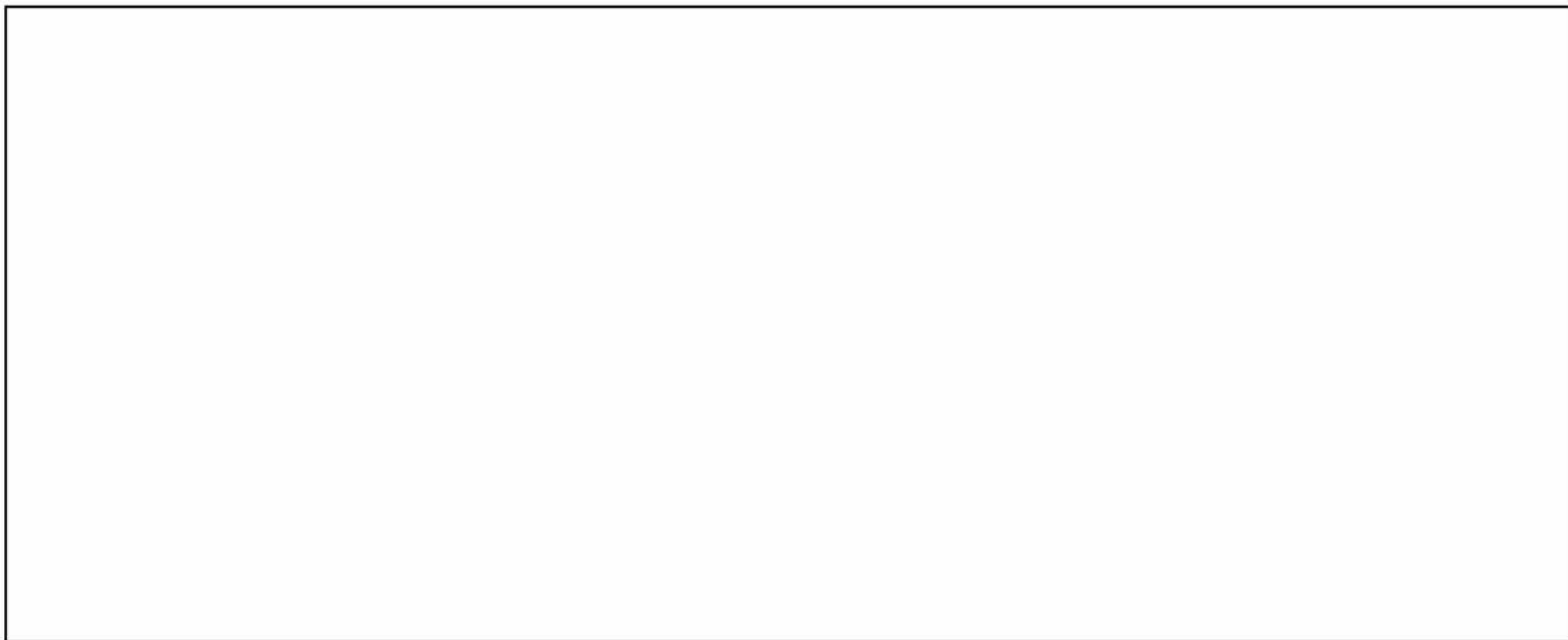


U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Atty / Preparer / Interpreter Fraud

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Visa Fraud

(b)(7)(E)

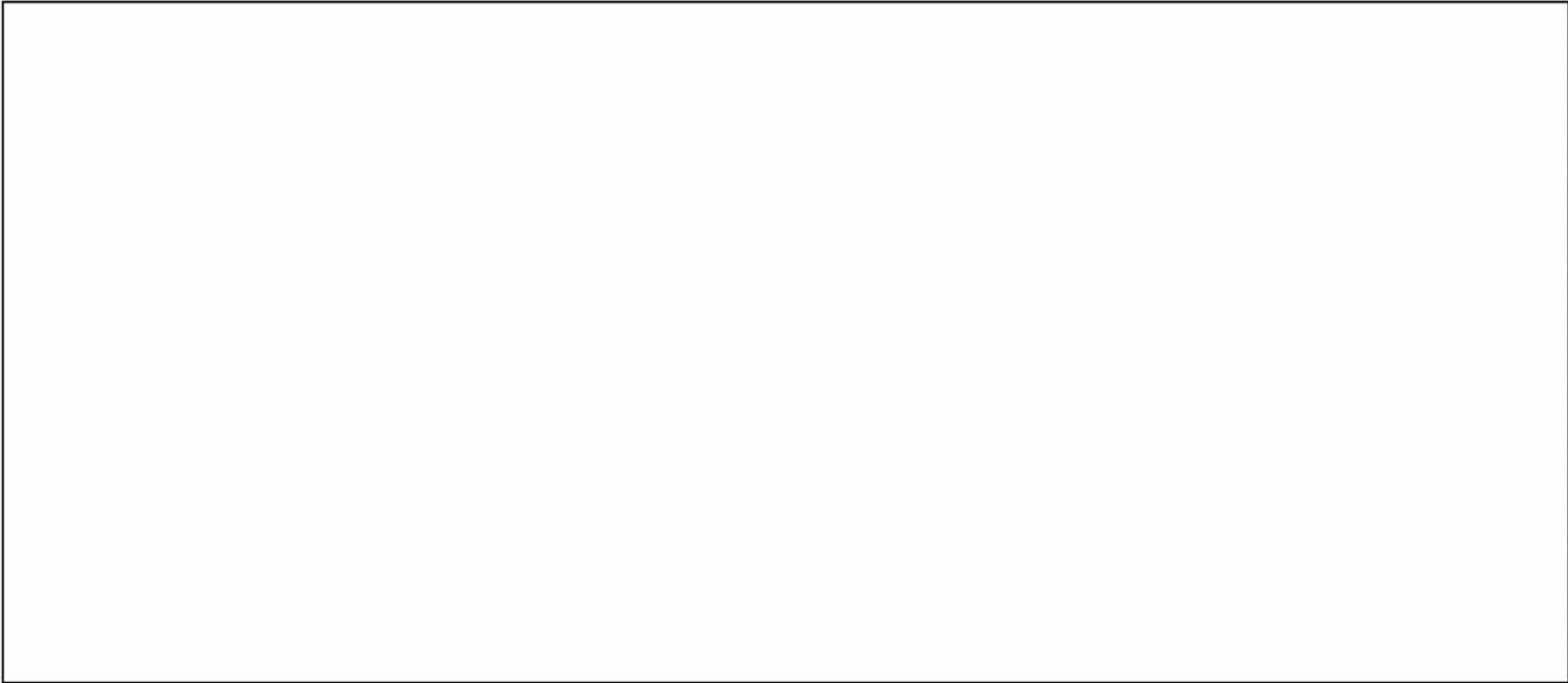


U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

What are Fraud Indicators?

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Where are Potential Fraud Indicators Found?

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Adjudicator's Role

Ask Open Ended Questions

Take Detailed Notes

- Confirm locations, full names, dates of birth for all immediate family.
- Closely review all documents that have been submitted. Are there any which are conspicuously missing or reasonable to request?
- Explore chain-of-custody for all supporting documents and any which are unreasonably absent.
- Ask about the filing history of the application – receive any assistance? Pay any fees?



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)



Fraud Referral Process



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Submitting a Fraud Referral?

- When should I submit a FR?
 - FRS can be submitted at any stage of the adjudicative process when fraud is suspected/ discovered.
- How do I submit a FR? (b)(7)(E)

-
-
-



Fraud Referral Process Overview

1. Pending Referral Completion: Asylum Officer creates new Fraud Referral (FR) in FDNS-DS and submits it for Supervisory review.

2. Pending Supervisory Review: SAO reviews the FR, then either returns it to the Officer for revision, closes the FR, or sends it to FDNS.

Steps 3, 4, and 5 are completed by FDNS personnel. Step names: FDNS Intake, Pending FDNS Findings, Pending SIO Review

6. Pending Final Adjudication Decision: Asylum Officer receives FDNS findings, closes out or sends to supervisor for Concurrence Meeting if there is a mismatch (more on this later).



Administrative Investigation

In response to the Fraud Referral, the FDNS Officer will conduct an administrative investigation. (b)(7)(E)

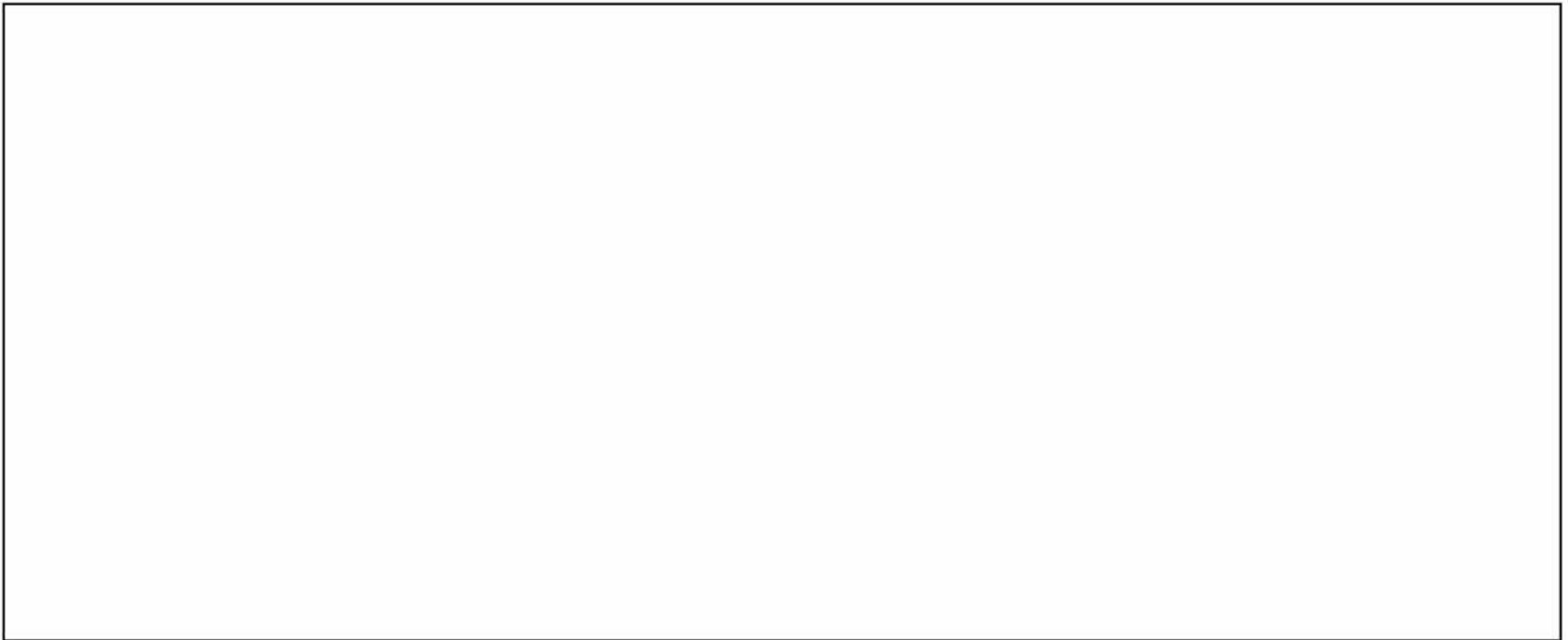
-
-
-
-



U.S. Citizenship
and Immigration
Services

Case Exercise

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Questions?

Feedback Reminder:

Please complete the survey to provide feedback for consideration and incorporation during the next training course. We review the surveys from every course and value your suggestions for improvement.

Thank you!
Chief, RAIO FDNS



U.S. Citizenship
and Immigration
Services

About this Presentation

- Author: RAIO FDNS
- Date of last revision and clearance by OCC: April 30, 2018.
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, relate to fictitious individuals.



Dissemination

- This presentation may not be reproduced or further disseminated without the express written consent of the Chief of RAIO FDNS.
- Please contact RAIO FDNS for additional information.



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)

Training Disclaimer

This Presentation is intended solely to provide training and guidance to USCIS personnel in performing their duties relative to the adjudication of immigration benefits.

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 Presentation does not have the force of law, or of a DHS directive.



U.S. Citizenship
and Immigration
Services

Unclassified // FOUO (For Official Use Only)



U.S. Citizenship and Immigration Services



U.S. Citizenship
and Immigration
Services



U.S. Citizenship
and Immigration
Services

Decision Writing TRIG

EXEMPTION ANALYSIS

SEPTEMBER 2020

Analysis of Bars / Discretionary Factors



U.S. Citizenship
and Immigration
Services

- I. BIOGRAPHIC/ENTRY OR ARRIVAL/IMMIGRATION STATUS INFORMATION
- II. BASIS OF CLAIM
- III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM
- IV. SUMMARY OF TESTIMONY
- V. ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT
- VI. FOCUSED LEGAL ANALYSIS
- VII. ANALYSIS OF BARS/DISCRETIONARY FACTORS
- VIII. DECISION

Where are we in the template?



Continue to Section VII. Analysis of Bars/Discretionary Factors

I

ADOTP Grant Template Rev. 09/14/2018

Page 14 of 16



VII. ANALYSIS OF BARS/DISCRETIONARY FACTORS

A. No Evidence of Possible Bars or Discretionary Factors

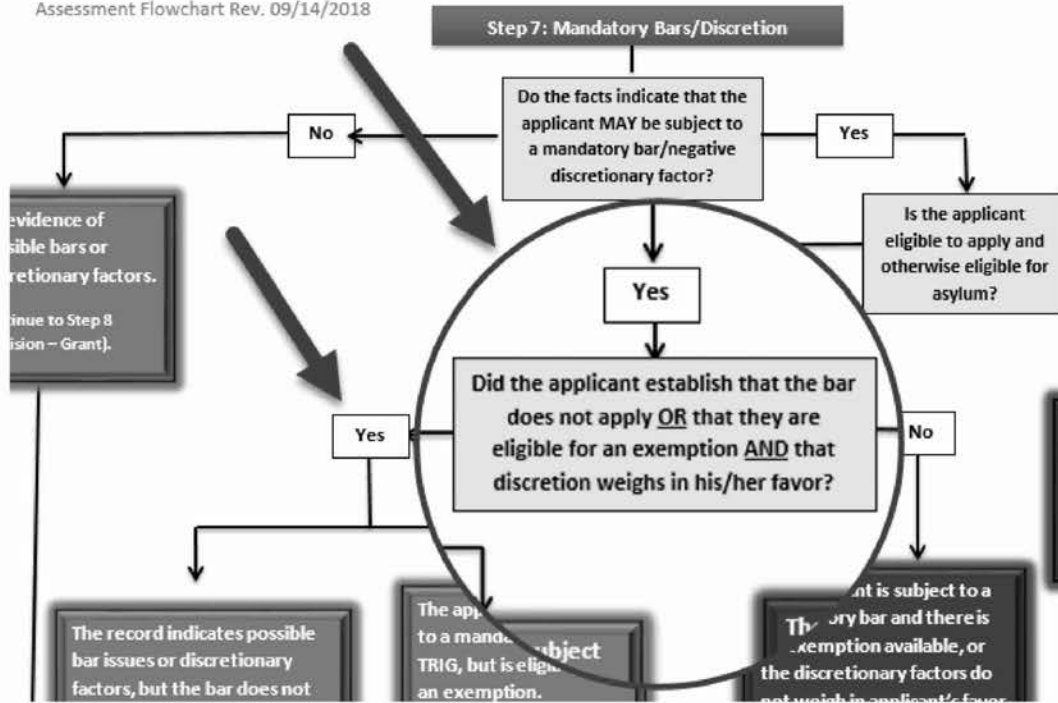
There are no mandatory bars that make the applicant ineligible for asylum or discretionary factors that weigh against an exercise of discretion to grant.

Where are we on the flowchart?



U.S. Citizenship
and Immigration
Services

Assessment Flowchart Rev. 09/14/2018



Step 1 – Exemption Availability



U.S. Citizenship
and Immigration
Services

- **Before you can begin writing your TRIG analysis, there are three preliminary steps:**
 - Determine whether the applicant is otherwise eligible for asylum
 - Identify the terrorist activity or organization at issue
 - Identify what part(s) of INA § 212(a)(3)(B) apply

Step 1 – Exemption Availability



U.S. Citizenship
and Immigration
Services

- **Otherwise eligible for asylum**
 - Recall from the general Mandatory Bars presentation how what you write changes depending on whether a case is being approved or not
 - If an applicant is not otherwise eligible for any reason, *do not* conclude that they are eligible for a TRIG exemption

Step 1 – Exemption Availability



- **Identify the activity or organization that gives rise to the TRIG issue**

(b)(7)(E)

Step 1 – Exemption Availability



U.S. Citizenship
and Immigration
Services

- **Identify which TRIG grounds at INA § 212(a)(3)(B) apply** (b)(7)(E)

Step 2 – Mandatory Bar Finding



- **State that the applicant is subject to a mandatory bar:**

The applicant is subject to a mandatory bar to a grant of asylum as someone who has engaged in terrorist activity. The applicant failed to establish by a preponderance of the evidence that the bar does not apply.

Step 3 – Provide Supporting Facts



U.S. Citizenship
and Immigration
Services

- **Provide the facts that give rise to the TRIG bar, including**

(b)(7)(E)

Step 4 – Address Knowledge at the Time



U.S. Citizenship
and Immigration
Services

(b)(7)(E)

-

Step 5 – Finding that the Group was a Terrorist Organization at the Time

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

-

Step 5 – Finding that the Group was a Terrorist Organization at the Time

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Step 6 – Provide Evidence of Org Terrorist Activity at Time of Applicant’s Activity

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Step 7 – Provide Evidence that Group Leadership Authorized Terrorist Activities

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Step 8 – Conclude the Group was a Terrorist Org

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Step 9 – Provide Evidence of Knowledge Group Engaged in Terrorist Activities at Time of Activity

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Step 10 – Terrorist Activity Conclusion



U.S. Citizenship
and Immigration
Services

(b)(7)(E)

-

Step 11 – Availability of Exemption and Threshold Criteria

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

-
-

Step 12 – Exemption Requirements

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

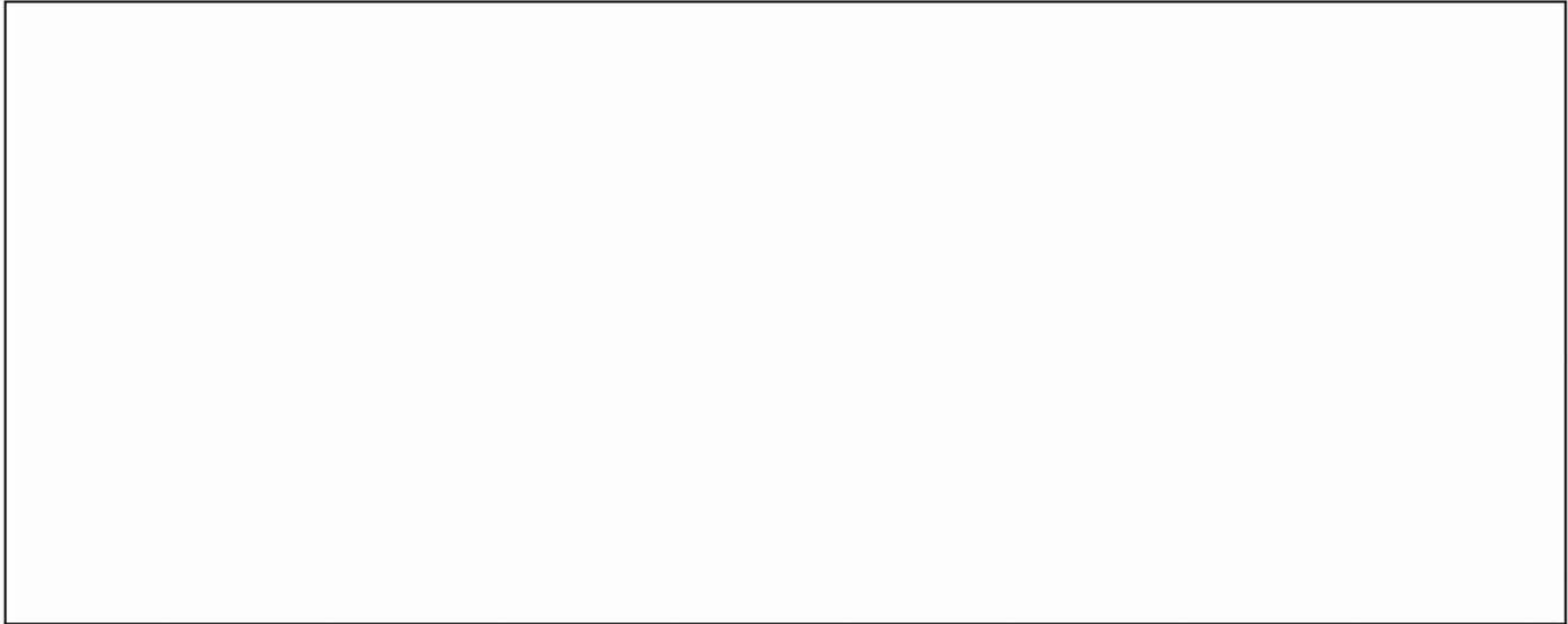
-
-

Step 12 – Exemption Requirements



U.S. Citizenship
and Immigration
Services

(b)(7)(E)



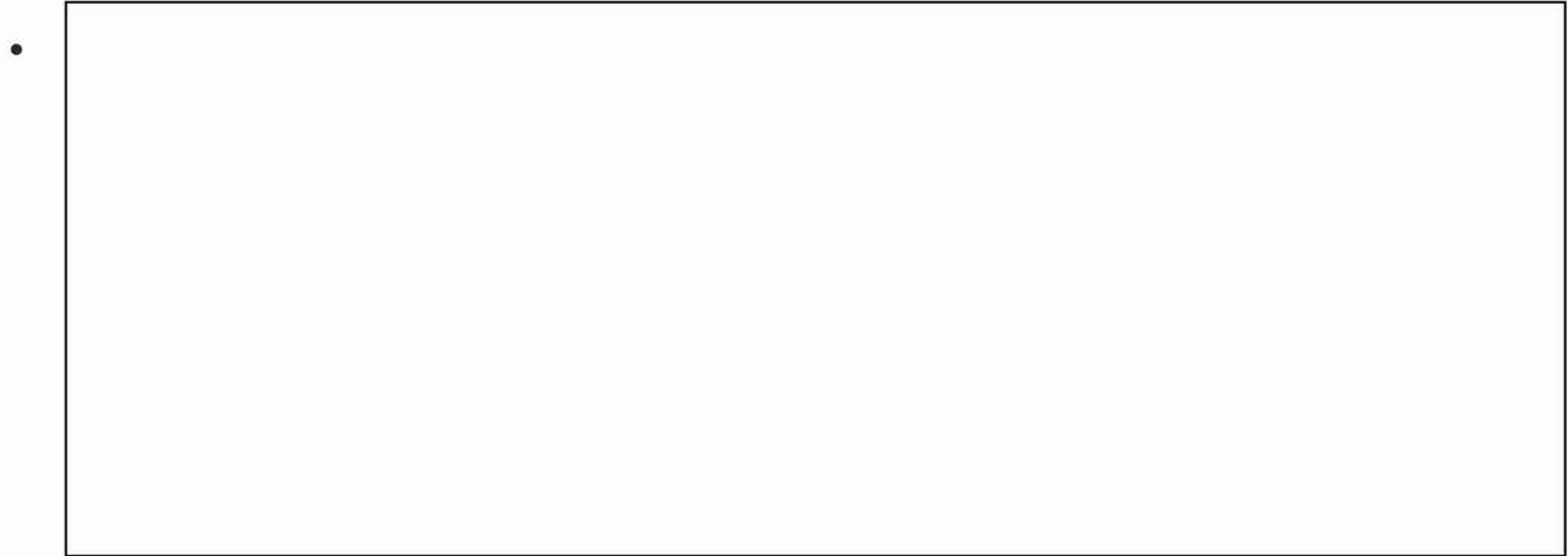
Step 13 – Totality of the Circumstances

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

- Exemptions are discretionary, and so a discretionary analysis is required even if the applicant meets all threshold and exemption requirements



Step 13 – Totality of the Circumstances



U.S. Citizenship
and Immigration
Services

(b)(7)(E)



Step 14 – Conclude Exemption Analysis

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Step 15 – Overall Conclusion as to TRIG Bar

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

A large, empty rectangular box with a black border, intended for the user to provide their overall conclusion as to the TRIG Bar.

Step 16 – Standard Grant Conclusion



U.S. Citizenship
and Immigration
Services

(b)(7)(E)



Practical Exercise

(b)(7)(E)





U.S. Citizenship
and Immigration
Services

DECISION WRITING



WELL-FOUNDED FEAR

September 2020

Where are we?



U.S. Citizenship
and Immigration
Services

- I. BIOGRAPHIC/ENTRY OR ARRIVAL/IMMIGRATION STATUS INFORMATION
- ii. BASIS OF CLAIM
- iii. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM
- iv. SUMMARY OF TESTIMONY
- v. ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT
- vi. FOCUSED LEGAL ANALYSIS (Well-Founded Fear)
- vii. ANALYSIS OF BARS/DISCRETIONARY FACTORS
- viii. DECISION

No future without a past...



U.S. Citizenship
and Immigration
Services

BEFORE you analyze Well-Founded Fear:

- **Every assessment must contain an analysis of past persecution**
- **If the applicant suffered any form of harm in the past, and this harm is part of the applicant's claim, you must address any harm the applicant experienced and conclude that the applicant either did, or did not, suffer past persecution.**

No Past Harm Claimed



U.S. Citizenship
and Immigration
Services

- Even if an applicant testifies to absolutely no harm in the past, the assessment still must address past persecution
- How is that written?

A. Past Persecution

1. Past persecution NOT claimed:

The applicant did not claim and the evidence does not indicate that the applicant experienced past persecution. If the applicant claimed any type of harm, **STOP** - you must use analysis in Section VI.A.2. below (Past Persecution **NOT** Established).

Continue to Section VI.B.2. Well-Founded Fear Analysis – Claim Based on Well-Founded Fear

Past Harm Claimed, but Past Persecution not Established



U.S. Citizenship
and Immigration
Services

- The applicant presents a claim where some form of harm happened to them in the past, but it isn't past persecution
- Three reasons for finding no Past Persecution:
 1. The harm doesn't rise to the level of persecution
 2. The harm was not inflicted on account of one of the protected grounds
 3. The government was willing and able to control the non-government persecutor

Past Harm Claimed, but Past Persecution not Established



U.S. Citizenship
and Immigration
Services

2. Past persecution NOT established:

The events the applicant described do not amount to past persecution.

Briefly describe the harm and analyze the facts to support the conclusion that past persecution was not established. Explain one of the following:

- Why the harm did not rise to the level of persecution.

OR

- Why the harm was not on account of a protected ground:
Include the following language: [The events the applicant described are not found to have been on account of one of the five protected grounds]. Explain why.

Note: If the applicant failed to establish past persecution relating to a particular social group, remember to formulate the PSG and address one of the following:

- How the PSG is not cognizable; OR
- How the applicant failed to establish membership in a PSG; OR
- How the applicant failed to establish that one central reason that the harm experienced was on account of the applicant's membership in a PSG.

In order to find a PSG cognizable, all of the following must be established:

- Immutability
- Social Distinction
- Particularity

When finding that a PSG is not cognizable, address how one of the above elements is not met.

OR

- In cases where the harm was carried out by a non-government entity, explain how the government was able and willing to control the non-government entity.

Well-Founded Fear Approval



U.S. Citizenship
and Immigration
Services



Where are we in the template?

2. Claim based on well-founded fear of future persecution (WFF):

a. **Well-founded fear established based on Mogharrabi test.**

However, the applicant has established a well-founded fear of persecution on account of [protected ground].

The applicant fears [he/she] will be [identify harm feared] by [identify feared persecutor] if the applicant returns to [country]. **Explain how the harm the applicant fears is serious enough to rise to the level of persecution.**

Well-Founded Fear Approval

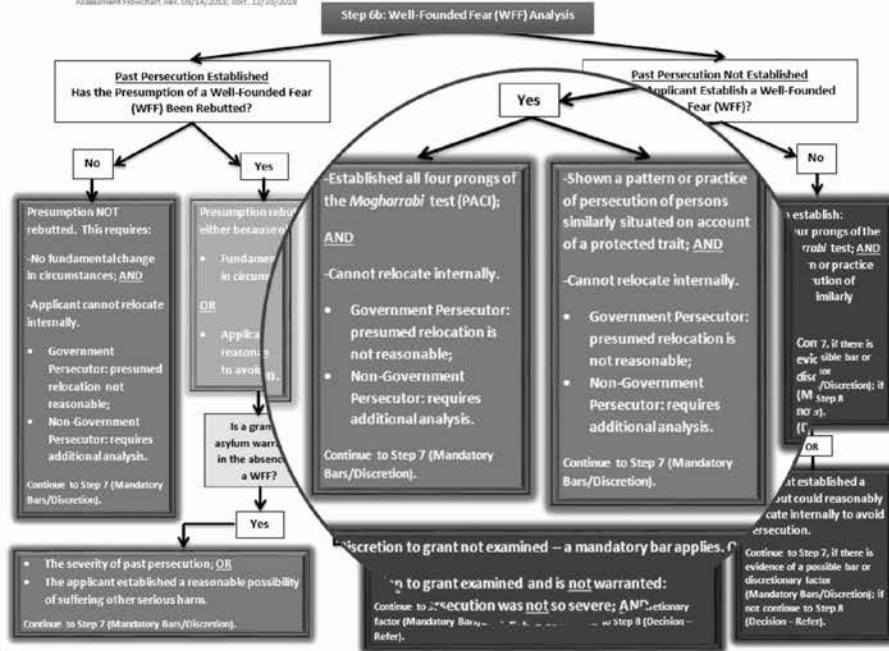


U.S. Citizenship and Immigration Services



Where are we on the flowchart?

Assessment Flowchart Rev. 09/14/2018; corr. 12/10/2018



Pre-PACI: What does the Applicant Fear?



U.S. Citizenship
and Immigration
Services

- **Before beginning your PACI analysis, you must first analyze the feared harm to determine whether it rises to the level of persecution**
 - This means that the harm feared must be *serious enough* that it *would rise to the level of persecution* if it were carried out
- **What that looks like in template language:**
 - The applicant fears [he/she] will be [identify harm feared] by [identify feared persecutor] if the applicant returns to [country]. **Explain how the harm the applicant fears is serious enough to rise to the level of persecution.**

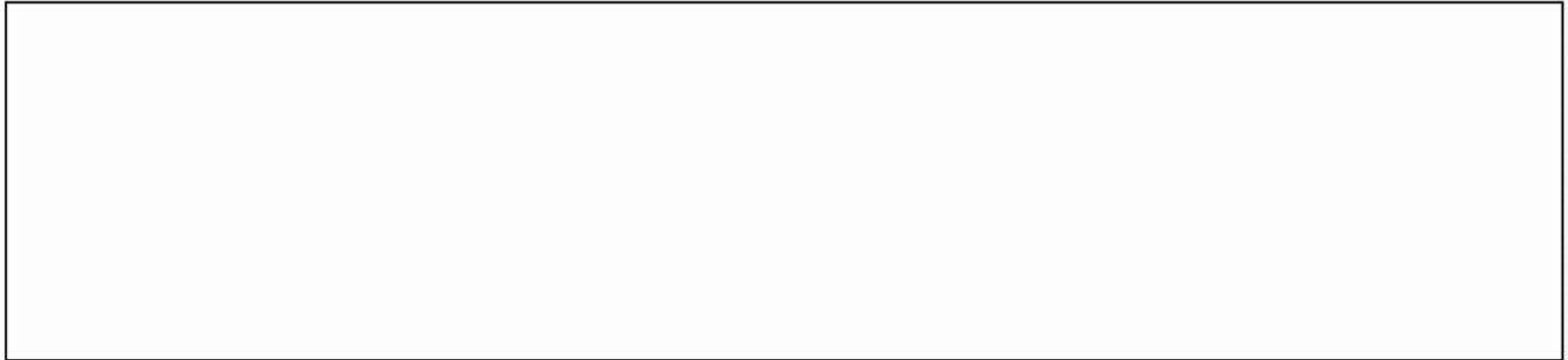
Pre-PACI: What does the Applicant Fear?



U.S. Citizenship
and Immigration
Services

- **Example:**

(b)(7)(E)



Well-Founded Fear based on *Mogharrabi* Test

- **Possession**
Does the applicant possess or does the persecutor impute to the applicant a possession of a characteristic included in one of the five protected grounds?
- **Awareness**
Is the persecutor aware or is there a reasonable possibility the persecutor could become aware that the applicant possesses the protected characteristic?
- **Capability**
Is the persecutor able to harm the applicant?
(For non-government persecutor) Is the government able and willing to *control the persecutor*?
- **Inclination**
Is the persecutor currently inclined to harm the applicant because of their protected characteristic?



The Story of a Template

The applicant has established all four prongs of the *Mogharrabi* test for well-foundedness. Explain how the applicant has established each of the following:

- i) **Possession** or imputed possession of a protected characteristic. Be sure to identify the protected ground.
 - If the basis of claim is a PSG that was not previously analyzed, you must analyze the PSG according to current Asylum Division guidance. See Section VI.A.3. above for additional guidance.
- ii) **Awareness**, or reasonable possibility the persecutor could become aware, the applicant possesses a protected characteristic.
- iii) **Capability** of the persecutor to persecute the applicant.
 - If the persecutor is a non-government entity, under the capability prong also explain how the evidence shows that the government is unable or unwilling to control the persecutor.
- iv) **Inclination** of the persecutor to persecute the applicant.
 - Include that the feared persecutor is inclined to persecute the applicant on account of a protected ground.

PACI & Nexus



U.S. Citizenship
and Immigration
Services

- **To grant a case based on Well Founded Fear alone, the analysis must determine if the harm feared has a nexus to a protected ground—would the persecutor harm the applicant on account of a protected ground?**
- *Where is nexus addressed in the Mogharrabi analysis?*

PACI & Nexus



U.S. Citizenship
and Immigration
Services



Possession & Inclination

- **Nexus or the “on account of” part of the analysis is partly covered in the Possession prong of PACI, and partly in the Inclination prong**
 - **Possession**—this analysis must explicitly identify and address the applicant’s protected characteristic
 - **Inclination**—this analysis must explicitly address the motivation of the persecutor to harm the applicant *on account of* the applicant’s protected characteristic

PACI & Unable/Unwilling to Control



U.S. Citizenship
and Immigration
Services

Which prong includes the analysis of whether the government is unable or unwilling to control the persecutor?

- If the persecutor is a non-government actor:

Capability Prong Writeup

- If the persecutor is a government actor:

No need to state the government is unable or unwilling to control the persecutor

PACI & Unable/Unwilling to Control



U.S. Citizenship
and Immigration
Services

How do you address the question of whether the government is currently unwilling or unable to control the feared persecutor?

You must include evidence—typically in the form of *the most current* COI and testimony—that shows that the government either cannot or simply does not control the persecutor



Inclination

Inclination prong must include:

Analysis that the feared persecutor is inclined to persecute the applicant on account of a protected ground

How?

Must include evidence—typically in the form of *the most current* COI and/or testimony—that the persecutor is currently harming or inclined to harm people or the applicant on account of the protected characteristic

Well-Founded Fear & Internal Relocation



Internal Relocation

- **If the persecutor is a non-government entity:**

The applicant has established that, under all the circumstances it is not reasonable for the applicant to relocate within the applicant's country to avoid future persecution.

- **Use COI or other objective evidence to establish there is no place within the applicant's country where the applicant could avoid being persecuted by the persecutor.**
- **If a place can be identified where persecution could be avoided, address factors that establish why it is not reasonable for the applicant to relocate there.**

Therefore, the applicant has established that [he/she] is a refugee.

OR

- **If the Government is the persecutor:**

The applicant must establish that, under all the circumstances it would not be reasonable for the applicant to relocate within the applicant's country to avoid future persecution, unless the persecutor is the government or government sponsored. Since the government of [insert country] is the persecutor, it is presumed that relocation is not reasonable. The evidence does not rebut this presumption. **Note: If the preponderance of the evidence shows that the applicant may be able to relocate to avoid persecution by the government, address how it is not reasonable to expect the applicant to do so.**

Therefore, the applicant has established that [he/she] is a refugee.

Well-Founded Fear & Internal Relocation



U.S. Citizenship
and Immigration
Services



Non-State Actors

If the feared persecutor is not a state actor, analyze objective evidence that shows the applicant has established they cannot relocate to avoid future persecution

How?

Must include evidence—typically in the form of *the most current* COI and/or testimony—that shows that there is nowhere the applicant can go to get away from the persecutor and be safe

What if the applicant can avoid the persecutor by internally relocating?

Must include evidence—can be COI, but is often testimony—that under all circumstances, it would not be reasonable to expect the applicant to internally relocate

Well-Founded Fear & Internal Relocation



U.S. Citizenship
and Immigration
Services



State Actors

For a state actor, **use the template language and move on!**

“The applicant must establish that, under all the circumstances it would not be reasonable for the applicant to relocate within the applicant’s country to avoid future persecution, unless the persecutor is the government or government sponsored. Since the government of [insert country] is the persecutor, it is presumed that relocation is not reasonable. The evidence does not rebut this presumption.”

COI Reminder for Well-Founded Fear



U.S. Citizenship
and Immigration
Services

WELL-FOUNDED FEAR				
Issue	Applies to	Time Period	Key Analysis	Examples
Capability	Non-government persecutor	Current	<ul style="list-style-type: none">• <u>Can</u> persecutor currently harm the applicant?• Is the gov't <u>unable/unwilling</u> to control the persecutor?	
Inclination	All persecutors	Current	Would the persecutor be <u>motivated</u> to harm the applicant <u>on account of</u> a protected ground?	
Internal Relocation	Non-government persecutor	Current	<ul style="list-style-type: none">• Could the applicant <u>avoid future persecution</u> somewhere in his/her home country?• Does COI inform the analysis of <u>reasonableness</u> of relocation?	

(b)(7)(E)

COI Reminder Citations



U.S. Citizenship
and Immigration
Services

Well Founded Fear analysis often relies heavily on COI as evidence to support the elements so . . . The minimum requirements for citing to COI are:

- **Author**
- **Title**
- **Date of Publication**
- **URL (website address)**
- **Access Date**
 - HRW – Human Rights Watch: World Report 2019 - Angola, 17 January 2019
<https://www.hrw.org/world-report/2019/country-chapters/angola> (accessed on 13 February 2019).
 - USDOS – US Department of State: Country Report on Human Rights Practices 2017 - Yemen, 20 April 2018 <https://www.state.gov/j/drl/rls/hrrpt/2017/nea/277273.htm> (accessed on 13 February 2019)

Alternate Tests



U.S. Citizenship
and Immigration
Services

Pattern and Practice

- Only used when an applicant was unable to establish that they would be singled out individually
- COI must be used and must indicate that there is systematic and pervasive persecution of a group of people who share the protected characteristic that the applicant possesses

Disfavored Group

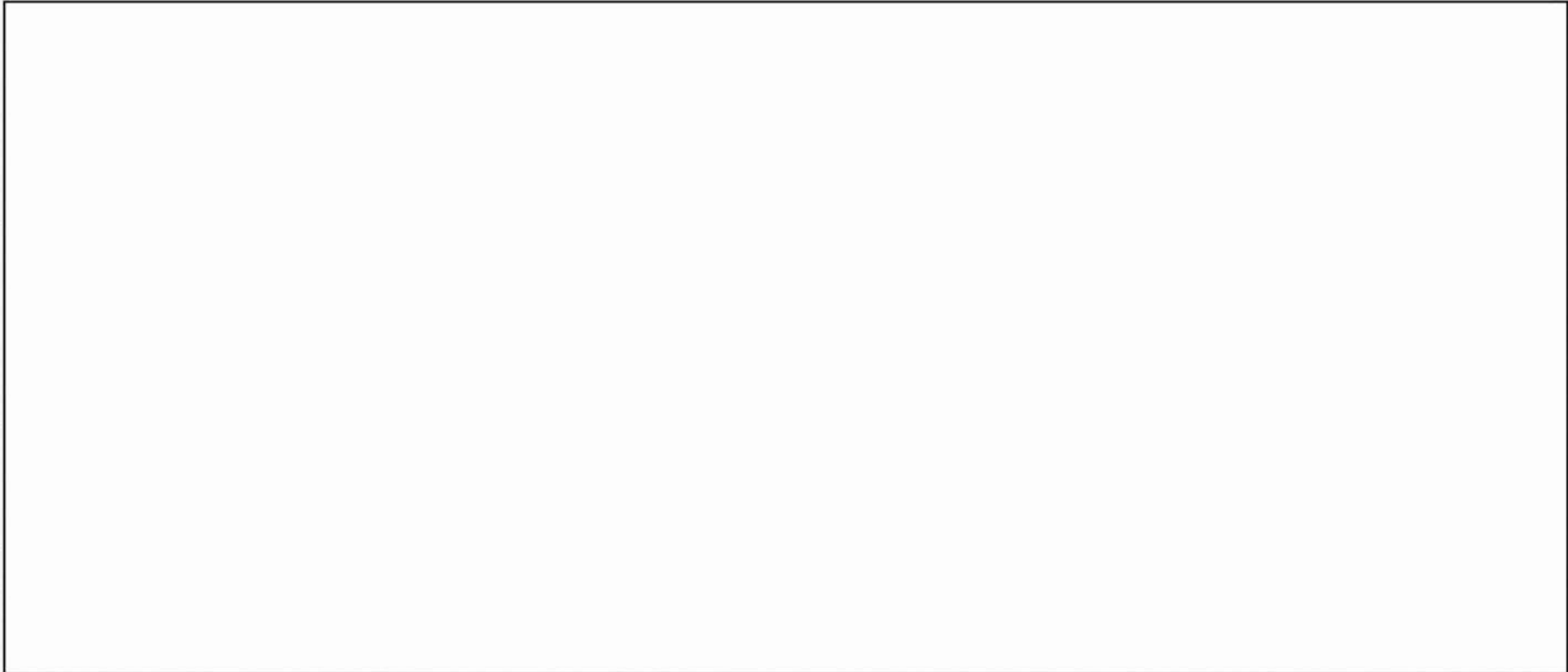
- Refer to the lesson plan for WFF and the disfavored group analysis as it is used in the 9th circuit

What is Missing Here

(b)(7)(E)



U.S. Citizenship
and Immigration
Services



Remember the Finding



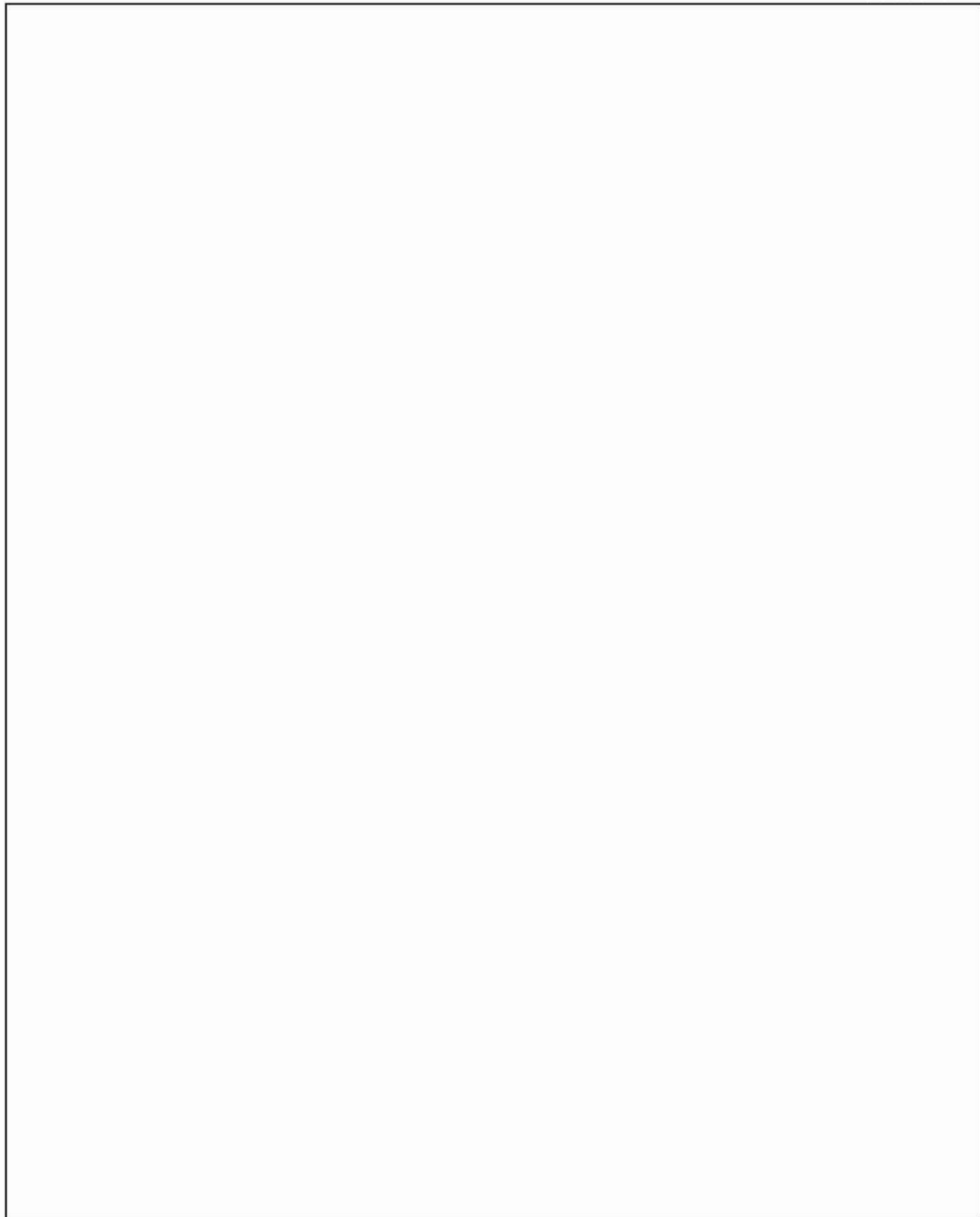
U.S. Citizenship
and Immigration
Services



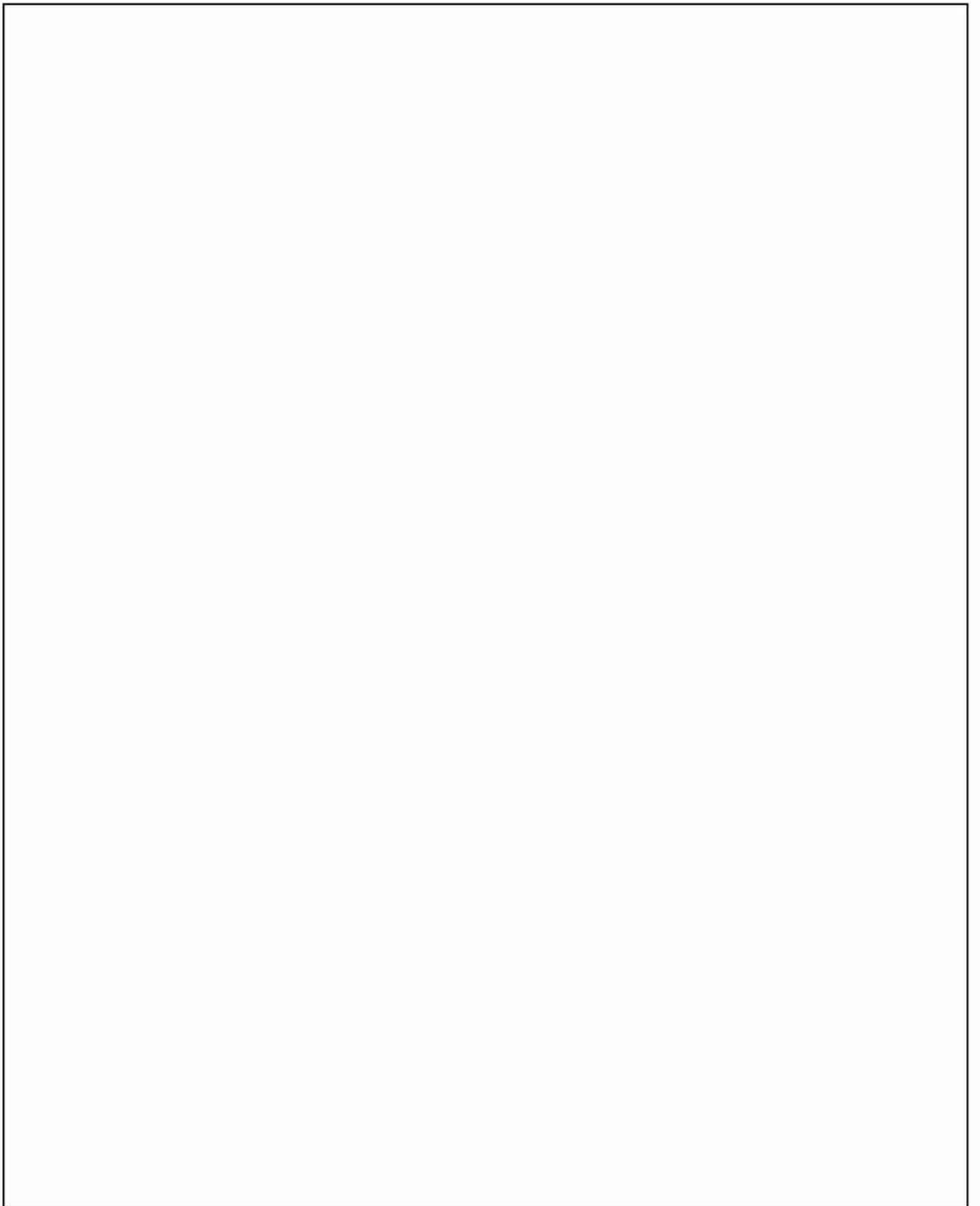
You must declare it so!

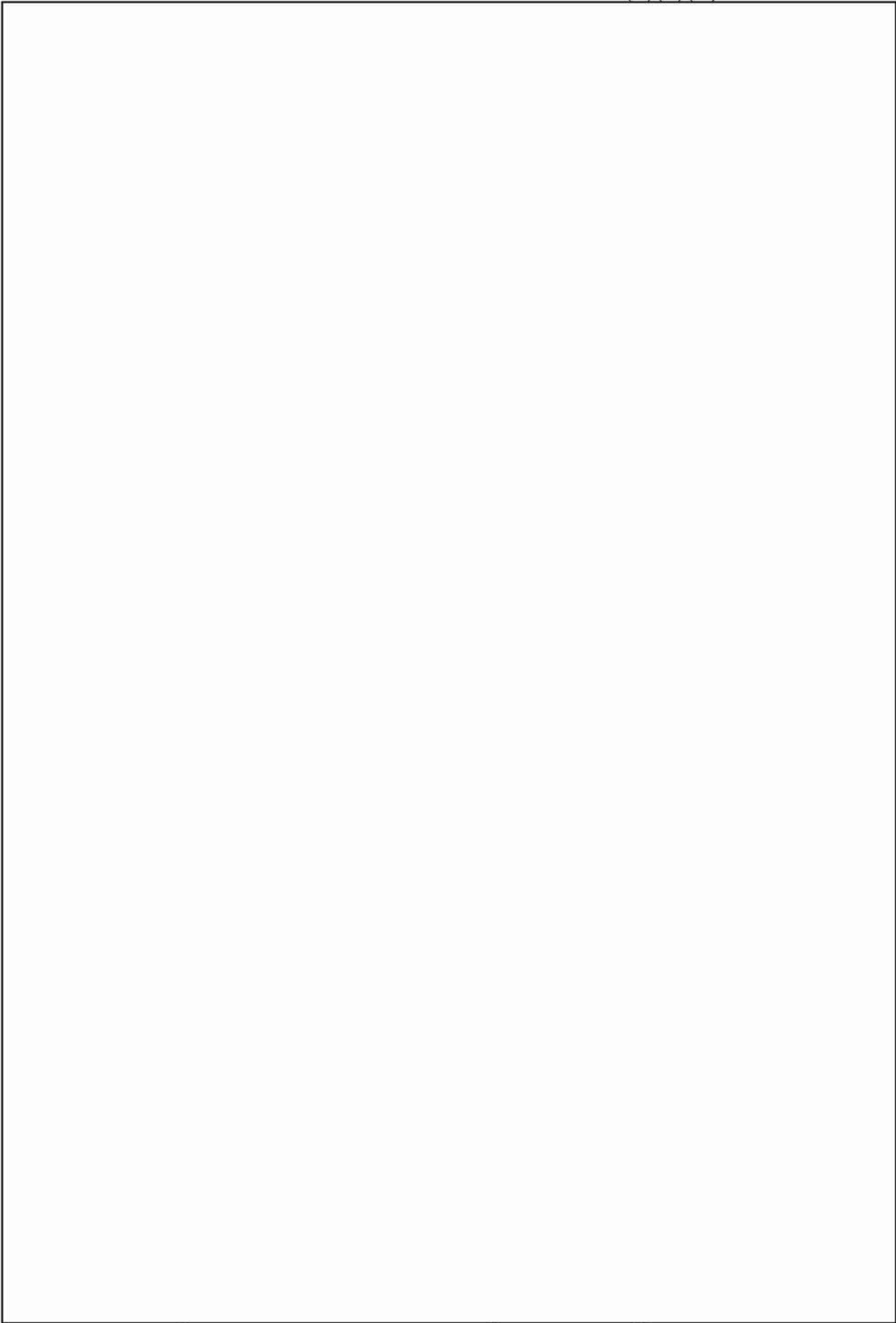
If the applicant established a well-founded fear:

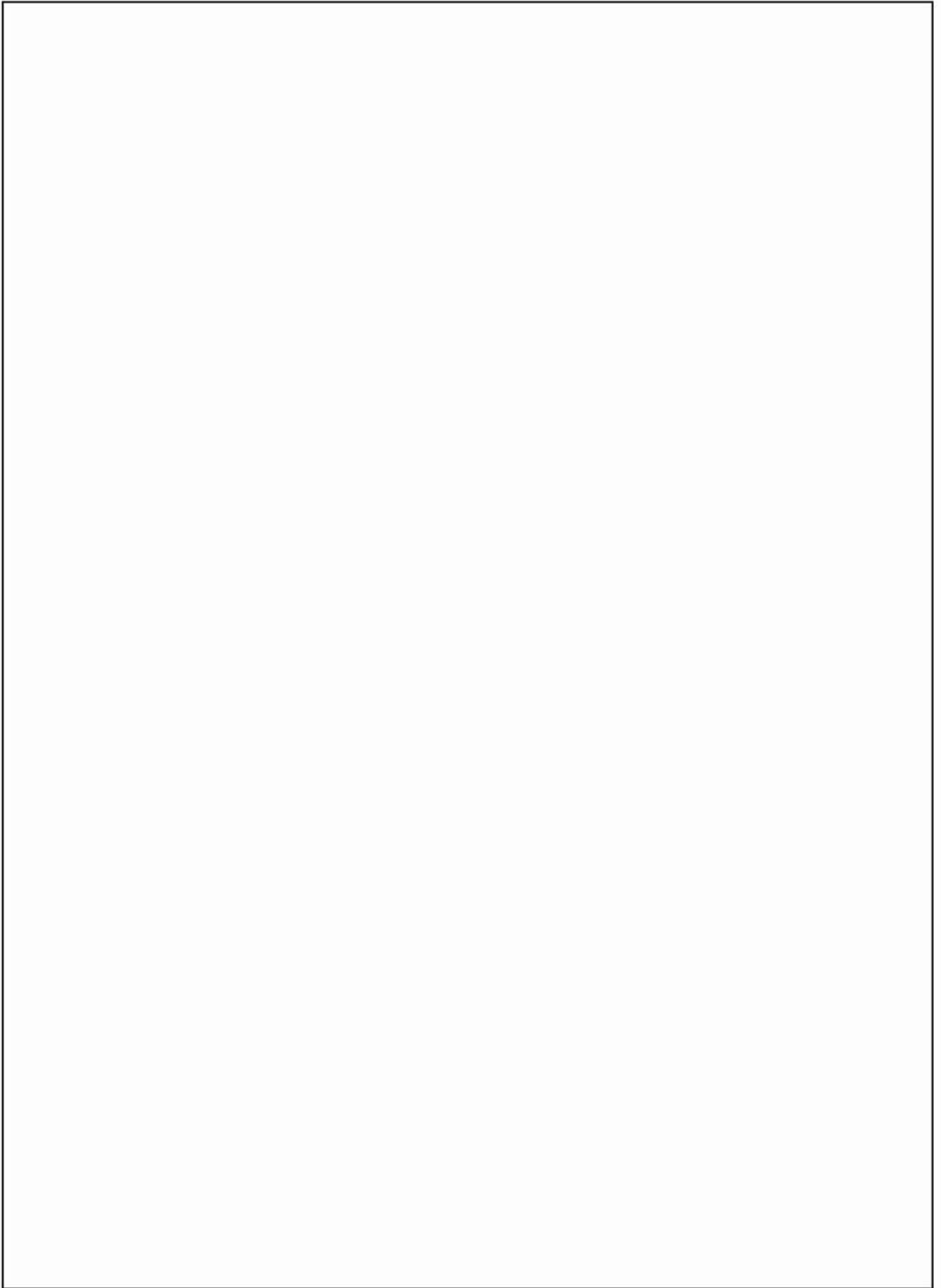
“Therefore the applicant has established that he/she is a refugee”



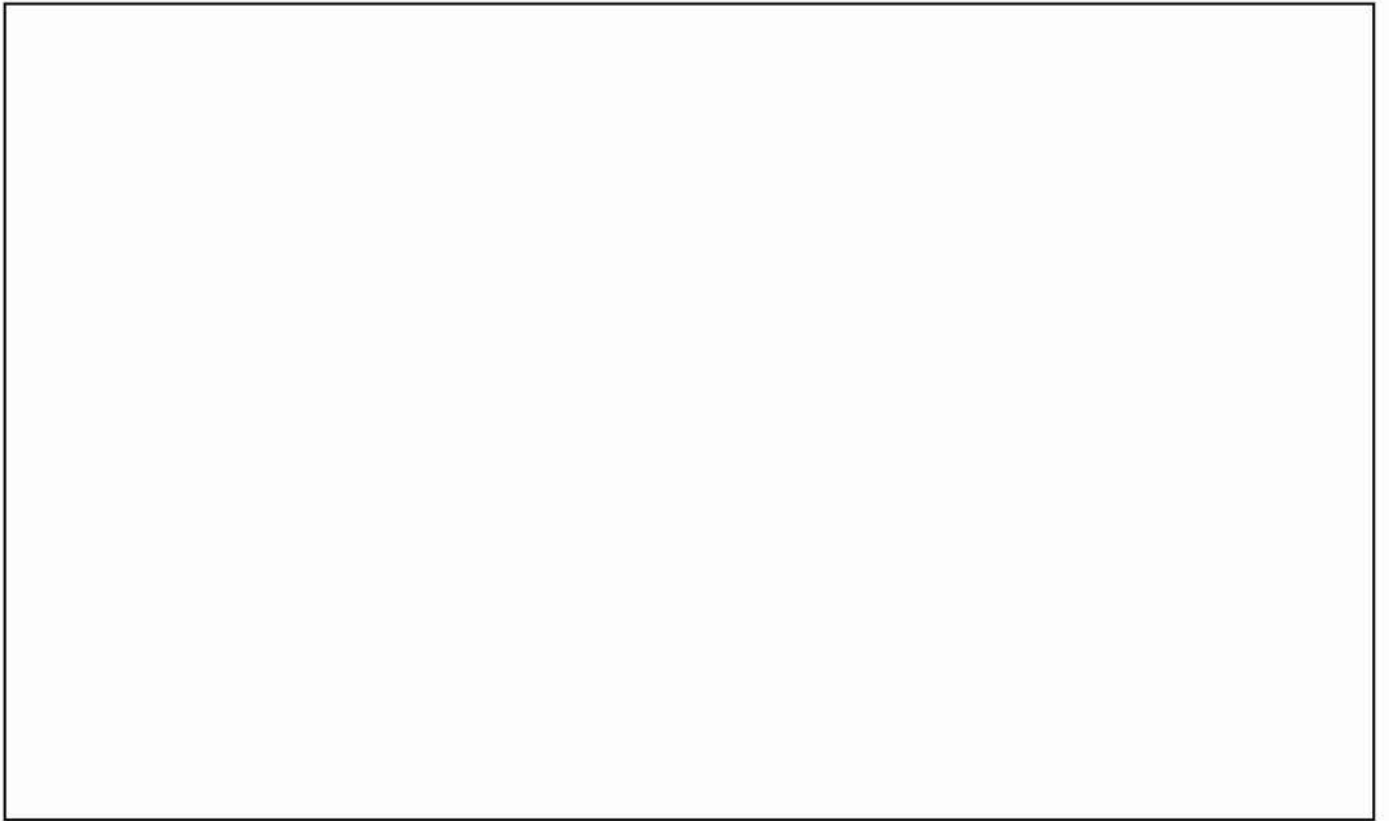
(b)(7)(E)



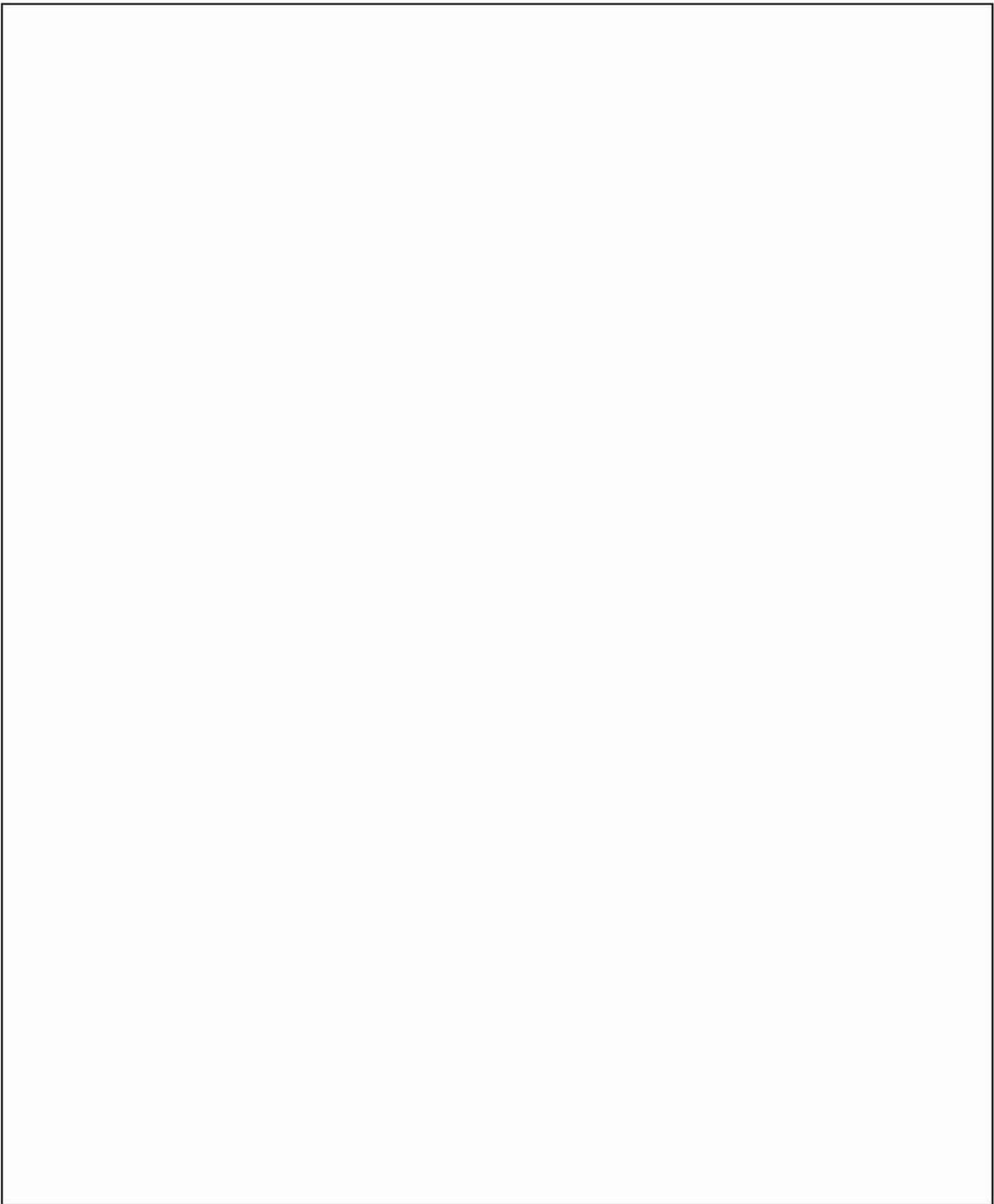


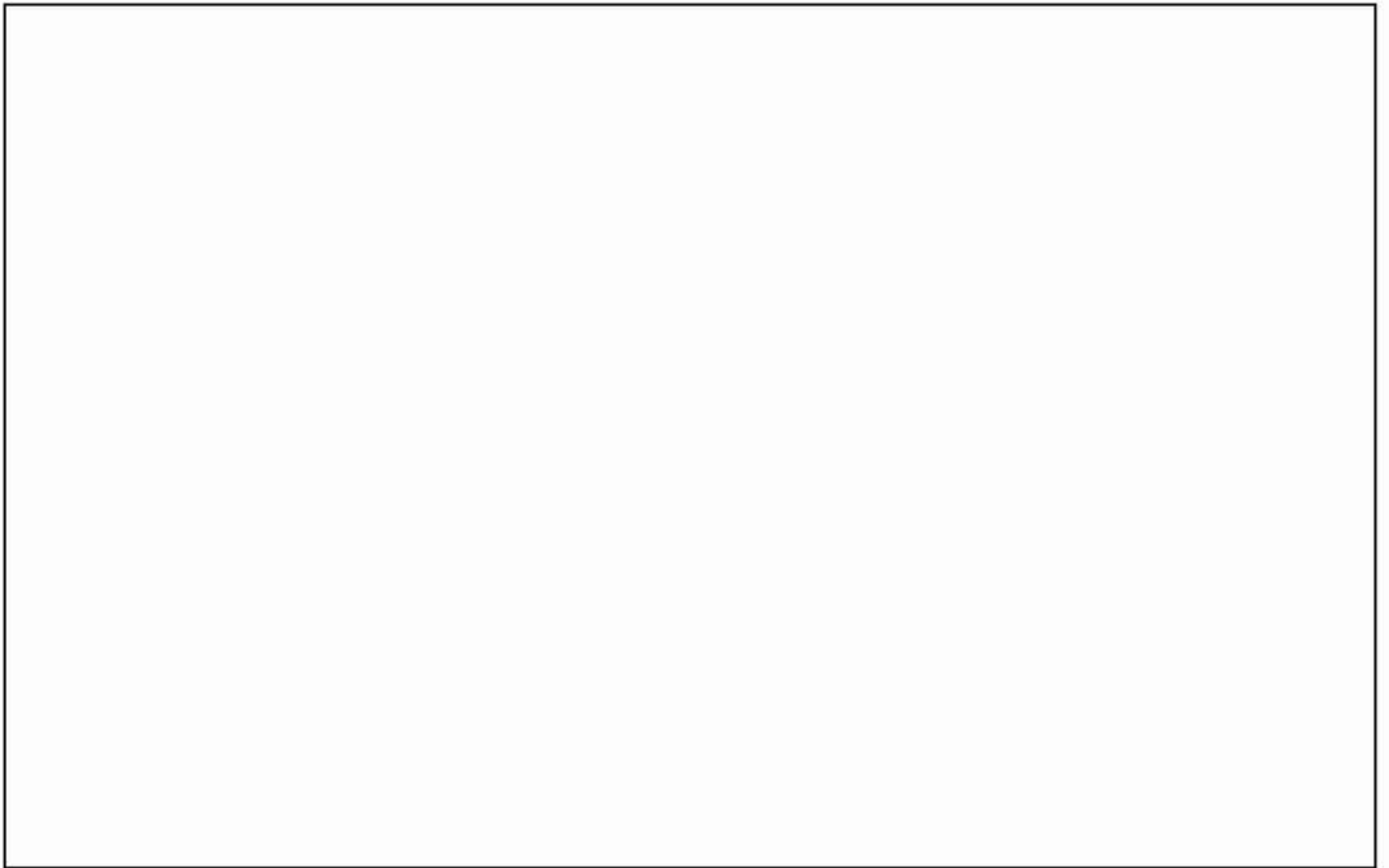


(b)(7)(E)



(b)(7)(E)







U.S. Citizenship and Immigration Services

National Security Overview and CARRP Processing

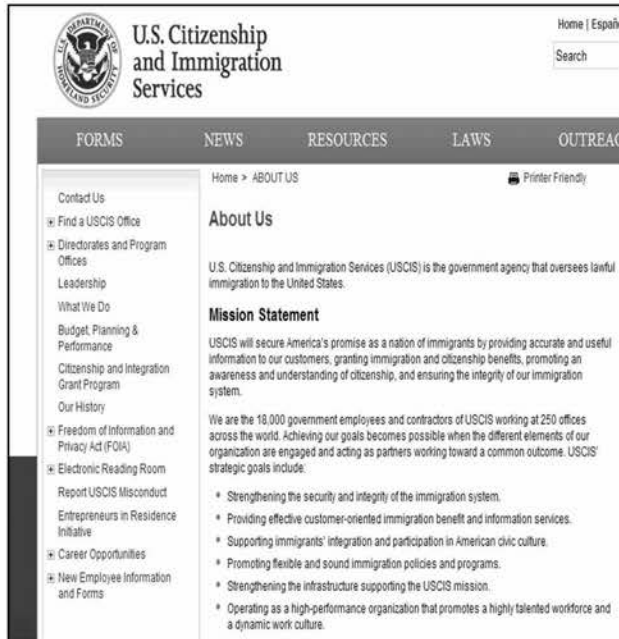
ADOPT
November 2019

Learning Objectives

- Provide Adjudicators with general understanding of USCIS' approach to handling cases with national security concerns.
- Familiarize Adjudicators with the FDNS Controlled Application Review and Resolution Process (CARRP)
- Enable Adjudicators to Identify factors that may indicate a national security concern.
- Enable Adjudicators with knowledge on primary FDNS resources used in vetting and resolution of national security concerns.



National Security Overview



U.S. Citizenship and Immigration Services

Home | Español

Search

FORMS NEWS RESOURCES LAWS OUTREACH

Home > ABOUT US Printer Friendly

Contact Us

- Find a USCIS Office
- Directorates and Program Offices
- Leadership
- What We Do
 - Budget, Planning & Performance
 - Citizenship and Integration Grant Program
 - Our History
- Freedom of Information and Privacy Act (FOIA)
- Electronic Reading Room
- Report USCIS Misconduct
- Entrepreneurs in Residence Initiative
- Career Opportunities
- New Employee Information and Forms

About Us

U.S. Citizenship and Immigration Services (USCIS) is the government agency that oversees lawful immigration to the United States.

Mission Statement

USCIS will secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.

We are the 18,000 government employees and contractors of USCIS working at 250 offices across the world. Achieving our goals becomes possible when the different elements of our organization are engaged and acting as partners working toward a common outcome. USCIS' strategic goals include:

- Strengthening the security and integrity of the immigration system.
- Providing effective customer-oriented immigration benefit and information services.
- Supporting immigrants' integration and participation in American civic culture.
- Promoting flexible and sound immigration policies and programs.
- Strengthening the infrastructure supporting the USCIS mission.
- Operating as a high-performance organization that promotes a highly talented workforce and a dynamic work culture.

USCIS Mission Statement:

“U.S. Citizenship and Immigration Services administers the nation’s lawful immigration system, **safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.**”

Lesson Objectives

1. How do we define national security concerns?
2. How do we identify national security concern cases?
3. How do we process national security concern cases?



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

What is “national security” at USCIS?

A national security concern exists when an individual or organization has been determined to have an **articulable link** to prior, current or planned involvement in, or association with, an activity, individual or organization described in INA § 212(a)(3)(A), (B), or (F), or § 237(a)(4)(A) or (B).

SOURCE OF AUTHORITY

INA §§ 212(a)(3)(A), (B), (F) – Security and related ***inadmissibility*** grounds

INA §§ 237(a)(4)(A), (B) – Security and related ***removability*** grounds



National Security Grounds

Areas of National Security Concern	Section of the INA
Espionage	§212(a)(3)(A), and §237(a)(4)(A)
Sabotage	
Exporting sensitive goods, technology, or information	
Overthrowing the U.S. government by force or violence	
Hijacking or sabotaging transportation	§212(a)(3)(B), and §237(a)(4)(B)
Hostage-taking	
Attack or assassination of any government official (U.S. or any other government)	
Using biological, chemical, or nuclear weapons	
Using other weapons to harm people or cause damage (other than for personal monetary gain)	§212(a)(3)(B), (a)(3)(F), and §237(a)(4)(B)
People or groups the Secretaries of State and/or Homeland Security have determined are terrorists	

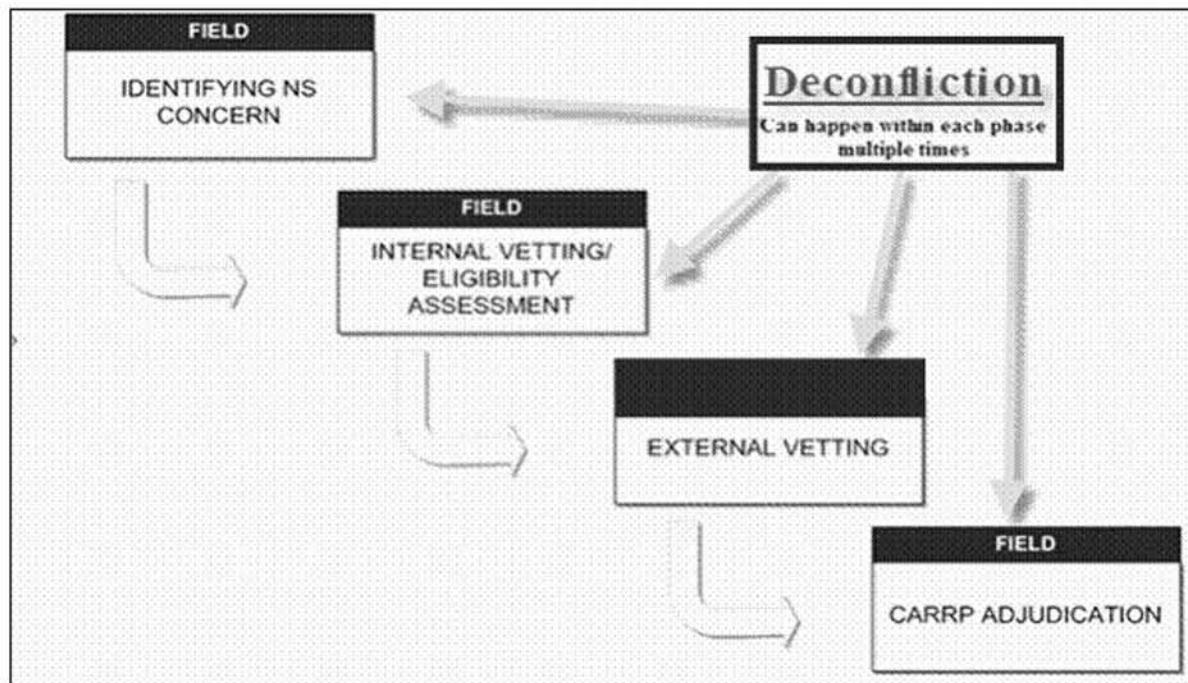


U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

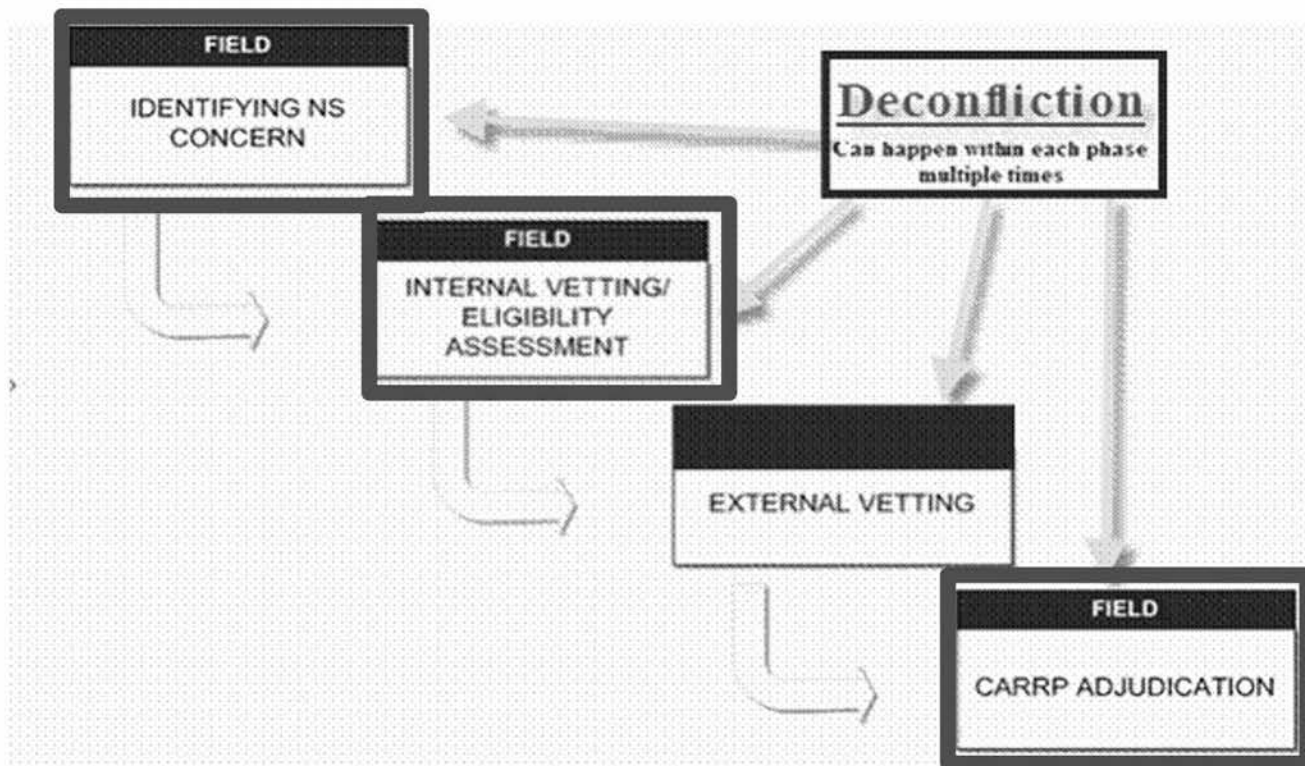
What to do if you identify an NS Concern?

If NS concerns are identified, then the case goes through Controlled Application Review and Resolution Program (CARRP).



CARRP Roadmap: Adjudicator's Role

The RAO adjudicating officer is responsible for three stages of the process (1,2, and 4).



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

CARRP Process & Operational Procedure

CARRP is a disciplined process for identifying, recording, vetting, and adjudicating applications and petitions where NS concerns are identified.

What does CARRP do?

- Provides a structured framework for the enhanced review and documentation of national security cases.
- Provides adjudicators with additional support and review by FDNS Officers
- Governs information sharing between USCIS and interagency partners, law enforcement agencies, and the intelligence community.
- Can result in additional information and uniform documentation for analysis by adjudicators and senior leadership.
- Requires USCIS Senior Leadership concurrence prior to granting Known or Suspected Terrorists (KST)



When does CARRP apply?

Individual / Organization + Connection to + NS ground from INA =

**National Security Concern
Handled under CARRP**



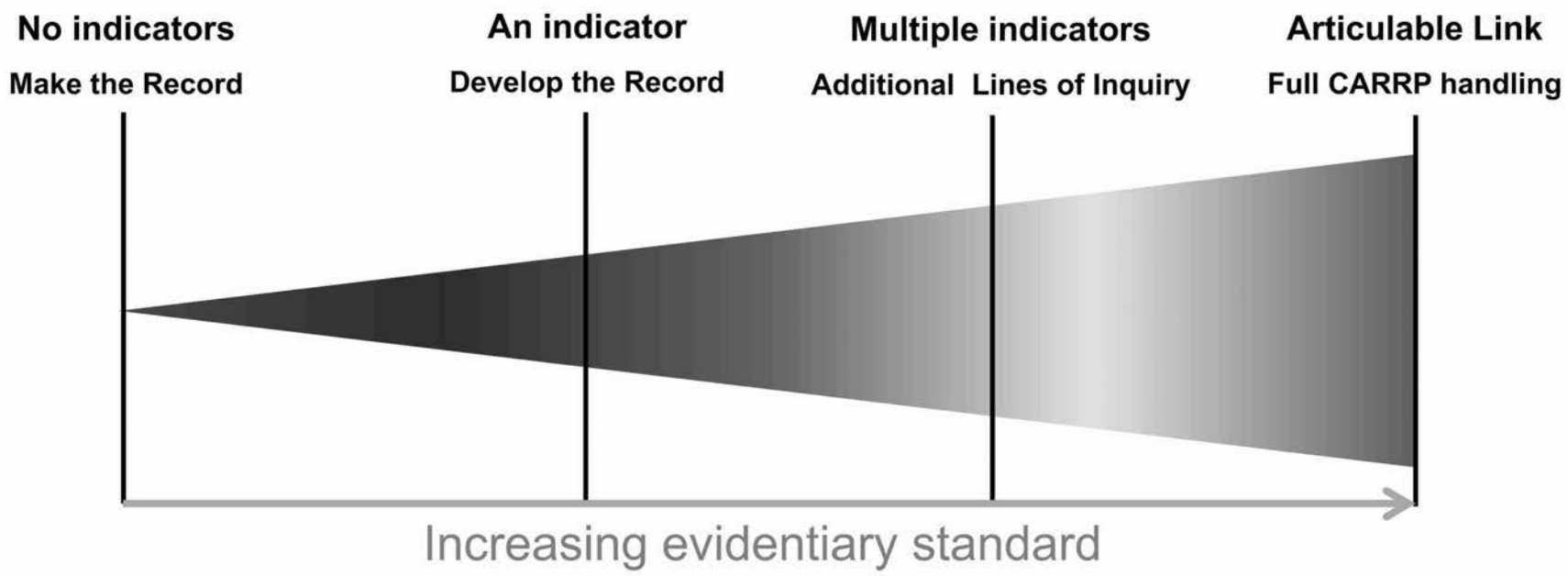
U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Unclassified // FOUO / Law Enforcement Sensitive

NS Indicator vs. NS Concern?

NS Indicator	NS Concern
<ul style="list-style-type: none"> ✓ An activity, characteristic, or association which requires further development to evaluate eligibility in the totality of the circumstances. 	<ul style="list-style-type: none"> ✓ An <u>articulable link</u> to an activity, individual, or organization described in § 212(a)(3)(A),(B) or (F), or § 237(A)(4)(A) or (B).



Indicators: Examples

Examples of *potential* indicators which may merit additional exploration in the interview record:

- Employment, Training, Government Affiliations

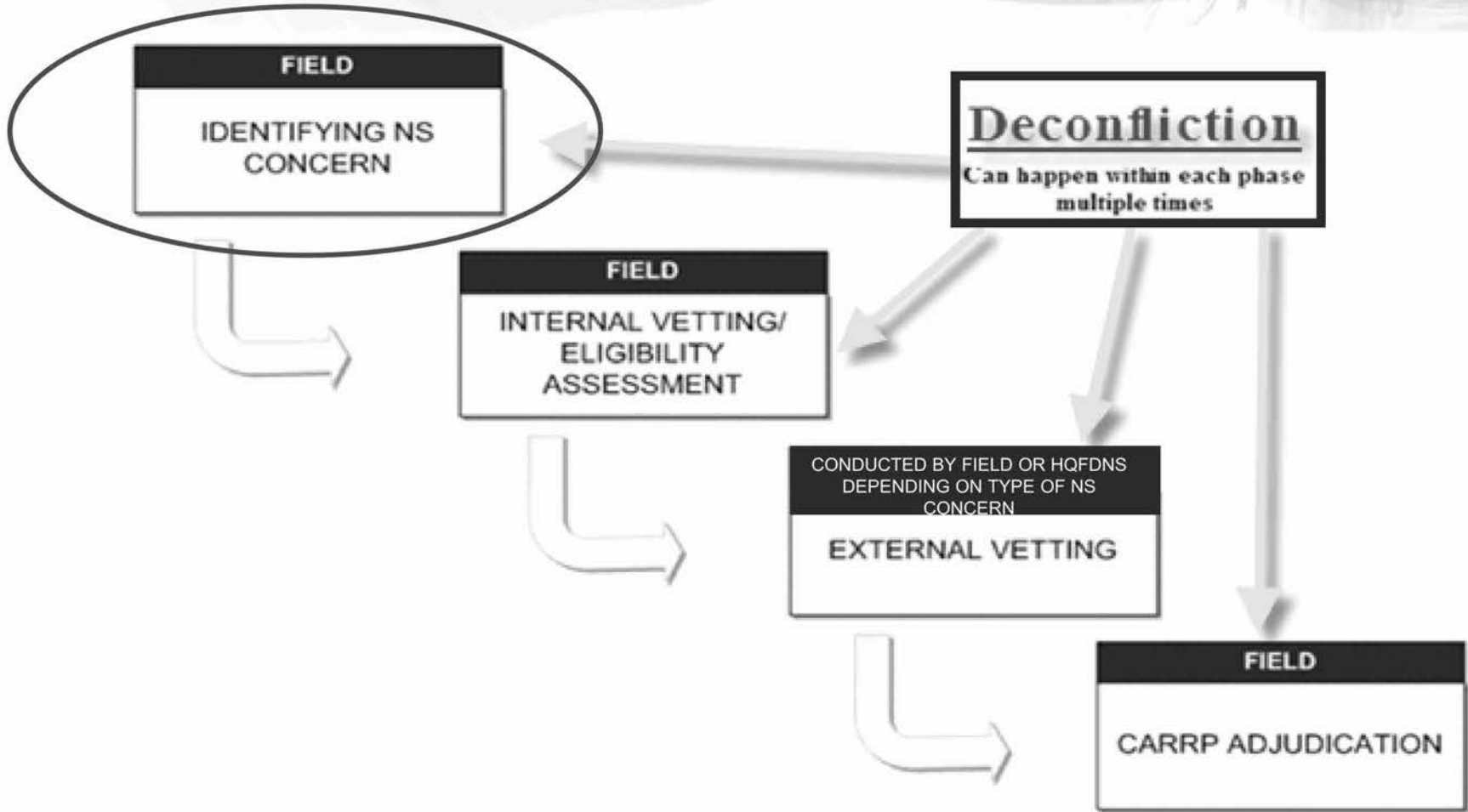
(b)(7)(E)

- Other suspicious activities

- Family Members or Close Associates
- Security Check Results
- Open source media (internet, news, social media...)
- Interview Testimony



CARRP Stage One



National Security Framework

Non-NS
Concerns

NS Concerns

KST

Non-KST



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Terminology: KST

- Nomination for placement in the Terrorist Screening Database (TSDB) as a KST must meet the *reasonable suspicion* threshold for Watchlisting
 - Known or suspected of
 - being engaged in terrorist activity;
 - having previously engaged in terrorist activity;
 - being a member of a terrorist organization;
 - having been a member of a terrorist organization;
 - preparing to engage in terrorist activity.

(b)(7)(E)

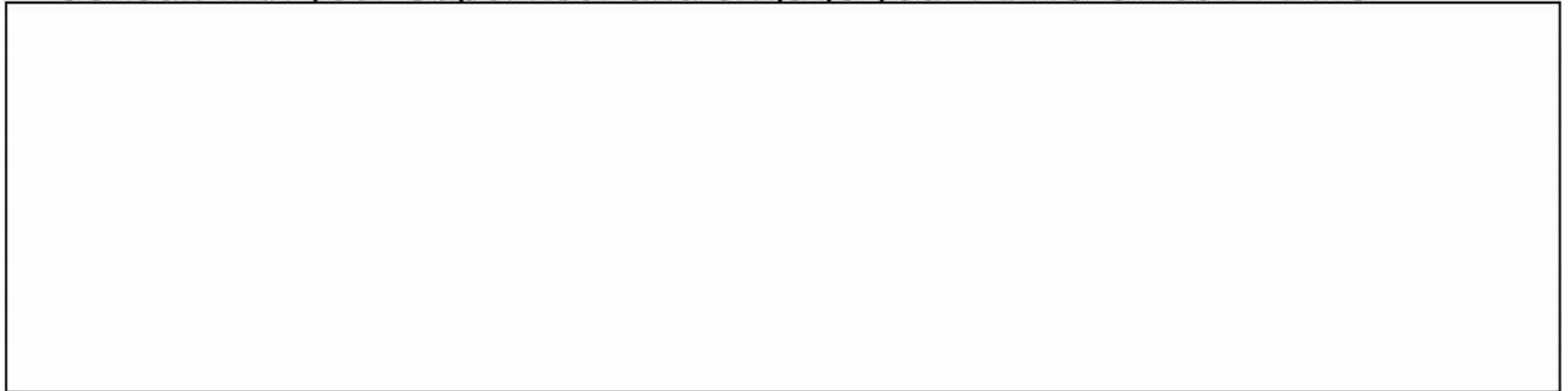


Encountering KSTs



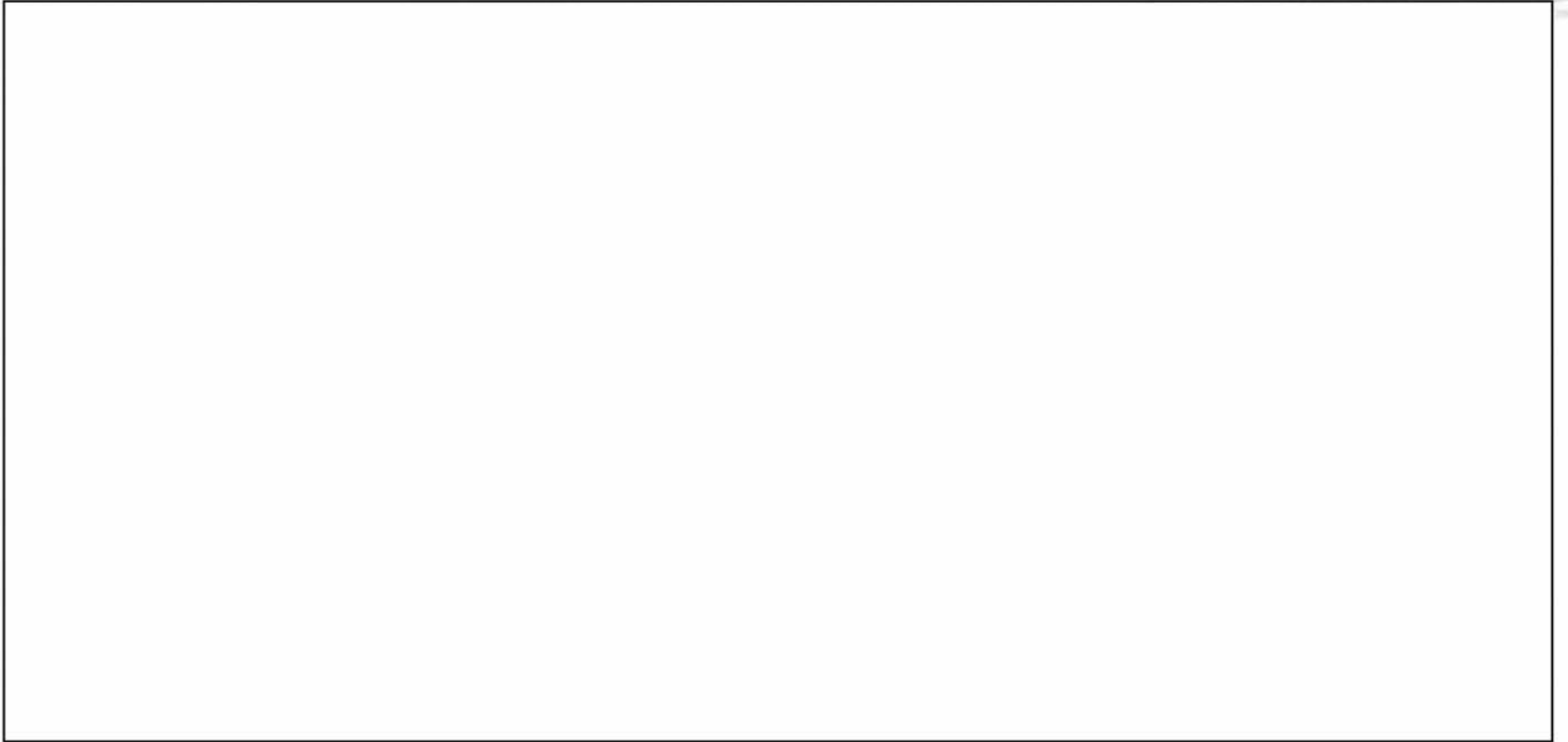
(b)(7)(E)

Consult with your Supervisor and engage your FDNS Officer. FDNS



Identifying KSTs

(b)(7)(E)



TECS Portals –

(b)(7)(C)

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

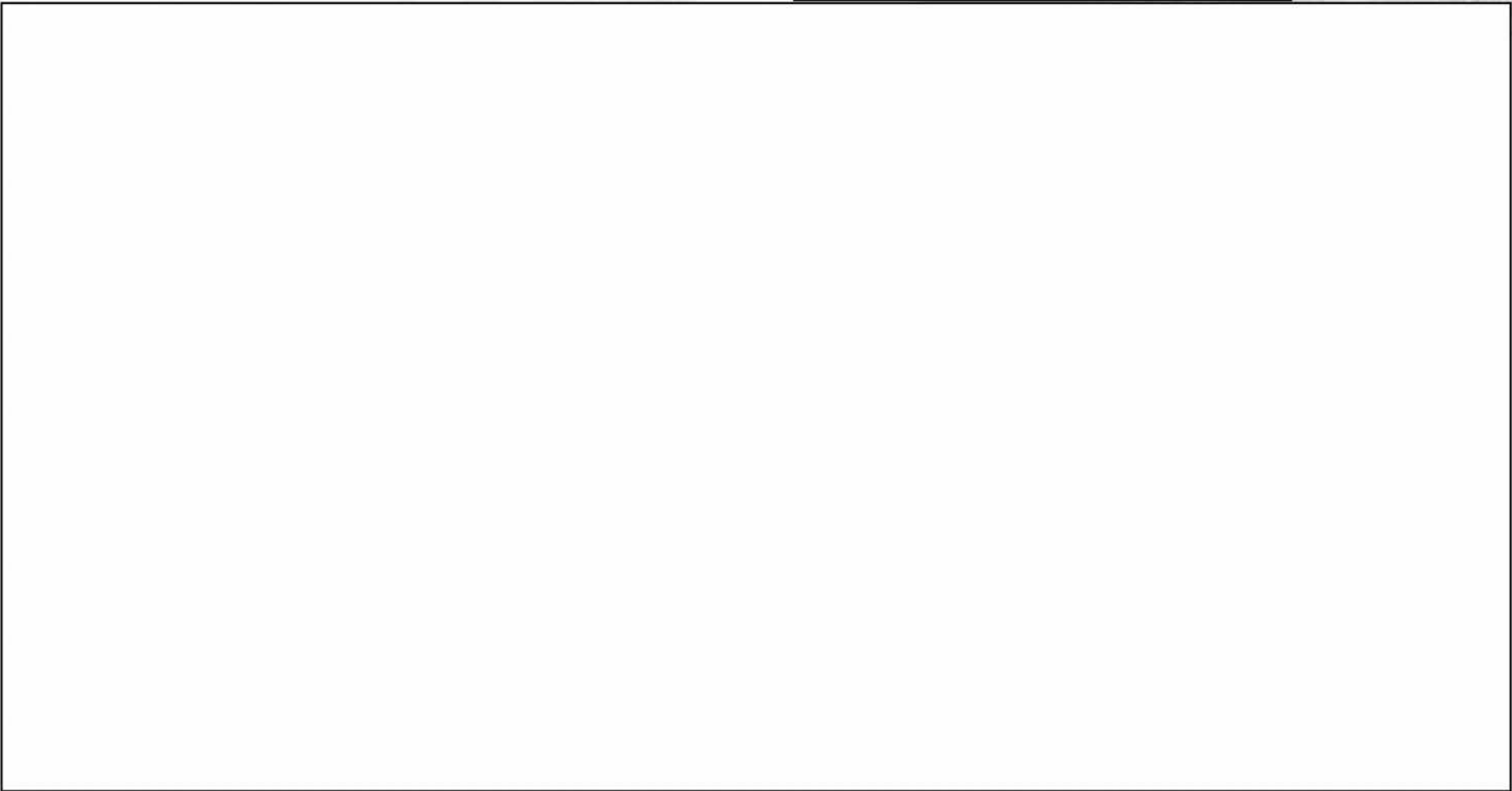
Unclassified // FOUO / Law Enforcement Sensitive

TECS Portals –



(b)(7)(C)

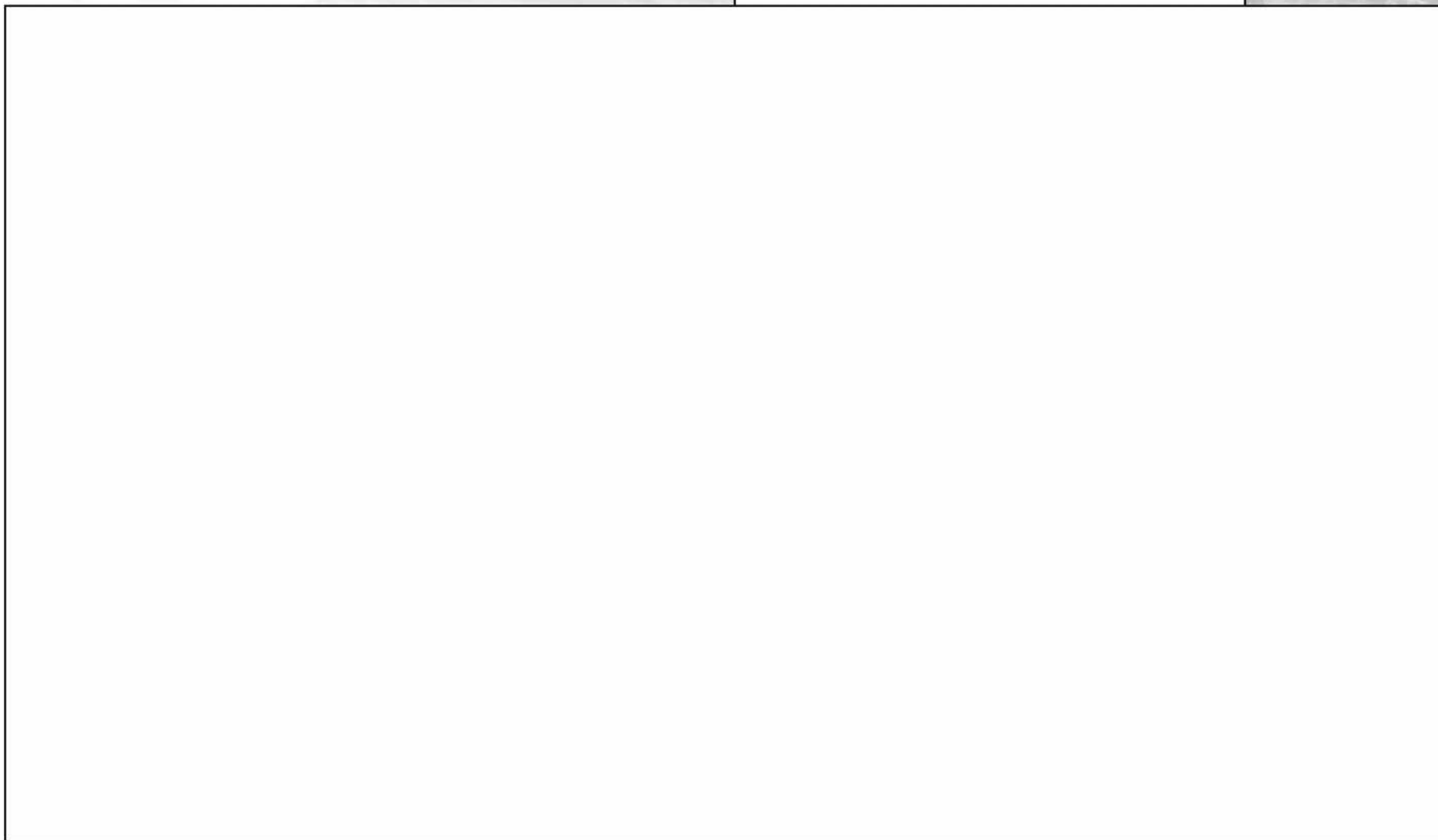
(b)(7)(E)



TECS Portals –

(b)(7)(C)

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

TECS Portals –

(b)(7)(C)

(b)(7)(E)



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Unclassified // FOUO / Law Enforcement Sensitive

Non-Known or Suspected Terrorist (Non-KST)

- A category for all remaining cases with NS concerns, regardless of source, including but not limited to:
 - Associates of KST(s), unindicted co-conspirators
 - Terrorist organization members
 - Agents of foreign governments
 - Persons who have provided material support to terrorists or terrorist organizations [See TRIG v. CARRP]
- Although not a designated KST, these individuals and organizations may also pose a serious threat to national security and merit additional vetting.



Identifying Non-KSTs

- Security Checks
- File Review
- Application or supporting documents
- U.S. or Foreign government information
- Open Source – internet, news, social media
- Tip Letters
- Interview (*self-reporting*)



CARRP Stage One: Identify the NS Concern – Security Checks

RAIO Security Checks

- Biographic Checks

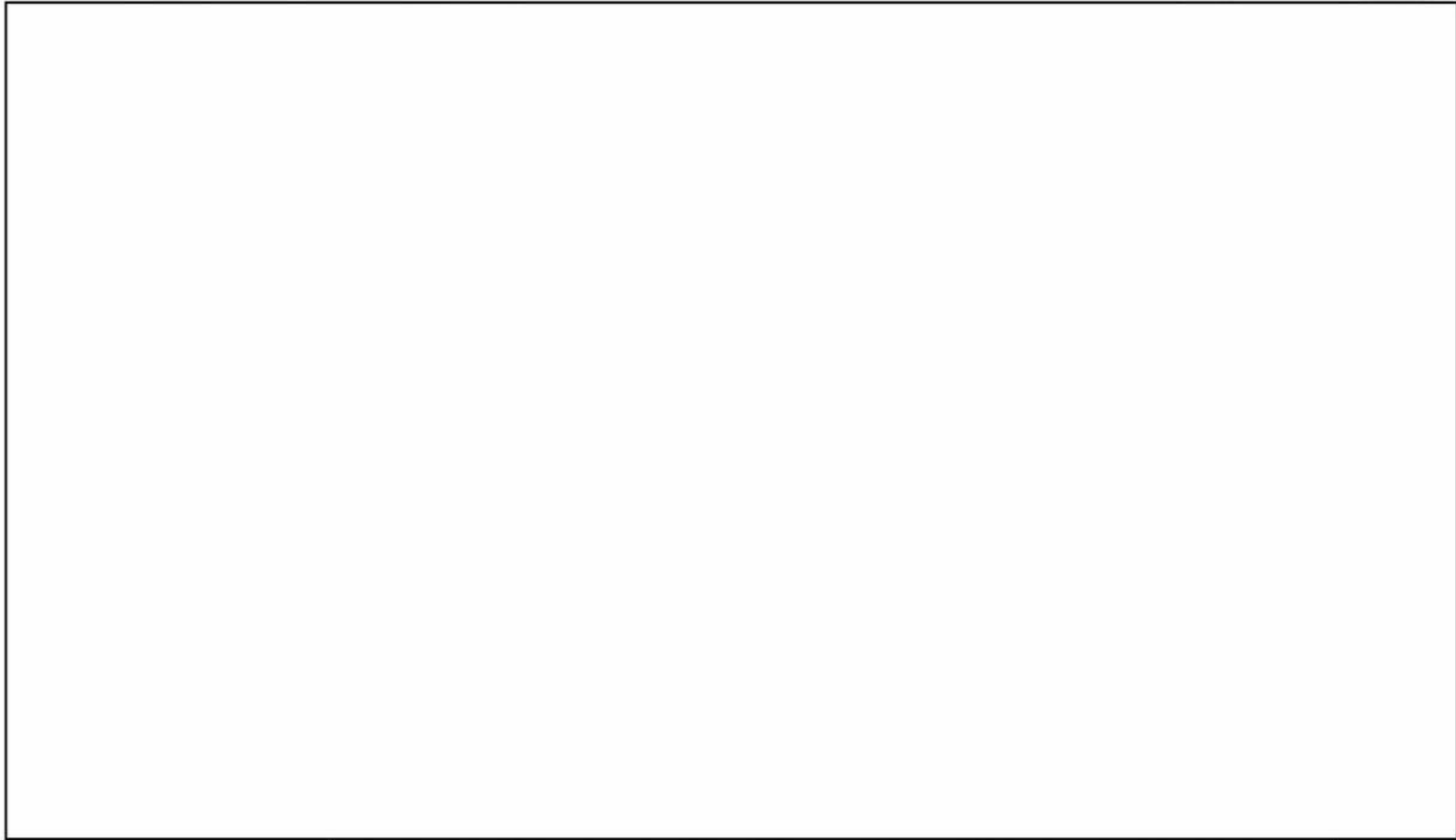
(b)(7)(E)

- Biometric Checks

- Other Classified System Checks



CARRP Stage One: Identify the NS Concern – Security Checks

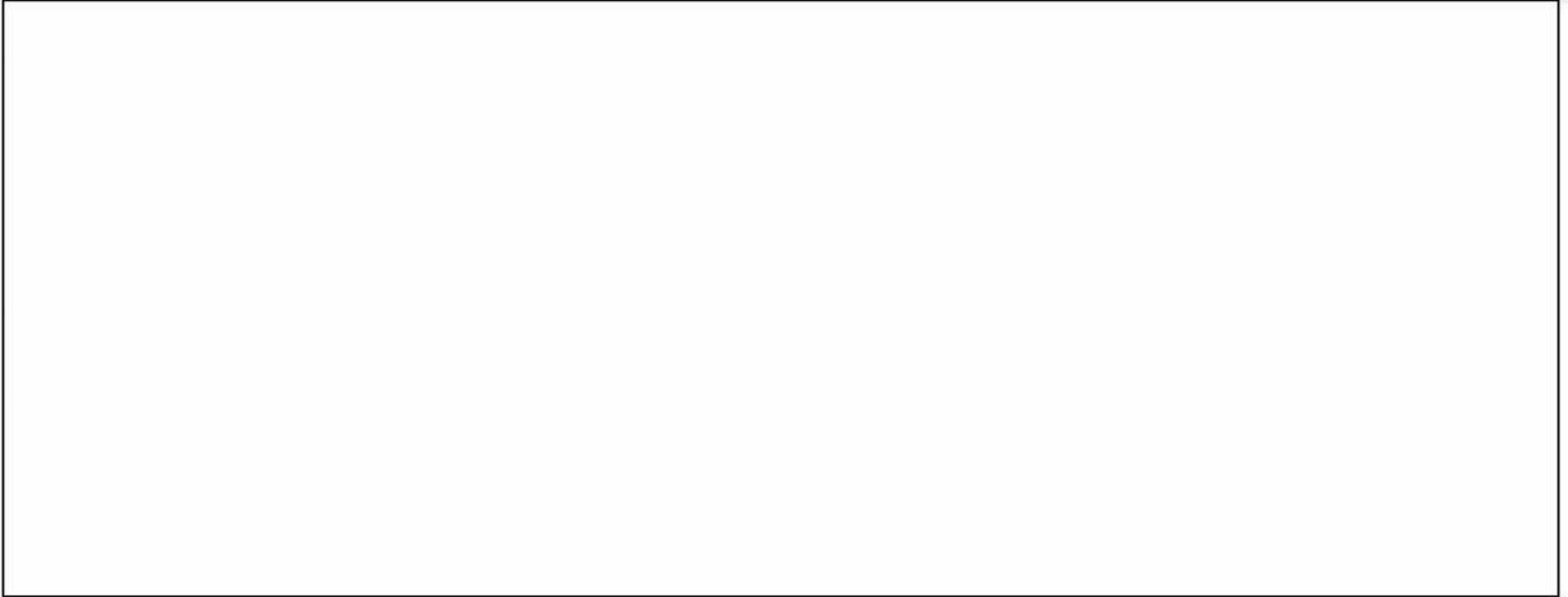


(b)(7)(C)
(b)(7)(E)



CARRP Stage One: Identify the NS Concern – Security Checks

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



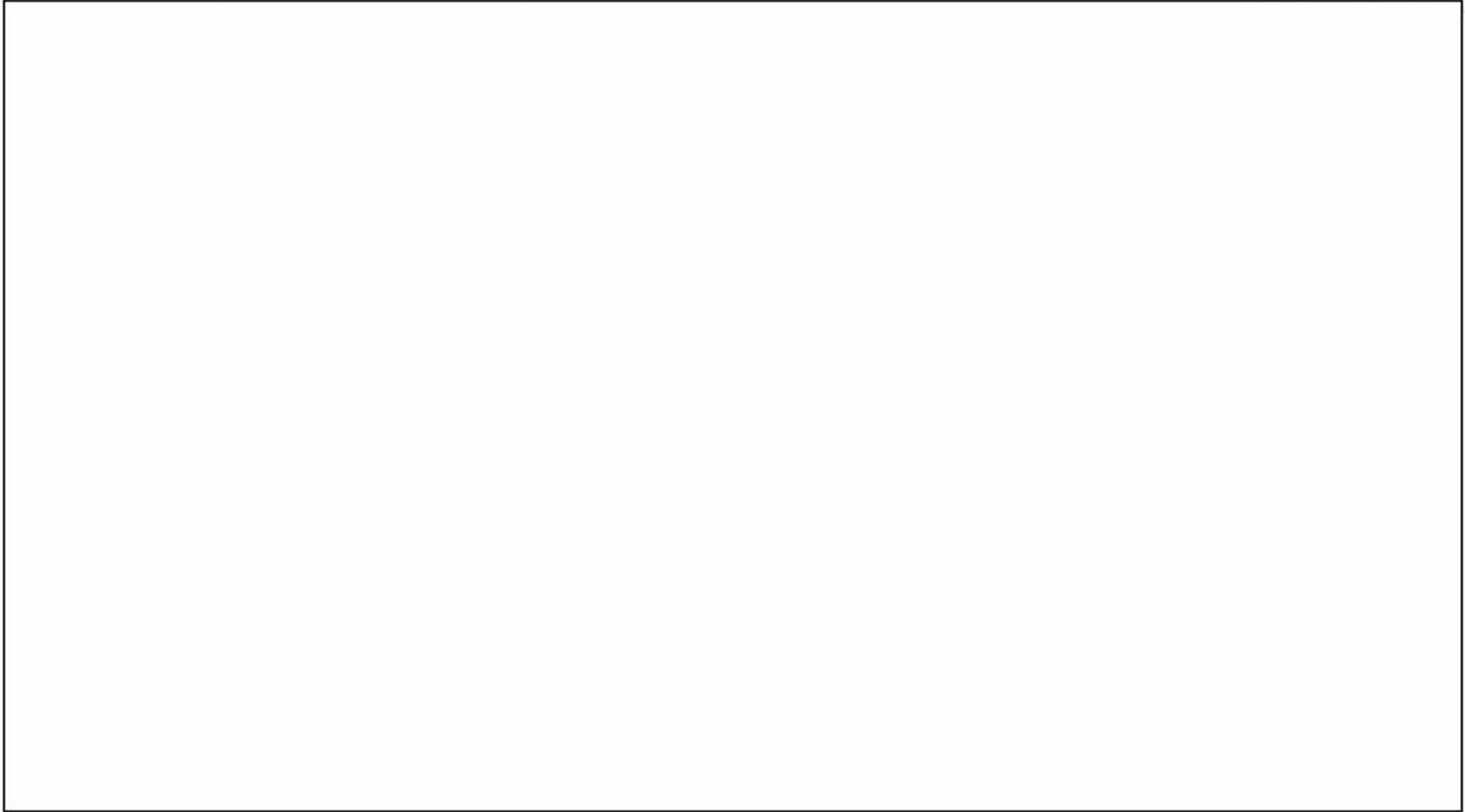
U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Unclassified // FOUO / Law Enforcement Sensitive

Identifying Non-KSTs Self-reported Concerns

(b)(7)(E)





National Security Overview

Sample Cases: Persecution Stories and Security Checks Handout

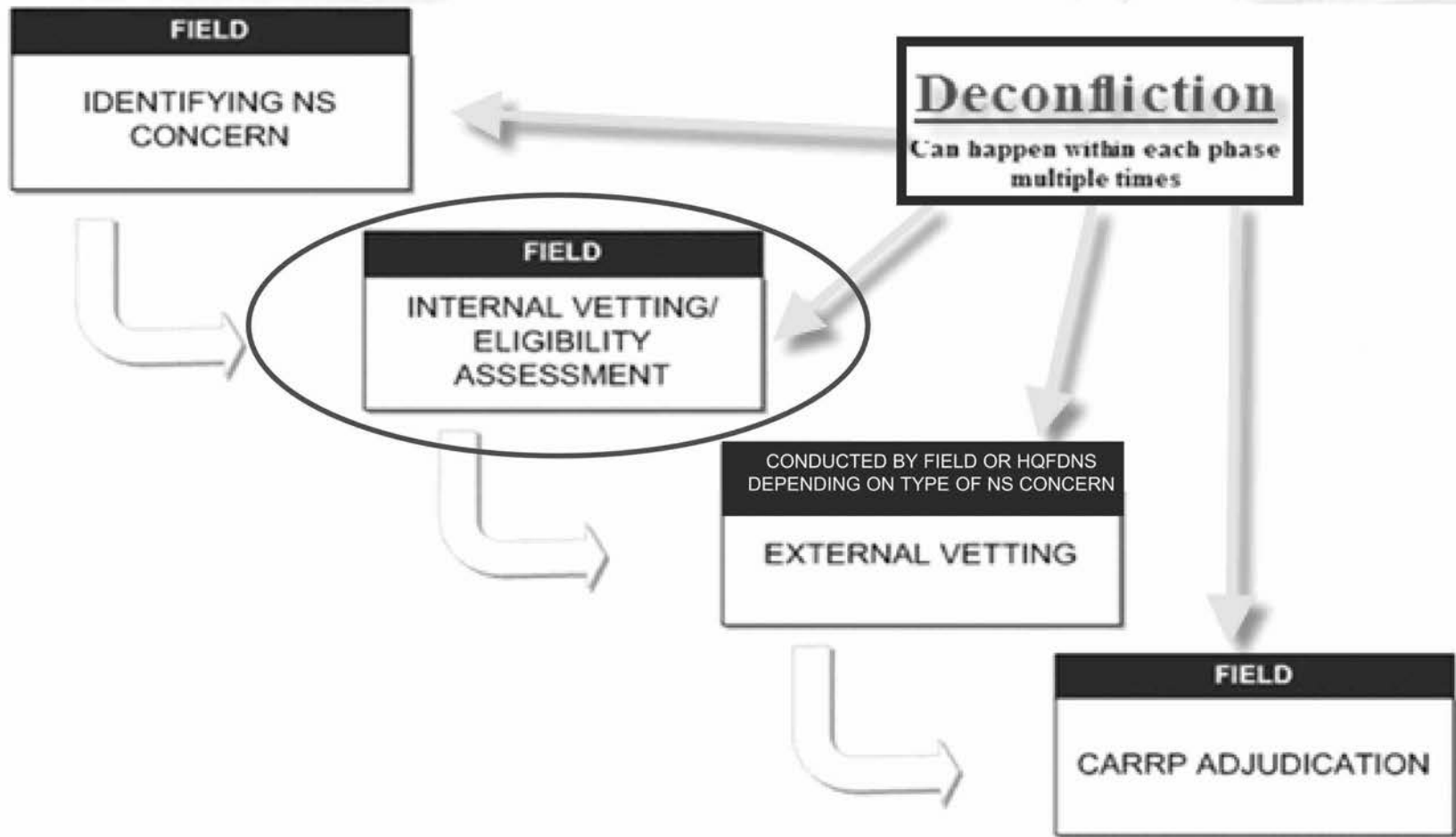


U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Unclassified // FOUO / Law Enforcement Sensitive

CARRP Stage Two



CARRP Stage Two

Internal Vetting & Eligibility Assessment

There are two parts of Stage Two:

1. Internal Vetting

- Conducted in order to obtain any relevant information to support adjudication and, in some cases, to further examine the nature of the NS concern.
- Performed by everyone involved in the CARRP process:
 - Adjudicators may conduct enhanced system searches, re-interviews, or issue RFEs
 - FDNS IOs conduct enhanced system searches
 - Adjudications and FDNS may jointly prepare a case history

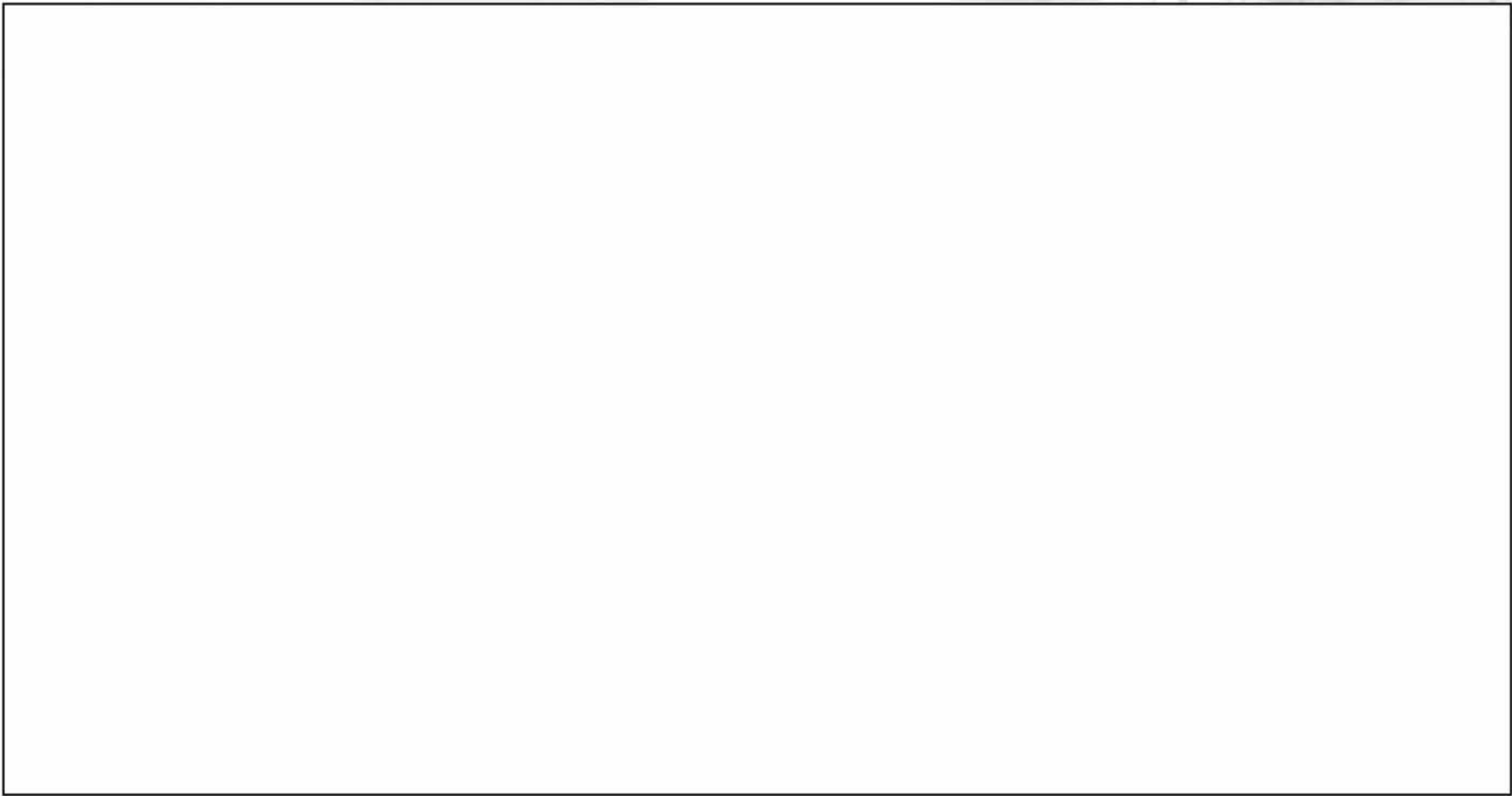
2. Eligibility Assessment

- To ensure that valuable time and resources are not unnecessarily expended externally vetting a case with a record owner when the individual is otherwise ineligible for the benefit sought.
- Typically performed by adjudicating officers to determine underlying substantive eligibility for the immigration benefit.
 - May be a specially designated Officer, such as a Senior Asylum Officer



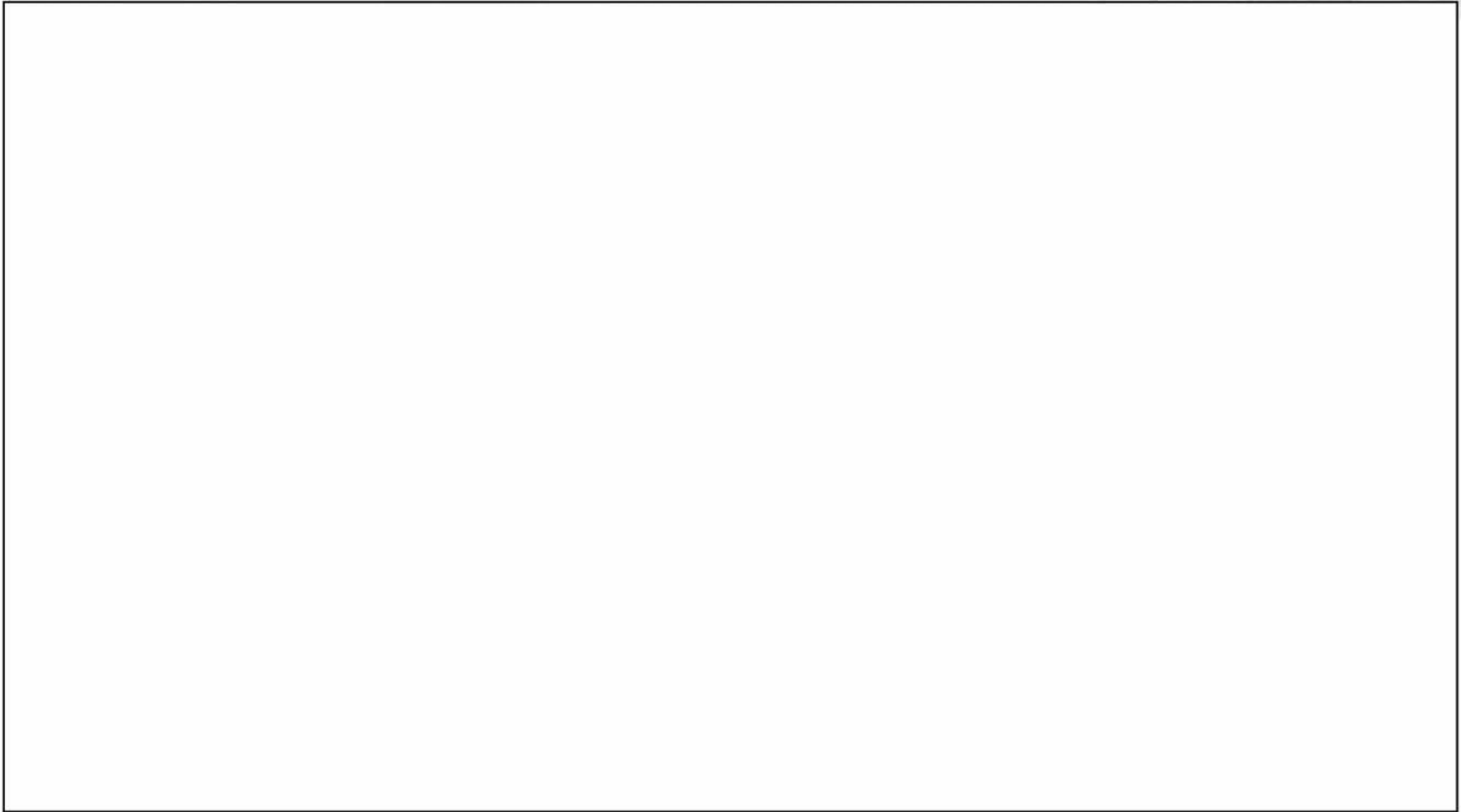
Eligibility Assessment: Interview Considerations

(b)(7)(E)

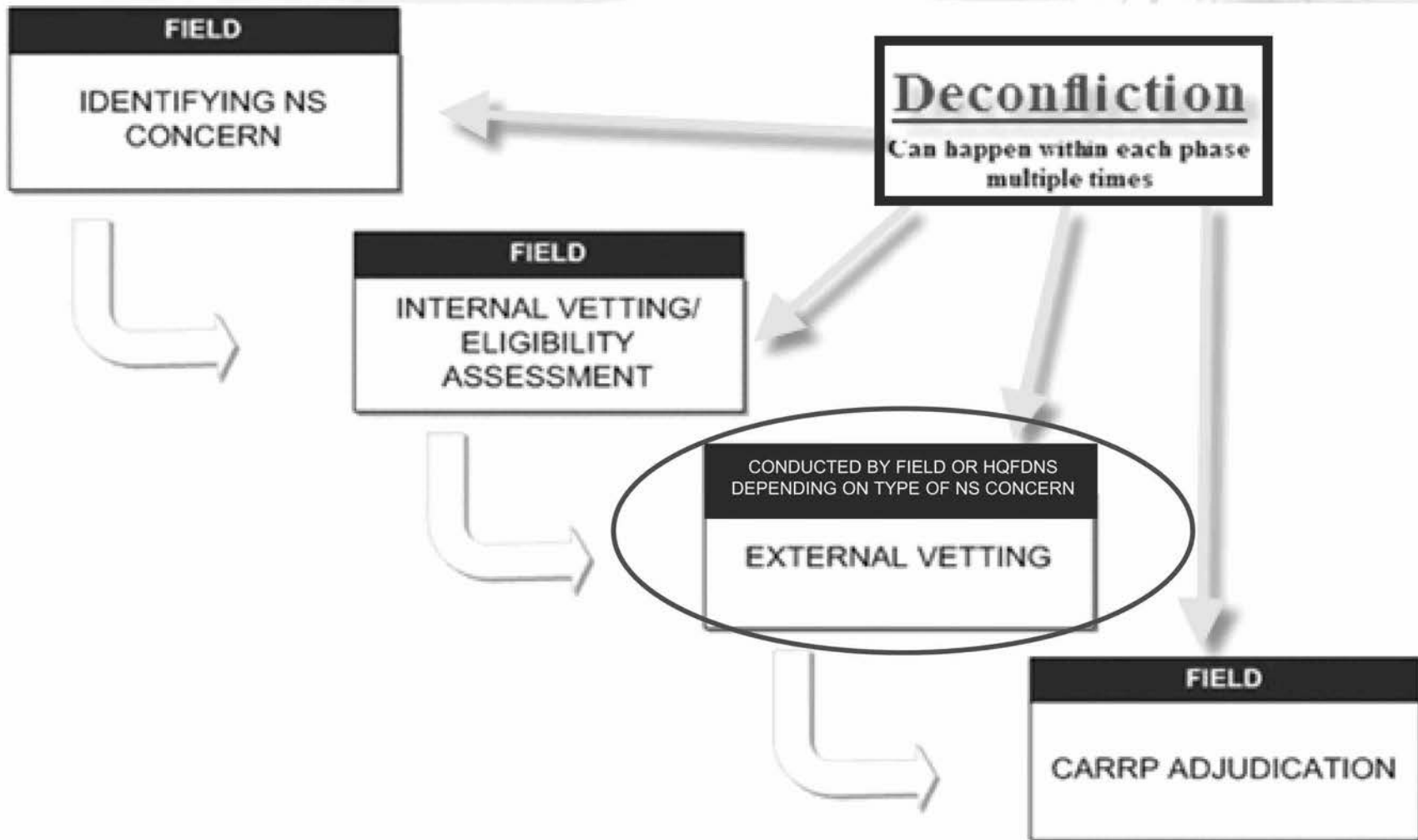


Applying CARRP to TRIG cases

(b)(7)(E)



CARRP Stage Three



U.S. Citizenship
and Immigration
Services

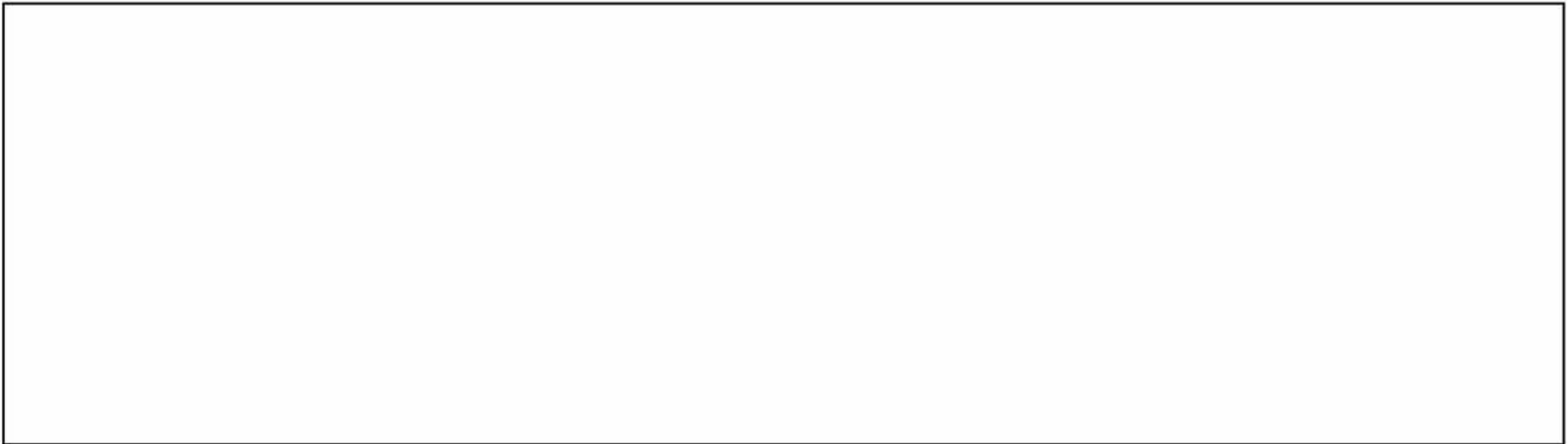
Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

External Vetting

External vetting is typically conducted by FDNS-IOs

- To obtain additional information from restricted access resources regarding the nature of the NS concern and its relevance to the individual.

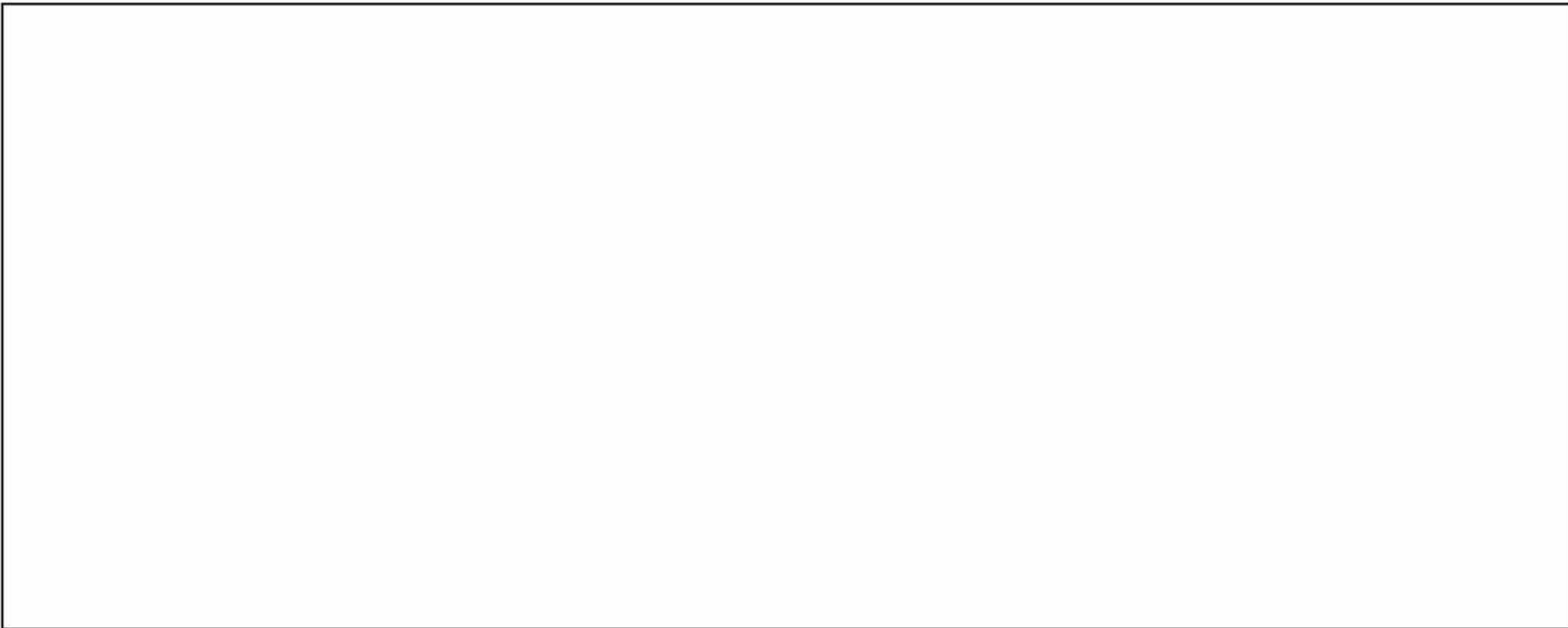
(b)(7)(E)



Results of External Vetting: BCAA

After external vetting, the case will be returned to Adjudications with a **Background Checks and Adjudicative Assessment (BCAA) worksheet to complete Stage 4.**

(b)(7)(E)



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

FDNS Findings and Recommendations



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

National Security Overview

Sample Cases: FDNS Findings Handout

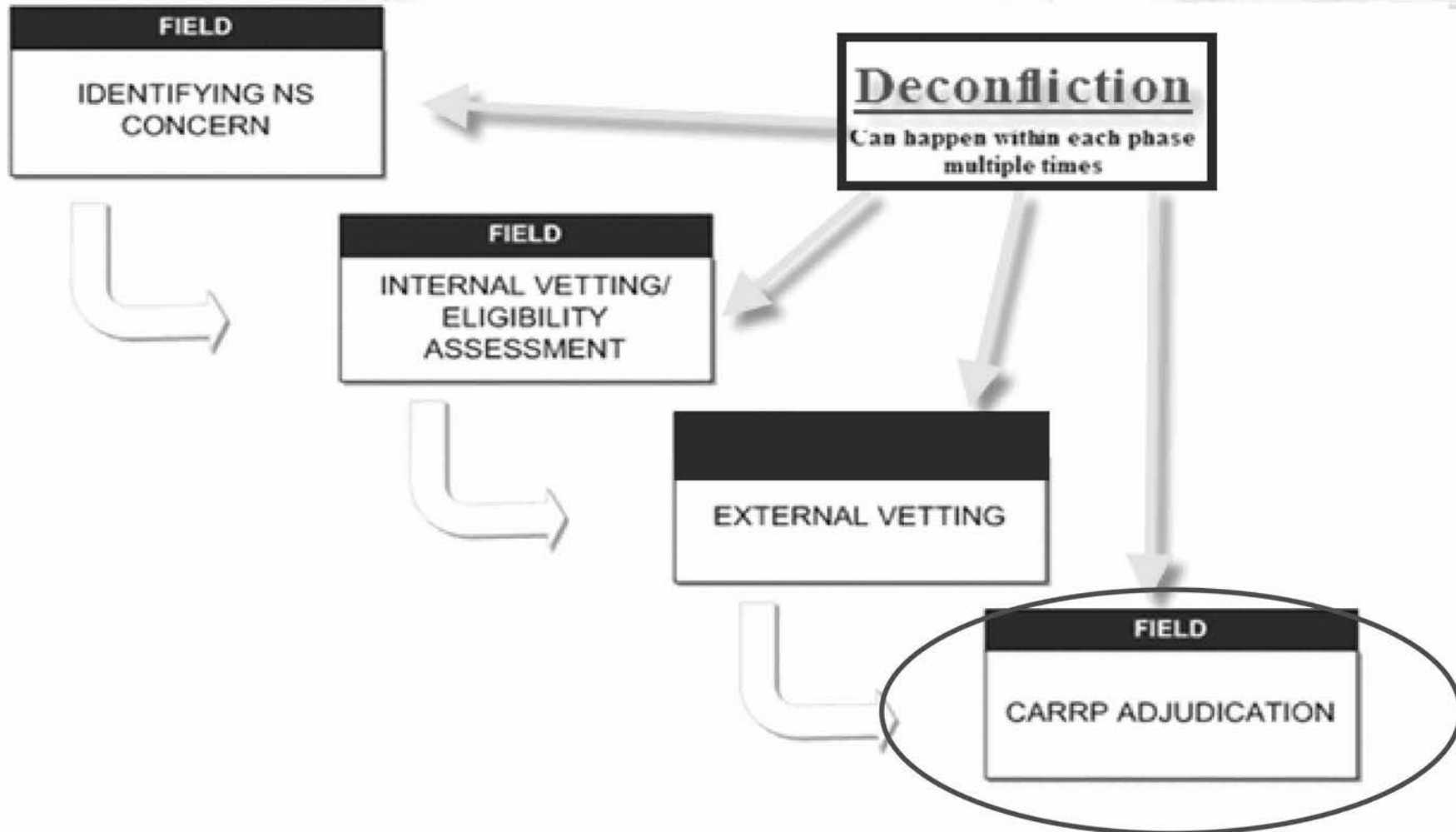


U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Unclassified // FOUO / Law Enforcement Sensitive

CARRP Stage Four



Adjudicating National Security Cases

CARRP Outcomes

Adjudicative Decision

Eligible for benefit

Ineligible for benefit (b)(7)(E)

**National
Security
Issue**



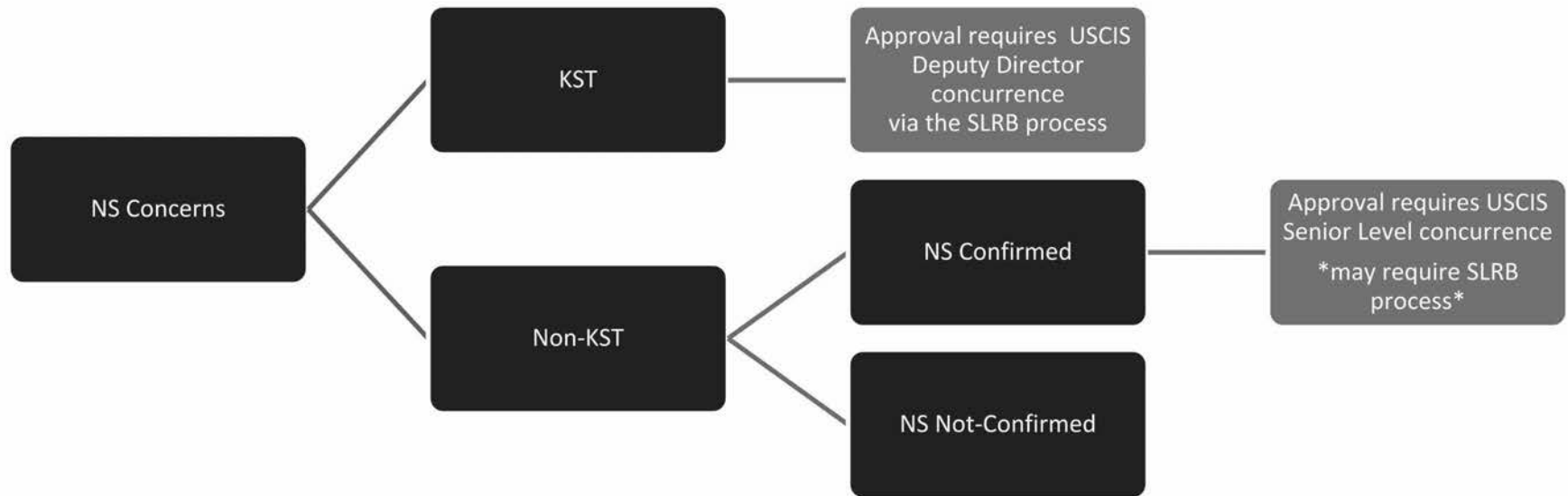
U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Unclassified // FOUO / Law Enforcement Sensitive

Stage Four

Adjudicating National Security Cases



Adjudicating KST cases

- Remember to notify your Supervisor and FDNS IO if you encounter a KST.



Unresolved KST NS concerns can ONLY be granted with concurrence of the USCIS Deputy Director.



Adjudicating Non-KST cases

For Non-KST NS Concern

- Any denial, referral, or Notice of Intent to Deny (NOID) an application or petition with NS concerns must be based on statutory grounds of ineligibility that can be cited in a decision.
 - Seek supervisory and/or legal review.

Unresolved Non-KST NS concerns after vetting and deconfliction appear eligible for benefit sought, the officer may:

- Recommend approval of the application/petition and must elevate this recommended approval to the senior-level official (typically Asylum Office Director or HQ RAD, HQ IO) for consideration/concurrence.
- Recommend further review of the application/petition and must elevate this recommendation to the senior-level official.



Final Considerations for Adjudication

CARRP is a multi-faceted process for identifying, recording, and adjudicating applications and petitions where NS concerns are identified.

- You are not alone
- Your Supervisors and FDNS-IOs are valuable resources

Evaluate the BCAA for external vetting results

- NS Concerns Resolved
- NS Concerns Confirmed or Unresolved

Determine further actions in consultation with your Supervisor and FDNS-IOs

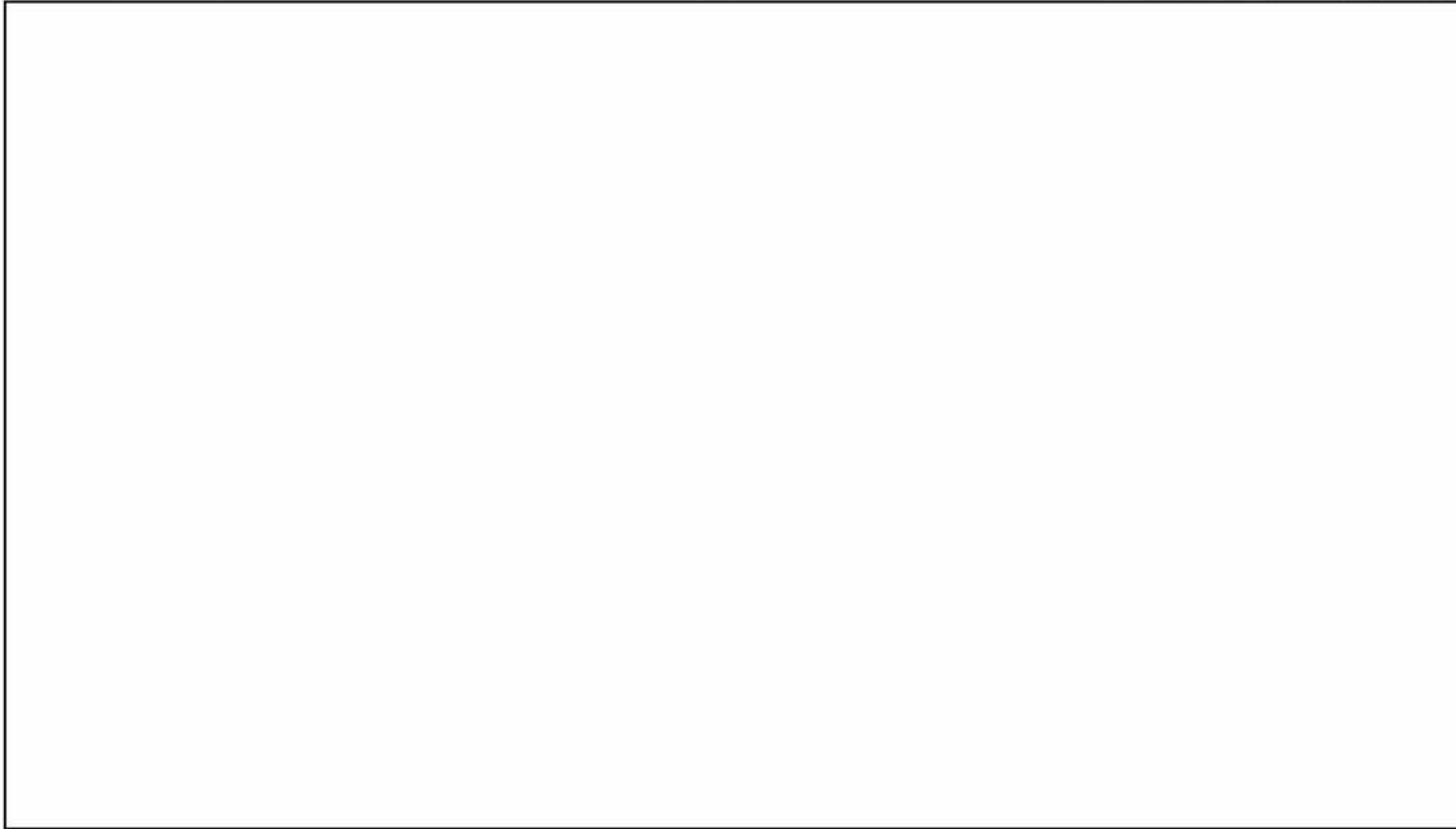
- Process through normal adjudication?
- Re-interview?
- Additional country conditions research?
- Additional background and systems checks?

Final CARRP Adjudication if NS Concern Remains

- Non-KST: Approval only with Senior Official concurrence (e.g. Asylum Director, HQ RAD, HQ IO)
- KST: Approval only with USCIS Deputy Director concurrence via the SLRB process



Additional National Security Resources



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



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

USCIS CARRP Policy

- *Policy for Vetting and Adjudicating Cases with National Security Concerns*
Signed April 11, 2008
 - Established KST vs. Non-KST categories
 - Decentralized non-KST processing to the field
 - Defined CARRP terms (“deconfliction,” “external vetting,” etc.)
 - Described the four stages of CARRP
- *Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving NS Concerns*
Signed February 06, 2009
 - Cases with unresolved KST NS concerns can be granted ONLY after concurrence of the USCIS Deputy Director.
- *Clarification and Delineation of Vetting and Adjudication Responsibilities for Controlled Application Review and Resolution Program (CARRP) Cases in Domestic Field Offices*
Signed June 5, 2009
 - Identified the roles of “designated officers” in CARRP
 - Outlined the actions and FDNS-DS documentation responsibilities within each role



USCIS CARRP Policy, con't..

- Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorist
Signed July 26, 2011
 - Revised the 2008 memo to allow the field to perform external vetting of KST cases without a requirement to consult HQ FDNS
- Policy for Treatment of Certain Cases Related to Alien Entrepreneurs Involving National Security (NS) Concerns
Signed May 8, 2012
 - Identified new form types subject to CARRP (b)(7)(E)

- Interim Guidance on Senior Leadership Review Board Standard Operating Procedures for Senior Leadership Case Review
Signed March 23, 2015
 - This interim guidance provides clarification for the process flow and documentation required for final grants of all KSTs and other high-profile Non-KST cases.



Questions?

Feedback Reminder:

Please complete the survey to provide feedback for consideration and incorporation during the next training course. We review the surveys from every course and value your suggestions for improvement.

Thank you!
RAIO FDNS



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.



Training Disclaimer

This Presentation is intended solely to provide training and guidance to USCIS personnel in performing their duties relative to the adjudication of immigration benefits.

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 Presentation does not have the force of law, or of a DHS directive.





U.S. Citizenship and Immigration Services



U.S. Citizenship
and Immigration
Services

Fraud Detection and National Security Directorate
You have the Public's trust and respect. Use them wisely.

Statutory National Security Indicators

Sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the INA

212 - GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION

(a) Classes of Aliens Ineligible for Visas or Admission

(3) Security and related grounds.-

(A) In general.-Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in-

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means, is inadmissible.

(B) Terrorist activities-

(i) IN GENERAL.-Any alien who-

(I) has engaged in a terrorist activity,

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of--

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

(ii) EXCEPTION- Subclause (IX) 4d of clause(i) does not apply to a spouse or child

(iii) TERRORIST ACTIVITY DEFINED

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED

(v) REPRESENTATIVE DEFINED

(vi) TERRORIST ORGANIZATION DEFINED

(F) Association with Terrorist Organizations - Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

237 - GENERAL CLASSES OF DEPORTABLE ALIENS

(a) Classes of Deportable Aliens.-Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(4) Security and related grounds.-

(A) In general.-Any alien who has engaged, is engaged, or at any time after admission engages in-

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

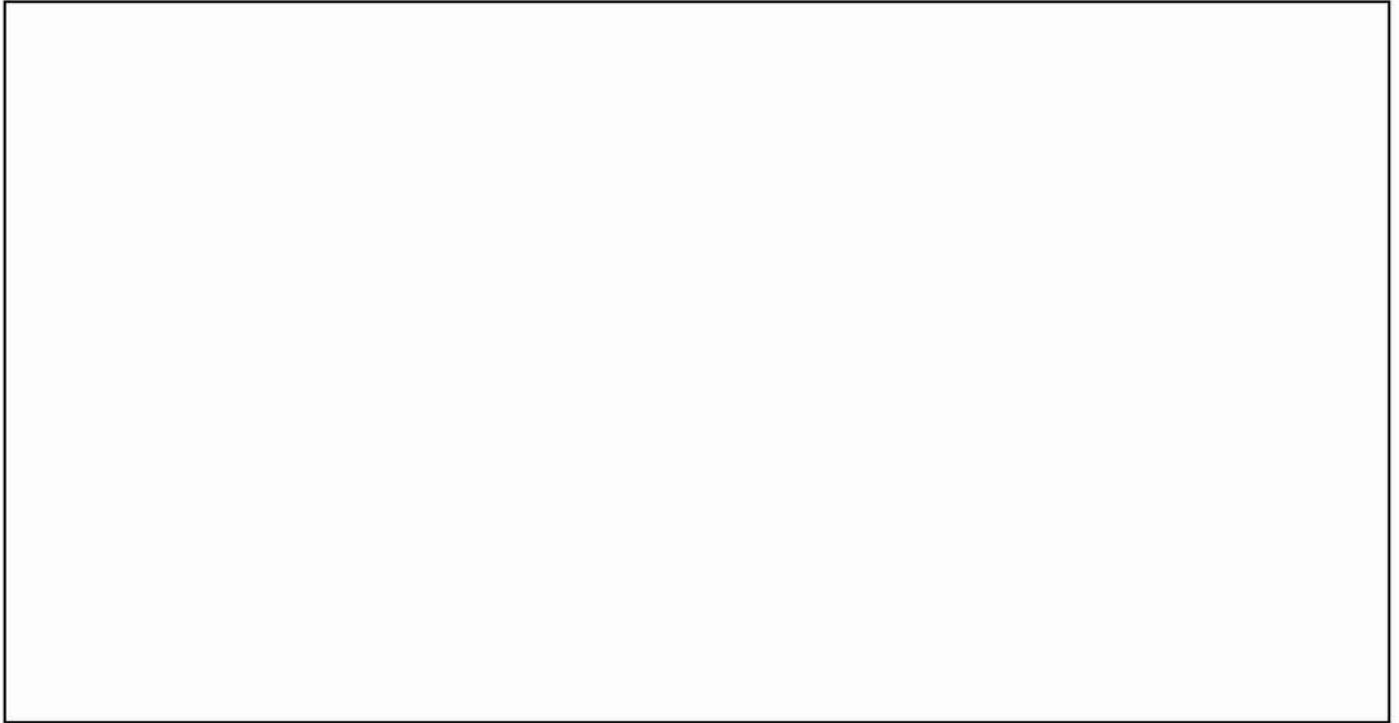
(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means, is deportable.

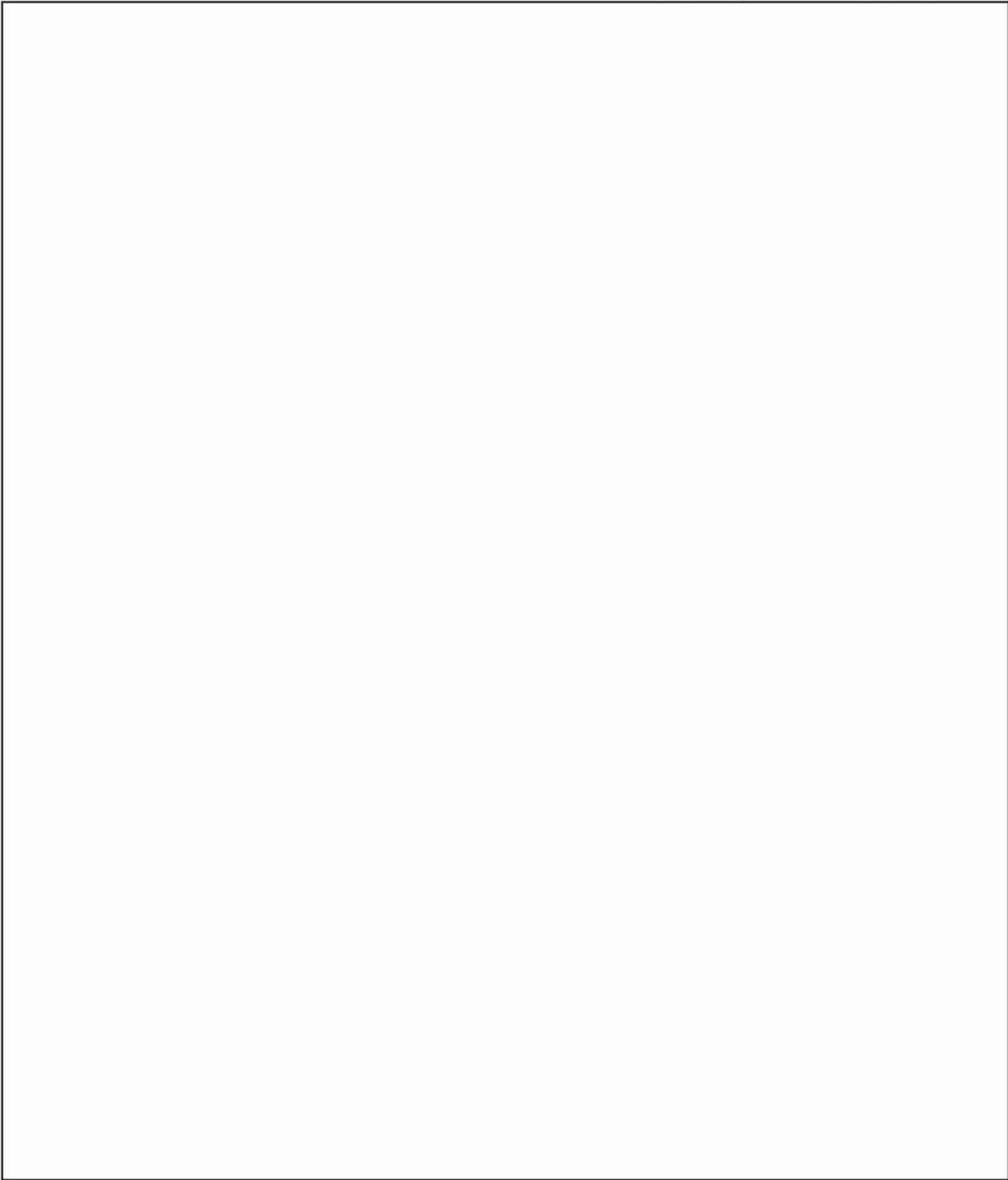
(B) Terrorist Activities - Any alien who is described in subparagraph (B) or (F) of section 212(a)(3) is deportable.

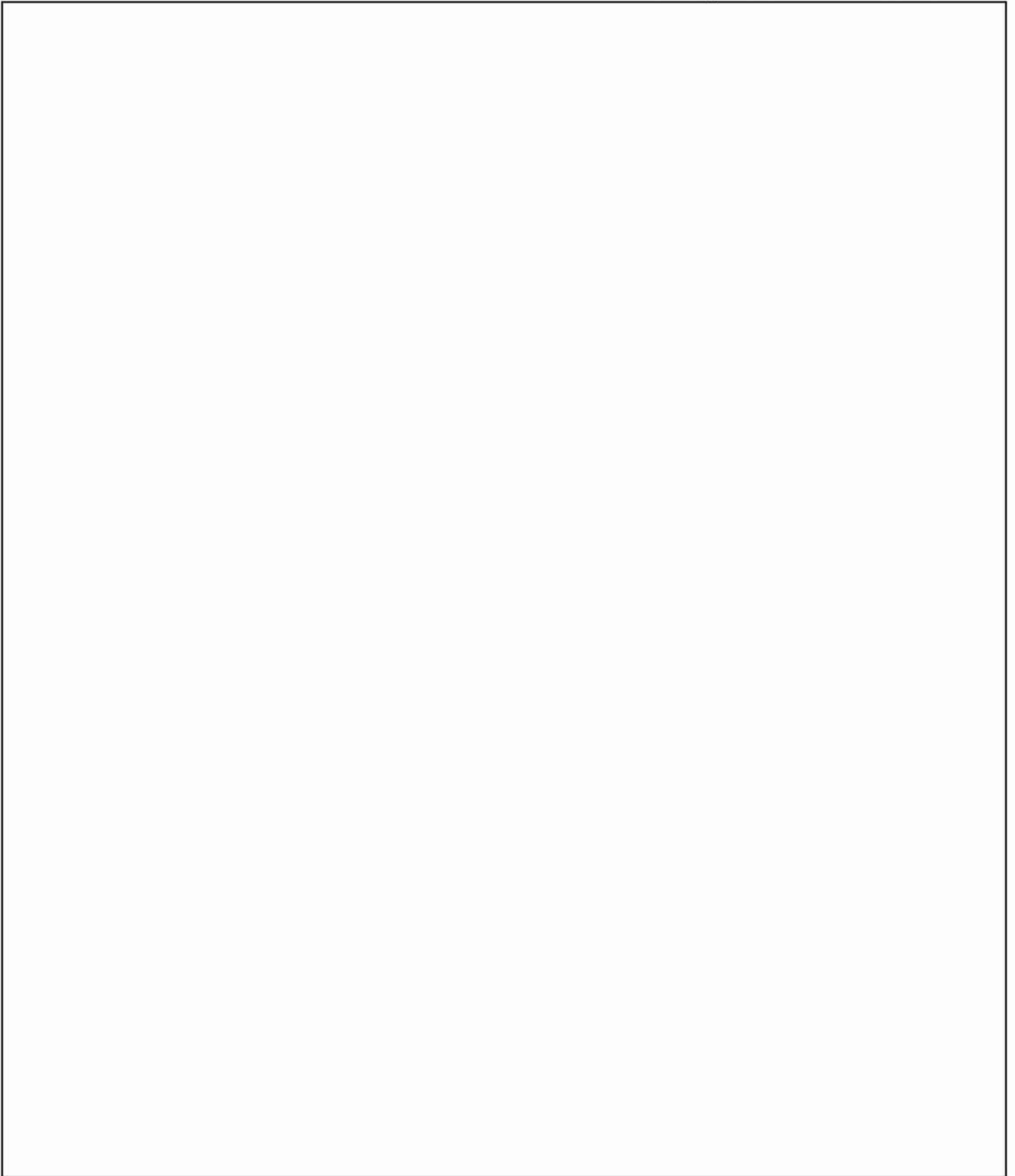
Student Interviewing Exercise: Persecution

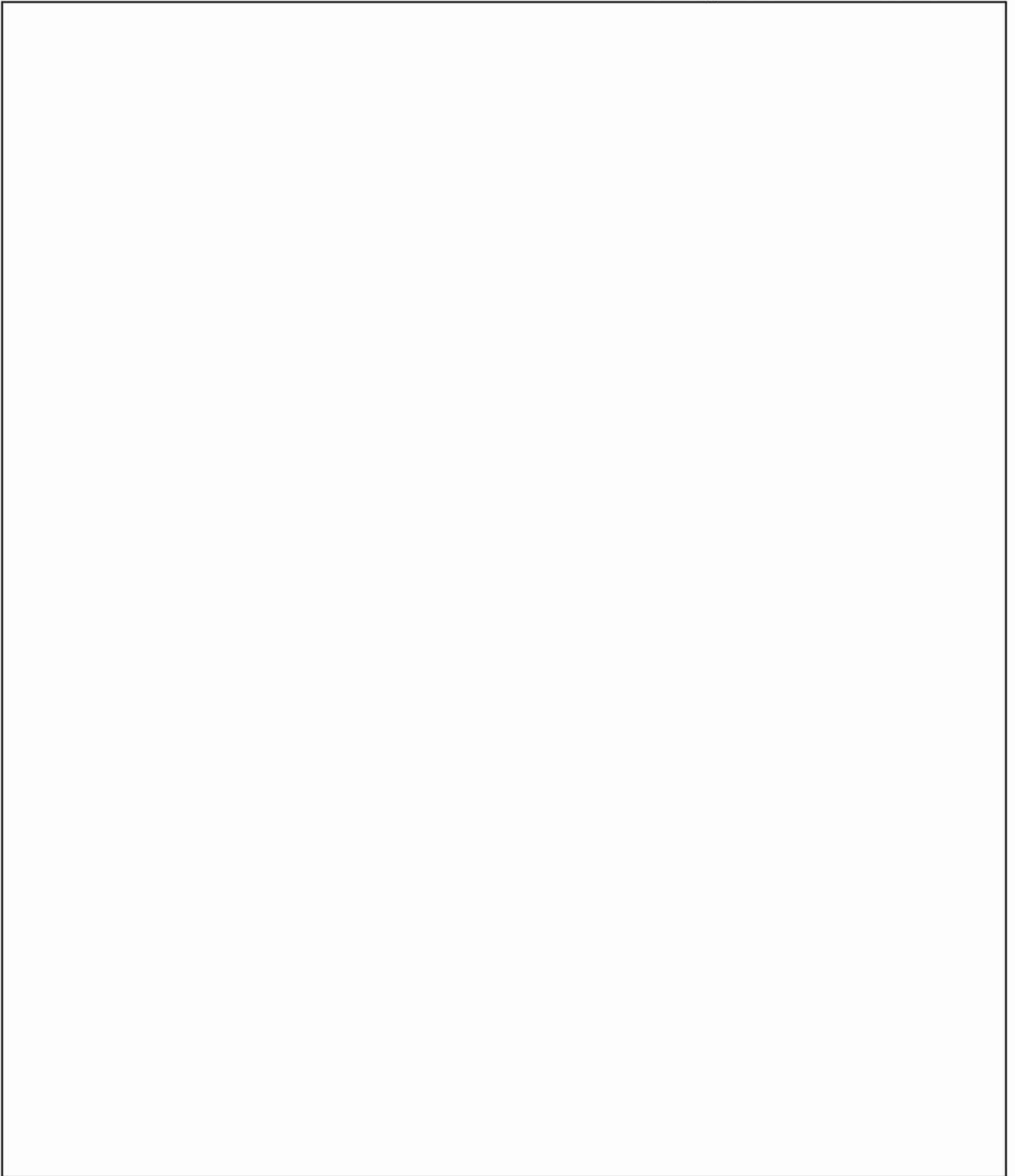
Pre-Interview Handout

(b)(7)(E)





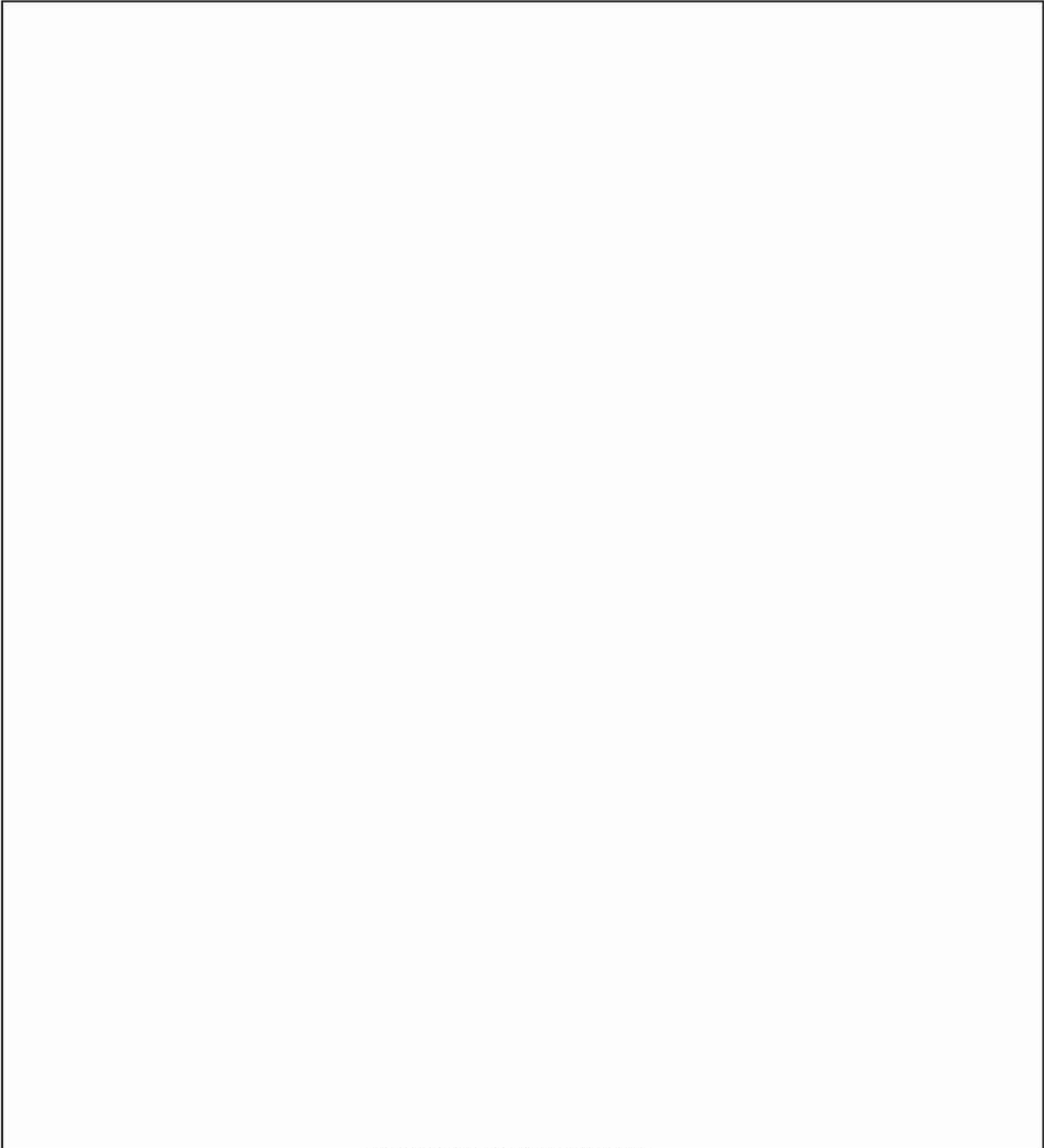




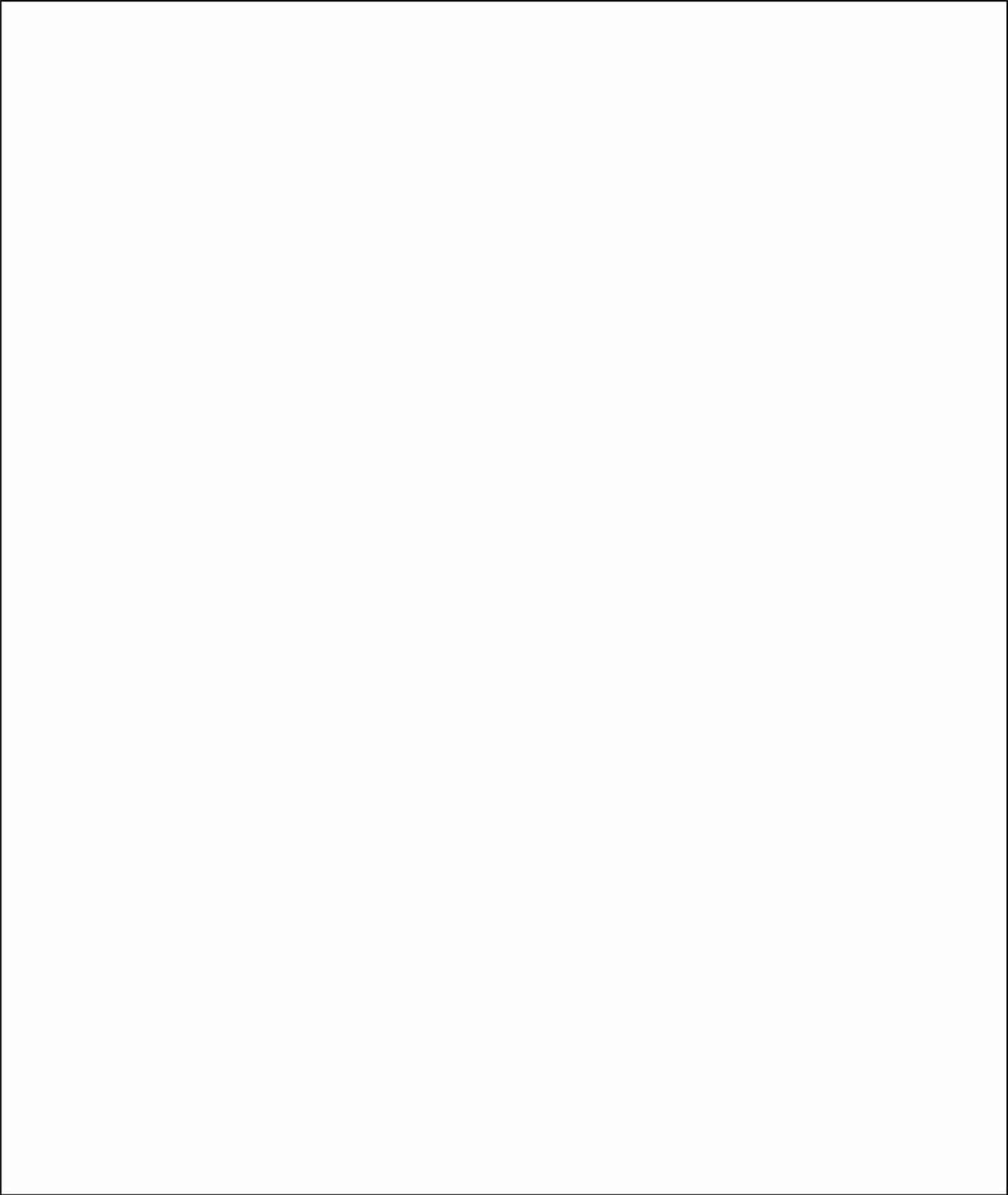
Student Name:
Student Office:

ADOTP Referral Lab Practical Exercise

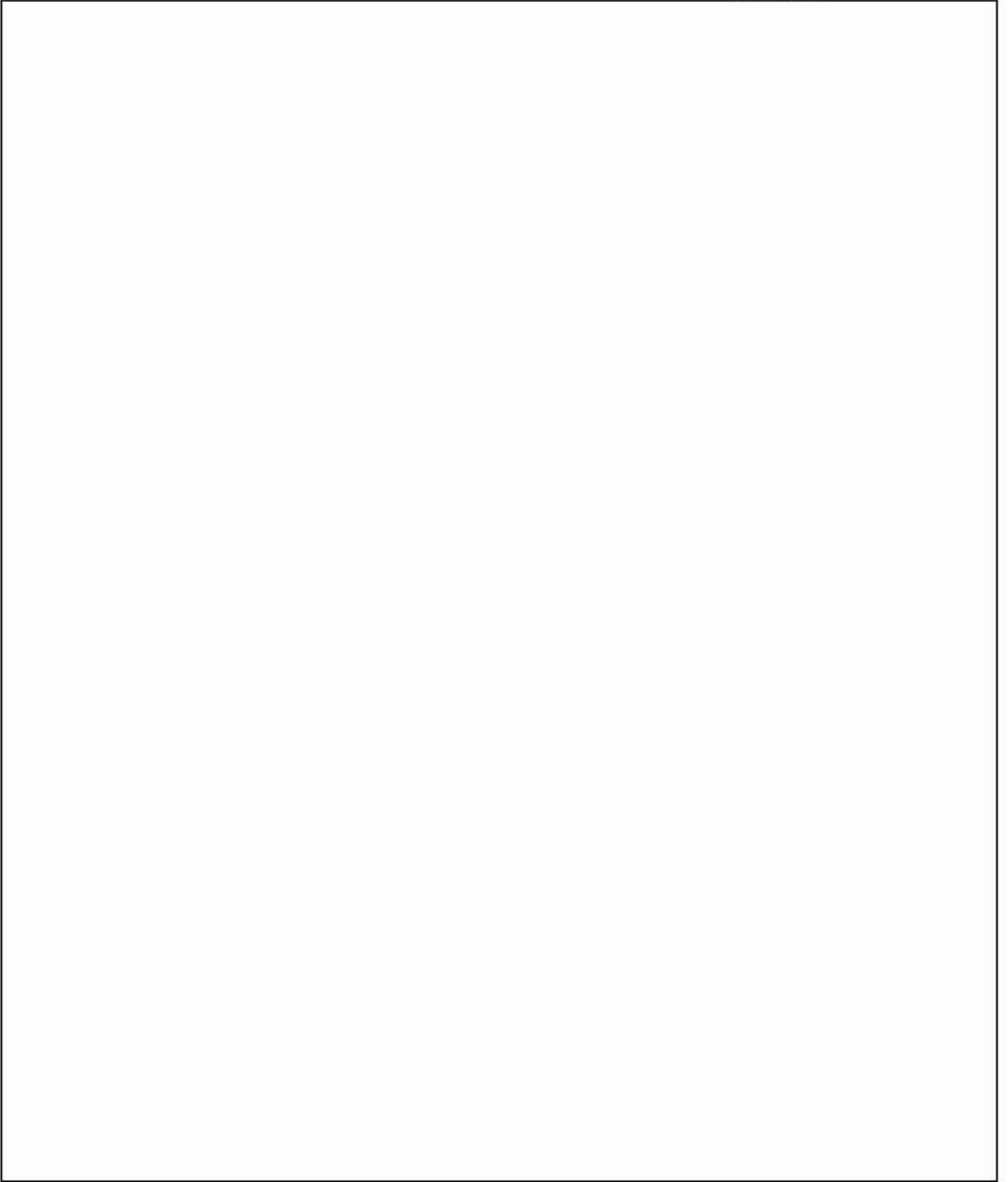
(b)(7)(E)



(b)(7)(E)



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



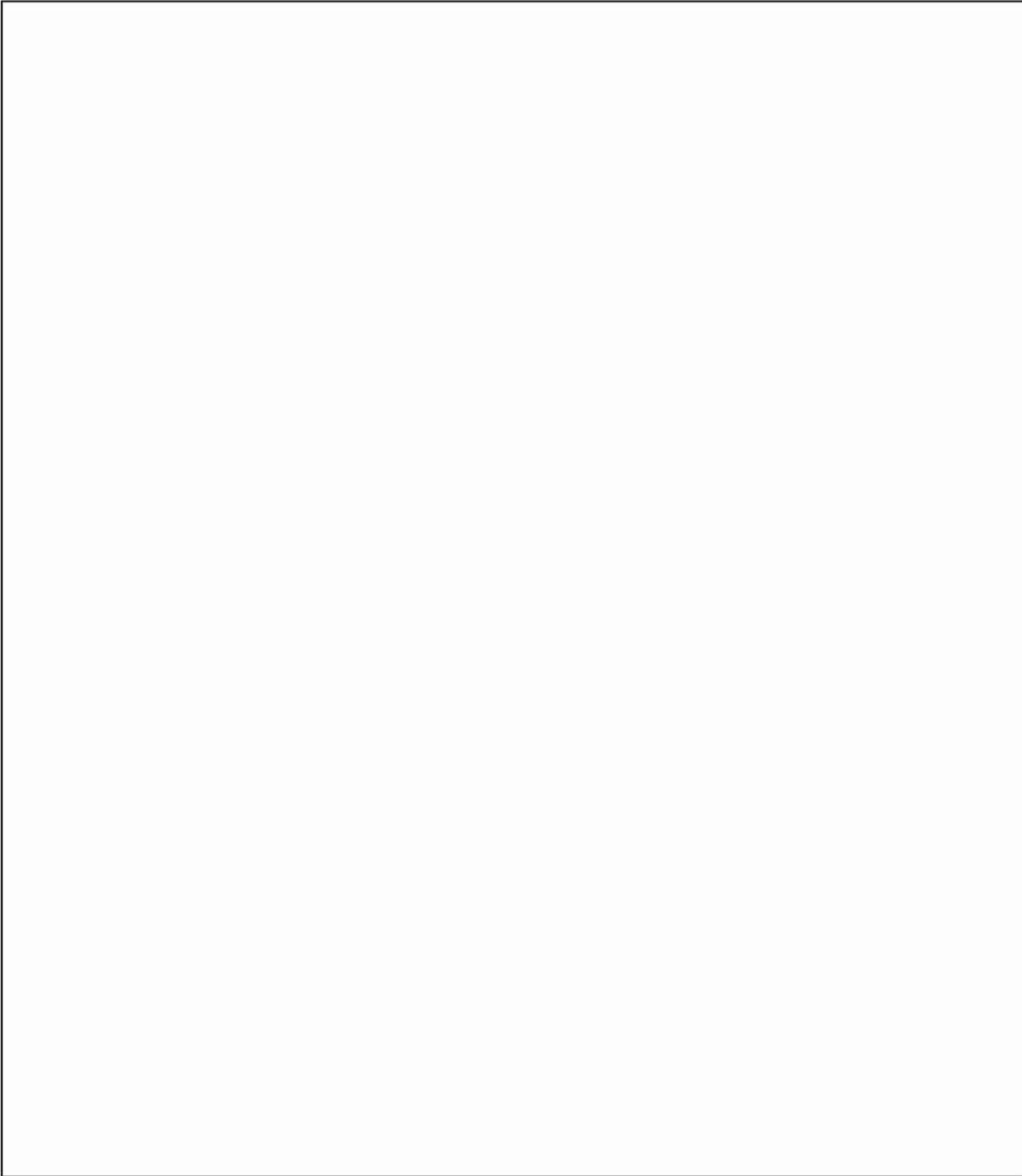
GUIDED MOCK INTERVIEW

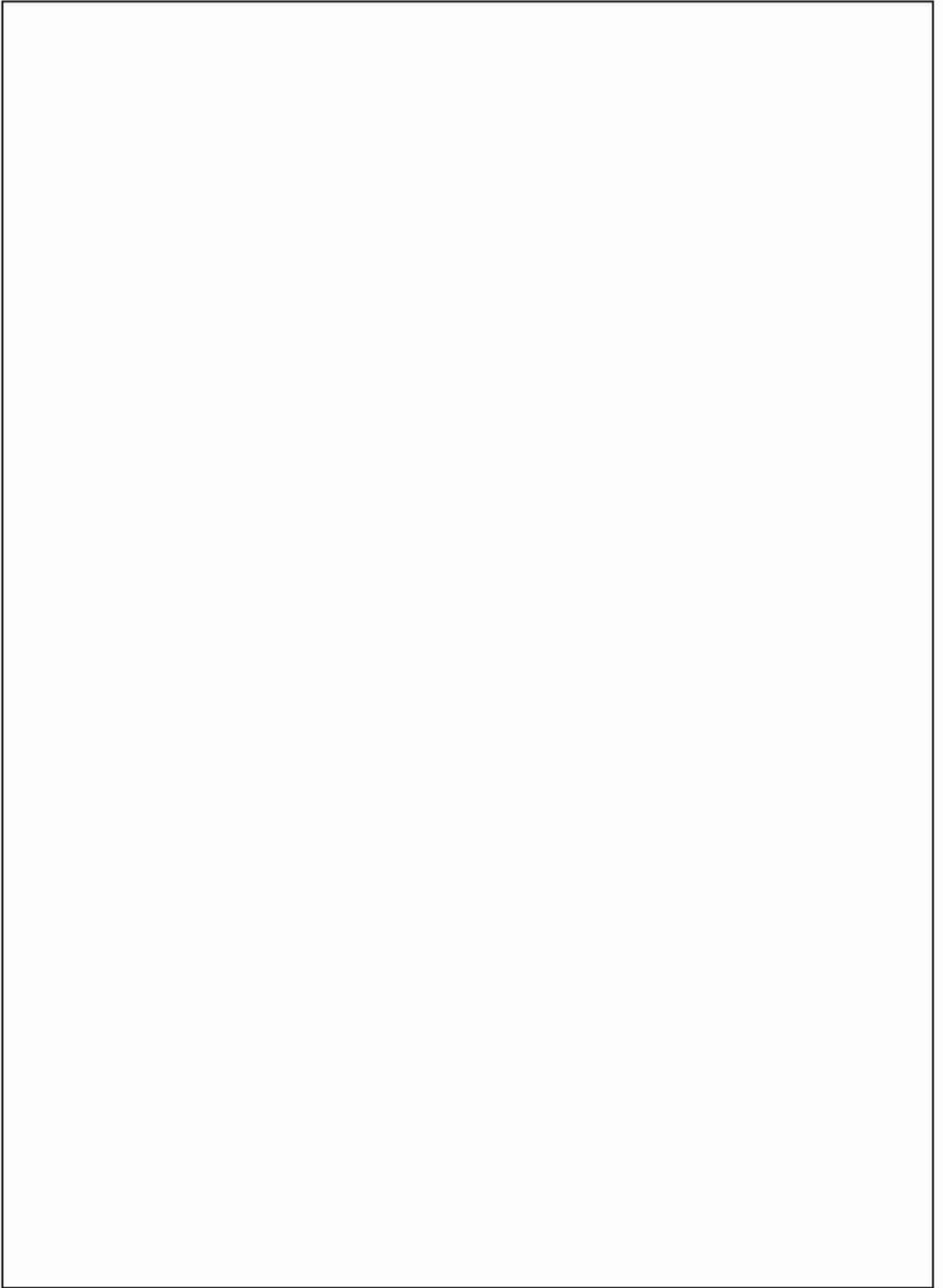
(b)(7)(E)

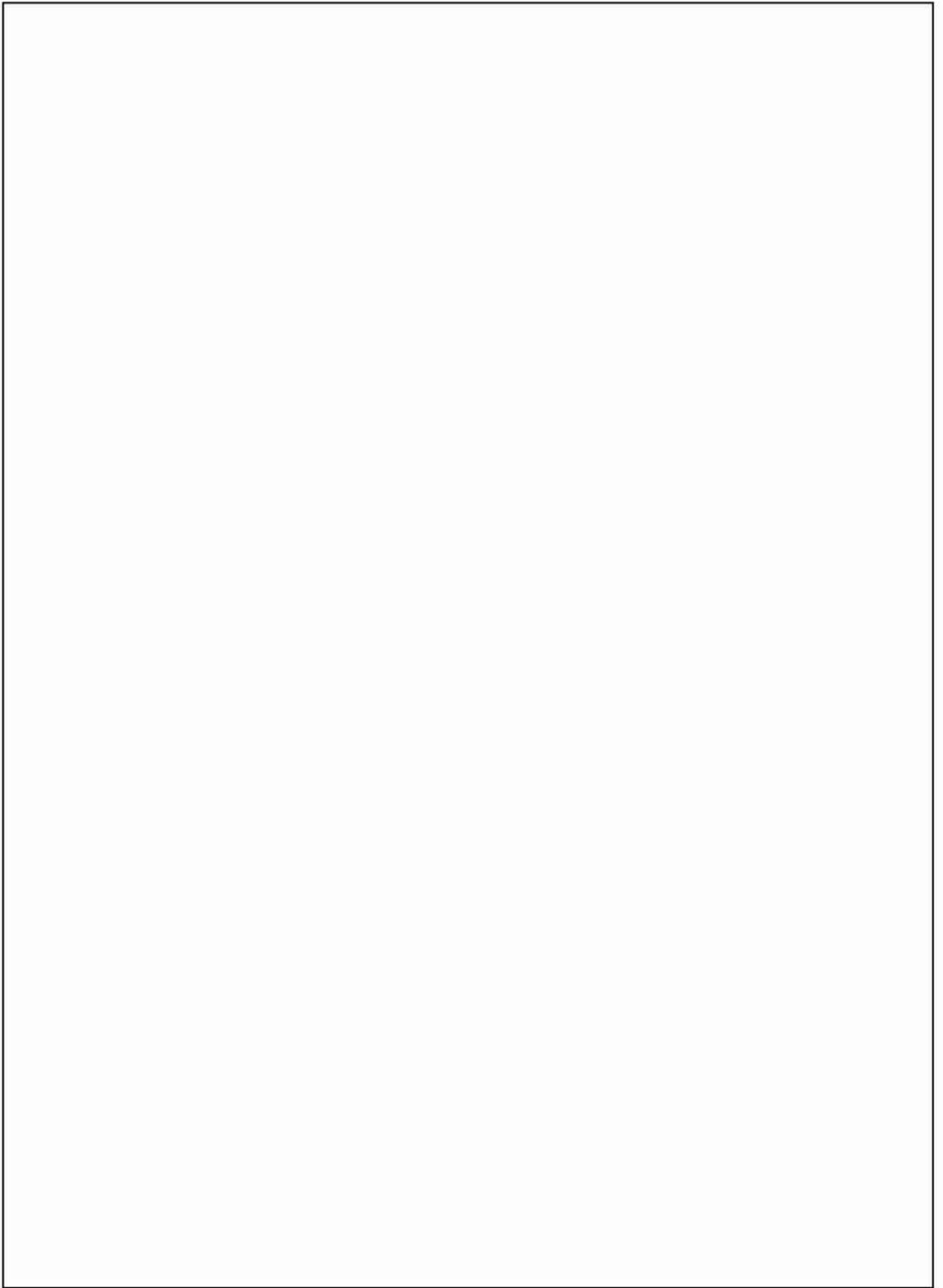
STUDENT INSTRUCTIONS

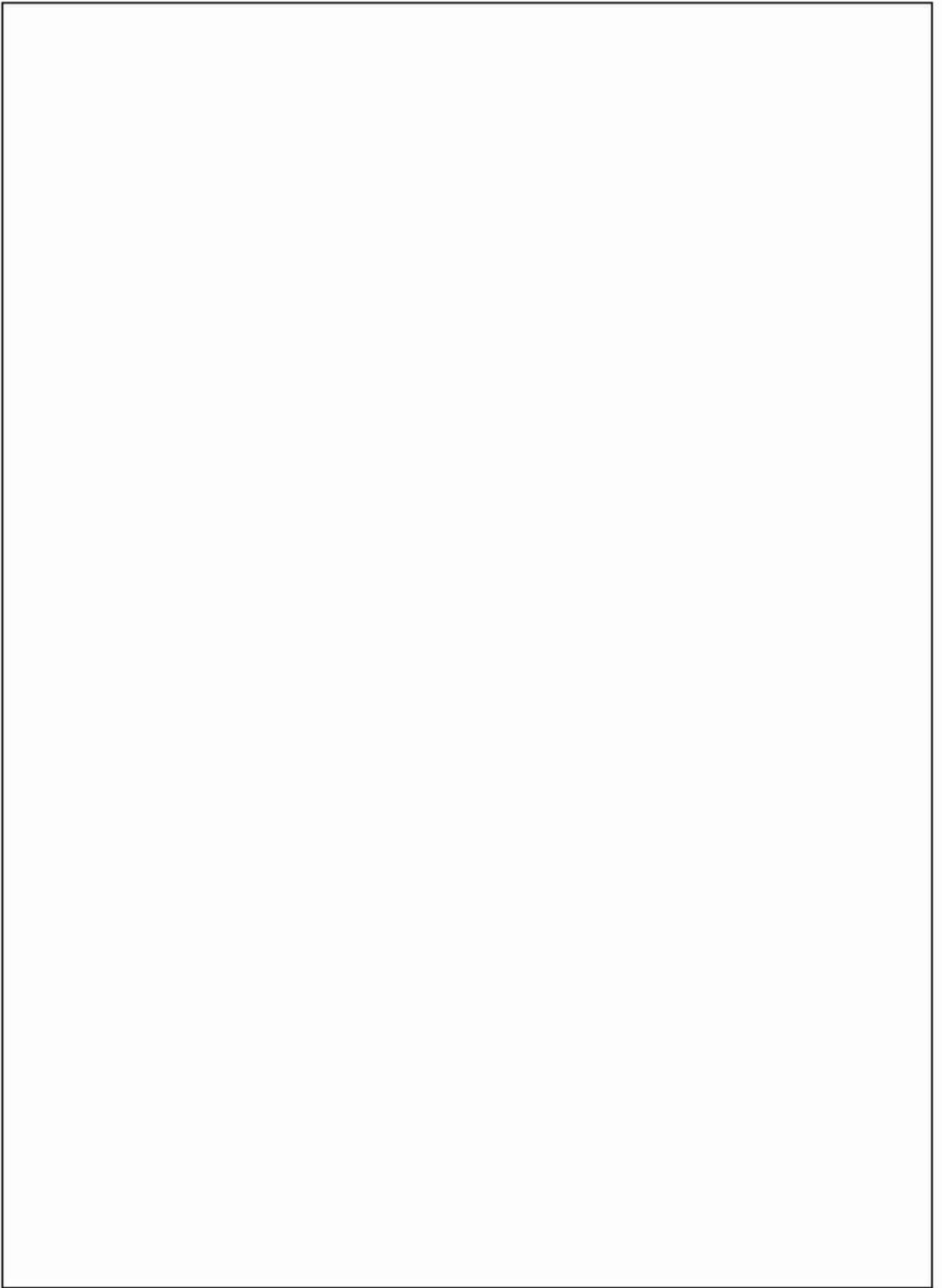
A large, empty rectangular box with a thin black border, occupying the majority of the page below the section headers. It is intended for student instructions.

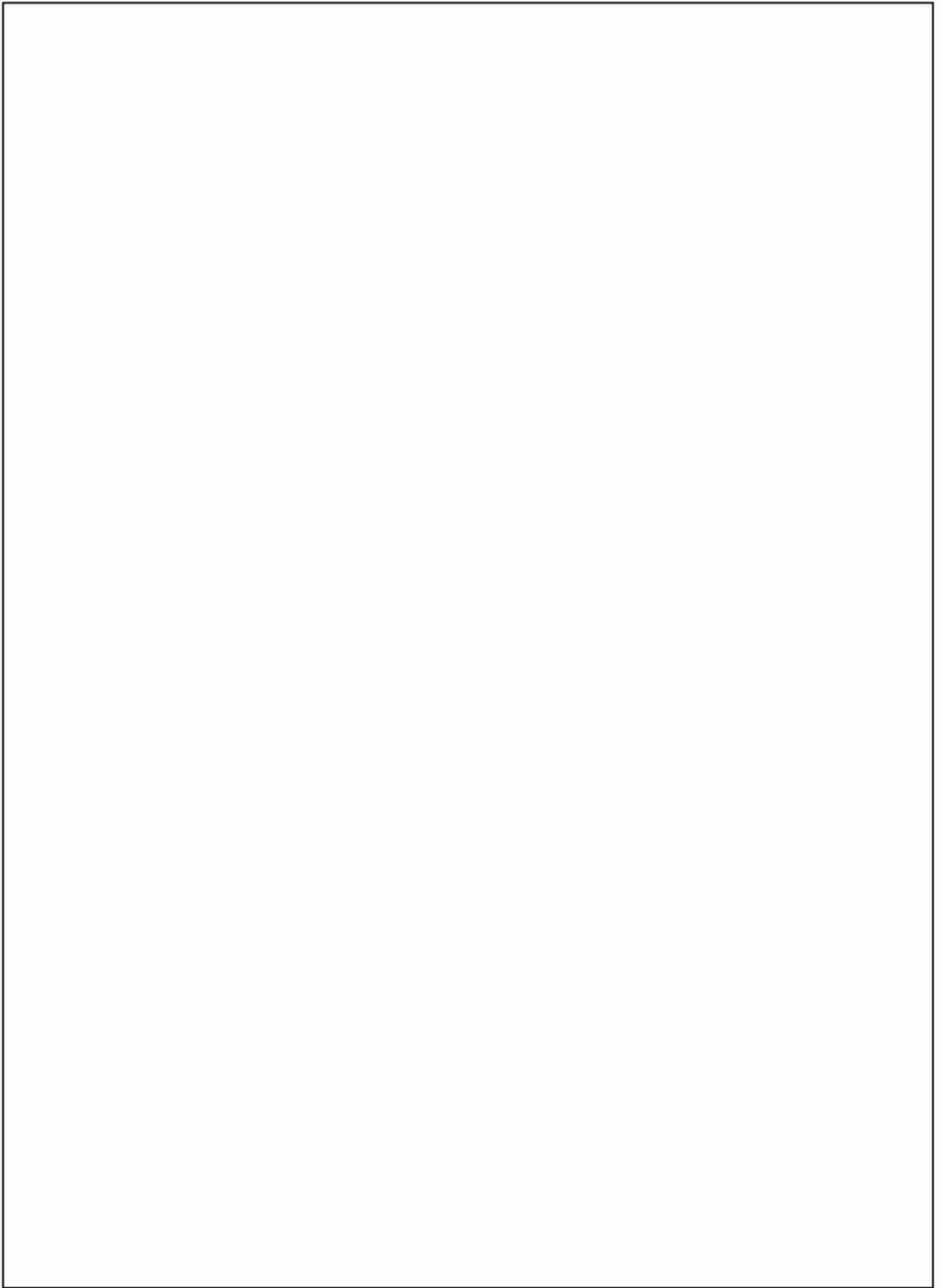
BEFORE YOUR MOCK INTERVIEW

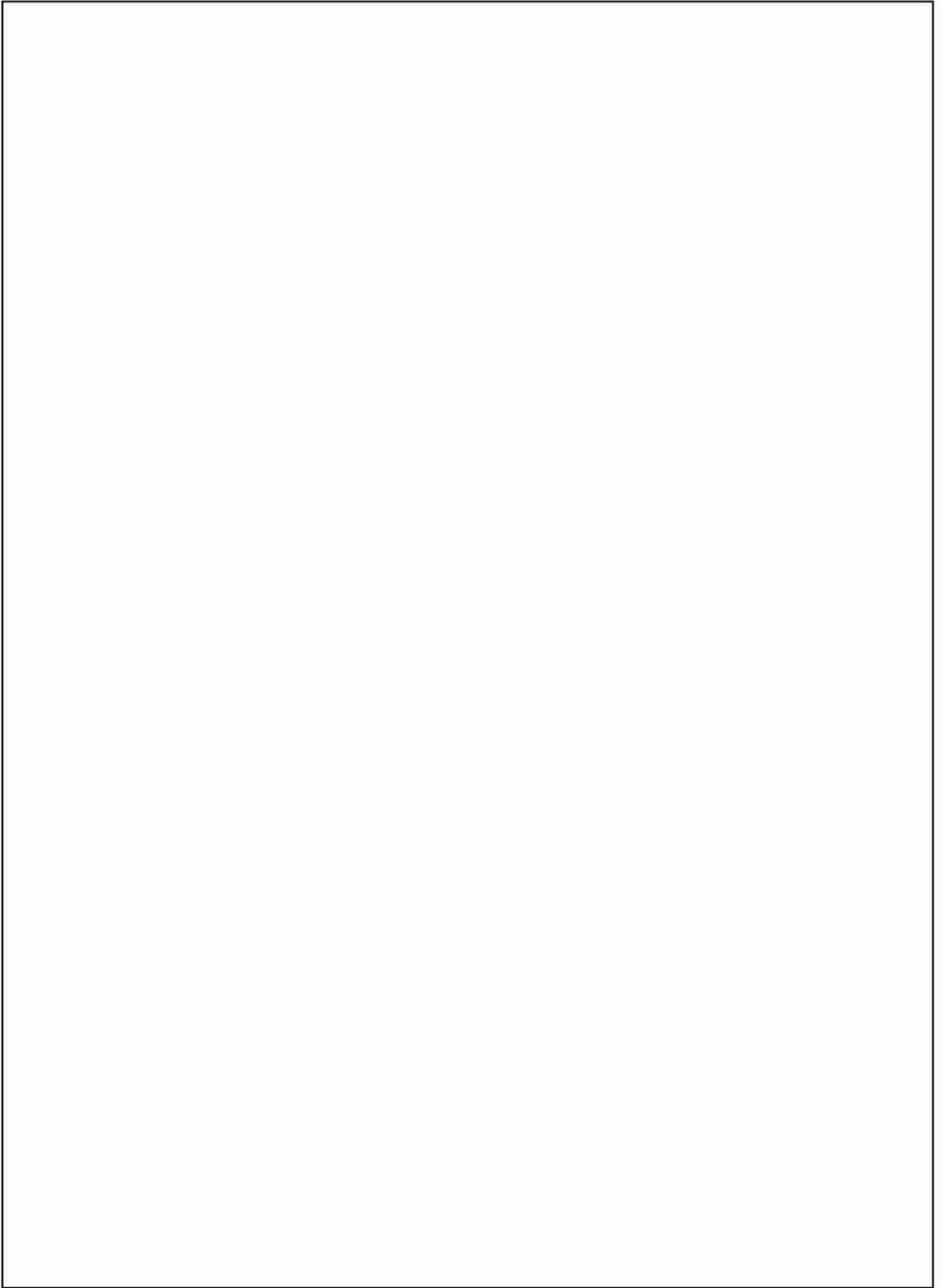


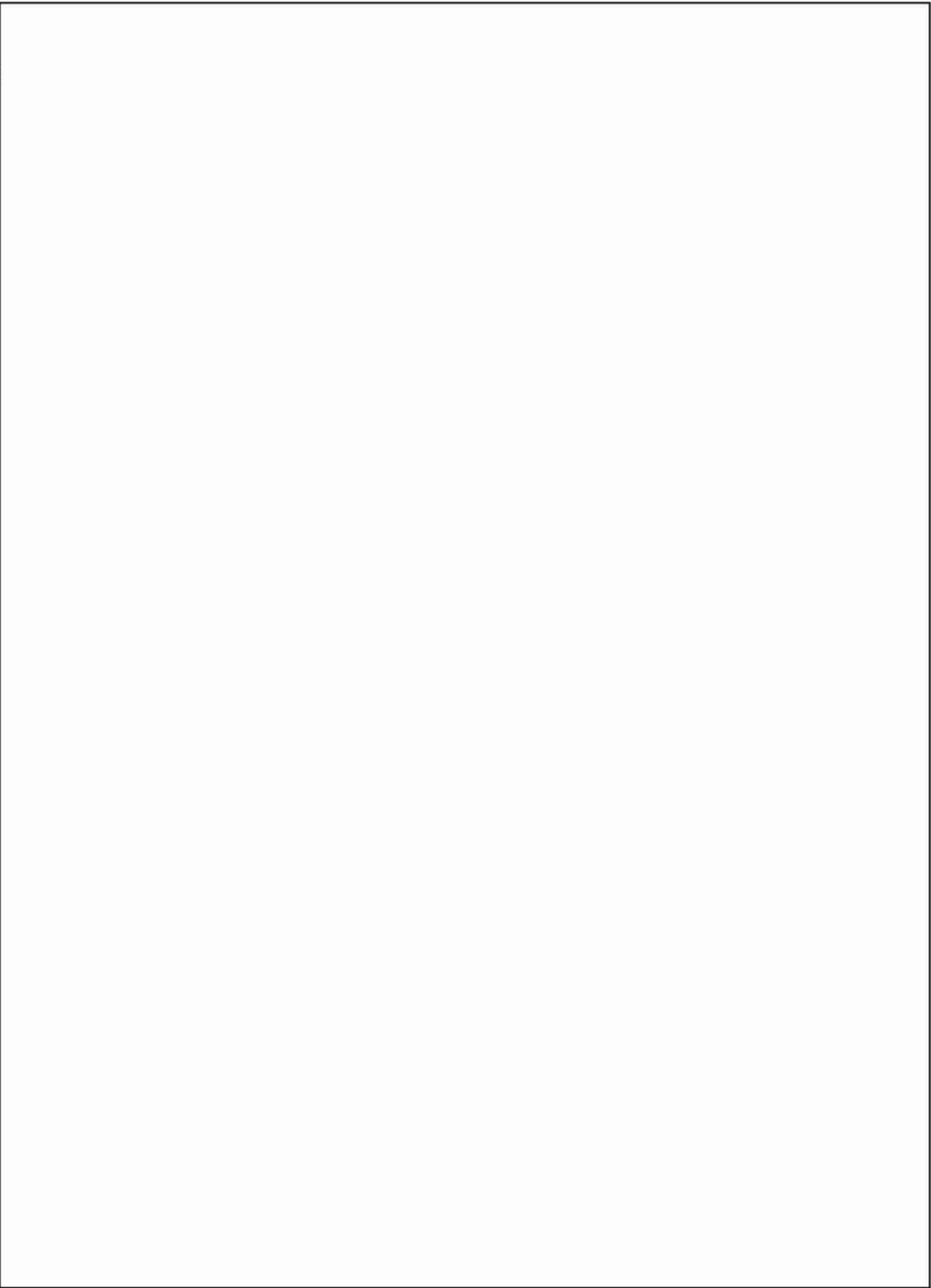


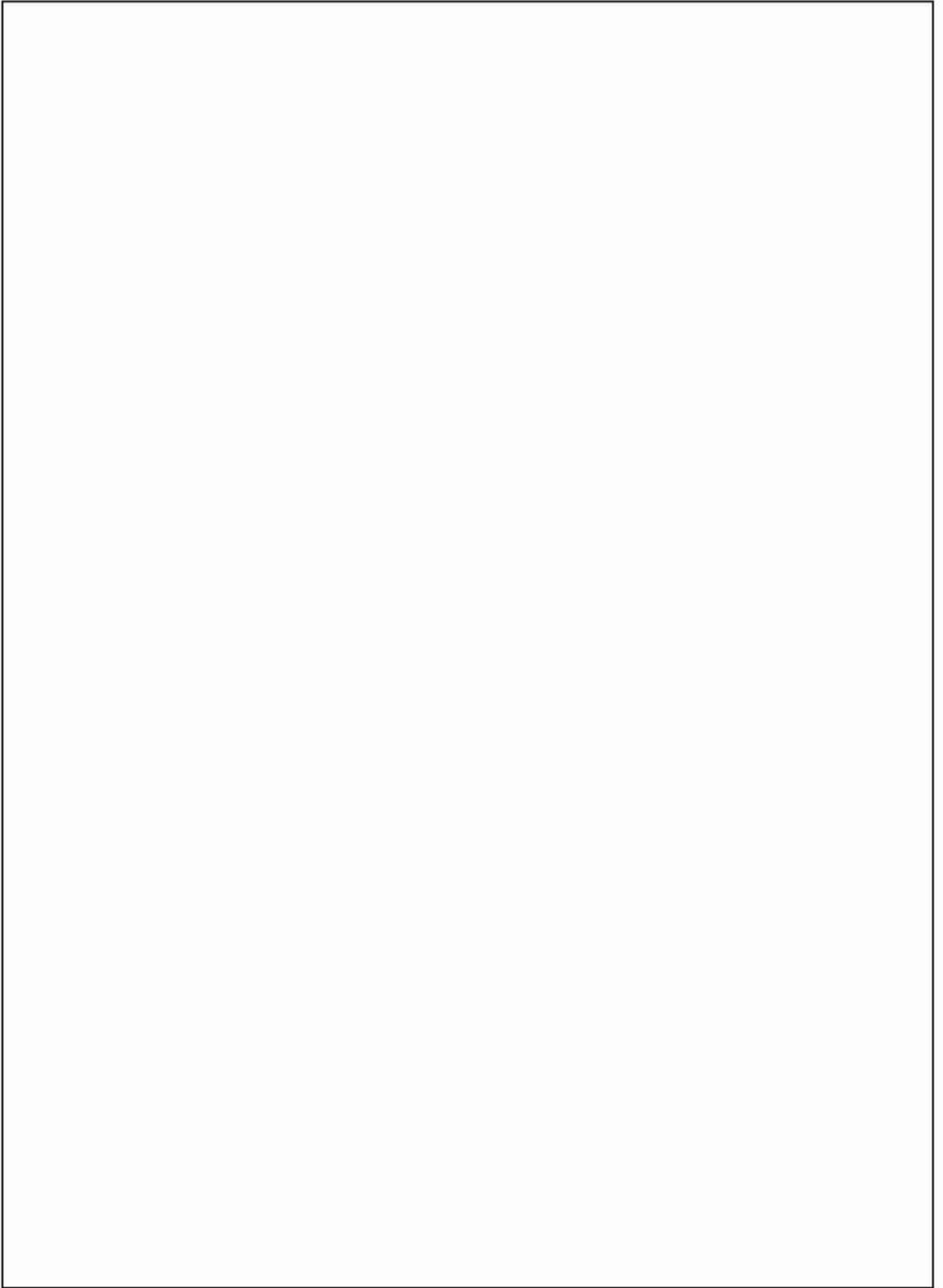


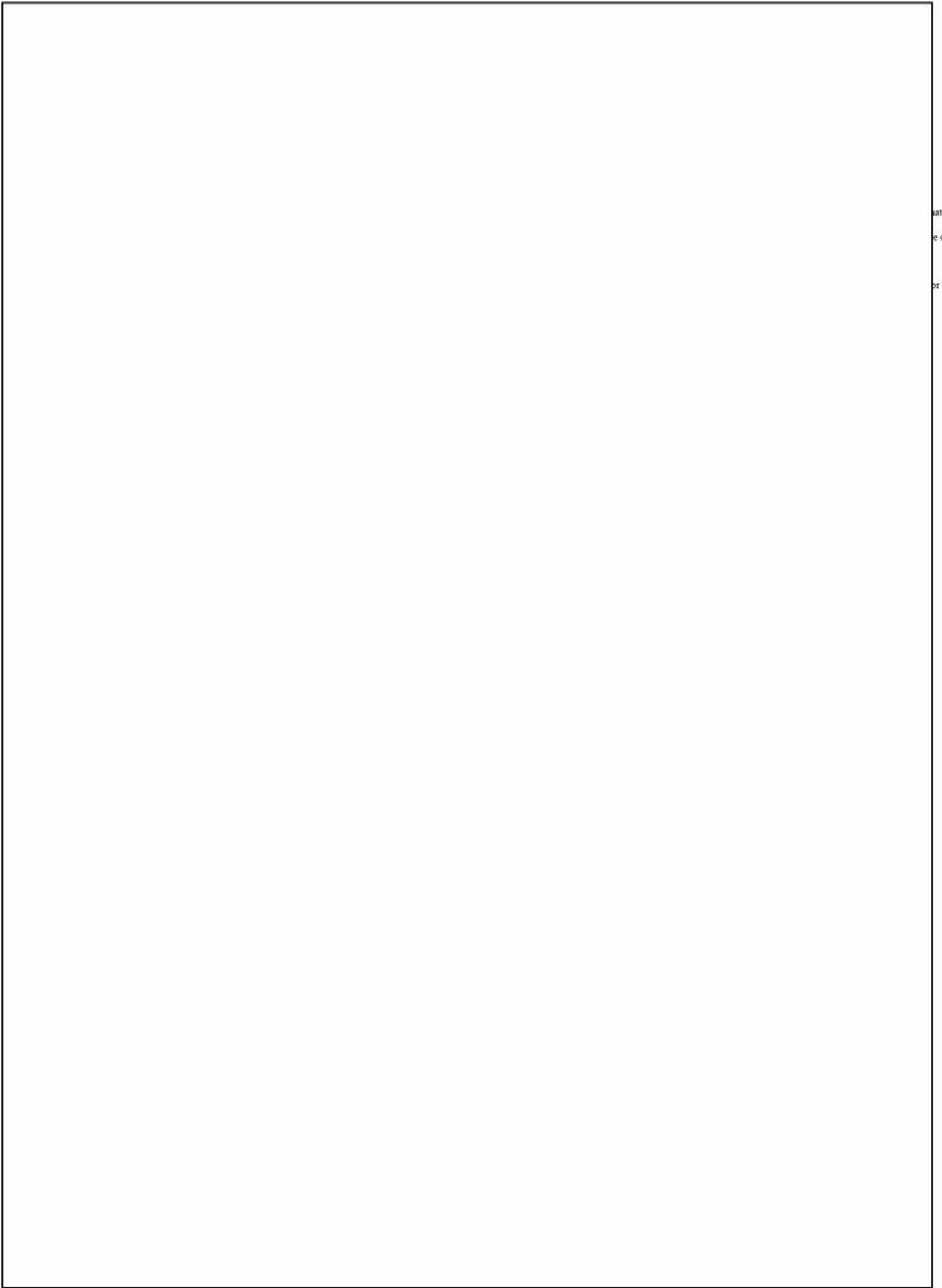




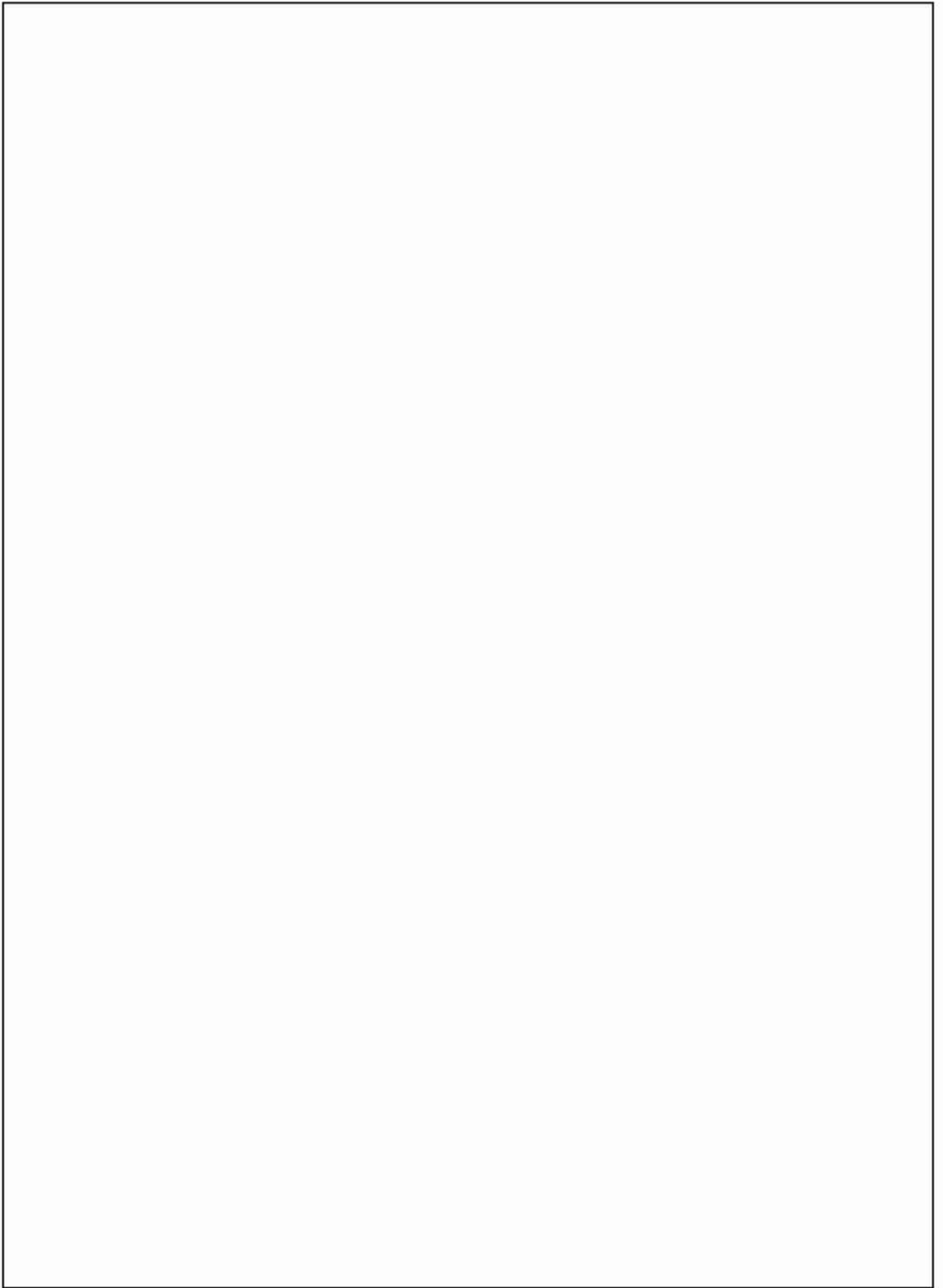








at I
e or
pr





Nexus – PSG Practical Exercise



Roadmap: What we're doing today

Brief review

How and where to analyze PSGs

- “PSG Legal Analysis Guidance” handout

Sample PSG analysis

PSG Practical Exercise (PE)

A Particular Social Group = a protected ground



U.S. Citizenship
and Immigration
Services

II. BASIS OF CLAIM

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

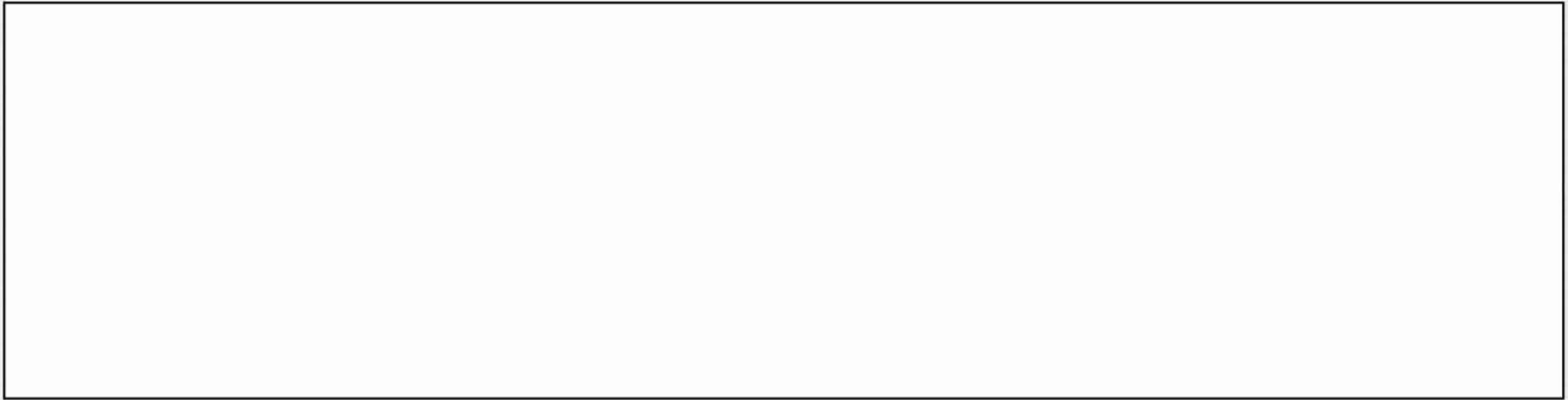
Particular Social Group – a protected ground



U.S. Citizenship
and Immigration
Services

II. BASIS OF CLAIM

(b)(7)(E)





PSG Analysis – Where are we in the Template?

VI. FOCUSED LEGAL ANALYSIS

In order to receive asylum, an asylum-seeker must establish past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

1. Where does the PSG analysis go?



Past Persecution

- “The acts described...”
- -> PSG analysis <-
- **Past Persecution analysis**
 - Identity of persecutor
 - Severity of harm
 - Nexus (“At least one central reason...”)
 - Gov’t Unwilling/Unable

Well-Founded Fear

- If no PP established or claimed:
“However, the applicant has established...”
- “The applicant fears...”
- “The applicant has established all four prongs of the *Mogharrabi* test...”
- -> PSG analysis <-
- **PACI analysis**
 - Possession, Awareness, Capability, and Inclination

PSG analysis - Past Persecution



The acts described by the applicant amount to past persecution on account of the applicant's [specify actual/imputed protected ground.]

If the basis of claim is a particular social group (PSG), analyze the PSG according to current Asylum Division guidance and address the following:

- **Formulate the PSG**
- **Identify the immutable characteristic**
- **Analyze how the group is socially distinct**
- **Analyze the particularity of the group**
- **Include a finding of how the applicant is a member of the PSG**

PSG analysis

WFF



U.S. Citizenship
and Immigration
Services

However, the applicant has established a well-founded fear of persecution on account of [protected ground].

The applicant fears [he/she] will be [identify harm feared] by [identify feared persecutor] if the applicant returns to [country]. **Explain how the harm the applicant fears is serious enough to rise to the level of persecution.**

The applicant has established all four prongs of the *Mogharrabi* test for well-foundedness.

- **If the basis of claim is a PSG that was not previously analyzed, you must analyze the PSG according to current Asylum Division guidance**

PACI analysis

Brief review: three-part test



U.S. Citizenship
and Immigration
Services

Immutability: Common immutable characteristic

Social Distinction: Meaningfully distinguished from those who do not have it

Particularity: Clear benchmark for determining who falls within the group

2. Introduce the PSG analysis



The BIA has established a three-part test for evaluating whether a group meets the definition of a particular social group. The group must be (1) composed of members who share a common immutable characteristic, (2) socially distinct within the society in question, and (3) defined with particularity.

3. The first step

Immutable Characteristic



First, the group must comprise individuals who share a common, immutable characteristic that either a member cannot change or is so fundamental to the member's identity or conscience that he or she should not be required to change it. *[Refer to one of the sample assessments]*

4. The second step: Social Distinction



Second, there must be evidence indicating that a society perceives, considers, or recognizes persons as a group. This requirement can be met by showing that the society in question sets apart or differentiates between people who possess the shared belief or trait and people who do not. *[Refer to one of the sample assessments]*



COI

5. The Third Step: Particularity



Third, the group must be defined by characteristics that provide a clear benchmark for determining who falls within the group. It is possible to determine who is a member and who is not a member of a group defined as *[Refer to sample assessment]*.

6. PSG established - is applicant a member?



The applicant's testimony concerning [Refer to one of the sample assessments] is evidence that shows that the applicant [Refer to sample assessment]. The applicant therefore has established that he/she is a member of the particular social group [Refer to one of the sample assessments]

7. Continue the Legal Analysis



Past Persecution

- **“The acts described...”**
- -> PSG analysis <-
- **Past Persecution analysis**
 - Identity of persecutor
 - Severity of harm
 - Nexus (“At least one central reason...”)
 - Gov’t Unwilling/Unable

Well-Founded Fear

- **If no PP established, “However, the applicant has established...”**
- **“The applicant fears...”**
- **“The applicant has established all four prongs of the *Mogharrabi* test...”**
- -> PSG analysis <-
- **PACI analysis**
 - Possession, Awareness, Capability, and Inclination



Questions?



Let's go through a sample together:
PSG analysis for a claim from Russia



Analyze the PSG and address the following:

Formulate the PSG

Identify the
immutable
characteristic

Analyze how the
group is socially
distinct

Analyze the
particularity of the
group

Include a finding of
how the applicant is
a member of the
PSG

PSG PRACTICAL EXERCISE
DECISION WRITING

Instructions: Review the partial Assessment to Grant.

(b)(7)(E)

Write the Particular Social Group analysis for this assessment, following the structure in the Asylum Division Templates.

[Empty box for writing the Particular Social Group analysis]

ASSESSMENT TO GRANT ASYLUM

ALIEN NUMBER:

ASSESSMENT DATE:

NAME:

ASYLUM OFFICER:

COUNTRY: Uganda

REVIEWING SAO:

LOCATION:

I. BIOGRAPHIC/ENTRY OF ARRIVAL/IMMIGRATION STATUS INFORMATION

(b)(7)(E)

II. BASIS OF CLAIM

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

IV. SUMMARY OF TESTIMONY

[Redacted content]

V. ANALYSIS OF CREDIBILITY/EVIDENCE ASSESSMENT

[Redacted content]

VI. FOCUSED LEGAL ANALYSIS

[Redacted content]

(b)(7)(E)

ASSESSMENT TO GRANT ASYLUM

ALIEN NUMBER:

DATE: May 18, 2020

NAME:

ASYLUM OFFICER:

COUNTRY: Russia

REVIEWING SAO:

LOCATION:

I. BIOGRAPHIC/ENTRY OR ARRIVAL/IMMIGRATION STATUS INFORMATION

II. BASIS OF CLAIM

III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

IV. SUMMARY OF TESTIMONY

(b)(7)(E)

(b)(7)(E)



V. ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT

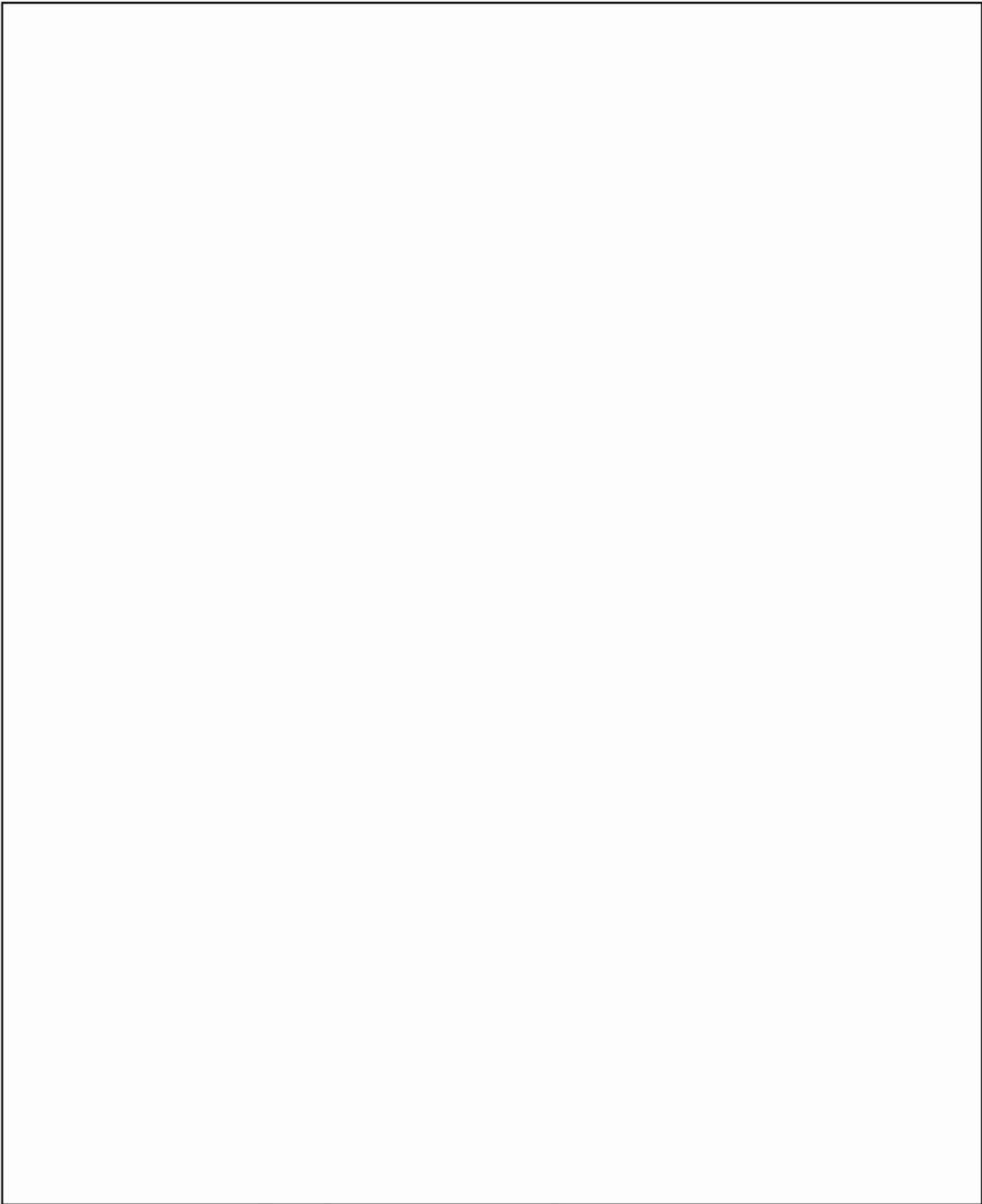


VI. FOCUSED LEGAL ANALYSIS

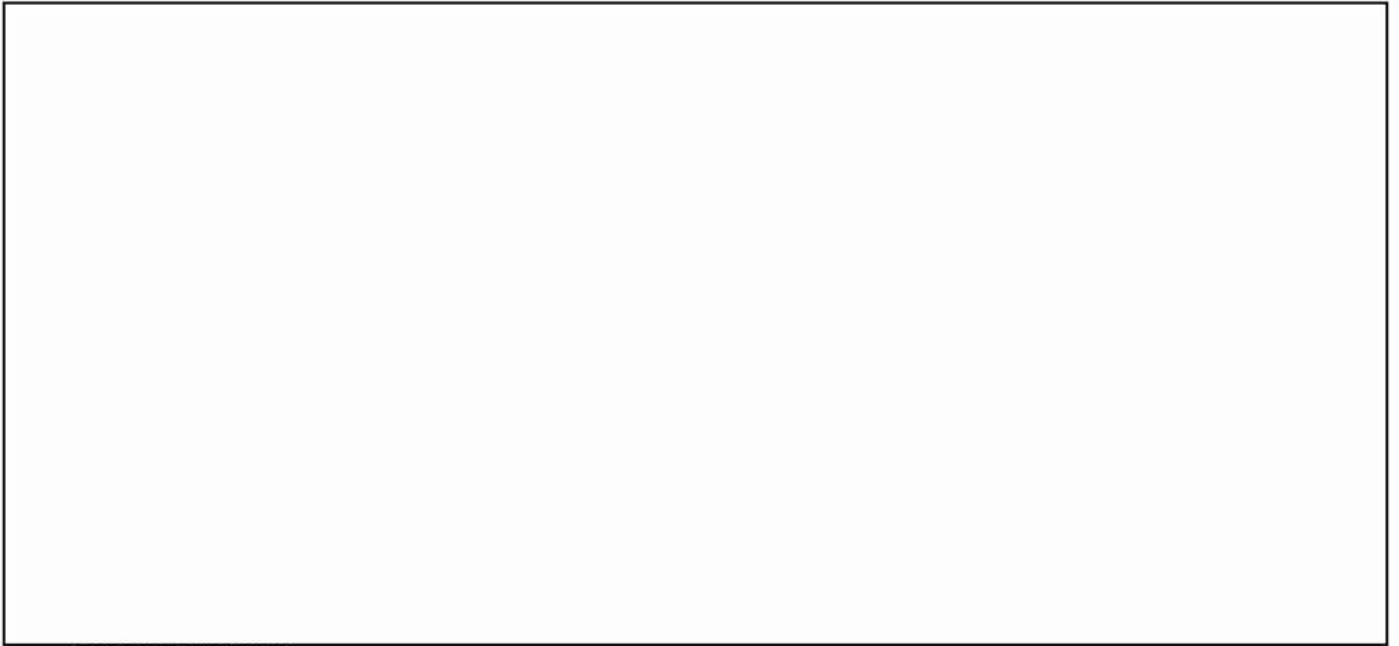


(b)(7)(E)

(b)(7)(E)



(b)(7)(E)



VII. ANALYSIS OF BARS/DISCRETIONARY FACTORS



VIII. DECISION

Assessment is to grant.

(b)(7)(E)

1.

2.

3.

4.

5.

(b)(7)(E)

6.

7.

(b)(7)(E)

Referral Lab

ADOTP

Referral Lab – Overview

- ▶ Mechanics of the Referral Template
- ▶ Components of Complete Referral
- ▶ Recommendations of information to be included in each component
- ▶ Explanation of Exercise
- ▶ Writing Exercise
- ▶ De-briefing

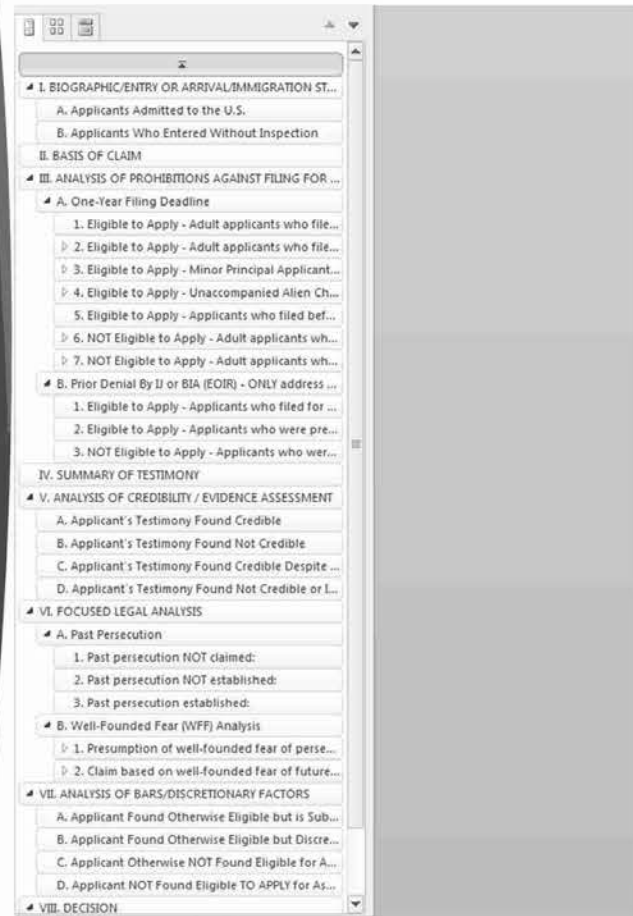
Referral Lab – Templates

- ▶ Find the Referral Template [here](#)
- ▶ Find the Assessment Flowchart [here](#)

Referral Lab – Referral Template

- ▶ For ease of Access -> View -> Navigation Pane :

4



ASSESSMENT TO REFER

ALIEN NUMBER: A [Principal A Number] ASSESSMENT DATE:
[LAST REVISION DATE]

NAME: [First Name LAST NAME] ASYLUM OFFICER: [NAME/AO #]

COUNTRY: [Citizenship] REVIEWING SAO: [NAME/SAO#]

LOCATION: Z_ _ [Complete Office Code] (b)(7)(E)

Referral Lab

- ▶ Components of the Assessment:
 - ▶ I. Bio
 - ▶ II. BOC
 - ▶ III. Prohibitions against filing (OYFD/Prior Denial by IJ) BIA
 - ▶ IV. SOT
 - ▶ V. Credibility
 - ▶ VI. Analysis (Past Persecution, WFF)
 - ▶ VII. Bars
 - ▶ VII. Decision

Referral Lab - Analysis

VI. FOCUSED LEGAL ANALYSIS

▲ A. Past Persecution

1. Past persecution NOT claimed:
2. Past persecution NOT established:
3. Past persecution established:

Referral Lab - Analysis

▲ B. Well-Founded Fear (WFF) Analysis

▲ 1. Presumption of well-founded fear of persecution (ONLY use when past persecution is established):

a. Presumption of well-founded fear NOT rebutted: NO fundamental change in circumstances AND...

▲ b. Presumption of well-founded fear IS rebutted: Fundamental change in circumstances OR the ap...

▲ (i) Exercise of discretion to grant based on past persecution in the absence of well-founded fear:

(a) Discretion to grant will not be examined – A mandatory bar applies:

(b) Discretion to grant asylum in the absence of a well-founded fear was examined and is N...

▲ 2. Claim based on well-founded fear of future persecution (WFF):

a. Well-founded fear established based on Mogharrabi test.

b. Well-founded fear established based on pattern or practice – the applicant did not establish he...

c. Well-founded fear claimed, but applicant did NOT establish a well-founded fear of persecution ...

d. Well-founded fear established based on either the Mogharrabi analysis OR pattern or practice ...

Referral Lab - Analysis

- ▶ If the applicant fails to establish past persecution, what do you have to analyze for well-founded fear?
 - ▶ Always analyze possession!
 - ▶ Also analyze the prong where the *Mogharrabi* analysis fails
- ▶ Then, don't forget pattern and practice!

Referral Lab – Instructions

You have been given three distinct factual scenarios addressing different portions of an affirmative asylum claim. The analysis fails in each scenario. Please use the referral template to write the analysis that would appear in your assessment for each of the scenarios.

If you need to use COI for your analysis, please consult the [USDOS 2019 Country Reports on Human Rights Practices](#).

You have 45 minutes to complete your writing, and then we will go over samples of analysis.

Past Persecution – Seriousness of Harm

(b)(7)(E)

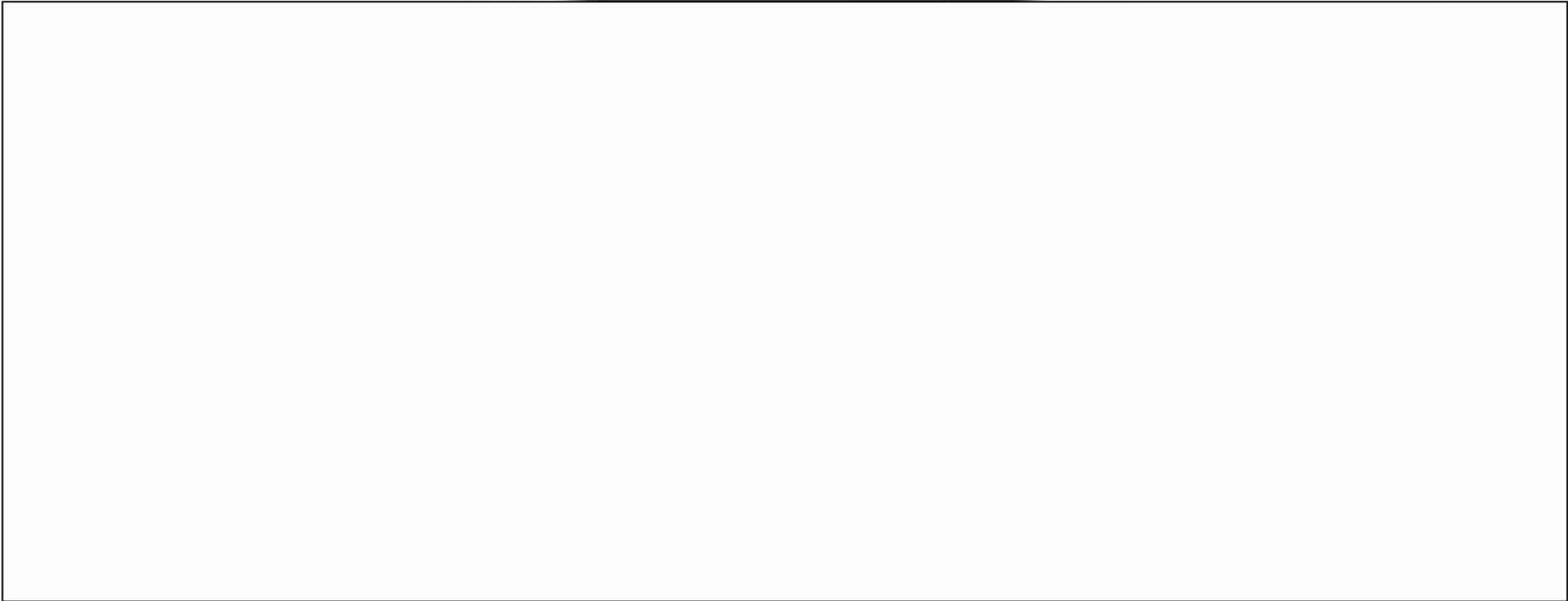
Past Persecution - Nexus

(b)(7)(E)



WFF - PACI

(b)(7)(E)

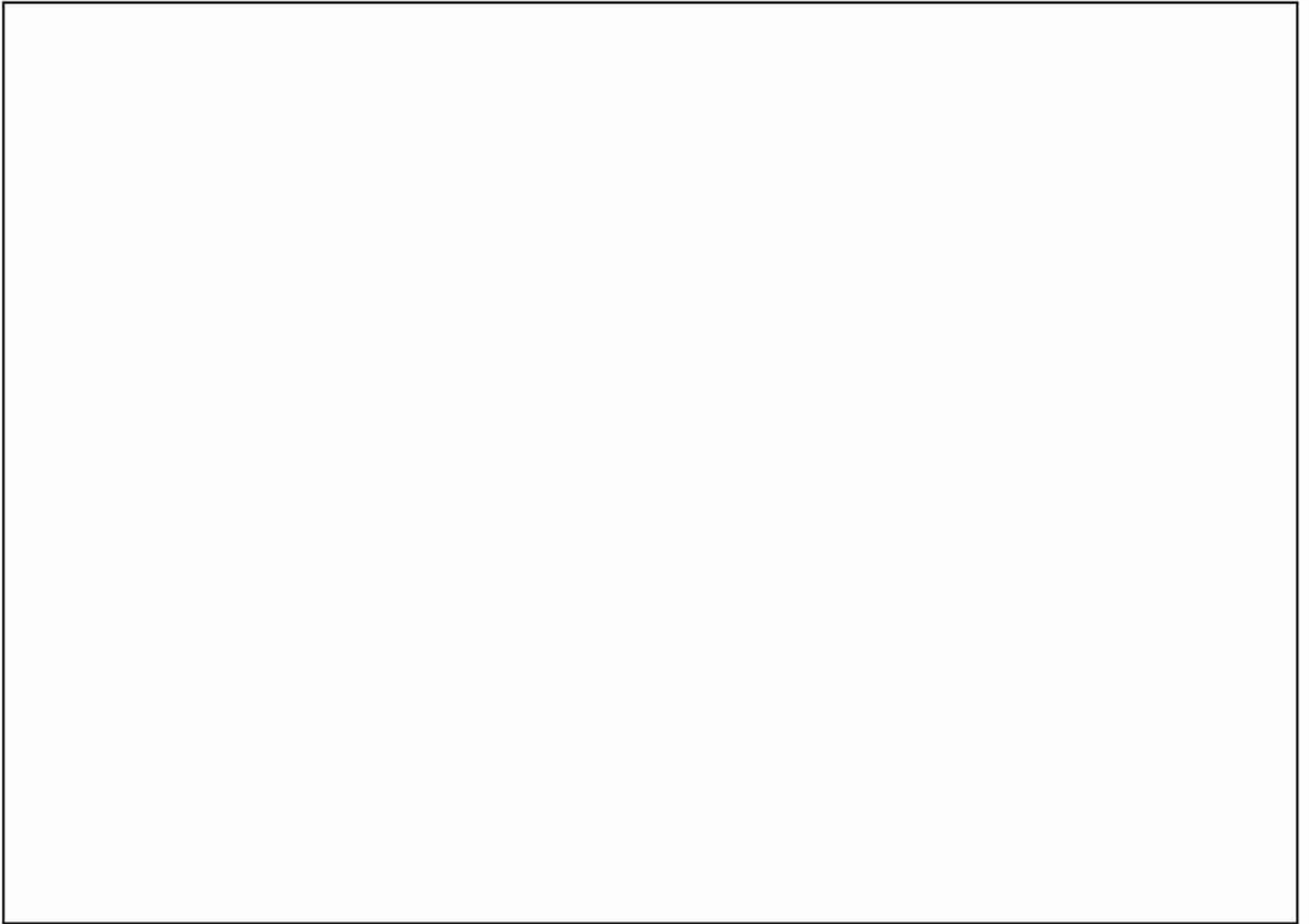


WFF

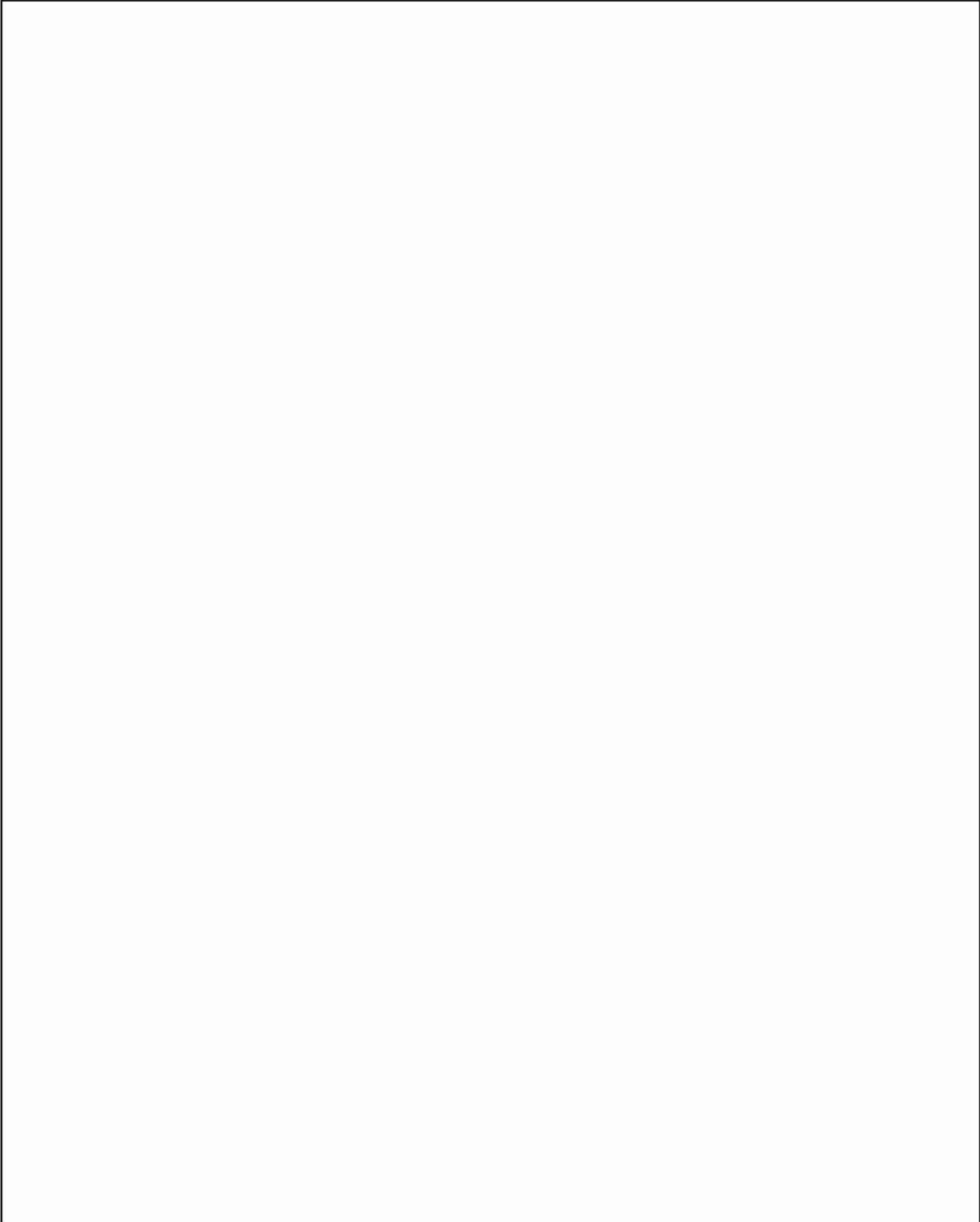
- ▶ Is this the end of the analysis?
 - ▶ NO!
- ▶ What comes next?
 - ▶ Pattern & Practice

Questions?





(b)(7)(E)



BEST PRACTICES FOR TIME MANAGEMENT

FOR ASYLUM OFFICERS

1

Updated 2/2019

WHAT DO AO'S DO?

Adjudicate Cases

- Affirmative Asylum
 - Local and Circuit Ride Locations
- Credible Fear
 - In-Person or Telephonic
- Reasonable Fear
 - In Person or Telephonic
- NACARA
- Terminations

WHAT ELSE?

- Security Checks
- WebTA
- Concur
- Write up backlog cases
- Circuit rides
- Weekly trainings
- Mandatory PALMS Courses
- OTHER DUTIES AS ASSIGNED

HOW TO “SAVE TIME”?

- Pre-interview
- During the interview
- Post interview

PRE-INTERVIEW TIPS

- **Organize your physical space**
 - Pre-populate interview forms with repeated info
 - Keep forms and adjudicative aids easily accessible
 - You should be familiar with the information on those forms (and the AAPM appendices)
 - Knowing the information helps you execute the forms efficiently and confidently during the interview
 - Simplify your space – put away other work
 - Applicants should not see government info or other applicants' info
- **Know who does what in your office – so that you know who to ask**

PRE-INTERVIEW TIPS

- **Review the file(s)**
 - Know what is in that 589
 - Know what is in the affidavit
 - Timelines, important events, possible nexus, deficiencies in the case, COI
 - Compare dates across docs
 - Create a roadmap – make sure you hit on all the legal elements
 - Formulate an idea of what you expect to happen in the interviews for the day
 - Do you have an obvious one year case? Nunc pro tunc? UAC? Possible NS concerns?

PRE-INTERVIEW TIPS

- **At LEAST run** (b)(7)(E)
 - If this leads to more info – find that info before you bring the applicant in the room and seek help if you don't know what to do with the info you find
 - Applicant's identity, travel patterns, date of arrival in the U.S, alleged past harm, and fear of future harm
 - Additional names or DOB, and if the applicant is a possible national security concern
- **Bookmark Common COI Sites**
 - U.S. State Department HR Reports
 - IRFA
 - Refworld
 - Amnesty International
 - Human Rights Watch
 - Freedom House

PRE-INTERVIEW TIPS

- **Have everything ready before you bring that applicant in the room**
 - Notes
 - File
 - Tools
 - The applicant is in your office to be interviewed, not watch you do your other tasks
 - Do NOT discuss cases in public spaces or where applicants may be present or will hear

DURING THE INTERVIEW

- Be very familiar with your introduction
- During your introduction review everyone's identity docs, prepare interpretation forms, etc.
- You may have to add a dependent/spouse at the interview
- Active listening
- Control the interview
 - Try to figure out the landscape of the claim so you can plan your time
 - Keep track of time
 - Communicate with your SAO if you have a time issue

DURING THE INTERVIEW

- Even if you are rushed, review your notes to make sure you have what you need
- Work on determining when you have sufficient testimony – it is a skill to develop

POST INTERVIEW

- **Organize electronic files**
 - Use consistent naming conventions for notes and assessments
 - Helps to quickly refer to them when adjudicating future cases with a similar fact pattern, issue, or country of origin.
 - Suggestion: a-number, country, date (not names)
 - **Be careful about creating “databases” – DHS prohibitions**
 - In addition, you can create different folders in your personal drive to save your assessments
 - Name folders according to the country/type of cases/issue
 - Keep in mind that others may need to access your notes and/or assessments in your absence – it is not your personal property

POST INTERVIEW

- **Notes**

- Print a hard copy of your notes immediately after the interview and put them in the file – especially on circuit rides
- Clean up your notes (within a reasonable time after the interview). Important misspellings, uncommon abbreviations, and major grammatical errors that can affect the meaning.

- **Write-ups**

- Plan for your write ups
 - Stick a post-it note in your circuit ride files to remind you what the case requires when you return to it in your office.
- Organize interviewed cases in a way that allows you to prioritize
 - Look at age of case
 - Issues
 - How fast you can get them done
- Figure out your citations formatting and keep them in a doc to copy/paste

POST INTERVIEW

- Ask co-workers for help – don't reinvent the wheel
 - Make sure their work is correct before you adopt it
- Ensure that for the final product, the information in the assessment matches your applicant. Verify that the gender and country of origin is correct
- For complicated cases, discuss the issues with your supervisor b/c they are the ones who have to review the assessment for legal sufficiency – i.e. don't waste 2 hours writing a faulty assessment

POST-INTERVIEW

- **Prioritize**

- Keep track of factors that affect deadlines
- Humanitarian Issues: Health issues (mental or physical), fear of harm to family in their home country, Congressional inquiries, etc.
- Does the applicant have pending removal proceedings (PRLs)
- Delivery of Decision
 - Pick-up vs. Mail-out
- Status of the applicant
- HQ review, CF, RF, National Security Concerns

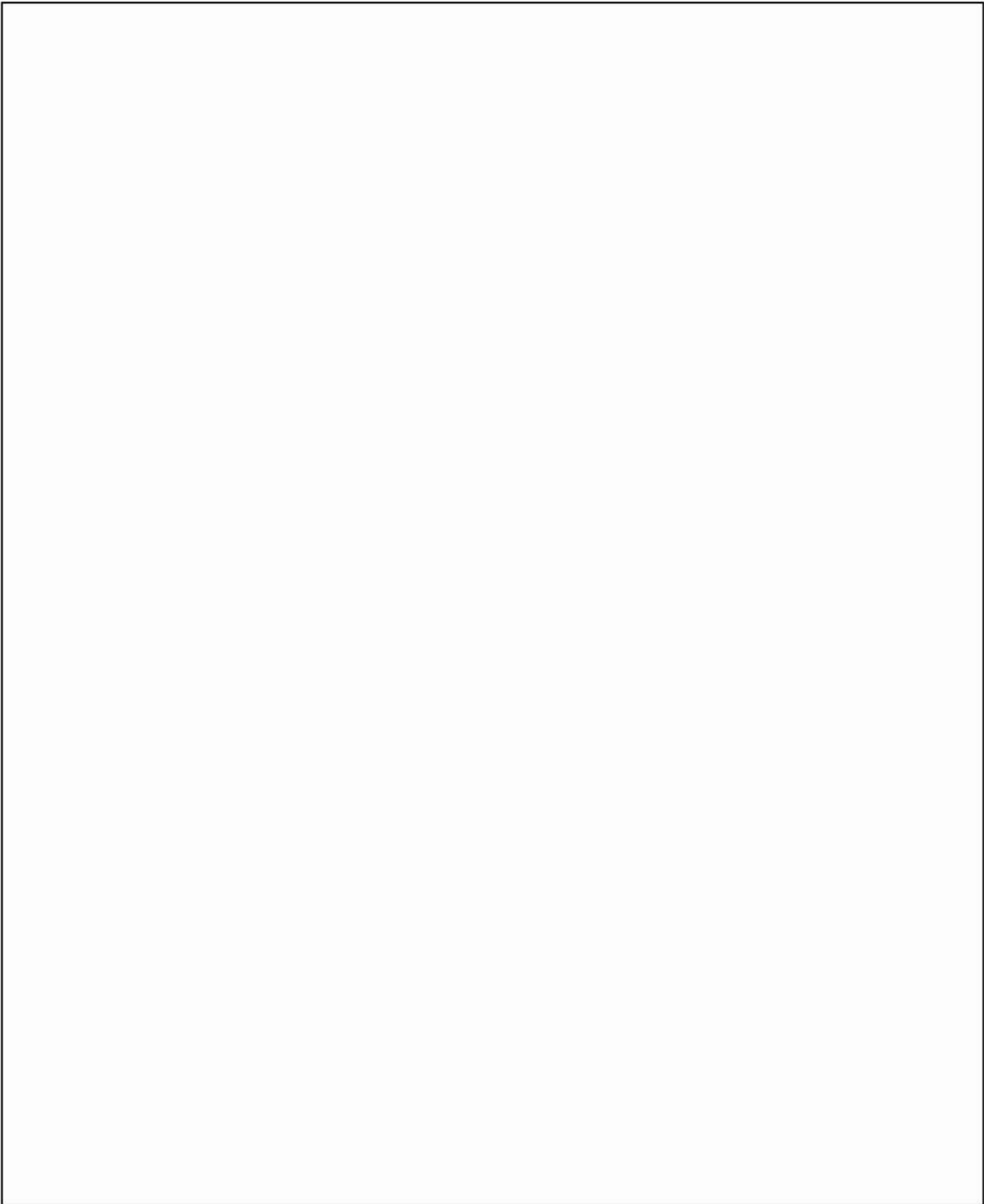
POST-INTERVIEW

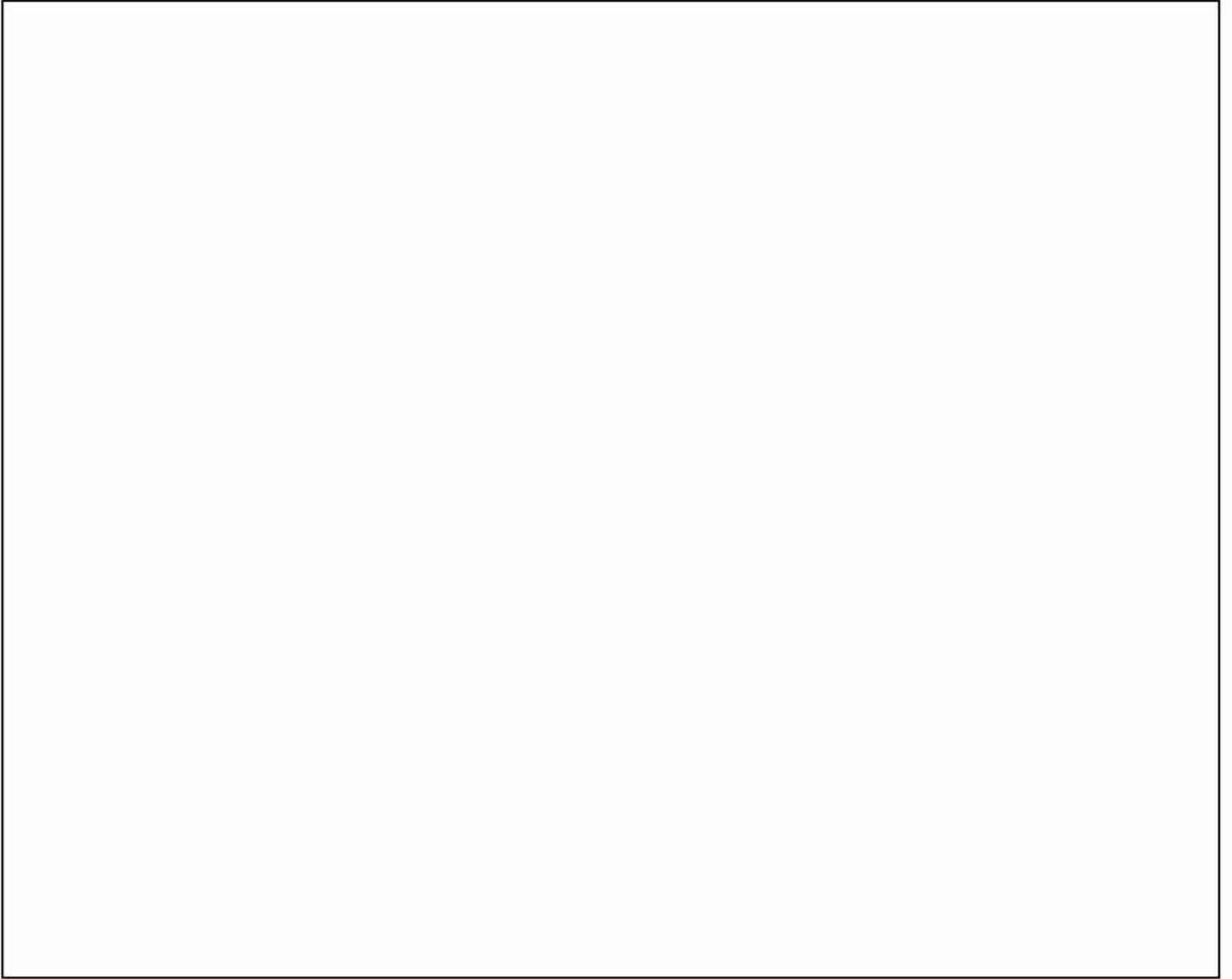
- Be decisive – you are an adjudicator. Don't shy away from making decisions.
- Be flexible – you are an adjudicator. You will get feedback.
- When in doubt, write up the statement of facts – it will help you analyze.
- If you have to re-interview, be clear about what info you need. It may be an FDNS issue, legal sufficiency, trafficking, etc.

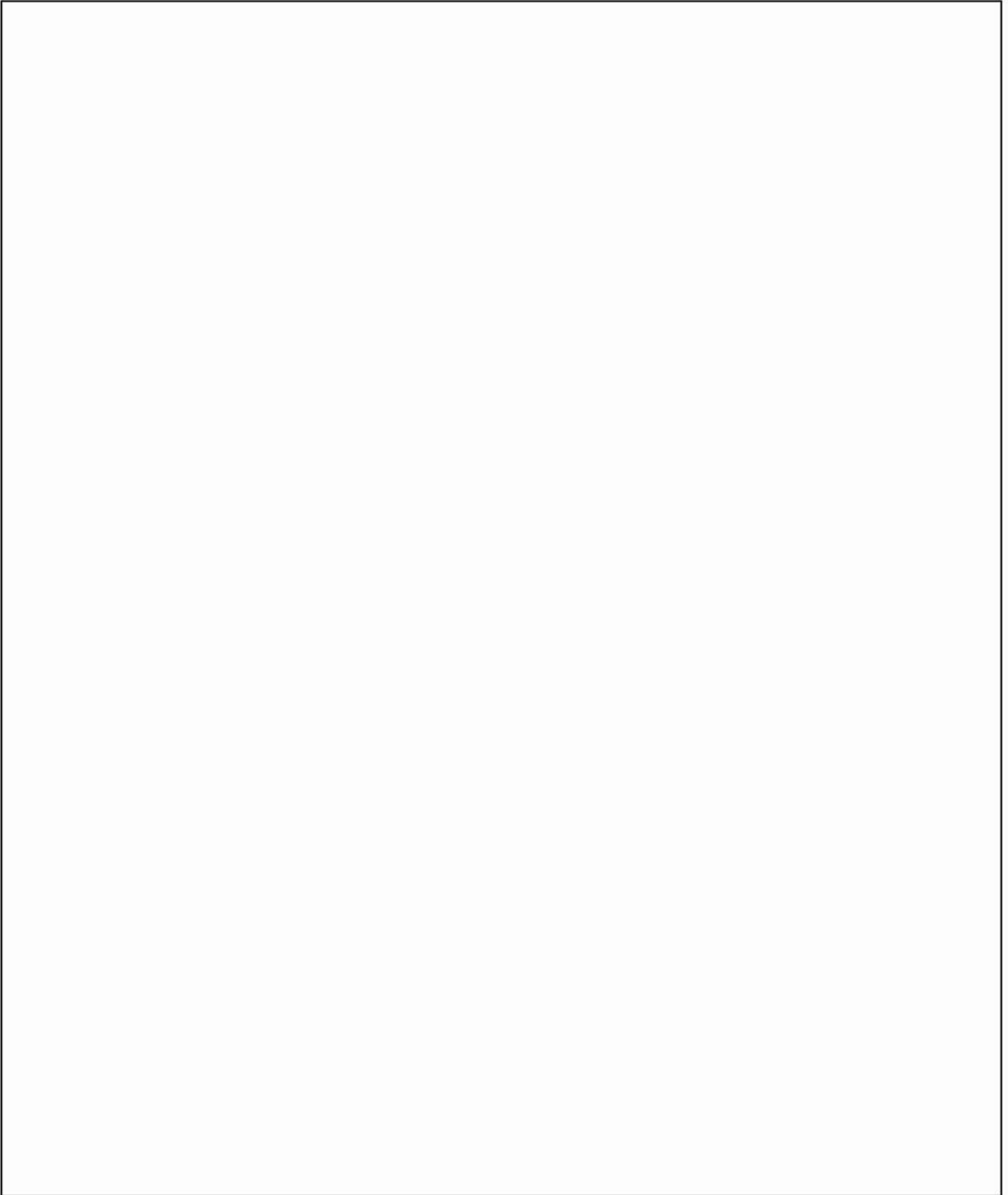
HAVE A LIFE

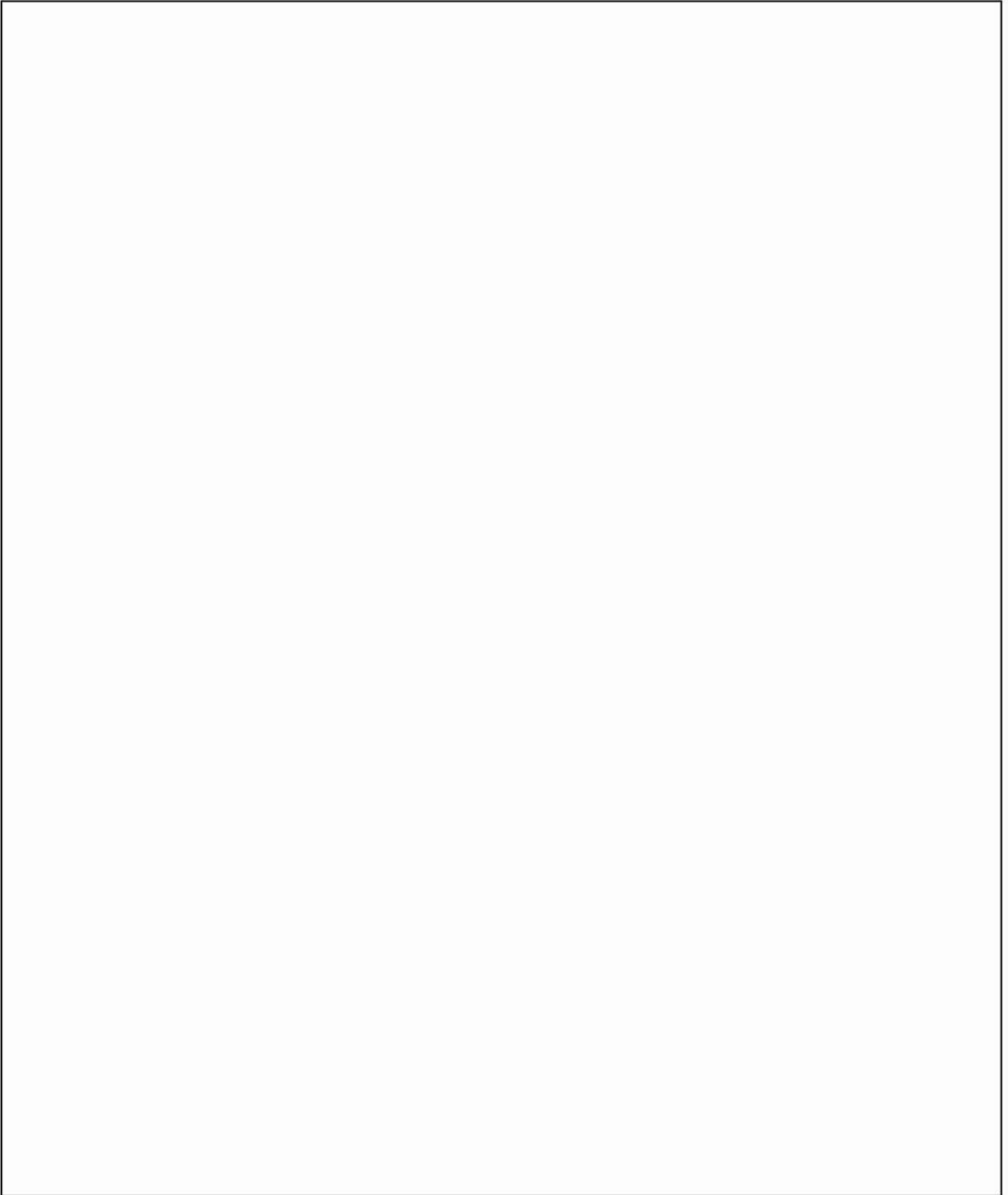
- When you leave the office, LEAVE it at the office
- It will make you better at your job and a better co-worker

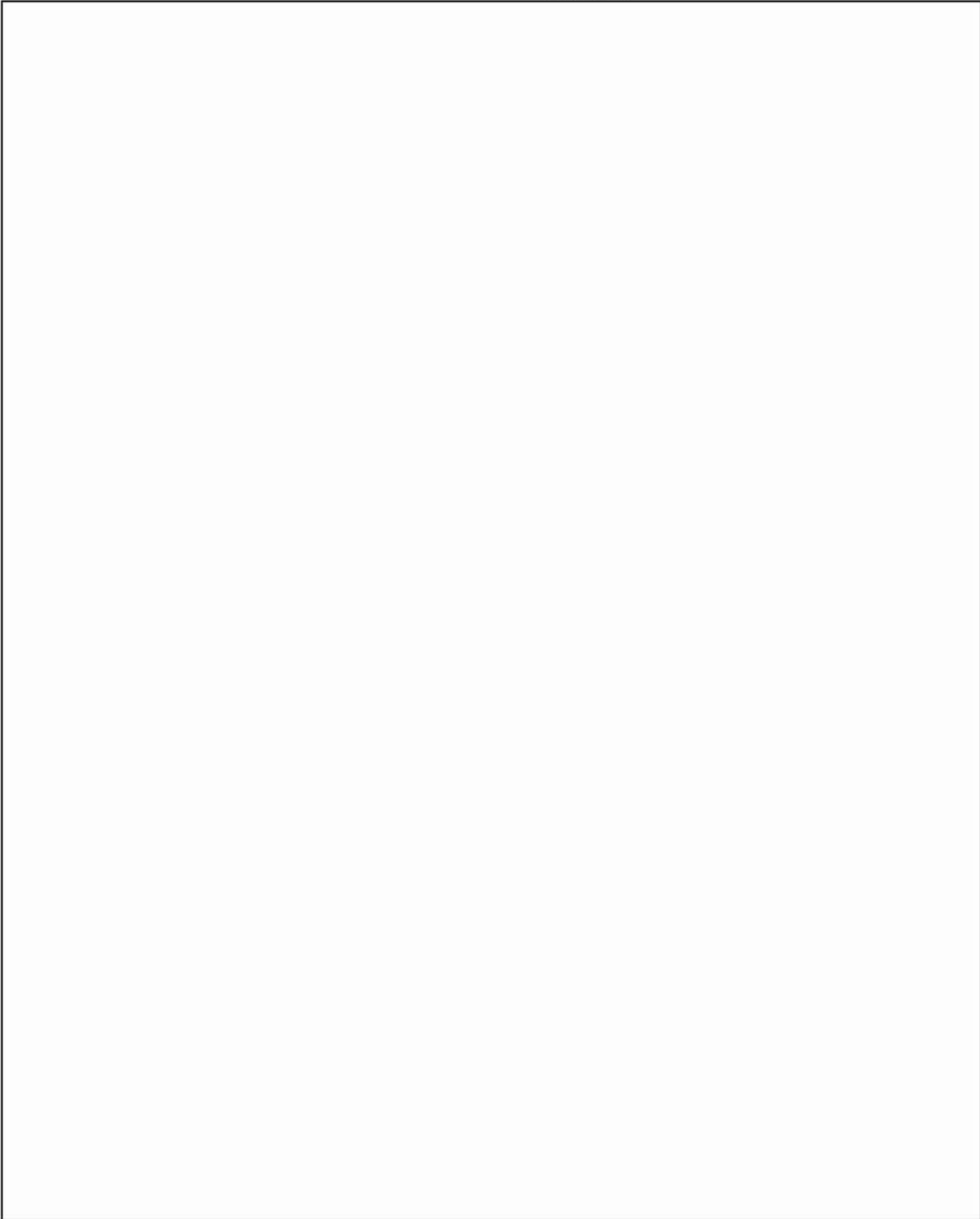
Student 1 Instructions:

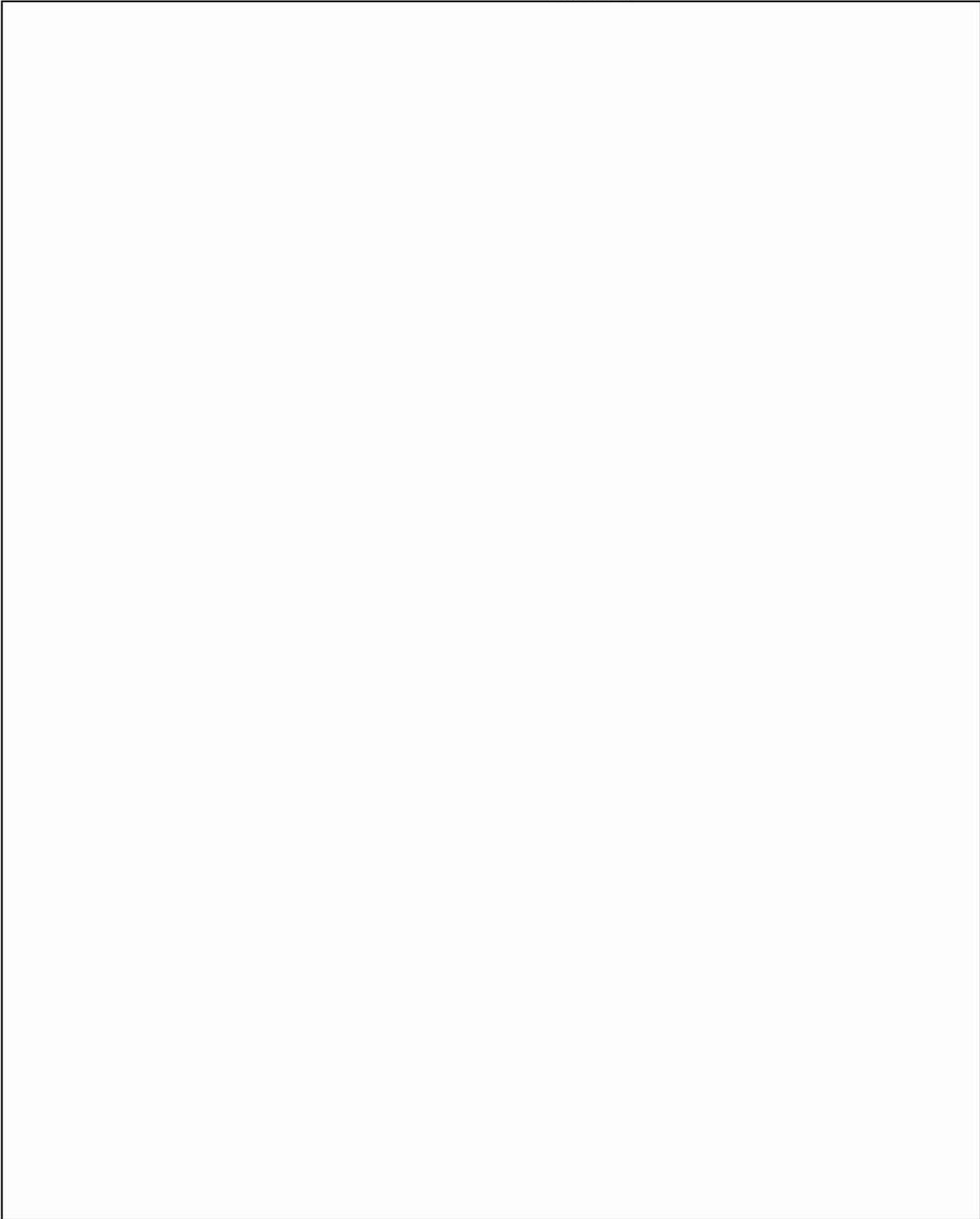


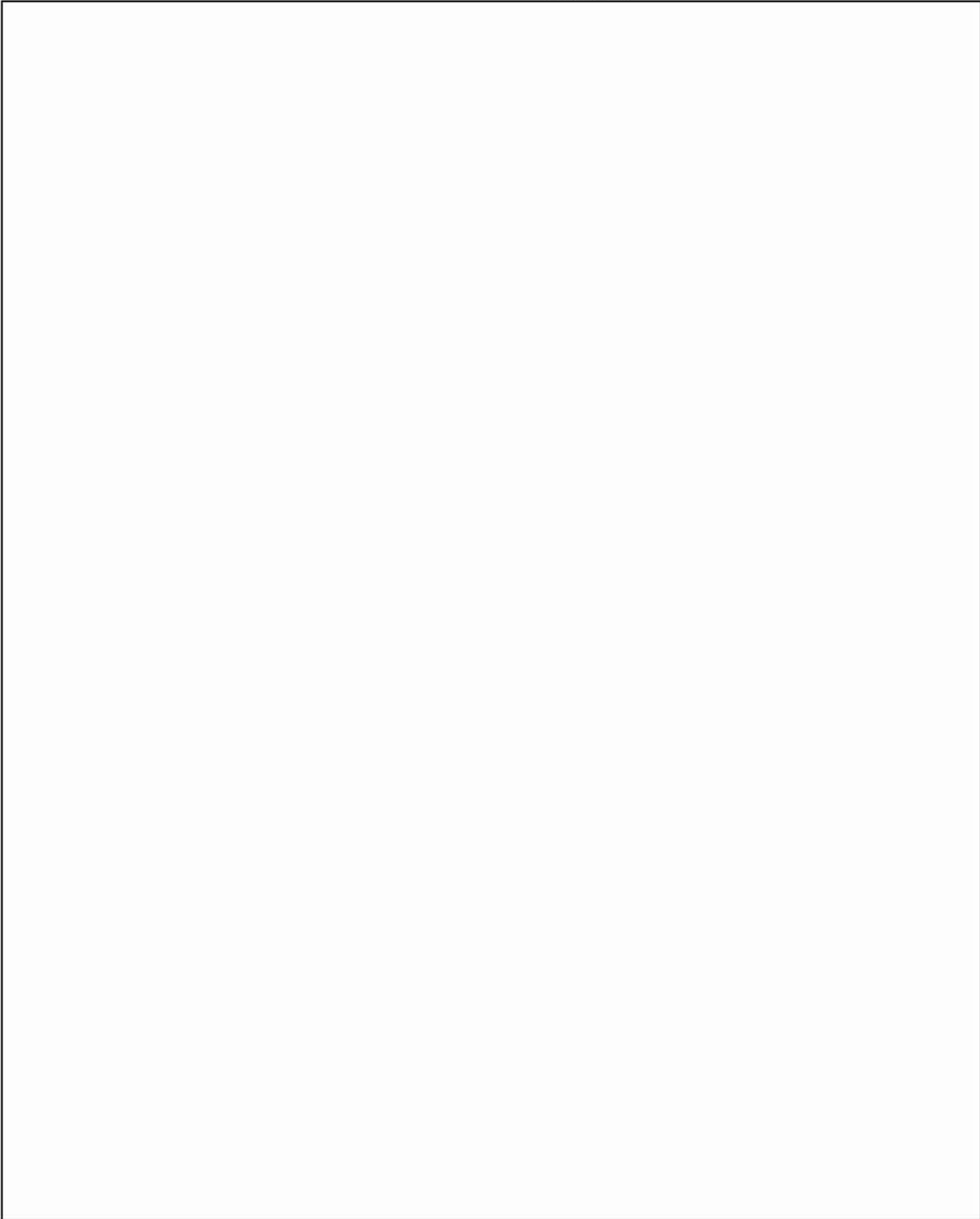


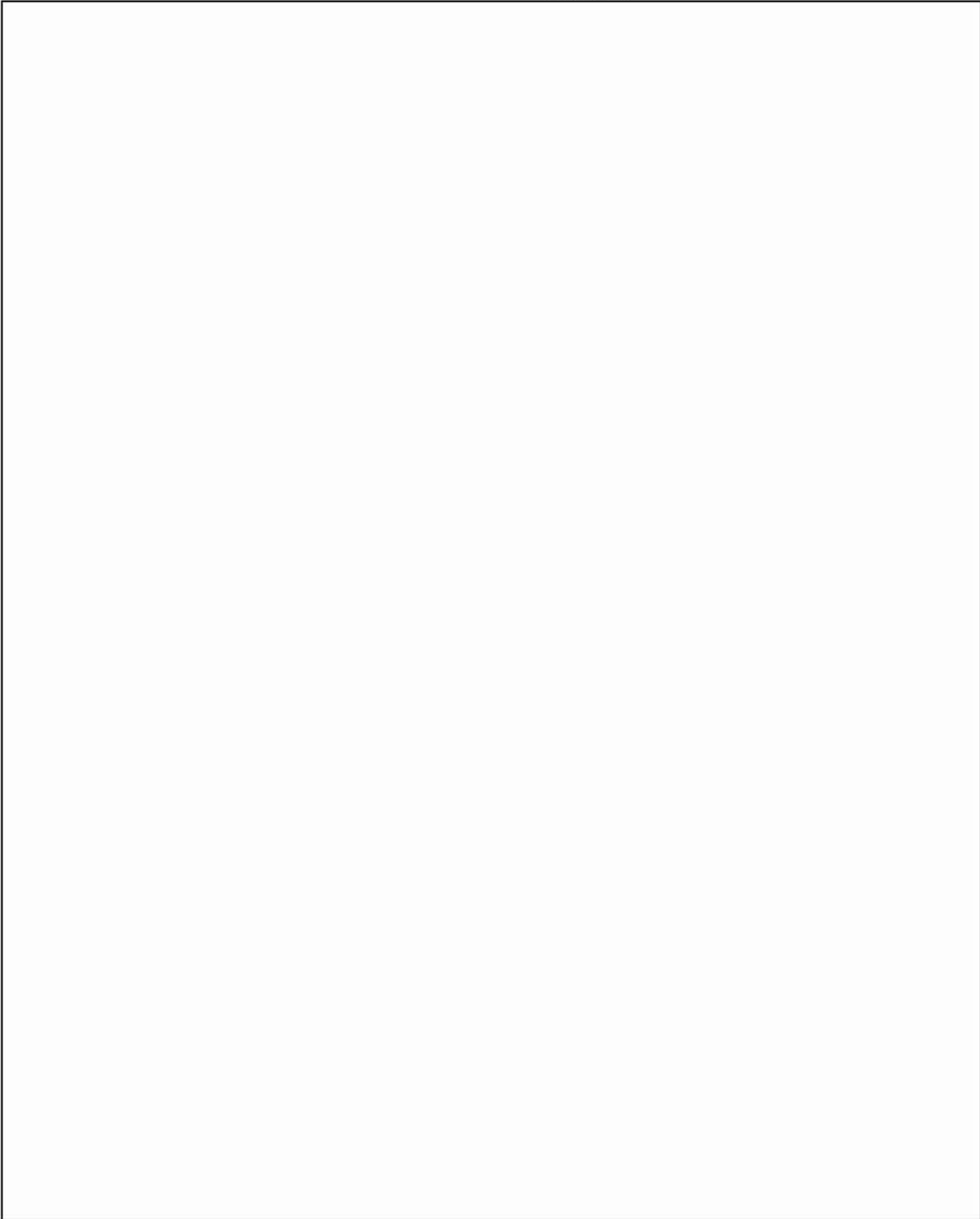














Decision Writing:

Credibility

NOVEMBER 2019

CREDIBLE or NOT CREDIBLE?

- I. BIOGRAPHIC/ENTRY OR ARRIVAL/IMMIGRATION STATUS INFORMATION
- II. BASIS OF CLAIM
- III. ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM
- IV. SUMMARY OF TESTIMONY
- V. ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT**
- VI. FOCUSED LEGAL ANALYSIS
- VII. ANALYSIS OF BARS/DISCRETIONARY FACTORS
- VIII. DECISION

CREDIBLE or NOT CREDIBLE?

**You must make a credibility determination
in every assessment of asylum eligibility**

CREDIBLE or NOT CREDIBLE?

- ▶ **Although there are other scenarios that may be possible, most cases will either be written up as:**

Testimony Found Credible

OR

Testimony Found Not Credible

CREDIBLE OR NOT CREDIBLE?

How do I decide if my applicant is credible?

1. **Look at the facts:** Review your interview notes/other evidence to determine if there is evidence that indicates that applicant's testimony is or is not credible
2. **Analyze the evidence** that may indicate lack of credibility
3. **Conclude** whether the applicant's testimony is credible in the totality of the circumstances

TESTIMONY FOUND CREDIBLE

► **General rule:**

A positive credibility finding is supported by statements that are detailed, plausible, internally consistent, consistent with their other statements, and consistent with other evidence in the record and country conditions information.

TESTIMONY FOUND CREDIBLE

► Where is this in the template/How is that written up?



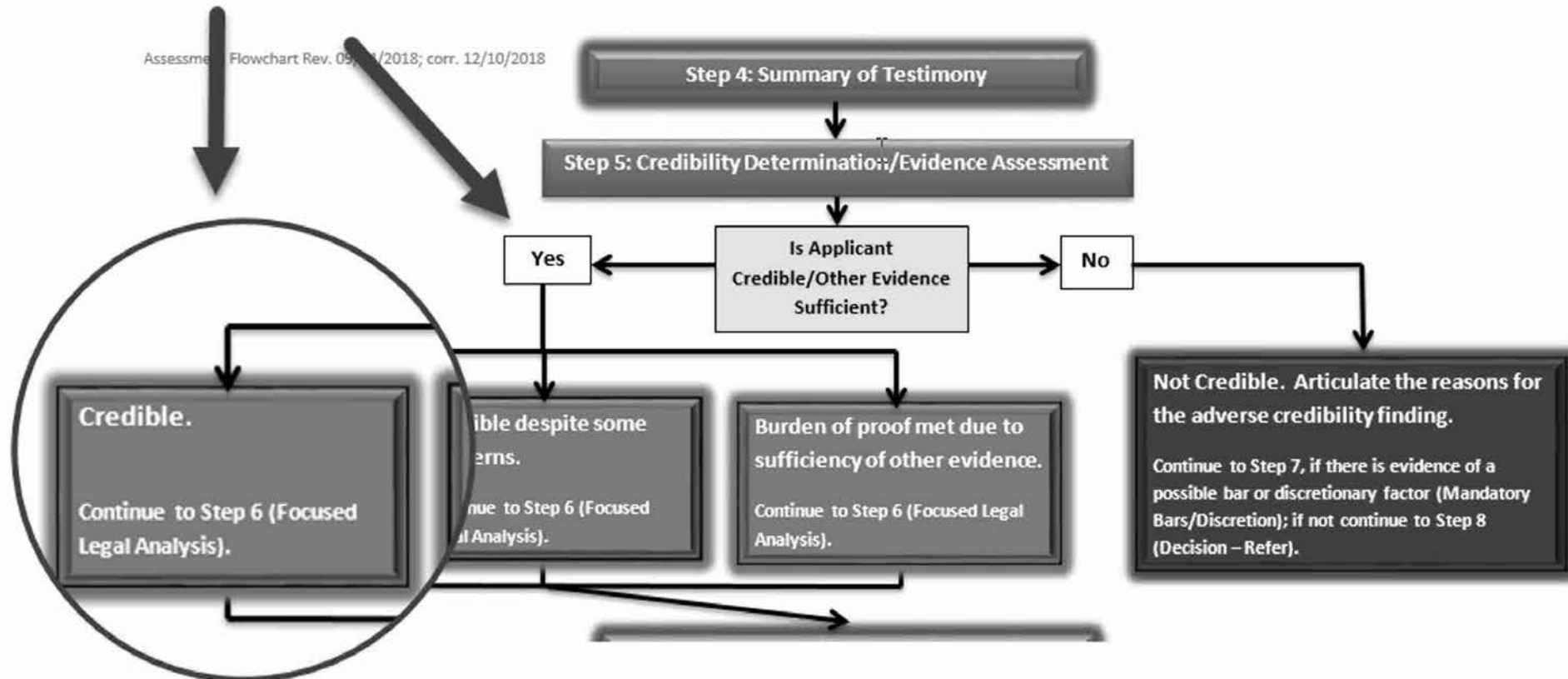
V. ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT

A. Applicant's Testimony Found Credible

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

TESTIMONY FOUND CREDIBLE

► Where is that on the flowchart?



TESTIMONY FOUND NOT CREDIBLE

- ▶ After examining the facts, if you find that the applicant's testimony is not credible, you must provide a specific, *clearly articulated* basis for the adverse credibility determination.

This means...

You need to do analysis!

TESTIMONY FOUND NOT CREDIBLE

► Where are we in the REFERRAL template?

10

B. Applicant's Testimony Found Not Credible

Introduce an adverse credibility analysis with the following standardized template language:

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

Provide a factual analysis of negative credibility factors that are relied upon for the adverse credibility determination.

- Identify the type of credibility factor (for example, lack of detail, inconsistency, implausibility or other relevant factors).
- Provide evidence of the lack of detail, inconsistency, implausibility or other relevant factors.
- Provide the applicant's explanation or lack of explanation.
- Explain why the applicant's explanation or lack of explanation is not found reasonable.
- Explain the relevance of the factor.

ADOTP Referral Template Rev. 09/14/2018

Page 11 of 26

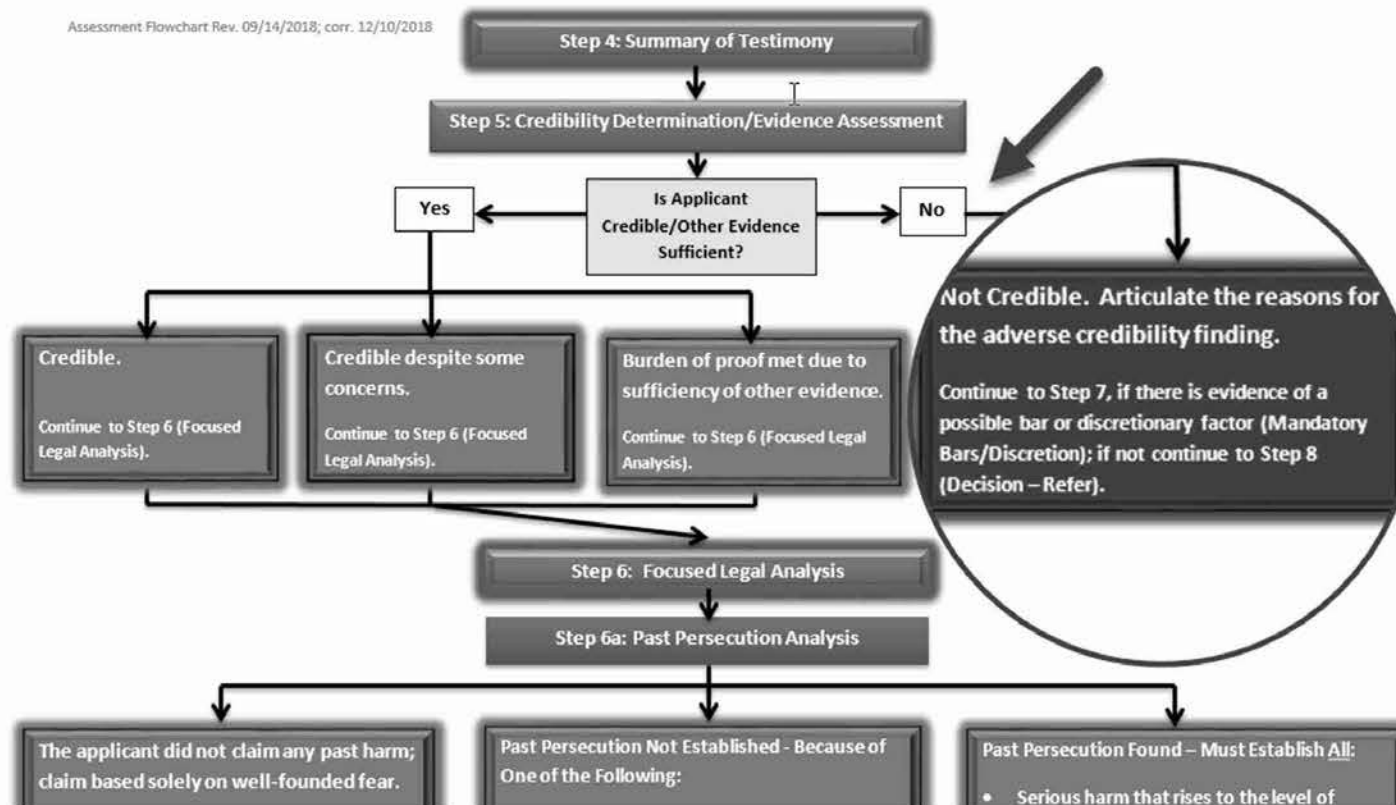
Once all credibility factors that are relied upon for the adverse credibility determination have been analyzed, make a determination as to how much weight they should be given in assessing the overall credibility of the testimony and how the applicant's testimony is not credible in the totality of the circumstances.

Conclude with:

Considering the totality of the circumstances and all relevant factors, the applicant's testimony is found not credible. Therefore, the applicant failed to meet his/her burden of establishing that [he/she] is a refugee.

TESTIMONY NOT FOUND CREDIBLE

► Where are we on the flowchart?



THE STRUCTURE OF A CREDIBILITY REFERRAL

BIOGRAPHIC/ENTRY OR ARRIVAL/IMMIGRATION STATUS INFORMATION

BASIS OF CLAIM

ANALYSIS OF PROHIBITIONS AGAINST FILING FOR ASYLUM

SUMMARY OF TESTIMONY

ANALYSIS OF CREDIBILITY / EVIDENCE ASSESSMENT

Individual Credibility Concern

Individual Credibility Concern

Individual Credibility Concern

Individual Credibility Concern

Totality of the Circumstances: Credibility

DECISION

SUMMARY OF TESTIMONY vs. CREDIBILITY ANALYSIS

- ▶ **Summary of Testimony**—contains facts elicited during the interview that, if the applicant is credible, would be used to analyze eligibility issues (Past Persecution/WFF/Bars).
- ▶ **Credibility Analysis**—requires examination of available evidence to determine whether the applicant is credible. May introduce and examine testimony that is in the interview notes but is not in the summary of testimony.

TESTIMONY FOUND NOT CREDIBLE: HOW TO WRITE INDIVIDUAL CREDIBILITY CONCERNS

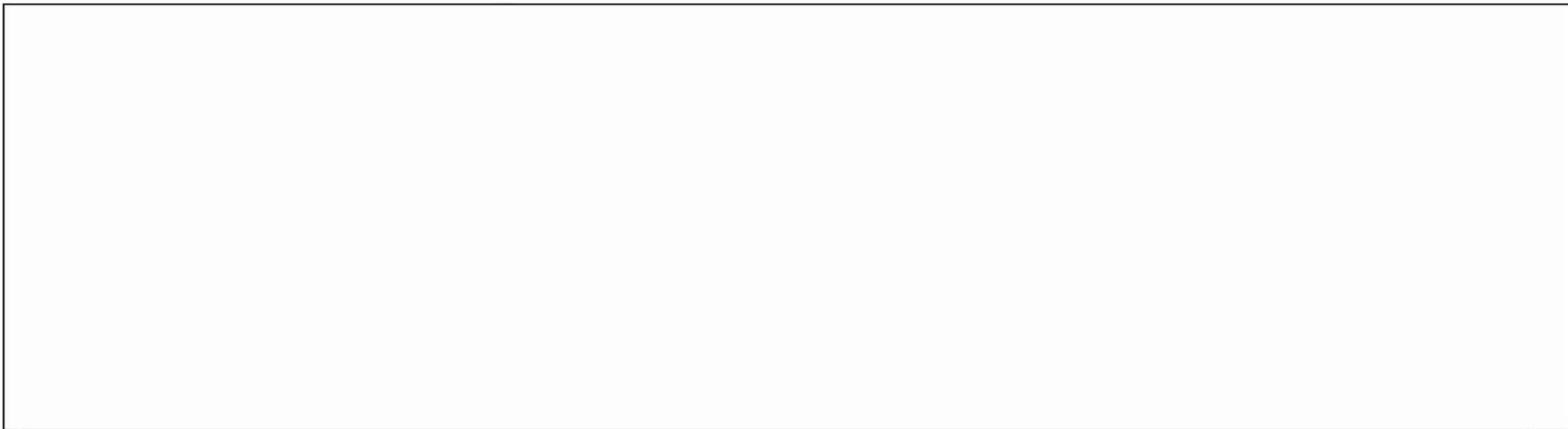
- ▶ Identify the type of credibility factor
- ▶ Provide the evidence of the lack of detail, inconsistency, implausibility or other relevant factor
- ▶ Provide the applicant's explanation or lack of explanation
- ▶ Explain why the applicant's explanation or lack of explanation is not found reasonable
- ▶ Explain the relevance of the factor to the overall determination

TESTIMONY FOUND NOT CREDIBLE

- ▶ What does the analysis of ONE individual credibility concern look like?

Credibility Concern B

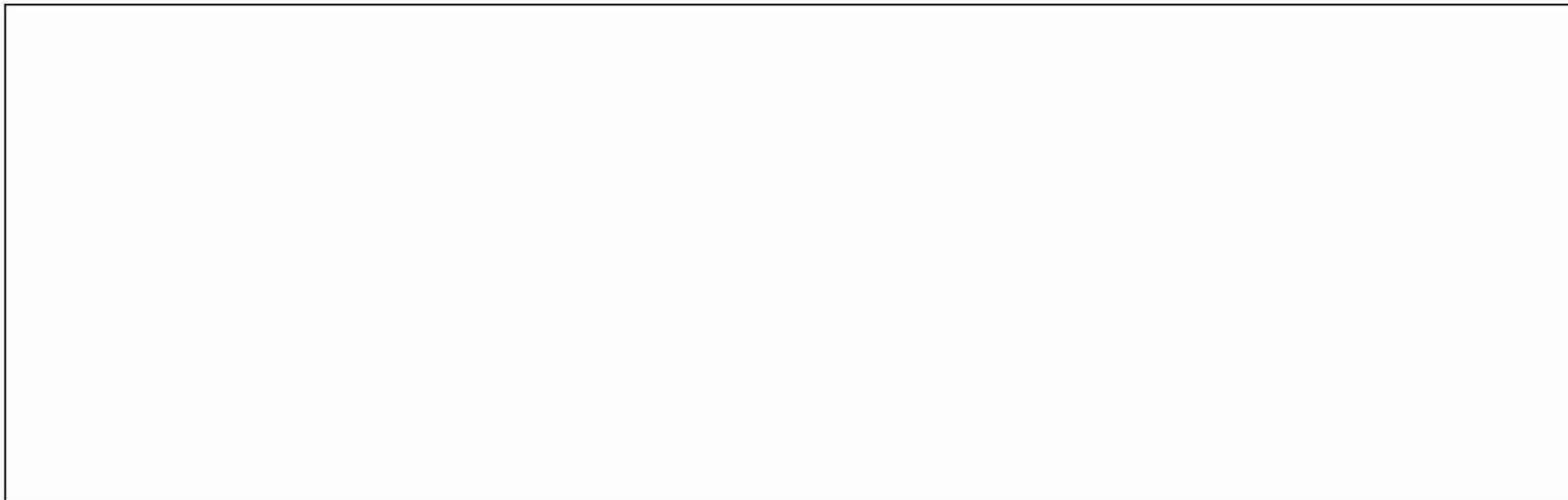
(b)(6)



IDENTIFY THE TYPE OF CREDIBILITY CONCERN

What type of credibility concern is it?

(b)(7)(E)




IDENTIFY THE TYPE OF CREDIBILITY CONCERN

- ▶ What type of concern is it and what is it about?

Credibility Concern B

(b)(6)



PROVIDE EVIDENCE OF CREDIBILITY CONCERN

Now that we know what type of credibility concern we have, we must explain what indicates this is a credibility concern

PROVIDE EVIDENCE OF CREDIBILITY CONCERN

- ▶ What evidence supports that the applicant's testimony regarding his arrest in August 2009 was inconsistent?

Credibility Concern B

(b)(6)

--

PROVIDE EVIDENCE OF CREDIBILITY CONCERN

- ▶ **What actual evidence can we point to that supports, “The applicant first indicated that he was arrested while at home with his family”?**

Interview Notes!

The interview notes will reflect that the applicant testified he was at home with his family members when he was arrested.

PROVIDE EVIDENCE OF CREDIBILITY CONCERN

What actual evidence can we point to that supports, “. . . later, the applicant testified that he was arrested at a meeting with [redacted] members at another [redacted] member’s home”?

(b)(6)

(b)(6)

Interview Notes!

The interview notes will reflect that *after* the applicant’s first claim to where he was when he was arrested, he later claimed he was at a meeting with [redacted] member’s at one of their homes.

(b)(6)

PROVIDE APPLICANT'S EXPLANATION

You are expected to give the applicant an opportunity to explain the reason for the credibility concern

PROVIDE APPLICANT'S EXPLANATION

“The applicant was afforded many opportunities. . .”

PROVIDE APPLICANT'S EXPLANATION

What is applicant's explanation for his testimony that gives two different versions of where he was and who he was with when he was arrested?

Credibility Concern B

(b)(6)

PROVIDE APPLICANT'S EXPLANATION

Just saying the applicant was unresponsive is insufficient:

- ▶ "...a general statement that the [applicant] was 'unresponsive' to questions is insufficient to support a finding of unresponsiveness; instead [one] must identify particular instances ... where [applicant] refused to answer questions asked of him." *Singh v. Ashcroft*, 301 F.3d 1109, 1113 (9th Cir. 2002).
- ▶ **Pro tip:** if the applicant **responded** at all to your question, that cannot be called **unresponsive!**

REASONABLENESS OF EXPLANATION

Explain why the applicant's explanation or lack of an explanation is not reasonable:

- ▶ “does not resolve the inconsistency” is NOT enough
- ▶ You must address why the explanation is not reasonable—give rationale and details

REASONABLENESS OF EXPLANATION

Is the applicant's explanation(s) reasonable?

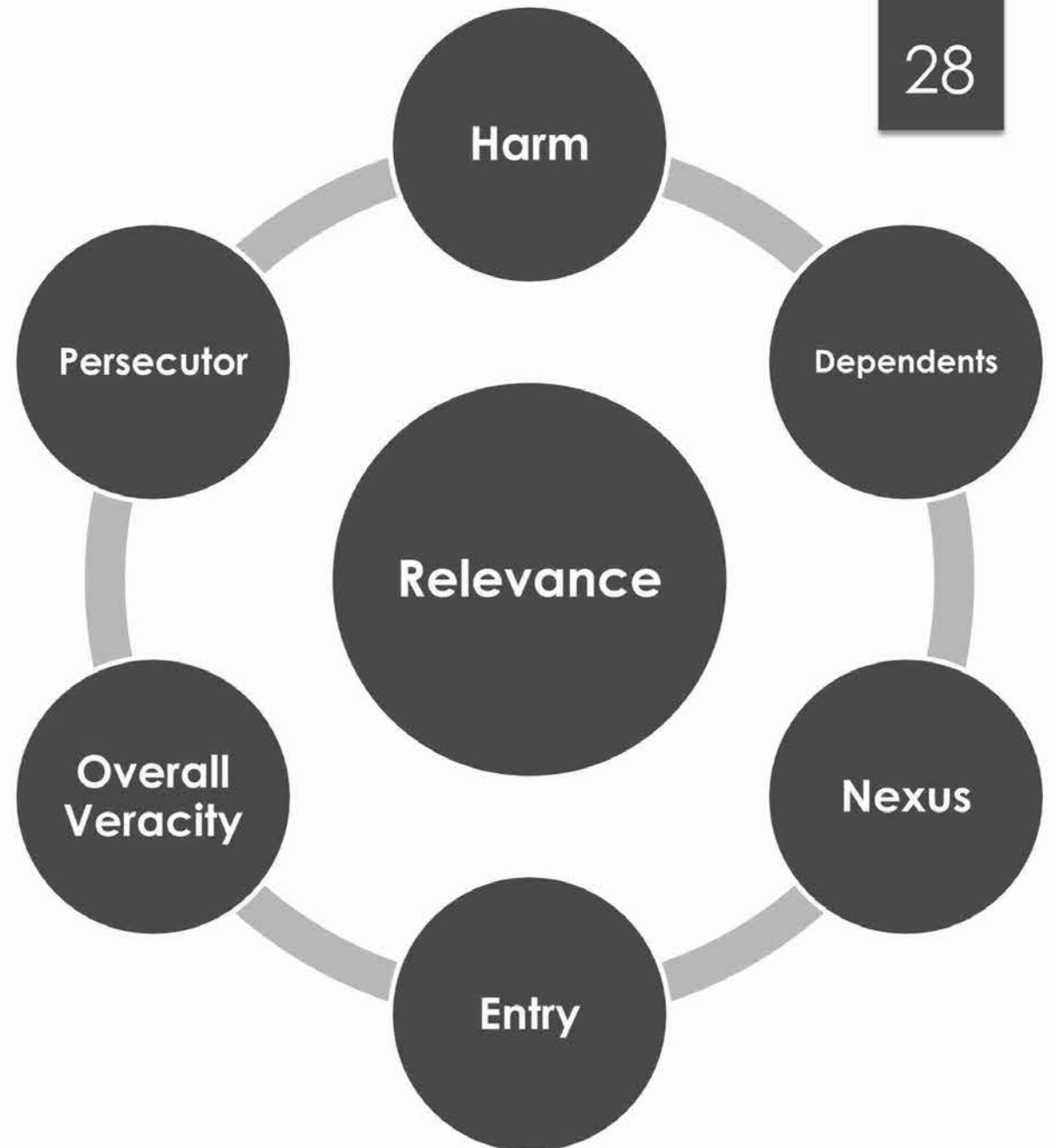
Credibility Concern B

(b)(6)



EXPLAIN THE RELEVANCE OF THE CONCERN

What do we mean by relevance?



EXPLAIN THE RELEVANCE OF THE CONCERN

How is this credibility concern relevant to the overall totality of the circumstances?

Credibility Concern B

(b)(6)

--

WRITE-UP PRACTICE

- ▶ Read the set of facts on your handout. As you read: (1) identify possible credibility concerns and (2) think about how each item might fit into write-up format we just discussed
- ▶ After reading the scenario, address each element of the individual concern as if you were crafting the individual credibility concern for an assessment to refer.

WRITE-UP PRACTICE

IDENTIFY THE TYPE OF CREDIBILITY CONCERN

What type of credibility concern do we have with this fact scenario?

Inconsistency

How would we write it?

The applicant's testimony regarding where his mother and sister live is inconsistent.

WRITE-UP PRACTICE

PROVIDE EVIDENCE OF CREDIBILITY CONCERN

What is the evidence that the applicant was inconsistent about the location of his mother and sister?

Testimony (as reflected in the interview notes)

How would we write it?

(b)(6)

(b)(6) Initially the applicant testified that his mother and sister live in [redacted] [redacted] and that no one in his family has ever lived [redacted] [redacted]. Later the applicant testified that his mother and sister lived in [redacted] time the applicant went into hiding and that they still live there currently.

WRITE-UP PRACTICE

PROVIDE APPLICANT EXPLANATION

What was the applicant's explanation as to why his testimony was inconsistent?

His mother and sister visit his brother in times a year for a few weeks, so that was why he said they lived there also.

(b)(6)

How would we write it?

When given the opportunity to explain this inconsistency, the applicant testified that his mother and sister visit his brother in a couple times a year for a few weeks each time and that was why he said they lived there also.

(b)(6)

WRITE-UP PRACTICE

EXPLAIN WHY EXPLANATION IS NOT REASONABLE

Why is the applicant's explanation not reasonable?

The applicant's mother and sister lived in [redacted] at the time he went into hiding and they still live in [redacted] today. (b)(6)

How would we write it?

This explanation is not reasonable because the applicant testified that no one in his family has ever lived outside of [redacted] yet he also testified that his mother and sister live there now and did at the time he went into hiding. Visits a couple times per year for a few weeks would not be objectively considered to be relocating for purposes of residency. (b)(6)

WRITE-UP PRACTICE

EXPLAIN THE RELEVANCE OF THE CREDIBILITY CONCERN

To which element(s) is the inconsistency regarding where the mother and sister live?

Past Harm (Past Persecution)

Internal Relocation (WFF)

How would we write it?

This inconsistency is relevant to both the applicant's claim of past harm and the ability of his persecutor to locate him once he went into hiding as well as to the reasonableness of expecting him to internally relocate should he return to (b)(6)

WEIGHT & TOTALITY OF CIRCUMSTANCES

► And finally:

After analyzing all identified factors, make a determination as to how much weight they should be given in assessing the overall credibility of the testimony and how the applicant's testimony is not credible in the totality of the circumstances

WEIGHT & TOTALITY OF CIRCUMSTANCES

What does it mean to consider the totality of the circumstances and all relevant factors?

WEIGHT & TOTALITY OF CIRCUMSTANCES

- ▶ **What things should we consider when looking at the totality of the circumstances?**
 - When the events occurred
 - Possible effects of trauma
 - Applicant's age, abilities, and level of education

- ▶ **Such factors should always be considered in an adverse credibility determination.**

WEIGHT & TOTALITY OF CIRCUMSTANCES

► How do we write it?

(b)(6)

Totality of the Circumstances

The applicant provided some documentary evidence in support of his claim, in form of his [redacted] [redacted] He did not provide any documents to establish that he was detained by the authorities or medical documentation to support that he was harmed. Although he provided a card as evidence of his [redacted], and this membership may be relevant to his claim, he provided no additional evidence to corroborate that he engaged in the activities that he claimed resulted in his arrest or that [redacted] in and of itself would result in the harm claimed by the applicant. Therefore given the applicant's lack of credible testimony, the [redacted] does not carry sufficient evidentiary weight as a single relevant factor to establish elements of his refugee eligibility.

[redacted] Considering the totality of the circumstances and all relevant factors, the applicant's testimony is found not credible.

(b)(6)

WEIGHT & TOTALITY OF CIRCUMSTANCES

Remember: Testimony is only part of the evidence

You must consider *all* the evidence when analyzing whether the applicant met his/her burden of proof.

“The whole picture must be taken into account since testimony is not a discrete, self-contained unit of evidence examined and weighed without context, it is part of the body of evidence which is intertwined and consist[s] in its totality.” *Matter of S-M-J-*, 21 I&N Dec. 722, 728 (BIA 1997).

CREDIBILITY ISSUES BUT... STILL CREDIBLE!

Testimony Found Not Credible or Is Otherwise Insufficient to Meet the Burden of Proof But Other Credible Evidence Meets Burden of Proof

▶ **Testimony Found Not Credible or Was Insufficient**

When the applicant's testimony raises credibility concerns—either inconsistencies or not enough detail to establish their burden. This requires an analysis using the full adverse credibility framework.

+

▶ **Other Evidence Provided Meets Applicant's Burden of Proof**

Describe the evidence and explain how it is credible, direct and specific evidence that might independently establish eligibility for asylum (past persecution or well-founded fear).

**CREDIBILITY ISSUES
BUT...**

STILL CREDIBLE!

▶ Testimony Found Not Credible or Is Otherwise Insufficient to Meet the Burden of Proof But Other Credible Evidence Meets Burden of Proof

42

C. Applicant's Testimony Found Not Credible or Is Otherwise Insufficient to Meet the Burden of Proof But the Applicant Provided Other Credible Evidence to Meet His/Her Burden of Proof

The applicant's testimony concerning [insert appropriate issues and identify credibility or other concerns, e.g., lacked detail and/or was inconsistent and/or was implausible].

Provide a factual analysis of negative credibility factors that are relied upon for the adverse credibility determination.

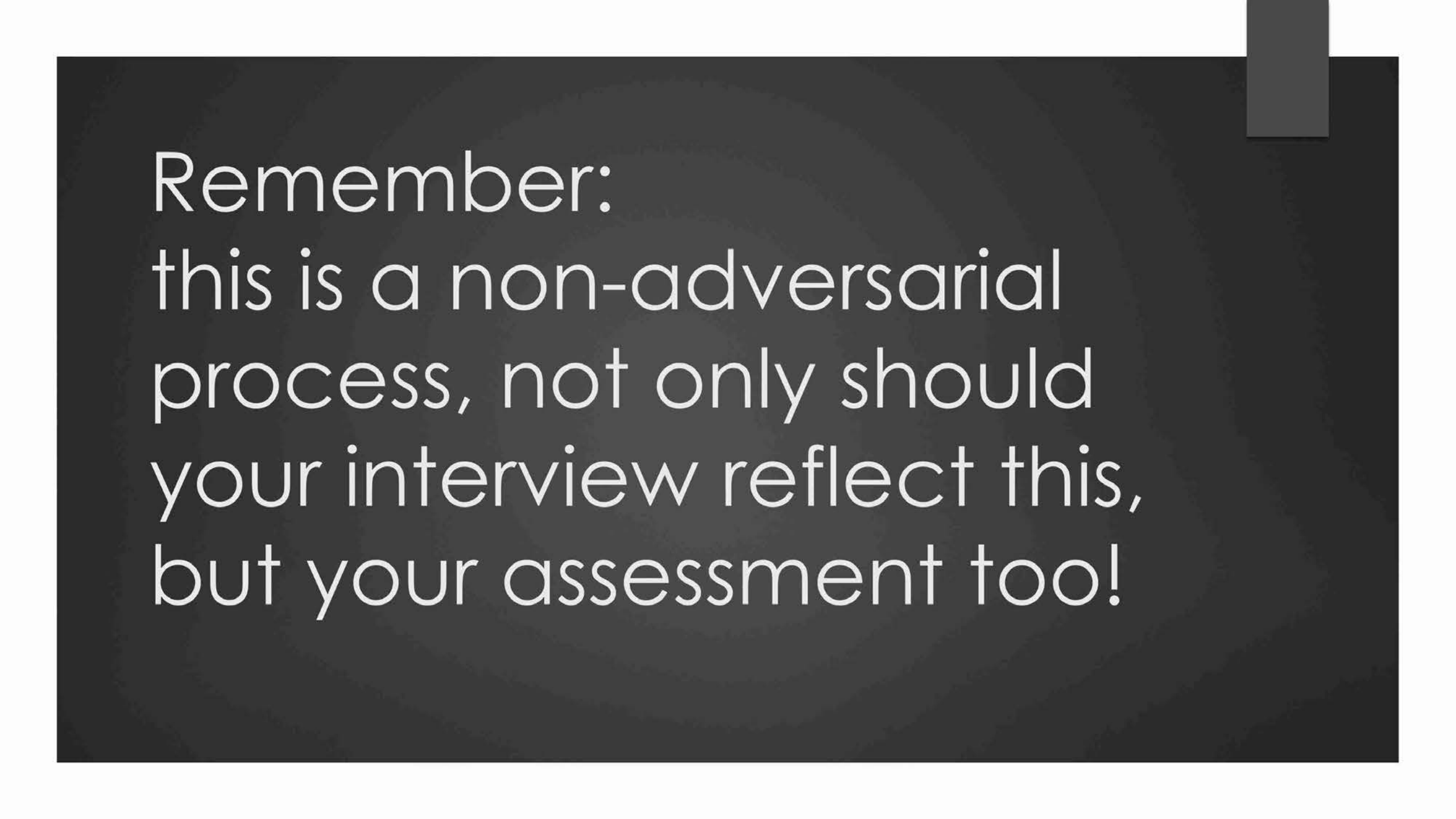
ADOTP Grant Template Rev. 09/14/2018

Page 7 of 16

- Identify the type of credibility factor (for example, lack of detail, inconsistency, implausibility or other relevant factors).
- Provide evidence of the lack of detail, inconsistency, implausibility or other relevant factors.
- Provide the applicant's explanation or lack of explanation.
- Explain why the applicant's explanation or lack of explanation is not found reasonable.
- Explain the relevance of the factor.

Once all credibility factors that are relied upon for the adverse credibility determination have been analyzed, make a determination as to how much weight they should be given in assessing the overall credibility of the testimony and how the applicant's testimony is not credible in the totality of the circumstances.

Considering the totality of the circumstances and all relevant factors, the applicant's testimony is found not credible. However, the applicant provided other credible evidence to meet [his/her] burden of proof. Describe the evidence and explain how it is credible, direct and specific evidence that might independently establish eligibility for asylum (past persecution or well-founded fear).



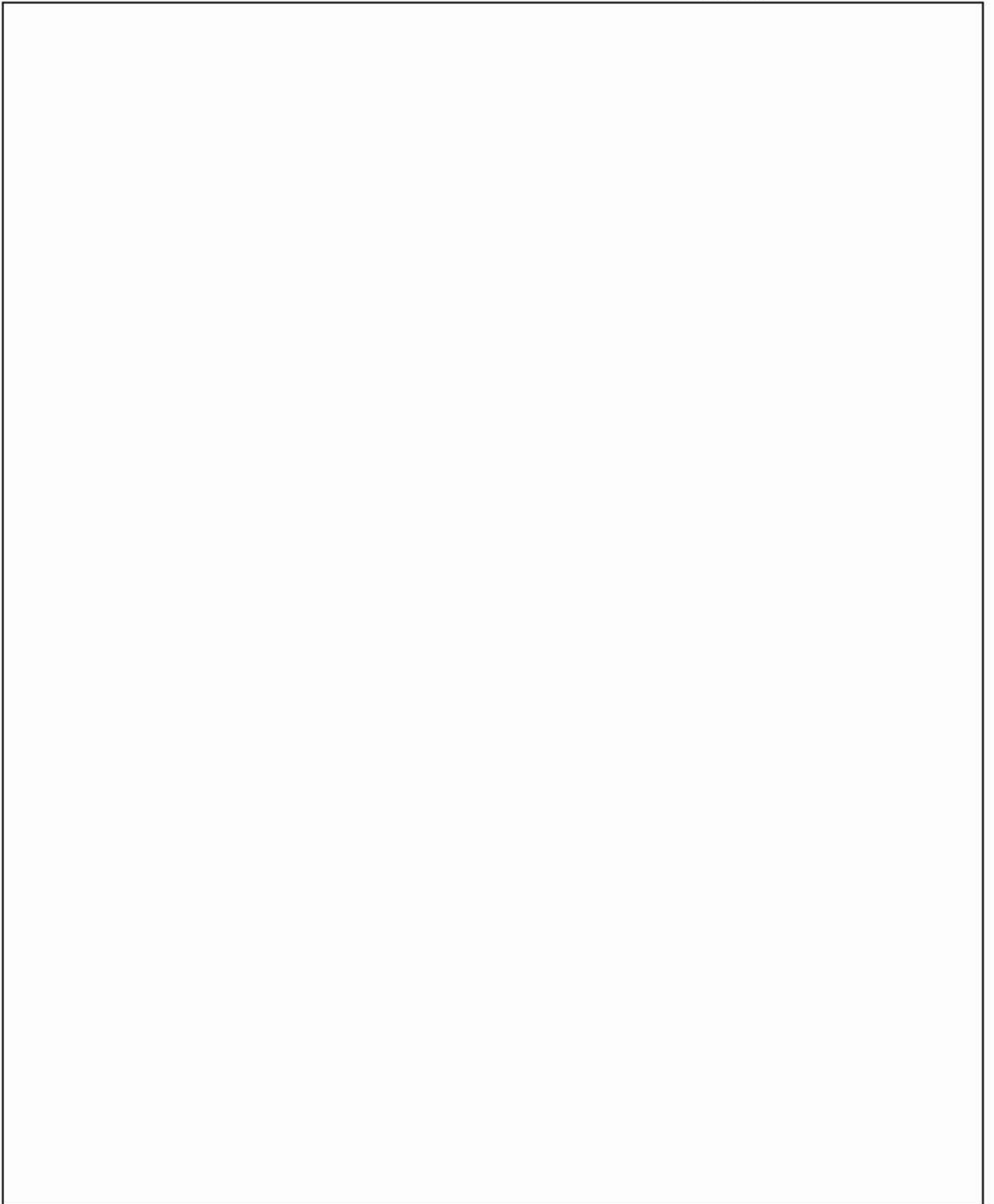
Remember:
this is a non-adversarial
process, not only should
your interview reflect this,
but your assessment too!

CREDIBILITY ANALYSIS PRACTICAL EXERCISE – Decision Writing

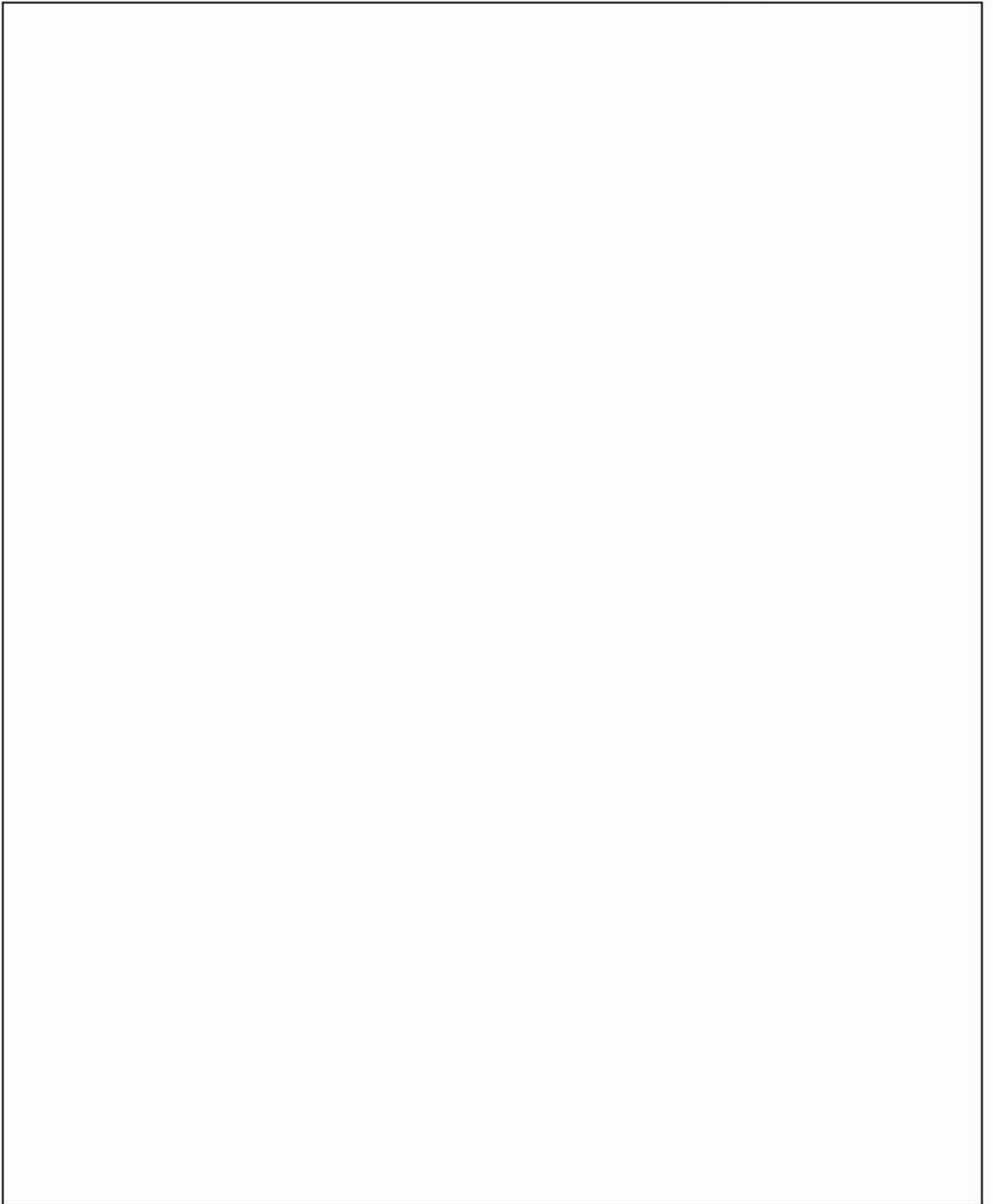
(b)(7)(E)

A large, empty rectangular box with a thin black border, occupying most of the page. It is intended for the student to write their decision during the practical exercise.

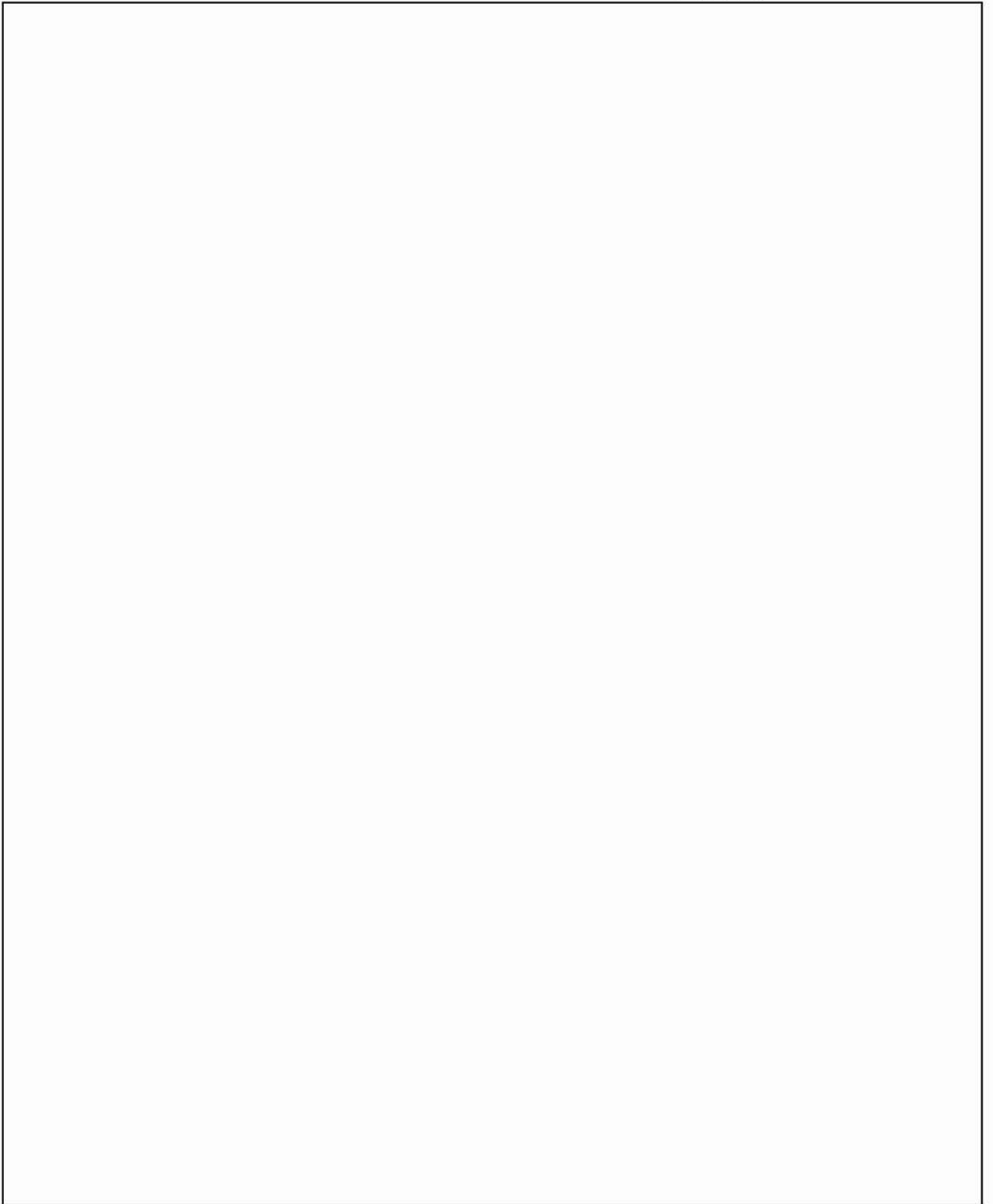
(b)(7)(E)



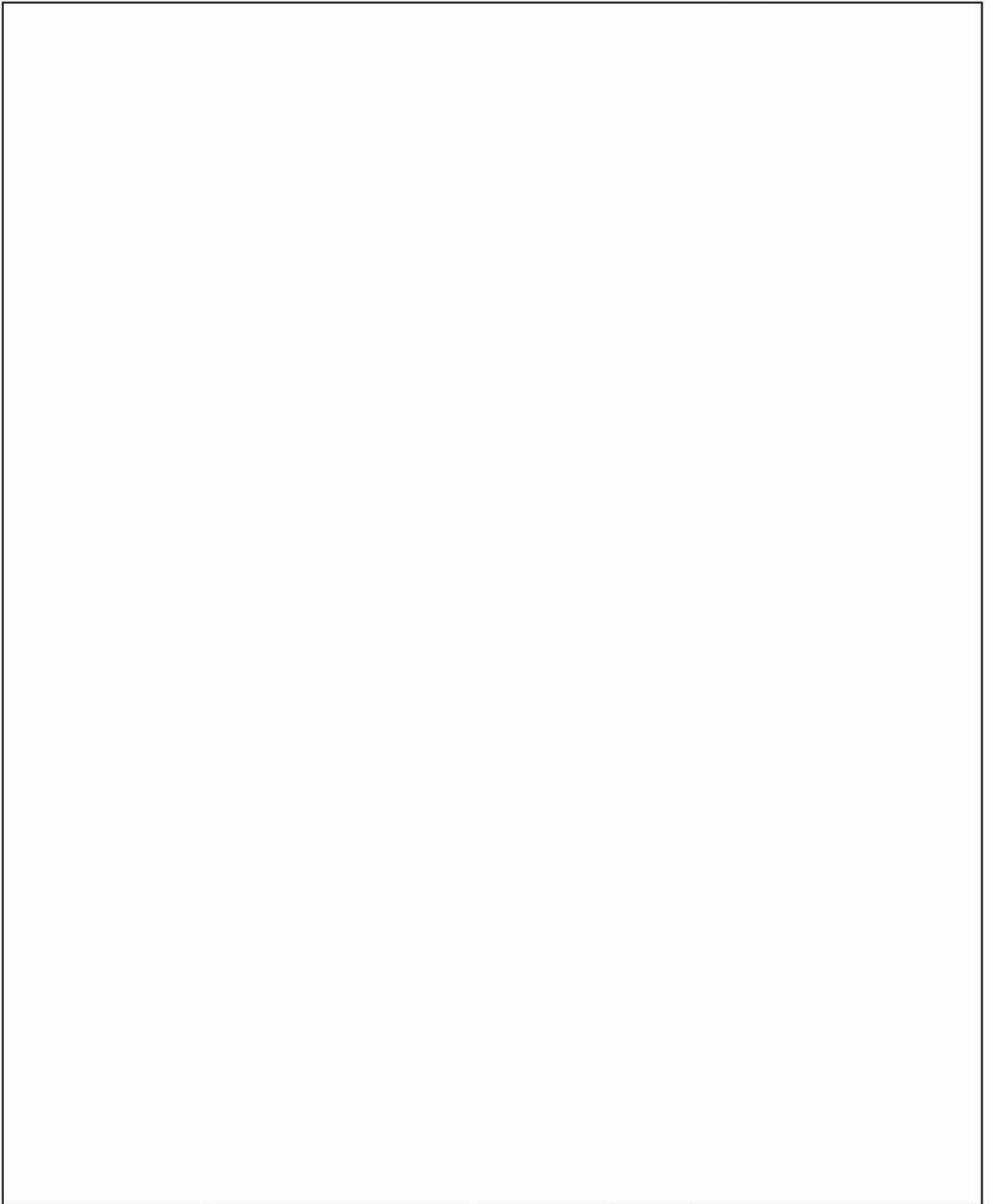
(b)(7)(E)



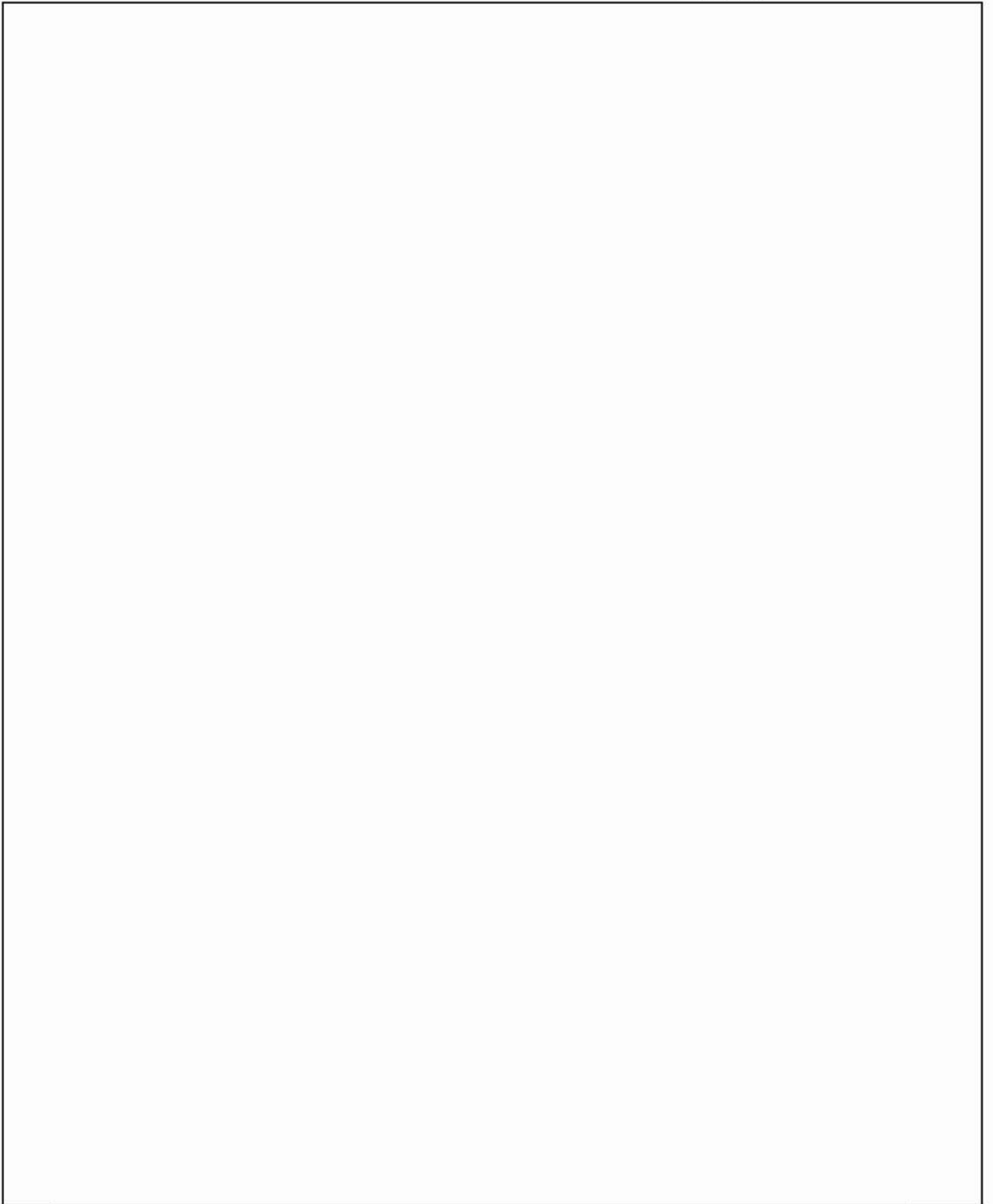
(b)(7)(E)



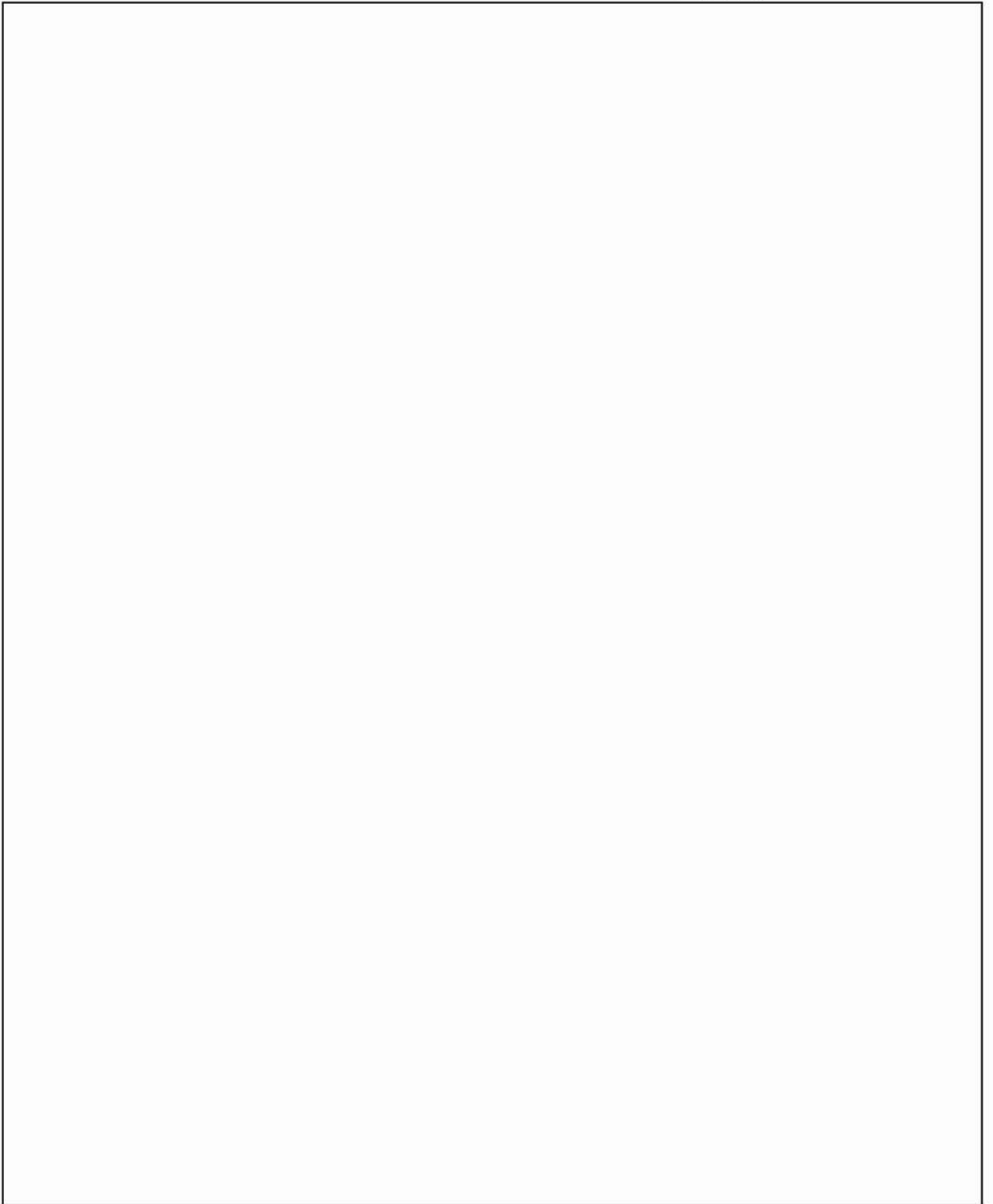
(b)(7)(E)



(b)(7)(E)



(b)(7)(E)





U.S. Citizenship
and Immigration
Services

Credibility

Pre-Practical Exercise Refresher

Types of Credibility Concerns



U.S. Citizenship
and Immigration
Services

Inconsistency
(External and
Internal)

Lack of Detail*

Implausibility

Demeanor

Candor or
Responsiveness

Inaccuracies or
Falsehoods

Any other
relevant factor



Laying a Foundation: General

- Thinking backwards: What else has to be true in order for the inconsistency/lack of detail/implausibility/etc. to be indicative of an applicant's credibility?
- Dual purpose: 1) to foreclose potential fabricated explanations if the events did not occur, while 2) ensuring that the perceived credibility concern is not a genuine misunderstanding



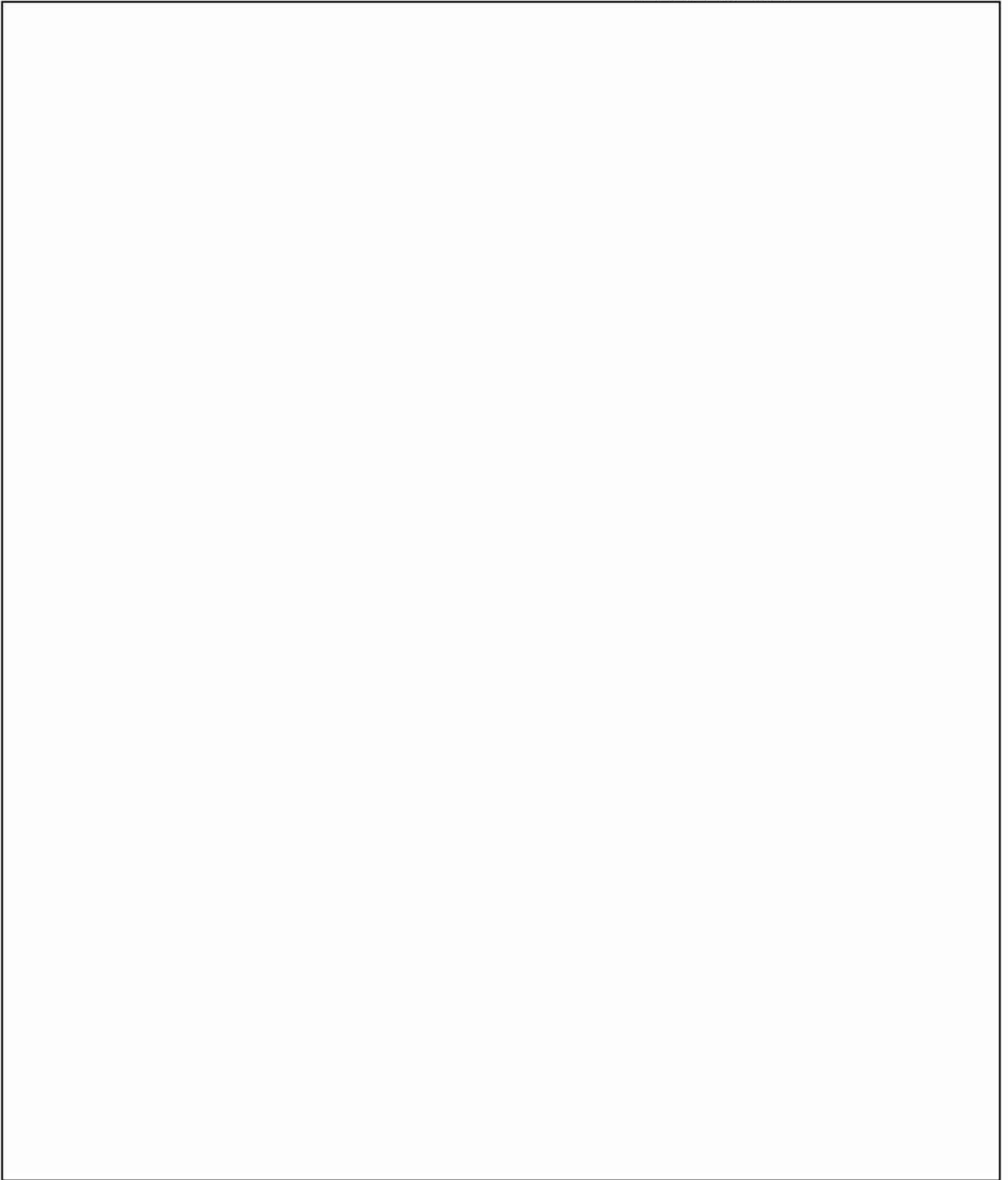
Laying a Foundation: Inconsistency

- Identify the (potential) inconsistency
- Think of reasonable explanations for the inconsistency
- Ask questions to clarify/“close the door”
- If inconsistency remains, confront after exploring possible explanations



Laying a Foundation: Lack of Detail

- Get a “base line” of how the applicant normally testifies
- Explore the level of detail/knowledge the applicant should reasonably be expected to provide
- Elicit testimony
 - Avoid overly-broad questions, ensure applicant isn’t pausing
- If testimony lacks detail, confront and consider reasonableness of explanation for failure to provide detailed testimony



DO NOT USE FOR DECISION WRITING EXERCISE!

