U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010

U.S. Citizenship and Immigration Services

February 26, 2021

Austin Evers
1030 15th St NW
Ste B255
Washington, DC 20005

COW2019501574

Dear Austin Evers:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office on November 13, 2019. You specifically requested any final policies, procedures, protocols, instructions or guidance regarding the transfer of responsibility for credible fear interview from asylum officers within USCIS to law enforcement agents within CBP.

Enclosed is the eighth production of responsive records, which consists of 957 pages that are responsive to your request. There are 837 pages released in their entirety and 119 pages released in part. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(6), (b)(7)(c) and (b)(7)(e) of the FOIA.

The following exemptions are applicable:

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We have withheld information relating to third-party individuals. The types of documents and/or information we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.

Exemption (b)(7)(E) of the FOIA provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

As a result of discussion between agency personnel and a member of our staff, as a matter of administrative discretion, we are releasing computer codes found on system screen prints previously withheld under exemption b(2). There may be additional documents that contain discretionary releases of exempt information. If made, these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

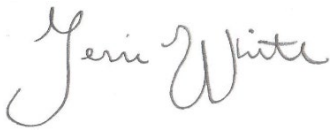
AMERICAN OVERSIGHT

The enclosed record consists of the best reproducible copies available. Certain pages contain marks that appear to be blacked-out information. The black marks were made prior to our receipt of the file and are not information we have withheld under the provisions of the FOIA or PA.

The National Records Center does not process petitions, applications or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with the bureau, you must address these issues with your nearest District Office.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Questions concerning this FOIA/PA request may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead or emailed to FOIAPAQuestions@uscis.dhs.gov. Please include the control number listed above on all correspondence with this office. You can now submit a new FOIA request online using our new Freedom of Information Act Records System (FIRST). If you wish to submit a new FOIA/PA request, please visit www.uscis.gov/FOIA for instructions and requirements.

Sincerely,



Terri White
Acting Director, FOIA Operations

Enclosure(s)

AMERICAN OVERSIGHT

Convention Against Torture (CAT)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

CAT Article 3: Non-Refoulement

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

AMERICAN OVERSIGHT

Convention Against Torture

As a signatory to the *Convention Against Torture* the United States has an obligation to provide protection where there are substantial grounds to believe that an individual would be in danger of being subjected to…

TORTURE

AMERICAN OVERSIGHT

What is TORTURE?

AMERICAN OVERSIGHT

Article 1 of the Convention defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

AMERICAN OVERSIGHT

Definition of Torture: 8 C.F.R. 208.18(a)

(1) Severe Harm

(2) Specific Intent

(3) State Action

(4) Custody or Physical Control

(5) Not From Lawful Sanctions

AMERICAN OVERSIGHT

Difference between Refugee Convention and CAT

- CAT does not require that the torture be connected to any of the five protected characteristics identified in the definition of a refugee

- No nexus ("on account of" a protected ground) requirement in for CAT

AMERICAN OVERSIGHT

(1) Severe Harm

- Torture requires severe pain or suffering, whether physical or mental
- Torture is an extreme form of cruel and inhuman treatment
- Certain forms of harm that may be considered persecution may not be considered severe enough to amount to torture

AMERICAN OVERSIGHT

(1) Severe Harm: Physical

Types of harm that may be considered torture include, but are not limited to, the following:

- Death
- Rape and other sexual violence
- Sustained, systematic beating
- Burning with cigarettes
- Application of electric shocks to sensitive parts of body

AMERICAN OVERSIGHT

(1) Severe Harm: Mental Pain or Suffering

Must be prolonged mental harm resulting from :

- Severe physical pain or suffering (or threat thereof)
- Threats of imminent death
- Intentional infliction of mind altering substances
- Threat of any of the above to another person

AMERICAN OVERSIGHT

(1) Severe Harm

- What questions would you ask?

  - How did the perpetrator harm you?
  - What did the perpetrator say they would do to you?
  - Did you suffer injuries?
  - Did you require treatment?
  - Do you still think about what happened? How often? How does it make you feel?
  - What do you fear will happen to you in the future?

AMERICAN OVERSIGHT

(2) Specific Intent

- For an act to constitute torture, the act must be specifically intended to inflict severe pain or suffering.

- An act that results in unanticipated or unintended severity of pain and suffering is not torture.

AMERICAN OVERSIGHT

(3) State Action

Torture is pain or suffering inflicted: by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

AMERICAN OVERSIGHT

(3) State Action

Who or what is a public official?

- Police officers
- Soldiers or the military
- Elected, appointed, local government, regional government, national government
- Can be any public official from "low level" officials to those in the "upper echelons of power"

AMERICAN OVERSIGHT

(3) State Action: Identity of the Torturer

- Was official on duty?
- Was official in uniform?
- Did official have access to the victim b/c of his/her position as a public official?
- Did the public official invoke their status when harming the victim?
- Did the official threaten future harm with the authority given to him as an official?
- Was the public official in a place where only other officials have the authority to be?
- What was the motivation(*) to harm?

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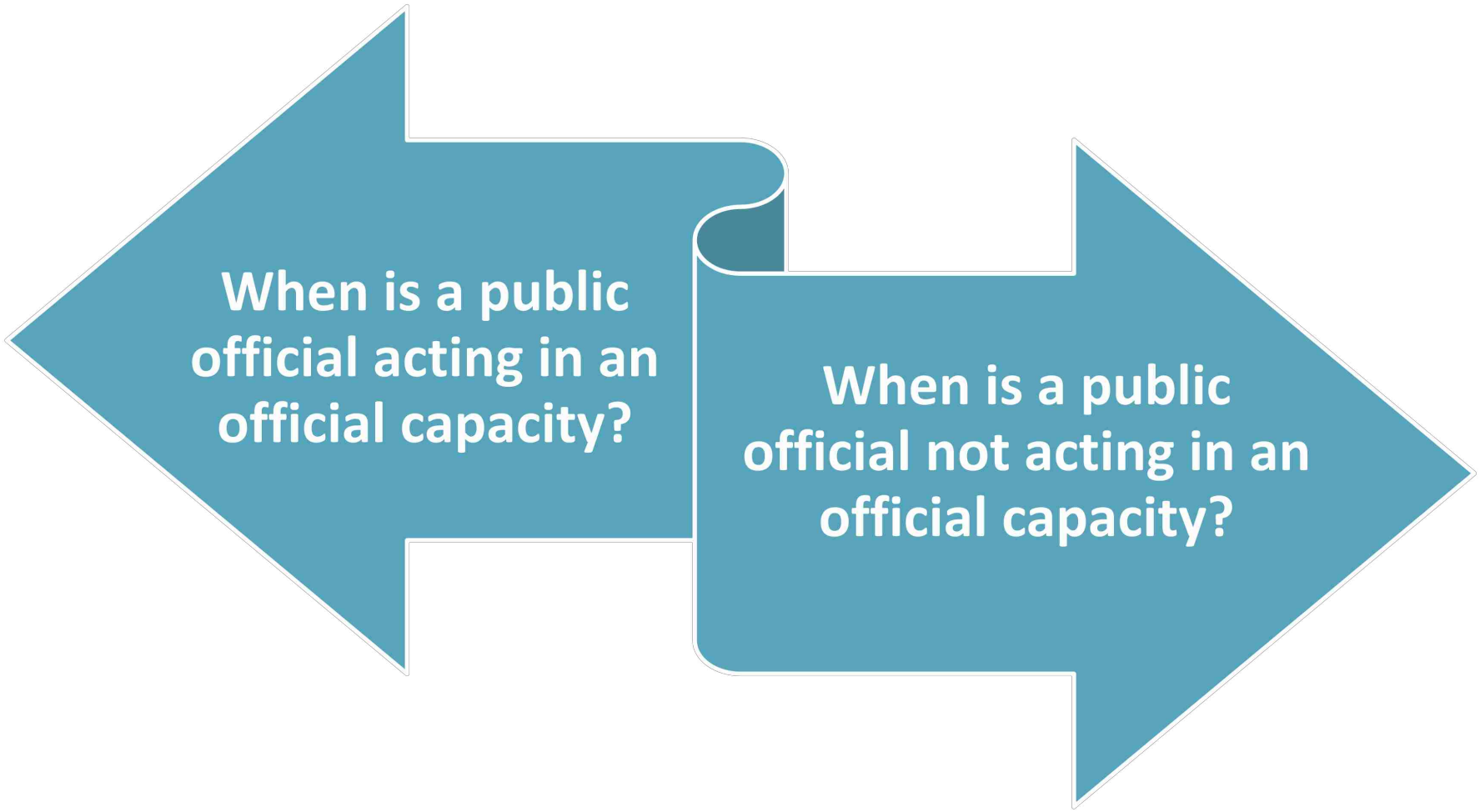
(3) State Action

In Official Capacity



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U.S. Citizenship and Immigration Services

FOUO/LES

(3) State Action

In Official Capacity

Acting in an Official Capacity or Under the Color of Law

- May include a public official acting **within** or **outside** of official duties
- Requires **connection** between the official position and harmful conduct

A public official acts under color of law when he misuses power possessed by virtue of law and made possible only because he was clothed with the authority of law.

Ramirez Peyro v. Holder, 574 F.3d 893 (8th Cir. 2009) (internal citations omitted)

AMERICAN OVERSIGHT

(3) State Action

In Official Capacity

We have recognized on numerous occasions that acts motivated by an officer's personal objectives are 'under color of law' when the officer uses his official capacity to further those objectives.

Garcia v. Holder, 13-60381, (5th Cir. 2014) (internal citations omitted)

…when it is a public official who inflicts severe pain or suffering, it is only in exceptional cases that we can expect to be able to conclude that the acts do not constitute torture by reason of the official acting for purely private reasons.

Khouzam v. Ashcroft, *361 F.3d 161, 171 (2d Cir. 2004)*

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(3) State Action

In Official Capacity

Barajas- Romero v. Lynch 846 F.3d 351 (9th Cir. 2017)

- Ninth Circuit case
- "Acting in an official capacity" does not modify "public official"

[Applies nationwide for CF; 9th Circuit Jurisdiction Only for RF] adjudicator does not need to determine whether public official is acting in an official capacity

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(3) State Action

Private Actor

If harm inflicted by private actor OR public official not acting in an official capacity then determine if harm inflicted:

- at the instigation of;
- with the consent of; or
- with the acquiescence of

a public official acting in an official capacity

AMERICAN OVERSIGHT

(3) State Action

Acquiescence

A finding of acquiescence requires that prior to the activity the public official was

1) "Aware" of such activity *and*
2) "Breached" a legal duty to intervene

"Awareness" can be established by evidence of

1) Actual knowledge *or*
2) **Willful blindness (**Imputes knowledge to a public official)

AMERICAN OVERSIGHT

(3) State Action

Acquiescence

(1) Actual knowledge + breach of duty OR
(2) Willful blindness +breach of duty

Examples:

(1) A police officer witnesses applicant being beaten up by a MS-13 gang members and drives away
(2) A police officer believes that MS-13 members bring people to a certain corner to kill them. The police officer avoids going near that corner or purposely looks the other way while driving by the corner.

AMERICAN OVERSIGHT

(3) State Action

Acquiescence

Who must acquiesce?

- Public official acting in an official capacity
- Includes low level actors such as police officers

Consider:

- Prior breach of duty by law enforcement
- Country conditions
- Whether harm or acquiescence by public officials is routine

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(3) State Action

Acquiescence – Breach of Duty

- Was public official aware of the past act of harm?
- Should they have been aware?
- How did they act? What were they required to do? Did the public official breach a legal duty to intervene?

AMERICAN OVERSIGHT

(3) State Action

Acquiescence – Breach of Duty

- Was public official aware of the past act of harm?
- Should they have been aware?
- How did they act? What were they required to do?
- Will a public official be aware of the future act of harm?
- Should they be aware or will they deliberately avoid knowledge?
- How will they act? What are they required to do?

AMERICAN OVERSIGHT

(3) State Action

Acquiescence – breach of duty

Elicit testimony:

If the applicant testifies that they have firsthand experience

- reporting incidents or harm to law enforcement
- What else they have seen or heard

If the applicant knows someone in a similar situation

If the applicant is aware of corruption

If none of the above, then what is underpinning the applicant's belief in the future behavior of law enforcement

AMERICAN OVERSIGHT

(3) State Action

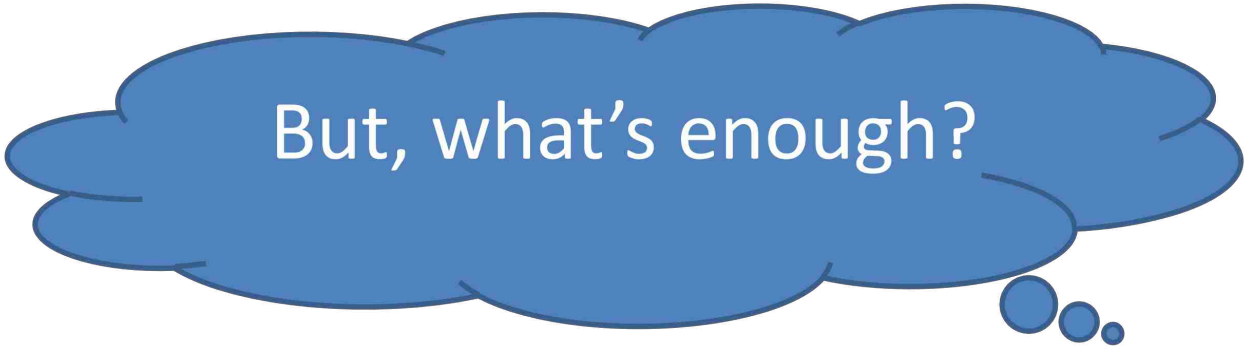
Acquiescence – breach of duty

- Did you report any crimes to law enforcement?
- Do you know any friends or family members who have reported any crimes to law enforcement?
- Have you seen or heard anything that makes you think the torturer and the authorities are working together?
- Have you seen or heard anything that makes you think the police would not help you if they were aware you were being harmed?

AMERICAN OVERSIGHT

(3) State Action

Acquiescence – breach of duty



Duty to elicit: applicant must support statements of belief with specific facts

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(3) State Action

Acquiescence – breach of duty

Weighing the evidence



Remember, we are assessing if a public official will acquiesce to the individual or group the applicant fears following through with the harm the applicant fears.

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(3) State Action: *CAT vs. Refugee Convention*

Determination of acquiescence is distinct from the "unable or unwilling" to control standard used in the definition of a refugee.

…A gov't does not acquiesce in torture of its citizens merely b/c it is aware of torture but is powerless to stop it. It does cross the line into acquiescence when it shows willful blindness toward the torture of citizens by a 3rd party.

Ramirez Peyro v. Holder, 574 F.3d 893 (8th Cir. 2009)

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(4) Custody and Control

In order to constitute torture an act must be directed against a person in the *offender's* custody or physical control.

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(5) Lawful Sanctions

- Pain or suffering arising only from, inherent in or incidental to lawful sanctions does not constitute torture.
- Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty.
- A State Party cannot through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.

AMERICAN OVERSIGHT

RECAP
Definition of Torture: 8 C.F.R. 208.18(a)

(1) Severe Harm

(2) Specific Intent

(3) State Action

(4) Custody or Physical Control

(5) Not From Lawful Sanctions

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CAT and the APSO Screening Process

Is there a significant possibility (CF) that the applicant can establish eligibility for relief under CAT (more likely than not) in a full hearing before an IJ or is there a reasonable possibility (RF) of torture?

CREDIBLE FEAR	REASONABLE FEAR
Significant Possibility	*Reasonable Possibility*

If the answer is "YES" it is a positive determination.

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Mandatory Bars

- The mandatory bars to withholding of removal do not apply in credible fear and reasonable fear of torture determinations.
- However, must elicit all information relevant to whether or not a bar to asylum or withholding might apply

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Additional Evidence to Consider

8 C.F.R. 208.16(c)(3) - *All evidence relevant to the possibility of future torture shall be considered, including, but not limited to:*

- (i) Evidence of past torture inflicted upon the applicant;
- (ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
- (iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
- (iv) Other relevant information regarding conditions in the country of removal

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Past Torture:

Evidence of past torture inflicted upon the applicant



No presumption of future torture where there is finding of past torture

BUT CF/RF = evidence of past torture usually enough

Unless

CF: substantial change = no significant possibility
RF: evidence to the contrary = no reasonable possibility

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Internal Relocation

Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured

- **In looking at future torture, asylum officers should consider whether or not the applicant could safely relocate to another part of his or her country**

- **Asylum officers should apply the same reasonableness inquiry articulated in the persecution context to the CAT context**

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Country Conditions

YOU MUST CONSIDER:

- Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
- Other relevant information regarding conditions in the country of removal

COI may be part of "other facts" that are known to the officer
But remember – APSO has duty to elicit relevant testimony

- **Specific**
- **Persuasive**

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About this presentation

- Authors: Asylum QA (ASYLUM-QA-CREDIBLE-FEAR@uscis.dhs.gov)

- Date of last revision: May 15, 2019
- This presentation is current only as of the date of the last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.

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U.S. Citizenship and Immigration Services

CREDIBLE FEAR
FAMILY PROCESSING PROCEDURES

USCIS ASYLUM DIVISION / OPERATIONS

AMERICAN OVERSIGHT

Last Updated: April 2, 2018

The Plan & Quick Reference

- Expedited Removal/Credible Fear Reminder – slide 4
- Dependents in CF and Desire to be Included– slides 5-12
- Discretion – slides 13-14
- Orientation – slides 18-19
- Security Checks – slide 20
- Interviewing – slides 21-31
- Determinations and Service Documents – slides 32-48
- Split Families (RF/CF) – slides 49-51
- Processing families detained separately or not detained – slide 52
- Scenarios and Important Reminders – slides 53-57

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DHS-19-1398-G-000161

Overview

U.S. Citizenship and Immigration Services

Issues may arise in any CF processing context, including:

- Family Residential Centers (FRCs)
- Adult detention facilities
- Non-detained
- Family members discovered at the time of interview

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Expedited Removal/Credible Fear

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

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Dependents in CF

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

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Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



DHS-19-1398-G-000165

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Concurrently

- Concurrently means same time, same place.
- **FRC families**: to be detained together they must have arrived concurrently. Ask about other family members who arrived concurrently who are not detained in the FRC.
- **Non-FRC families and split families**: need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

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Desires to be Included

- **Previous guidance**: instructed AOs to ask the dependent if he or she wanted to be included on the PA's determination.
- **Current guidance**: provide an explanation to the PA and dependent and ask each person if they understand and agree.
- An indication that the PA and dependent understand and agree constitutes an expression of the dependent's desire to be included in the PA's claim.

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Remember: Desires to be Included

U.S. Citizenship and Immigration Services

- Do not ask children or spouses if they want to be included on the PA's case.
- Do not ask parents if they want to be included on their child's case, and do not ask children if they want their parents to be included on their case.

AMERICAN OVERSIGHT

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Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

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DHS-19-1398-G-000169

Explanation

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

AMERICAN OVERSIGHT

Explanation

U.S. Citizenship and Immigration Services

When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

AMERICAN OVERSIGHT

Discretion

- Regulations provide that a spouse or child may be included in an applicant's CF evaluation and determination if they arrived together and the spouse or child desires to be included.
- If these criteria are met, it is USCIS **discretion** whether or not to include.
- The decision to exercise our discretion is case-specific.

AMERICAN OVERSIGHT

Use of Discretion

U.S. Citizenship and Immigration Services



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

AMERICAN OVERSIGHT
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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
  - PA and dependents detained separately (including in different asylum office jurisdictions)
  - PA and dependents not detained

AMERICAN OVERSIGHT
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Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, ask:**
  - If possible, would you like to be processed with your family members and included in your spouse or parent's CF determination?

AMERICAN OVERSIGHT

Remember: All Families

U.S. Citizenship and Immigration Services

- The spouse or child must arrive concurrently with the PA and desire to be included.
- Only a spouse or child may be a dependent on a positive CF determination. Siblings and parents cannot be dependents.
- USCIS will not include a dependent on a negative CF determination.
- Families do not need to be detained together to be included in the positive determination or receive an NTA for purposes of family unity.

AMERICAN OVERSIGHT

FRC Orientation Procedures

U.S. Citizenship and Immigration Services

- **Applicants detained at FRCs receive a second orientation.**
- **Mandatory questions at 2nd orientation:**
  1. Which language do you prefer?
  2. Do you prefer to be interviewed by a female or male officer, or no preference?
  3. Do you prefer a female or male interpreter, or no preference?
  4. Do you understand and agree? (After providing explanation)

AMERICAN OVERSIGHT

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FRC Orientation Procedures

U.S. Citizenship and Immigration Services

Documentation:

- **I-870**

1.5 01/04/18 — Date of AO orientation [MM/DD/YY]

1.6 Lack of resources — If orientation more than one week from date of detention, explain delay

1.7 01/08/2018 — Date of interview [MM/DD/YY]

1.8 Dilley, TX — Interview site

1.9 ☒ Applicant received and signed **Form M-444** and relevant *pro bono* list on 12/22/17; 01/04/18 — Date signed [MM/DD/YY]

- **Memo to file**

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Security Checks

U.S. Citizenship and Immigration Services

- Security checks are required for each family member
- Complete a BISC for each family member



AMERICAN OVERSIGHT

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Interview –
Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT
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Interview – Process

1) Interview the principal applicant.

If PA Appears Positive

- FRCs: AOs do not need to physically see and attempt to interview the children.
- Non-detained: AOs must physically see all children.

If PA Appears Negative

- AOs must ask the parent about his or her children's potential fears.
- If parent's testimony doesn't establish a positive CF for children, AOs must physically see all children and attempt to interview them.

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Interview - Rapport

- It's important to establish rapport with all applicants, especially with children.
- AOs may use the background gathering portion of the interview as a time to build rapport.
- Include a summary of rapport-building in the Q&A for each person interviewed.
- As you are building rapport, determine whether the child is capable of testifying in a meaningful manner.
- Consult the Children's Claims Lesson Plan on ways to build rapport with children.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Ask all applicants (adults and children) if they wish to be interviewed with or without other family members present.
- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Explain to the parent that the presence of children at the interview may impact their willingness to disclose details of traumatic events and impact the interview.
- Maintain flexibility in rescheduling an interview when there are possible concerns about a child's presence at the interview.
- AOs should explain to a parent whose child is present that the interview may be rescheduled if the parent needs to arrange for child care.
- If parent is caring for a sick child that may warrant a reschedule.

AMERICAN OVERSIGHT

Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

AMERICAN OVERSIGHT

Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

AMERICAN OVERSIGHT

Interview - Children

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

AMERICAN OVERSIGHT

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Interview – FRC Mandatory Questions

U.S. Citizenship and Immigration Services

Always ask these questions at the FRCs:

- Have you ever been harmed by a family member?
- Has/have your children ever been harmed by a family member?
- Have you ever been harmed by anyone you were in a relationship with?
- Have your children ever been harmed by anyone you were in a relationship with?
- Is there anything/anyone else you fear that we have not discussed today?

AMERICAN OVERSIGHT

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Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

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Interview – Summarizing Testimony

U.S. Citizenship and Immigration Services

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

AMERICAN OVERSIGHT

Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

AMERICAN OVERSIGHT
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1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars. The parent may respond to mandatory bar questions on behalf of her children, unless there are indications that one or more bars may apply. Even then, if a child is unable to meaningfully respond the parent may respond on the child's behalf.

AMERICAN OVERSIGHT
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1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
01/01/12	June Doe	El Salvador	A123 456 789	☒ Yes	☐ No	☒ Yes	☐ No

AMERICAN OVERSIGHT
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1. Positive Adult – Service Docs

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

AMERICAN OVERSIGHT
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2. Negative Adult

- USCIS will not exercise its discretion to include a dependent in a PA's negative determination.
- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- **If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not:**
  - We can use our discretion to place the child's parent(s) and any siblings under age 18 into §240 proceedings in the interest of family unity.
  - While we may refer to the child as the "principal applicant" in this context, the parent(s) and sibling(s) do not become dependents.
  - We are using DHS discretion to NTA parent(s) and any siblings under age 18 based on the child's positive CF determination.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

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2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- We cannot NTA parent(s) and sibling(s) under 18 years old for purposes of family unity unless they cannot establish CF on their own.
- Family unity interests are not implicated until and unless it is determined that the parent(s) and sibling(s) under 18 years old cannot establish CF on their own.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Age 18 and Older

U.S. Citizenship and Immigration Services

If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not:

- Generally we cannot use our discretion to place the child's parent(s) and any siblings into §240 proceedings in the interest of family unity.
- The policy to issue discretionary NTAs was adopted to promote family unity is only for children under age 18 who cannot establish CF.
- Check with your supervisor. In some locations ICE ERO has been amenable to our use of discretion in cases with this scenario.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
				☐ Yes	☐ No	☐ Yes	☐ No

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

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2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

- I-870 for each positive applicant
- CF Determination Checklist for each positive applicant
- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

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3. All Negative

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
  - The child(ren)'s fear.

AMERICAN OVERSIGHT
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3. All Negative

- Where no immediate family members are found to have a credible fear, the APSO follows procedures for preparing, serving, and processing each family member's decision for a negative CF determination.
- Each family member receives his or her own CF determination, including his or her own I-870 and CF Determination Checklist.
- The parent's I-870 should indicate that the child is not included in the parent's negative determination.

AMERICAN OVERSIGHT

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3. All Negative

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requested)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

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Family Processing – Split RF/CF

- We cannot include a child in a parent's positive RF determination
- We will not issue an NTA to the child based on the parent's positive RF determination.
- APSOs may use the parent's Q&A as a basis for a positive CF finding for a child as long as the parent's agreement to her testimony being included in the child's application is documented on the parent and child's Q&A and I-870.
- APSOs must screen everyone for mandatory bars.
- As in CF, if the child is incapable of testifying, clearly document this and ask the parent if she is willing to testify on the child's behalf.

AMERICAN OVERSIGHT

Family Processing – Split RF/CF

- Where the parent is in RF and the children are in ER/CF, and;
- Where one sibling has a positive CF determination but the other children under 18 do not;
- Issue NTAs for those other siblings (except siblings age 18 and over) for family unity.

AMERICAN OVERSIGHT
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Family Processing – Split RF/CF Documents

- Parent receives positive or negative RF determination
- I-870 for each child
- CF Determination Checklist for each child
- I-862 for each positive child (check box that respondent has demonstrated a credible fear of persecution or torture)
- I-869 and I-863 (if requested) for each negative child
- Interview notes (separate, or clearly documenting each person's claim was fully explored)

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Non-FRC Families

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions coordinate with the other asylum office.

AMERICAN OVERSIGHT

Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

1) Mother arrives concurrently with two minor children, ages 9 and 3. They are all in ER/CF and detained together. Mother does not establish a credible fear.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

3) Mother arrives concurrently with two minor children and they are detained together. The mother is in RF and children are in CF.

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Important Reminders

- Only spouses and children can be dependents.
- Ensure parent is aware of the availability of childcare and how child's presence may impact her ability to testify.
- When a parent is negative and his or her testimony does not establish a positive CF for a child, AOs must see, attempt to interview, and make a determination for each dependent. Each applicant has the right to an individual CF determination.
- Summarize each person's testimony. If a parent testifies on behalf of a child, summarize that testimony.
- Build rapport with all applicants. Note in the Q&A how you established rapport with children.
- When everyone is negative make sure the record is fully developed for all family members.

AMERICAN OVERSIGHT

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Important Reminders

U.S. Citizenship and Immigration Services

OUTCOME	INTERVIEW CHILD?	MANDATORY BARS	SERVICE DOCS
Positive Parent	No, unless child requests	Yes, for parent, spouse, and all children.*	I-870 and checklist for parent, NTAs for each family member
Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

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Questions?

U.S. Citizenship and Immigration Services

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U.S. Citizenship and Immigration Services

CREDIBLE FEAR
FAMILY PROCESSING PROCEDURES

USCIS ASYLUM DIVISION / OPERATIONS

AMERICAN OVERSIGHT

Last Updated: April 2, 2018

The Plan & Quick Reference

U.S. Citizenship and Immigration Services

- Expedited Removal/Credible Fear Reminder – slide 4
- Dependents in CF and Desire to be Included– slides 5-12
- Discretion – slides 13-14
- Orientation – slides 18-19
- Security Checks – slide 20
- Interviewing – slides 21-31
- Determinations and Service Documents – slides 32-48
- Split Families (RF/CF) – slides 49-51
- Processing families detained separately or not detained – slide 52
- Scenarios and Important Reminders – slides 53-57

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DHS-19-1398-G-000219

Overview

U.S. Citizenship and Immigration Services

Issues may arise in any CF processing context, including:

- Family Residential Centers (FRCs)
- Adult detention facilities
- Non-detained
- Family members discovered at the time of interview

AMERICAN OVERSIGHT

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Expedited Removal/Credible Fear

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

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Dependents in CF

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

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Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



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Concurrently

- Concurrently means same time, same place.
- **FRC families**: to be detained together they must have arrived concurrently. Ask about other family members who arrived concurrently who are not detained in the FRC.
- **Non-FRC families and split families**: need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

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Desires to be Included

- **Previous guidance**: instructed AOs to ask the dependent if he or she wanted to be included on the PA's determination.
- **Current guidance**: provide an explanation to the PA and dependent and ask each person if they understand and agree.
- An indication that the PA and dependent understand and agree constitutes an expression of the dependent's desire to be included in the PA's claim.

AMERICAN OVERSIGHT

Remember: Desires to be Included

- Do not ask children or spouses if they want to be included on the PA's case.
- Do not ask parents if they want to be included on their child's case, and do not ask children if they want their parents to be included on their case.

AMERICAN OVERSIGHT
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Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

AMERICAN OVERSIGHT

Explanation

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

AMERICAN OVERSIGHT

Explanation

U.S. Citizenship and Immigration Services

When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

AMERICAN OVERSIGHT

Discretion

- Regulations provide that a spouse or child may be included in an applicant's CF evaluation and determination if they arrived together and the spouse or child desires to be included.
- If these criteria are met, it is USCIS **discretion** whether or not to include.
- The decision to exercise our discretion is case-specific.

AMERICAN OVERSIGHT

Use of Discretion



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

AMERICAN OVERSIGHT
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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
  - PA and dependents detained separately (including in different asylum office jurisdictions)
  - PA and dependents not detained

AMERICAN OVERSIGHT

Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, ask:**
  - If possible, would you like to be processed with your family members and included in your spouse or parent's CF determination?

AMERICAN OVERSIGHT

Remember: All Families

U.S. Citizenship and Immigration Services

- The spouse or child must arrive concurrently with the PA and desire to be included.
- Only a spouse or child may be a dependent on a positive CF determination. Siblings and parents cannot be dependents.
- USCIS will not include a dependent on a negative CF determination.
- Families do not need to be detained together to be included in the positive determination or receive an NTA for purposes of family unity.

AMERICAN OVERSIGHT

FRC Orientation Procedures

U.S. Citizenship and Immigration Services

- **Applicants detained at FRCs receive a second orientation.**
- **Mandatory questions at 2nd orientation:**
  1. Which language do you prefer?
  2. Do you prefer to be interviewed by a female or male officer, or no preference?
  3. Do you prefer a female or male interpreter, or no preference?
  4. Do you understand and agree? (After providing explanation)

AMERICAN OVERSIGHT

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FRC Orientation Procedures

U.S. Citizenship and Immigration Services

Documentation:

- **I-870**

1.5 01/04/18 — Date of AO orientation [MM/DD/YY]

1.6 Lack of resources — If orientation more than one week from date of detention, explain delay

1.7 01/08/2018 — Date of interview [MM/DD/YY]

1.8 Dilley, TX — Interview site

1.9 ☒ Applicant received and signed **Form M-444** and relevant *pro bono* list on 12/22/17; 01/04/18 — Date signed [MM/DD/YY]

- **Memo to file**

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Security Checks

- Security checks are required for each family member
- Complete a BISC for each family member



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Interview –
Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

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Interview – Process

1) Interview the principal applicant.

If PA Appears Positive

- FRCs: AOs do not need to physically see and attempt to interview the children.
- Non-detained: AOs must physically see all children.

If PA Appears Negative

- AOs must ask the parent about his or her children's potential fears.
- If parent's testimony doesn't establish a positive CF for children, AOs must physically see all children and attempt to interview them.

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Interview - Rapport

- It's important to establish rapport with all applicants, especially with children.
- AOs may use the background gathering portion of the interview as a time to build rapport.
- Include a summary of rapport-building in the Q&A for each person interviewed.
- As you are building rapport, determine whether the child is capable of testifying in a meaningful manner.
- Consult the Children's Claims Lesson Plan on ways to build rapport with children.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Ask all applicants (adults and children) if they wish to be interviewed with or without other family members present.
- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Explain to the parent that the presence of children at the interview may impact their willingness to disclose details of traumatic events and impact the interview.
- Maintain flexibility in rescheduling an interview when there are possible concerns about a child's presence at the interview.
- AOs should explain to a parent whose child is present that the interview may be rescheduled if the parent needs to arrange for child care.
- If parent is caring for a sick child that may warrant a reschedule.

AMERICAN OVERSIGHT

Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

AMERICAN OVERSIGHT

Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

AMERICAN OVERSIGHT

Interview - Children

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

AMERICAN OVERSIGHT

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Interview – FRC Mandatory Questions

U.S. Citizenship and Immigration Services

Always ask these questions at the FRCs:

- Have you ever been harmed by a family member?
- Has/have your children ever been harmed by a family member?
- Have you ever been harmed by anyone you were in a relationship with?
- Have your children ever been harmed by anyone you were in a relationship with?
- Is there anything/anyone else you fear that we have not discussed today?

AMERICAN OVERSIGHT

Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

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DHS-19-1398-G-000247

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Interview – Summarizing Testimony

U.S. Citizenship and Immigration Services

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

AMERICAN OVERSIGHT

Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

AMERICAN OVERSIGHT
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1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars. The parent may respond to mandatory bar questions on behalf of her children, unless there are indications that one or more bars may apply. Even then, if a child is unable to meaningfully respond the parent may respond on the child's behalf.

AMERICAN OVERSIGHT
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1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
01/01/12	June Doe	El Salvador	A123 456 789	☒ Yes	☐ No	☒ Yes	☐ No

AMERICAN OVERSIGHT
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1. Positive Adult – Service Docs

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

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2. Negative Adult

- USCIS will not exercise its discretion to include a dependent in a PA's negative determination.
- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- **If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not:**
  - We can use our discretion to place the child's parent(s) and any siblings under age 18 into §240 proceedings in the interest of family unity.
  - While we may refer to the child as the "principal applicant" in this context, the parent(s) and sibling(s) do not become dependents.
  - We are using DHS discretion to NTA parent(s) and any siblings under age 18 based on the child's positive CF determination.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

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DHS-19-1398-G-000254

2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- We cannot NTA parent(s) and sibling(s) under 18 years old for purposes of family unity unless they cannot establish CF on their own.
- Family unity interests are not implicated until and unless it is determined that the parent(s) and sibling(s) under 18 years old cannot establish CF on their own.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Age 18 and Older

U.S. Citizenship and Immigration Services

If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not:

- Generally we cannot use our discretion to place the child's parent(s) and any siblings into §240 proceedings in the interest of family unity.
- The policy to issue discretionary NTAs was adopted to promote family unity is only for children under age 18 who cannot establish CF.
- Check with your supervisor. In some locations ICE ERO has been amenable to our use of discretion in cases with this scenario.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?	Is child included in PA's claim?
				☐ Yes ☐ No	☐ Yes ☐ No

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

DHS-19-1398-G-000259

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13	☐	Consultant(s)	
1.14	☒	Other(s), list:	Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.
1.15	☐	No one other than applicant and asylum officer	

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

- I-870 for each positive applicant
- CF Determination Checklist for each positive applicant
- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

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3. All Negative

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
  - The child(ren)'s fear.

AMERICAN OVERSIGHT

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3. All Negative

- Where no immediate family members are found to have a credible fear, the APSO follows procedures for preparing, serving, and processing each family member's decision for a negative CF determination.
- Each family member receives his or her own CF determination, including his or her own I-870 and CF Determination Checklist.
- The parent's I-870 should indicate that the child is not included in the parent's negative determination.

AMERICAN OVERSIGHT

3. All Negative

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requested)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

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Family Processing – Split RF/CF

- We cannot include a child in a parent's positive RF determination
- We will not issue an NTA to the child based on the parent's positive RF determination.
- APSOs may use the parent's Q&A as a basis for a positive CF finding for a child as long as the parent's agreement to her testimony being included in the child's application is documented on the parent and child's Q&A and I-870.
- APSOs must screen everyone for mandatory bars.
- As in CF, if the child is incapable of testifying, clearly document this and ask the parent if she is willing to testify on the child's behalf.

AMERICAN OVERSIGHT

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Family Processing – Split RF/CF

- Where the parent is in RF and the children are in ER/CF, and;
- Where one sibling has a positive CF determination but the other children under 18 do not;
- Issue NTAs for those other siblings (except siblings age 18 and over) for family unity.

AMERICAN OVERSIGHT
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Family Processing – Split RF/CF Documents

- Parent receives positive or negative RF determination
- I-870 for each child
- CF Determination Checklist for each child
- I-862 for each positive child (check box that respondent has demonstrated a credible fear of persecution or torture)
- I-869 and I-863 (if requested) for each negative child
- Interview notes (separate, or clearly documenting each person's claim was fully explored)

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Non-FRC Families

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions coordinate with the other asylum office.

AMERICAN OVERSIGHT

Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

1) Mother arrives concurrently with two minor children, ages 9 and 3. They are all in ER/CF and detained together. Mother does not establish a credible fear.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

3) Mother arrives concurrently with two minor children and they are detained together. The mother is in RF and children are in CF.

AMERICAN OVERSIGHT

Important Reminders

U.S. Citizenship and Immigration Services

- Only spouses and children can be dependents.
- Ensure parent is aware of the availability of childcare and how child's presence may impact her ability to testify.
- When a parent is negative and his or her testimony does not establish a positive CF for a child, AOs must see, attempt to interview, and make a determination for each dependent. Each applicant has the right to an individual CF determination.
- Summarize each person's testimony. If a parent testifies on behalf of a child, summarize that testimony.
- Build rapport with all applicants. Note in the Q&A how you established rapport with children.
- When everyone is negative make sure the record is fully developed for all family members.

AMERICAN OVERSIGHT

Important Reminders

U.S. Citizenship and Immigration Services

OUTCOME	INTERVIEW CHILD?	MANDATORY BARS	SERVICE DOCS
Positive Parent	No, unless child requests	Yes, for parent, spouse, and all children.*	I-870 and checklist for parent, NTAs for each family member
Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

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Questions?

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(b)(6)

TVPRA and UAC Determinations

ADOTP 1905/1906
May 2019

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Photograph by Hiram A. Ruiz, courtesy of the US Committee for Refugees,

Objectives

(b)(6)

1. Define an “Unaccompanied Alien Child” (UAC).

2. Describe the initial jurisdiction provision of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

3. Describe the TVPRA’s other provisions that relate to the Asylum Division.

4. Examine common UAC scenarios.

UACs

(b)(6)

Who are these applicants?

U.S. Citizenship and Immigration Services

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Why do Children Come to the U.S.?

(b)(6)

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

Why are Children Unaccompanied in the U.S.?

(b)(6)

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

AMERICAN OVERSIGHT

Numbers of UACs

(b)(6)

Unaccompanied children border apprehensions:

- FY 2018: 58,660
- FY 2017: 48,669
- FY 2016: 70,398
- FY 2015: 44,159
- FY 2014: 72,750
- FY 2013: 41,865

Many UACs are from Guatemala, El Salvador, Honduras, and Mexico.

UAC

(b)(6)

A UAC is a child who, **at the time of first filing** (with EOIR or USCIS):

- has no lawful immigration status in the US;
- has not attained 18 years of age;
- and has no parent or legal guardian in the US, or for whom no parent or legal guardian in the US is available to provide care and physical custody.

Terminology

(b)(6)

Asylum Applicants under 18

- Minor Principal
- Unaccompanied minors
- UAC
- PRL

AMERICAN OVERSIGHT

PRL

(b)(6)

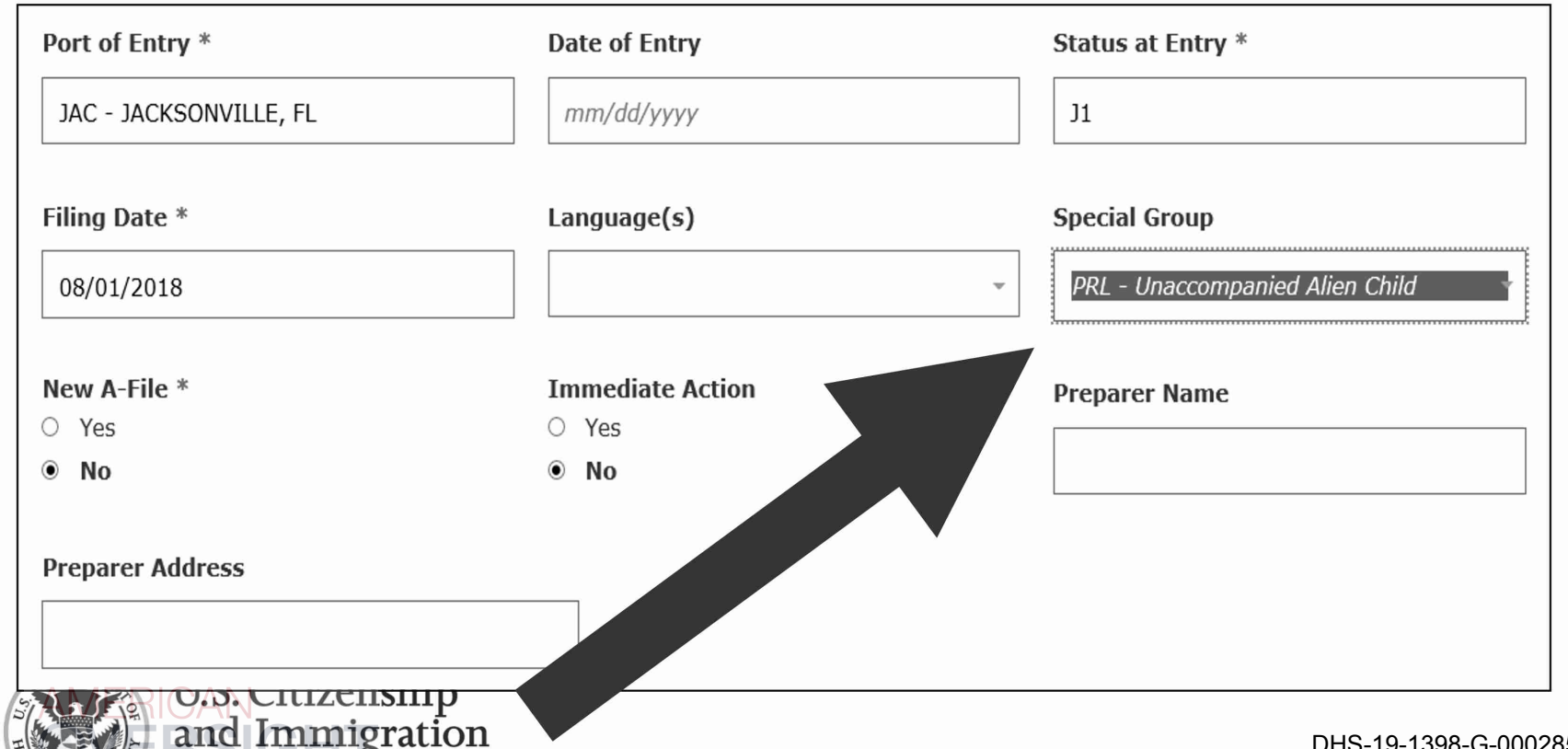
- PRL refers to those UACs who are currently in removal proceedings (under INA Section 240) in Immigration Court.

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

PRL

(b)(6)

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



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

TVPRA Issues

(b)(6)

What is the TVPRA?

TVPRA

(b)(6)

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

- Took effect on March 23, 2009.

TVPRA-Initial Jurisdiction

(b)(6)

- INA § 208(b)(3)(C):

  "An asylum officer. . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child. . . ."

- Therefore, to determine whether USCIS has jurisdiction, AOs must determine whether the applicant is a UAC.

AMERICAN OVERSIGHT

TVPRA Issues

(b)(6)

Why initial jurisdiction?

Why Have Initial Jurisdiction?

(b)(6)

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

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

Why Have Initial Jurisdiction?

(b)(6)

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

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

TVPRA Issues

(b)(6)

How does initial jurisdiction work?

(b)(6)

What Happens When a UAC is Apprehended?

- CBP or ICE make a UAC determination.
- CBP or ICE issue a Notice to Appear, putting the UAC into removal proceedings.
- CBP or ICE transfers the UAC to ORR custody within 72 hours of making the UAC determination.
- ORR places UACs in a range of settings until their release to an adult sponsor or family member.
- UACs are scheduled for immigration court hearings.

Immigration Court Hearing

(b)(6)

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

Other TVPRA Asylum Provisions

(b)(6)

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

(b)(6)

UAC Determinations

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

UAC Determinations

(b)(6)

Scenario 1:

1) Applicant in removal proceedings

AND

2) Prior UAC determination by CBP/ICE/HHS

If applicant is in removal proceedings AO must **confirm** applicant is a UAC for jurisdiction purposes.

Where to Find a Previous UAC Determination

(b)(6)

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

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

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Where to Find a Previous UAC Determination

(b)(6)

Form I-213: Record of Deportable Alien

UNACCOMPANIED JUVENILE:

(b)(7)(c)

FUNDS IN POSSESSION:

Mexican Peso 20.00

(b)(7)(c)

RECORDS CHECKED:

(b)(7)(e)

NARRATIVE:

NOTE:
Subject is an unaccompanied juvenile.

ENCOUNTER/ALIENAGE:
Subject, [redacted] (A# [redacted]), DOB: [redacted], was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was

Where to Find a Previous UAC Determination

(b)(6)

Form I-213: Record of Deportable Alien

(b)(7)(c)

TRAVEL INFORMATION:
[redacted] stated that she traveled from her home in [redacted] to Chiapas, Mexico then to Altar, Sonora, Mexico by bus. She then crossed the U.S./Mexico International Boundary illegally on foot.

DISPOSITION:
[redacted] is being served with a Warrant of Arrest/Notice to Appear, and placed in removal proceedings, per Section 212(a)(6)(A)(i) of the INA. She is an unaccompanied juvenile.

Where to Find a Previous UAC Determination

(b)(6)

Form 93: CBP UAC Screening Form

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

UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM

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

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

Credible Fear Determination

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

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

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

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

Human Trafficking

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

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

Where to Find a Previous UAC Determination

(b)(6)

ORR UAC Initial Placement Referral Form

UAC Initial Placement Referral Form

See Footer for Instructions – Updated, 3/25/08

Processing Officer's Name	Email Address	Desk Phone	Cell Phone

UAC Information

First Name	Middle Name	Last Name	DOB

Additional Names Used:				
Gender	Country of Birth	Immigration Status	A#	FINS #
		NTA Issued		

(b)(6)

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

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

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Where to Find a Previous UAC Determination

(b)(6)

ORR Verification of Release Form

US Department of Health and Human Services

Office of Refugee Resettlement
Verification of Release Form

OFFICE OF REFUGEE RESETTLEMENT
Division of Unaccompanied Children's Services

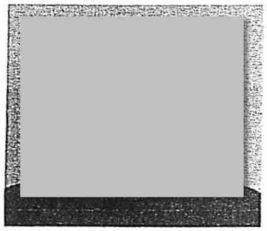
Name of Minor:		**Aliases (if any):**
Minor's Date of Birth:	**Minor's A**	**FINS#:**

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

_____

_____

Acknowledgement of Conditions of Release



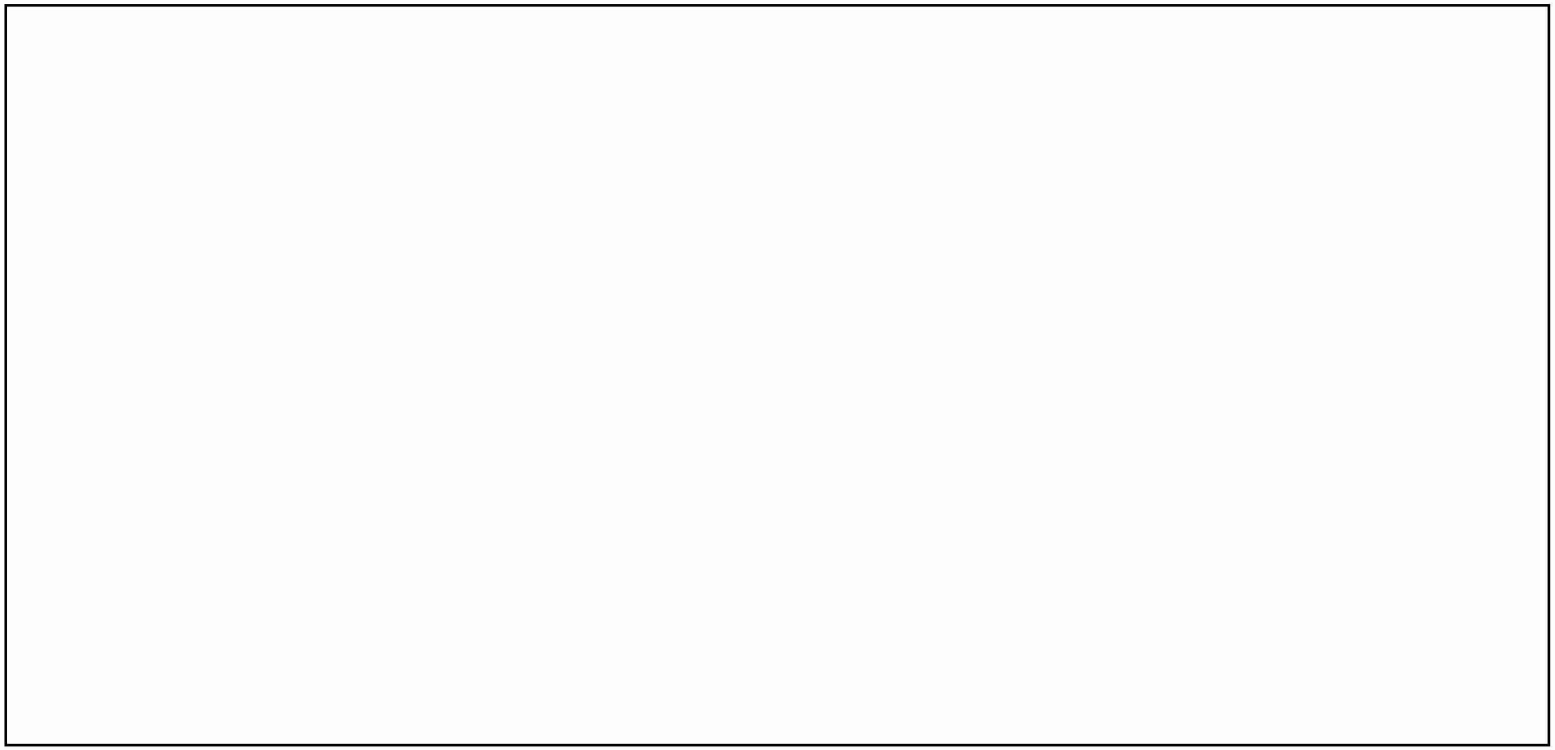
- **I hereby acknowledge that I have read, or had explained to me in the Spanish language, and I understand the conditions of my release as specified in the Sponsor's Agreement to Conditions of Release, which include among others the following conditions:**
- **I agree to appear at all future proceedings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

Where to Find a Previous UAC Determination

(b)(6)

EARM: Encounters Tab

(b)(7)(c) (b)(7)(e)



Previous UAC Determination

(b)(6)

(effective June 10, 2013)

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

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

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

UAC Determinations

(b)(6)

Scenario 2:

1) Applicant in removal proceedings

AND

2) **NO** prior UAC determination by CBP/ICE/HHS

AO makes UAC determination by examining the applicant's immigration status, age and unaccompanied status for purposes of jurisdiction, OYFD, HHS notification.

If No Previous UAC Determination Is in Place

(b)(6)

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

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

If No Previous UAC Determination is in Place

(b)(6)

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

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

If No Previous UAC Determination is in Place

(b)(6)

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

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

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

AMERICAN OVERSIGHT

UAC Determination: USCIS has Jurisdiction

(b)(6)

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

Non-UAC Determination

(b)(6)

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

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

(b)(6)

UAC Determinations

Scenario 3:

1) Applicant is **NOT** removal proceedings

AND

2) **NO** prior UAC determination by CBP/ICE/HHS

- **Affirmative filing: Jurisdiction is not at issue**
- OYFD does not apply
- Requirement to notify HHS of discovery of a UAC
- AO makes UAC determination by examining immigration status, age and unaccompanied status.

Types of UAC Decisions

(b)(6)

If applicant is in removal proceedings:

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

Background – Process

(b)(6)

- March 2009-June 2013:

  AOs always made independent factual inquiries to support UAC determinations.

- June 2013-present:

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

Border Security EO and DHS Implementation Memo

(b)(6)

Executive Order 13767:

- Includes a provision on UACs in a section on ending abuse of parole and asylum.
- Requires training for DHS personnel on the TVPRA and the UAC definition to ensure proper processing.

The DHS Implementation Memo for the EO:

- Requires DHS components to develop review procedures to confirm that an individual continues to be a UAC when receiving legal protections afforded by the TVPRA.

Summary

(b)(6)

1. A unaccompanied alien child (UAC) is under 18, unaccompanied, and without valid immigration status.

2. The TVPRA gives USCIS initial jurisdiction over all asylum applications filed by UACs; even if they are in removal proceedings.

3. AOs adopt the previous DHS determination that the applicant was a UAC unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC determination before the applicant files the initial application for asylum.

4. The TVPRA's other relevant provisions relate to the one-year filing deadline, placement in removal proceedings, and ORR responsibilities.

Country of Origin Information (COI) Research



Research Unit (RU)

Refugee, Asylum and International Operations

May 2019

U.S. Citizenship and Immigration Services

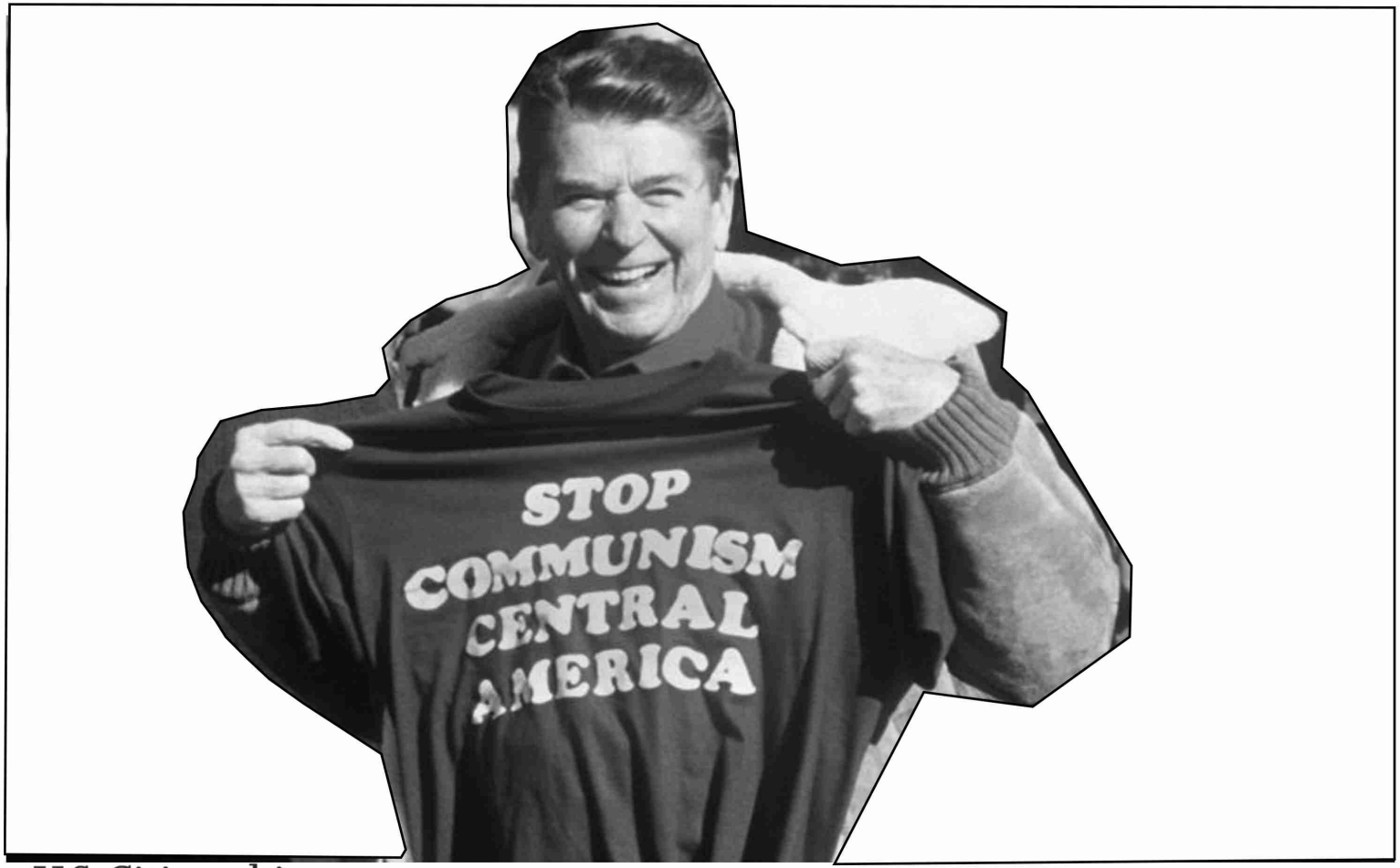
DHS-19-1398-G-000317

Definition of COI

COI could be described as information about the situation in refugees' home countries which is used in procedures for determining international protection needs.

The Genesis of the Research Unit (RU)

(b)(6)



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

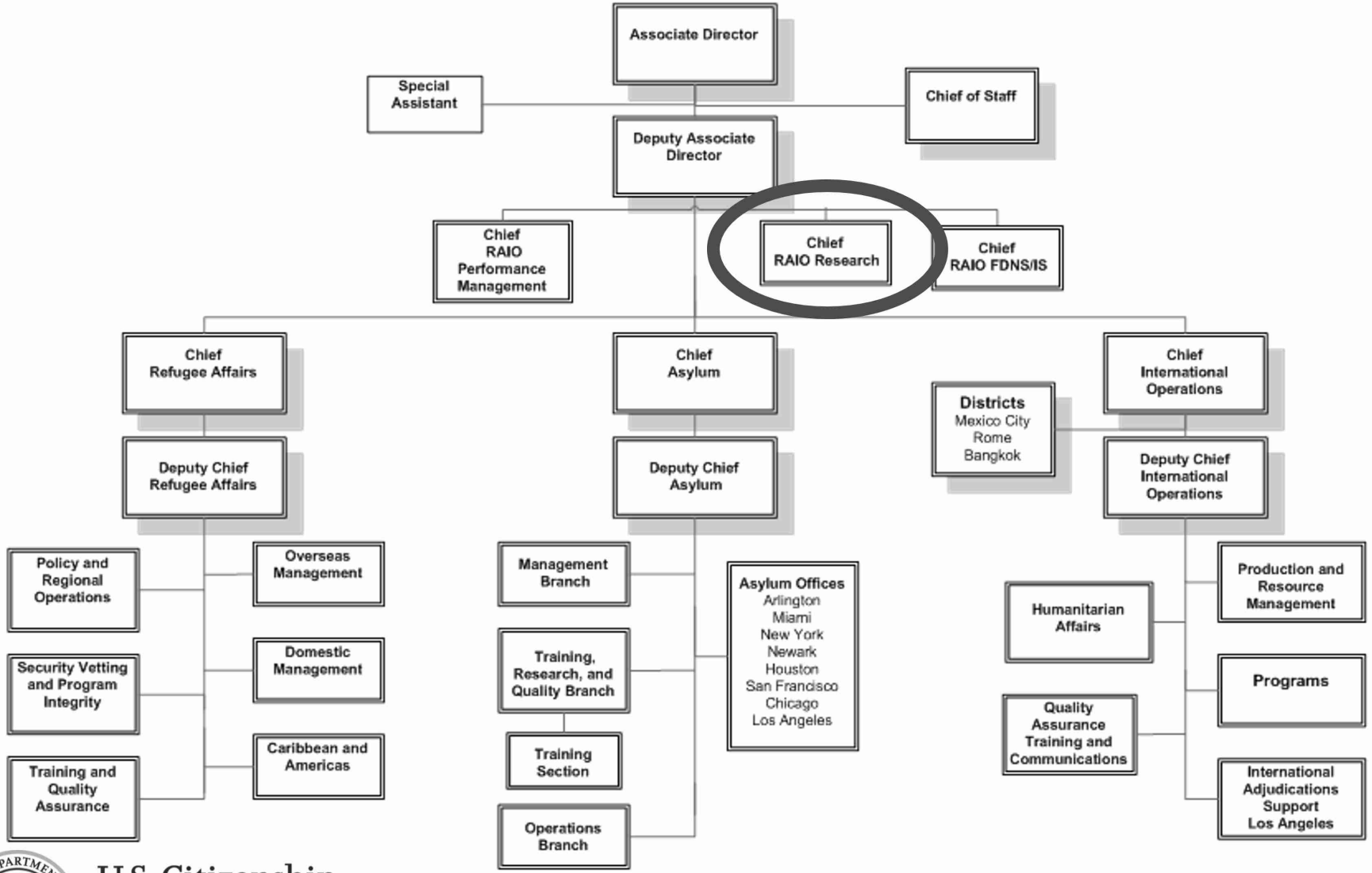
The RU was Established as an Independent Entity for COI

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

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

RAIO and RU



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

RU's Vision and Mission

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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- The New York Times
- The Washington Post
- Associated Press
- The New Humanitarian

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Weekly & Monthly Reading Suggestions (LAC)

- Refworld
  - Spanish language version

- RAIO Research Unit ECN
  - News Summary Bulletin (monthly)
  - Query Reponses
  - Country pages (links on home page)

U.S. Citizenship and Immigration Services

DHS-19-1398-G-000326

Weekly & Monthly Reading Suggestions (LAC)

- Immigration and Refugee Board of Canada (IRB)
  - National Documentation Packages (updated monthly)
  - Responses to Information Requests
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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- Information to help you reach a decision on a specific claim
- Sources of info that you could cite in support of your decision

U.S. Citizenship and Immigration Services

DHS-19-1398-G-000331

Research Unit Products Include

- Country pages
- Queries Responses
- Monthly News Summary Bulletin
- Temporary Protected Status Papers
- Hot topics
- Presentations/Trainings
- Encyclopedia of online resources
- TRIG Research

U.S. Citizenship and Immigration Services

DHS-19-1398-G-000332

Finding the Research Unit ECN Page

- Go to USCIS Connect and click on ECN
- Click on RAIO in the drop down menu of "organization"
- Click on "Research" to reach the Research Unit.
- Bookmark the Research Unit: https://ecn.uscis.dhs.gov/team/raio/Research/SitePages/ResearchHome.aspx

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Research Unit Country Pages



RAIO Research Unit

All RU Products

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- Central African Republic
- Democratic Republic of the Congo (DRC)
- Eritrea
- Ethiopia
- Ivory Coast
- Liberia
- Mali
- Nigeria
- Rwanda
- Senegal
- Somalia
- South Sudan
- Sudan

Asia

Latin America & Caribbean

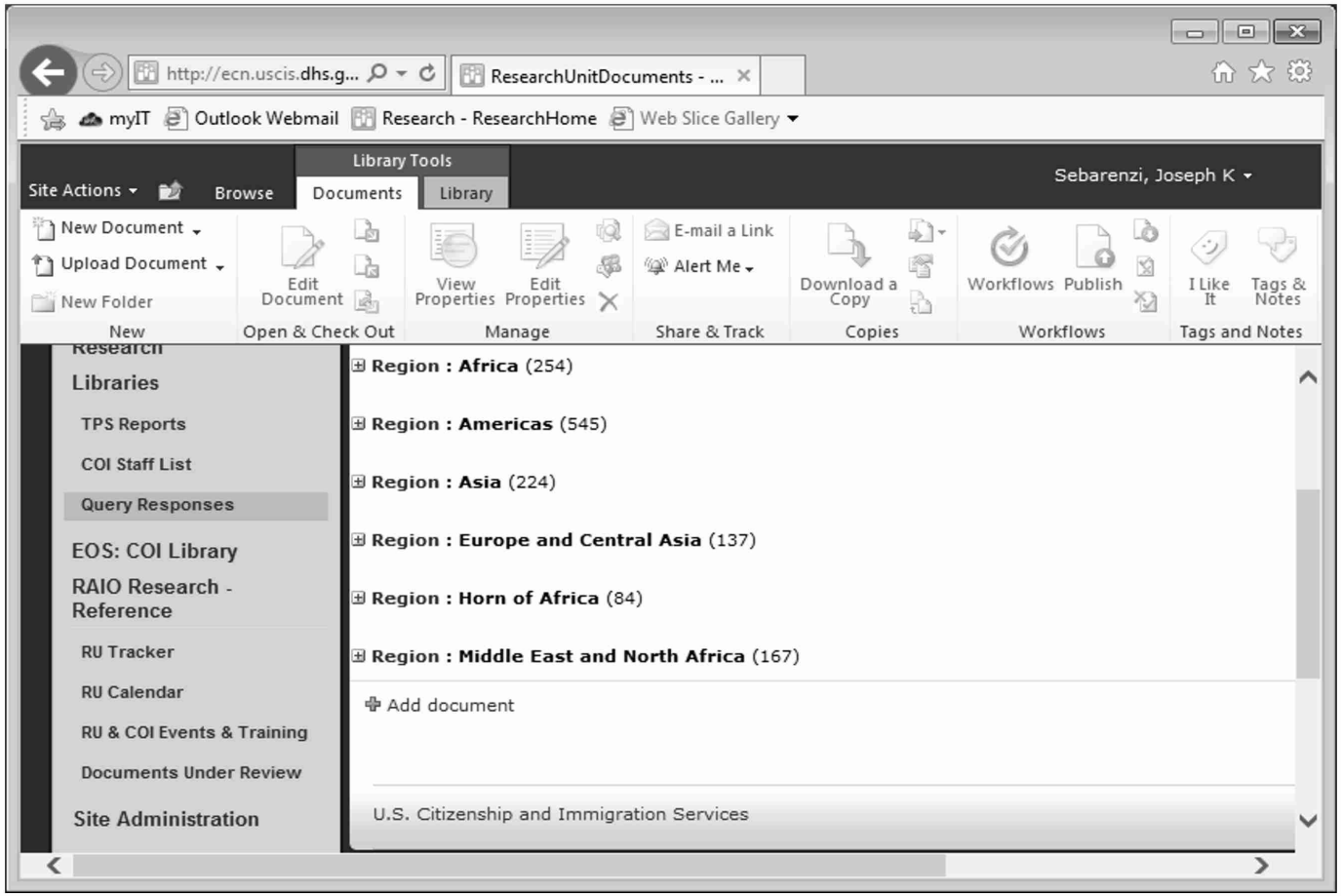
- Brazil
- Central American Gangs
- Colombia
- Cuba
- Ecuador
- El Salvador
- Guatemala
- Haiti
- Honduras
- Jamaica
- Mexico
- Nicaragua
- Peru
- Venezuela

Middle East & North Africa

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

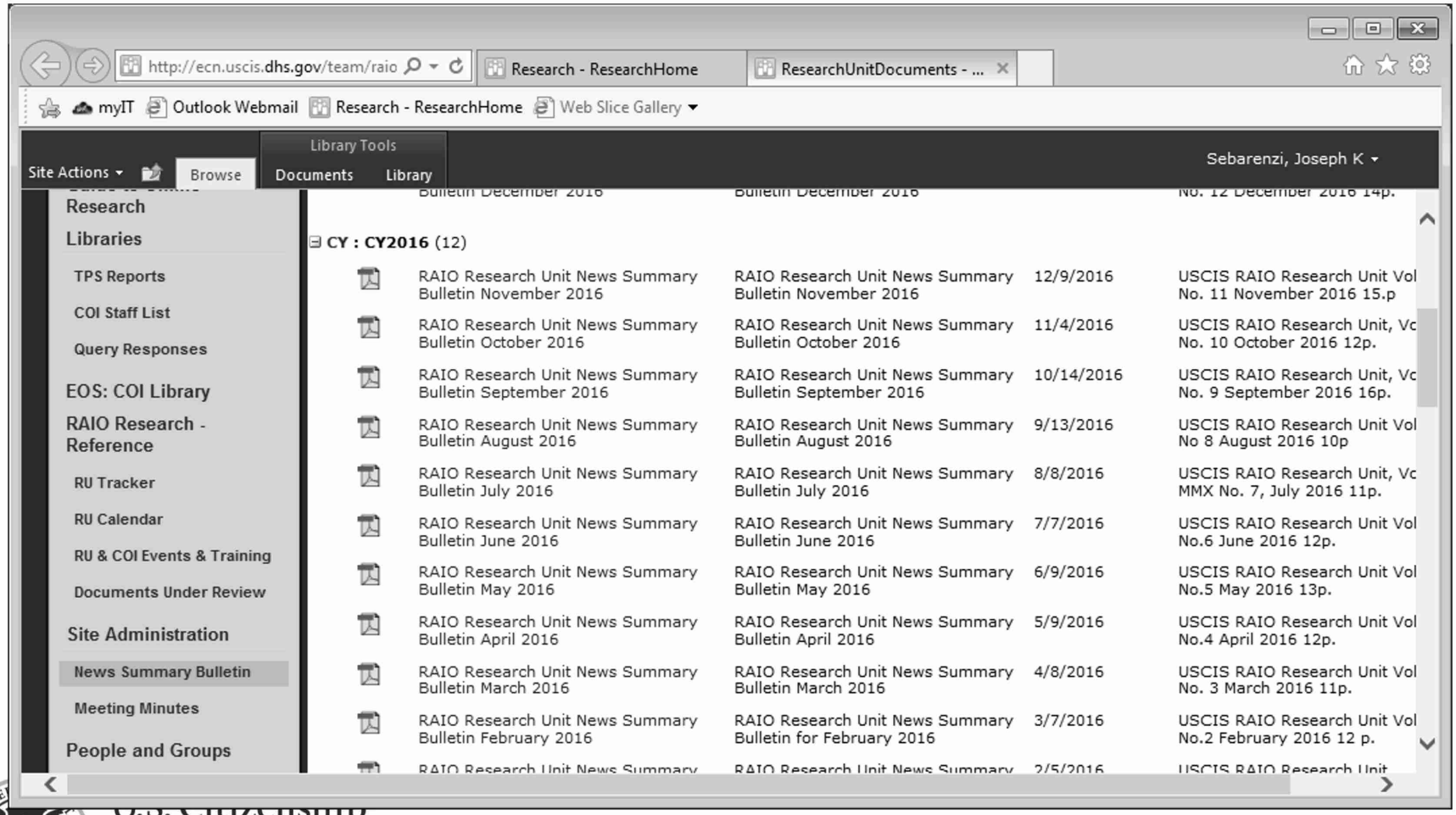
Query Responses



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

News Summary Bulletin



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Monthly News Summary Bulletin



U.S. Citizenship and Immigration Services

REFUGEE, ASYLUM, & INT'L OPERATIONS RESEARCH UNIT

NEWS SUMMARY

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Middle East & N. Africa 5
Horn of Africa 6
Sub-Saharan Africa 8

contact us at:
RAIOResearch@uscis.dhs.gov

CURRENT EVENTS

OCTOBER 2015

ASIA

Regional

Australia looks to Philippines to solve refugee conundrum

IRIN - October 14, 2015

Asylum seekers attempting to reach Australia by boat are sent to offshore processing centers and deprived of any chance to settle in Australia. One option was to be resettled in Cambodia, but Cambodia recently stated they do not want to accept any more. Australia has approached the Philippines, but rights groups there have attacked the potential deal. Australia is running out of third country options if it is to retain its policy of offshore processing and resettlement of refugees. Few countries in the Asia-Pacific region are signatories to the UN Refugee Convention.

Refugee rescue ship enters rough waters in Southeast Asia

IRIN - October 13, 2015

This past summer migrants were rescued at sea by the Migrant Offshore Aid Station, a private ship patrolling the Mediterranean. But its attempt to do the same in Southeast Asia will be much more difficult. Unlike European countries, most Southeast Asian nations have not signed the United Nations Convention on Refugees, which grants people the right to claim asylum. Thailand, Malaysia and Indonesia are reticent to allow refugees and migrants to land as seen earlier this year, when thousands of people were left stranded at sea.

U.S. Citizenship and Immigration Services

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Contact Info

RAIOResearch@uscis.dhs.gov

U.S. Citizenship and Immigration Services

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Country of Origin Information (COI) Research



Research Unit (RU)

Refugee, Asylum and International Operations

May 2019

U.S. Citizenship and Immigration Services

DHS-19-1398-G-000339

Definition of COI

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AMERICAN OVERSIGHT

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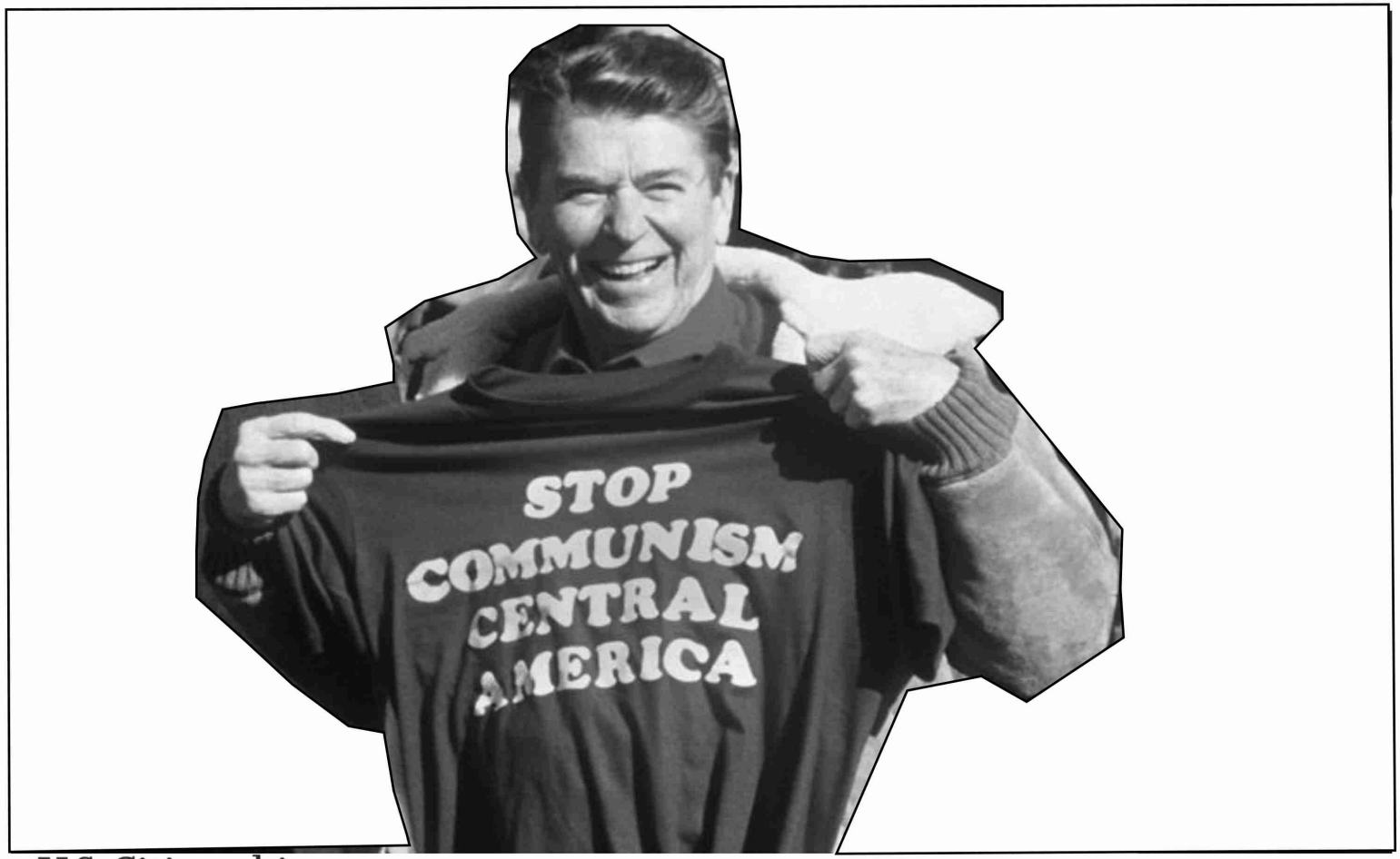
(b)(6)



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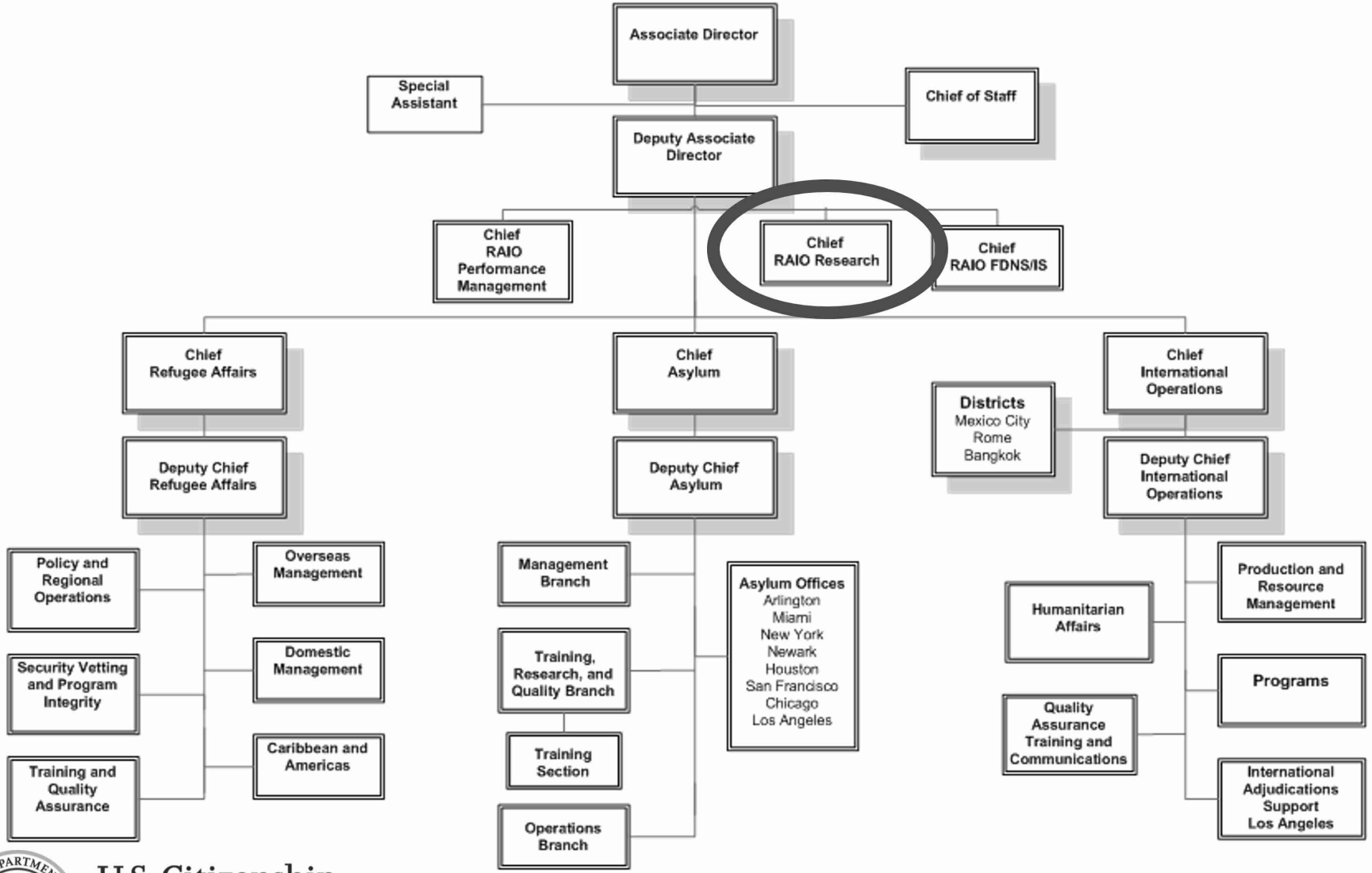

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FOIA/PA
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U.S. Citizenship and Immigration Services

DHS-19-1398-G-000353

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U.S. Citizenship and Immigration Services

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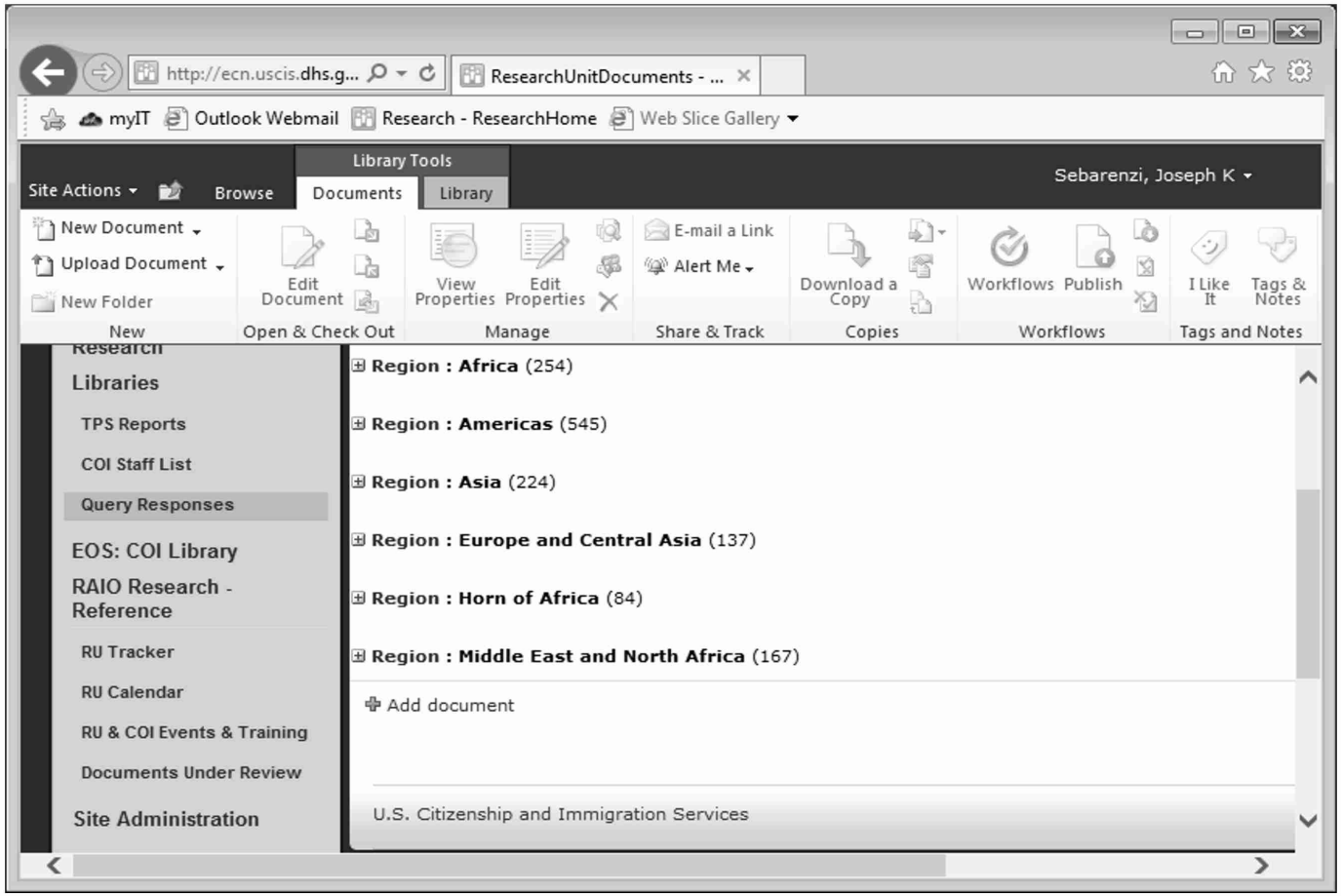

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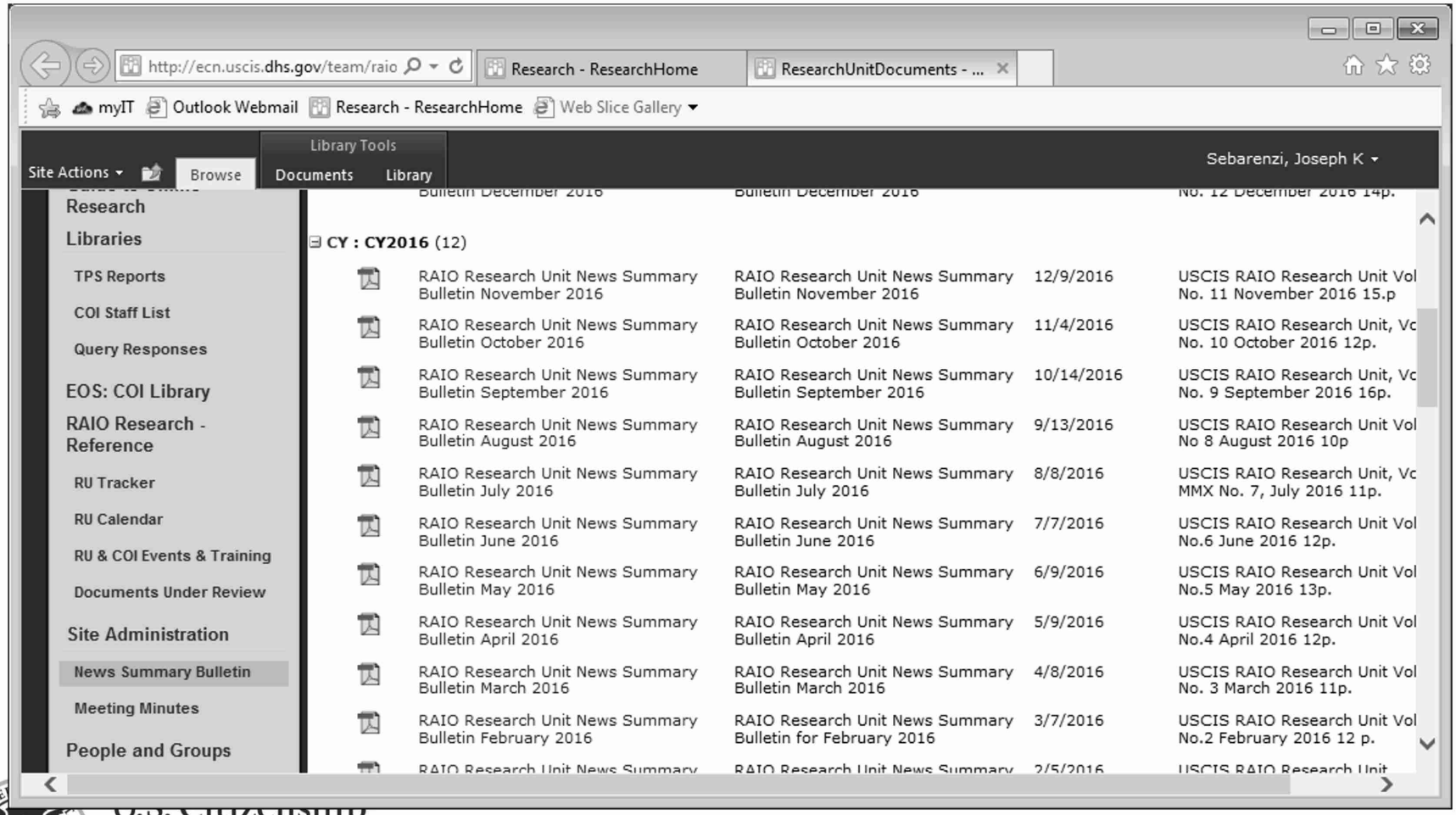
AMERICAN OVERSIGHT

News Summary Bulletin



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

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U.S. Citizenship and Immigration Services

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Sub-Saharan Africa 8

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CURRENT EVENTS

OCTOBER 2015

ASIA

Regional

Australia looks to Philippines to solve refugee conundrum

IRIN - October 14, 2015

Asylum seekers attempting to reach Australia by boat are sent to offshore processing centers and deprived of any chance to settle in Australia. One option was to be resettled in Cambodia, but Cambodia recently stated they do not want to accept any more. Australia has approached the Philippines, but rights groups there have attacked the potential deal. Australia is running out of third country options if it is to retain its policy of offshore processing and resettlement of refugees. Few countries in the Asia-Pacific region are signatories to the UN Refugee Convention.

Refugee rescue ship enters rough waters in Southeast Asia

IRIN - October 13, 2015

This past summer migrants were rescued at sea by the Migrant Offshore Aid Station, a private ship patrolling the Mediterranean. But its attempt to do the same in Southeast Asia will be much more difficult. Unlike European countries, most Southeast Asian nations have not signed the United Nations Convention on Refugees, which grants people the right to claim asylum. Thailand, Malaysia and Indonesia are reticent to allow refugees and migrants to land as seen earlier this year, when thousands of people were left stranded at sea.

U.S. Citizenship and Immigration Services

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Contact Info

RAIOResearch@uscis.dhs.gov

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Latin America

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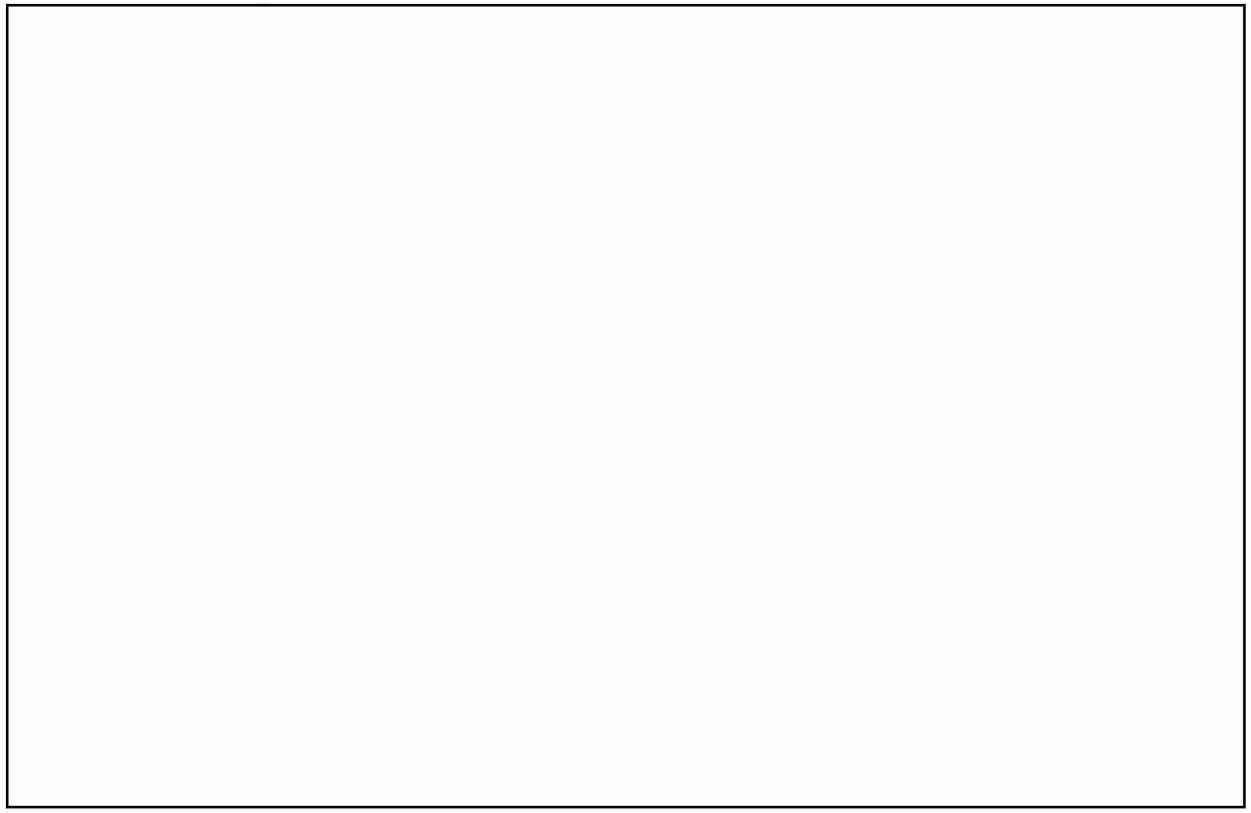
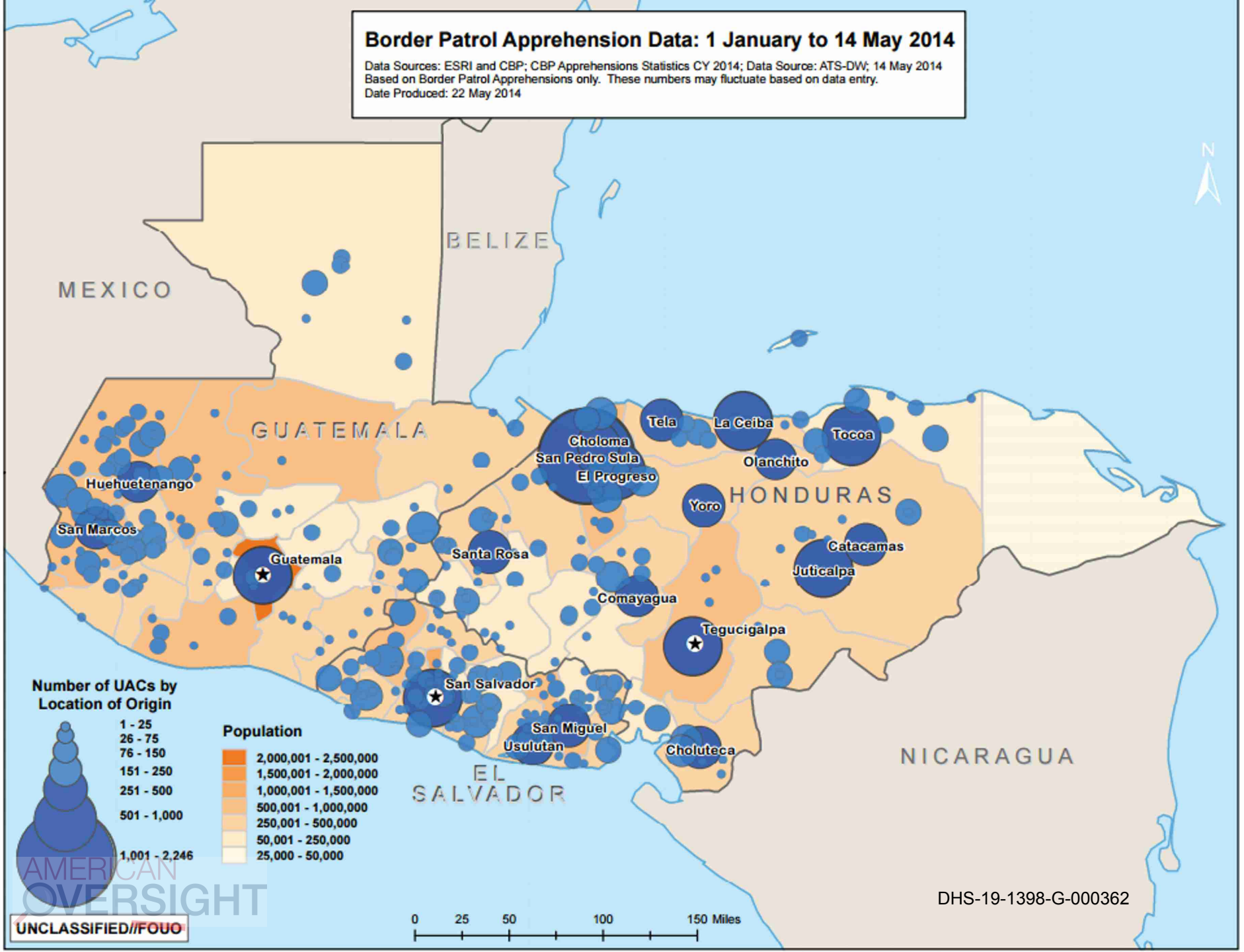


U.S. Citizenship and Immigration Services

RAIO Research Unit

May 2019

DHS-19-1398-G-000361


Border Patrol Apprehension Data: 1 January to 14 May 2014
Data Sources: ESRI and CBP; CBP Apprehensions Statistics CY 2014; Data Source: ATS-DW; 14 May 2014
Based on Border Patrol Apprehensions only. These numbers may fluctuate based on data entry.
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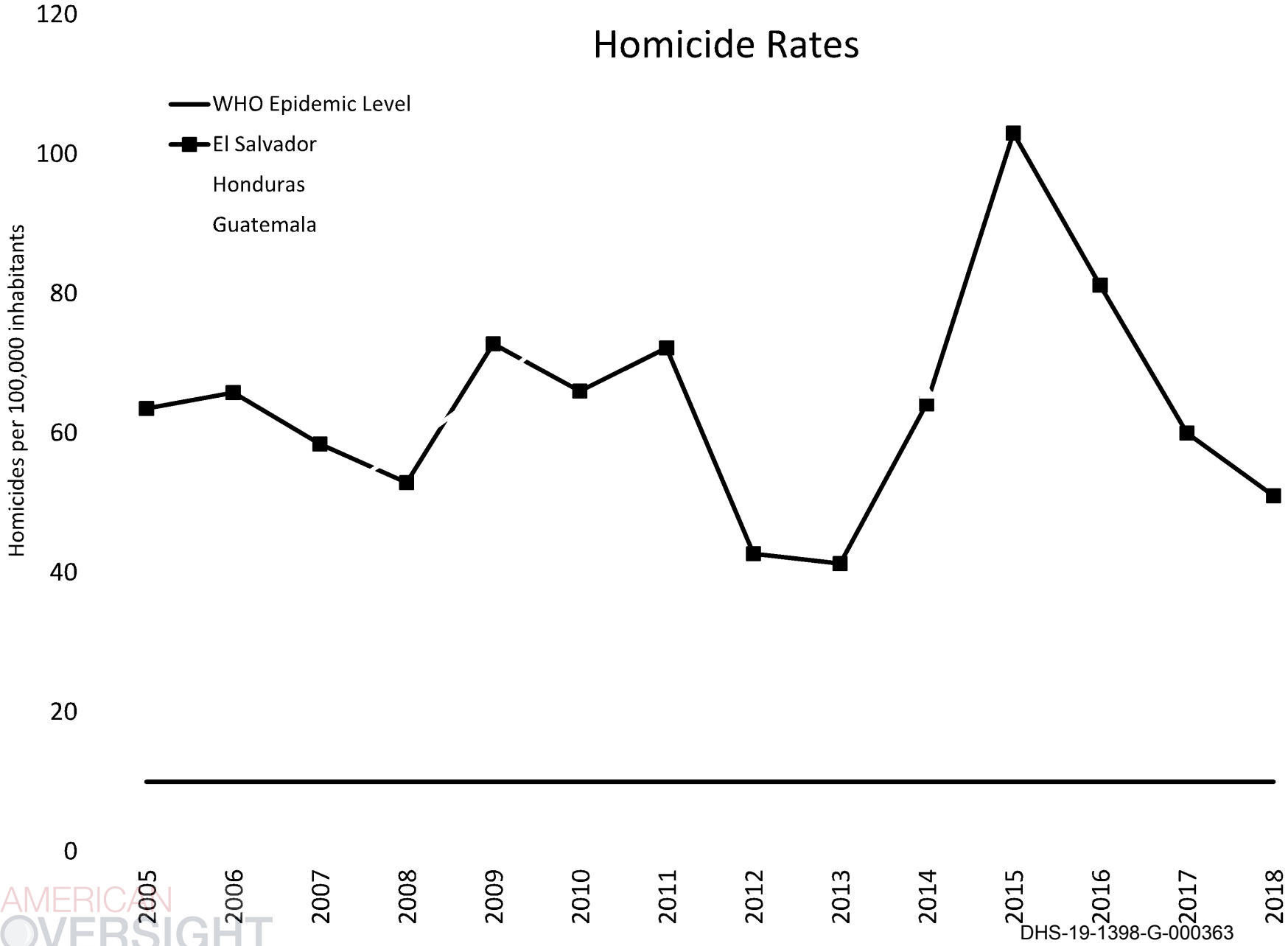

AMERICAN OVERSIGHT

El Salvador

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AMERICAN OVERSIGHT

Gangs

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Barrio 18
Revolucionarios, Sureños

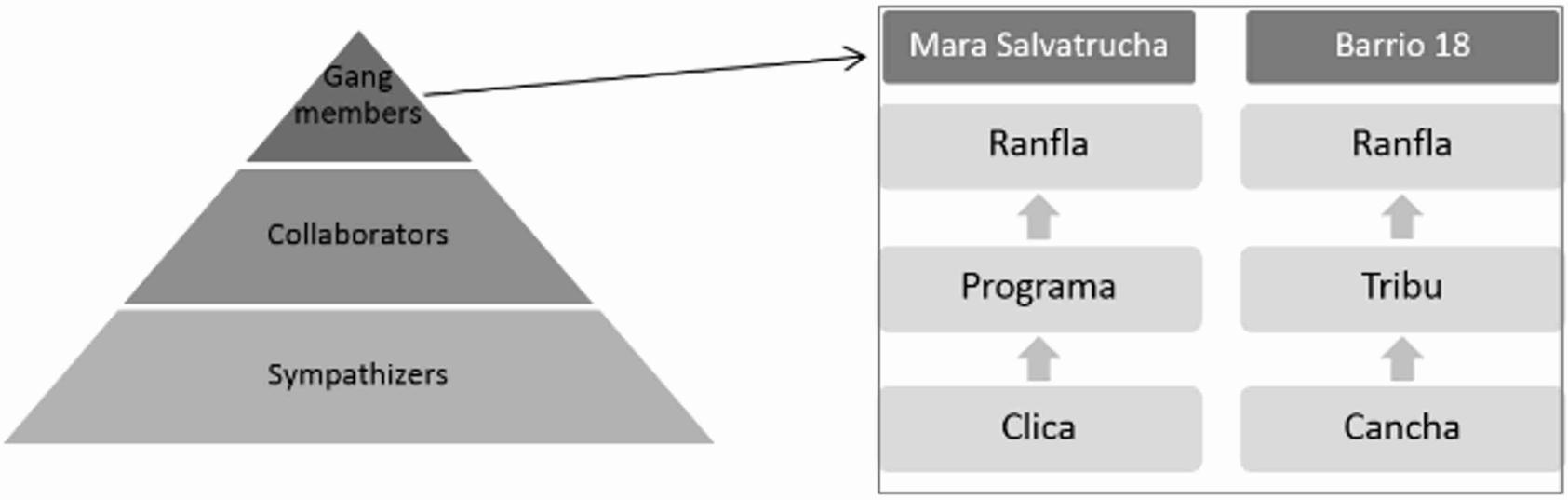
Mara Salvatrucha
(MS-13)

Other gangs: Mirada Locos 13, Mao Mao, La Maquína, La Raza, Sureños, Mara Desorden

AMERICAN OVERSIGHT

Gangs: Structure

Diagram: Gangs' structure[73]



Support structure

Internal structure

AMERICAN OVERSIGHT

Gangs

- Hierarchical
- Loose knit, disperse networks of factions
  - *Clicas* (MS-13) & *Canchas* (Barrio 18)
  - Affiliated franchises
  - Local leaders have a lot of autonomy and discretion over relationships, types of crime, and resources
  - Levels of violence and dependence on extortion may vary
- Geography
  - National influence
  - Likely have a national presence
  - Exercise de facto control in certain areas

AMERICAN OVERSIGHT

Gangs: Distinctive Traits

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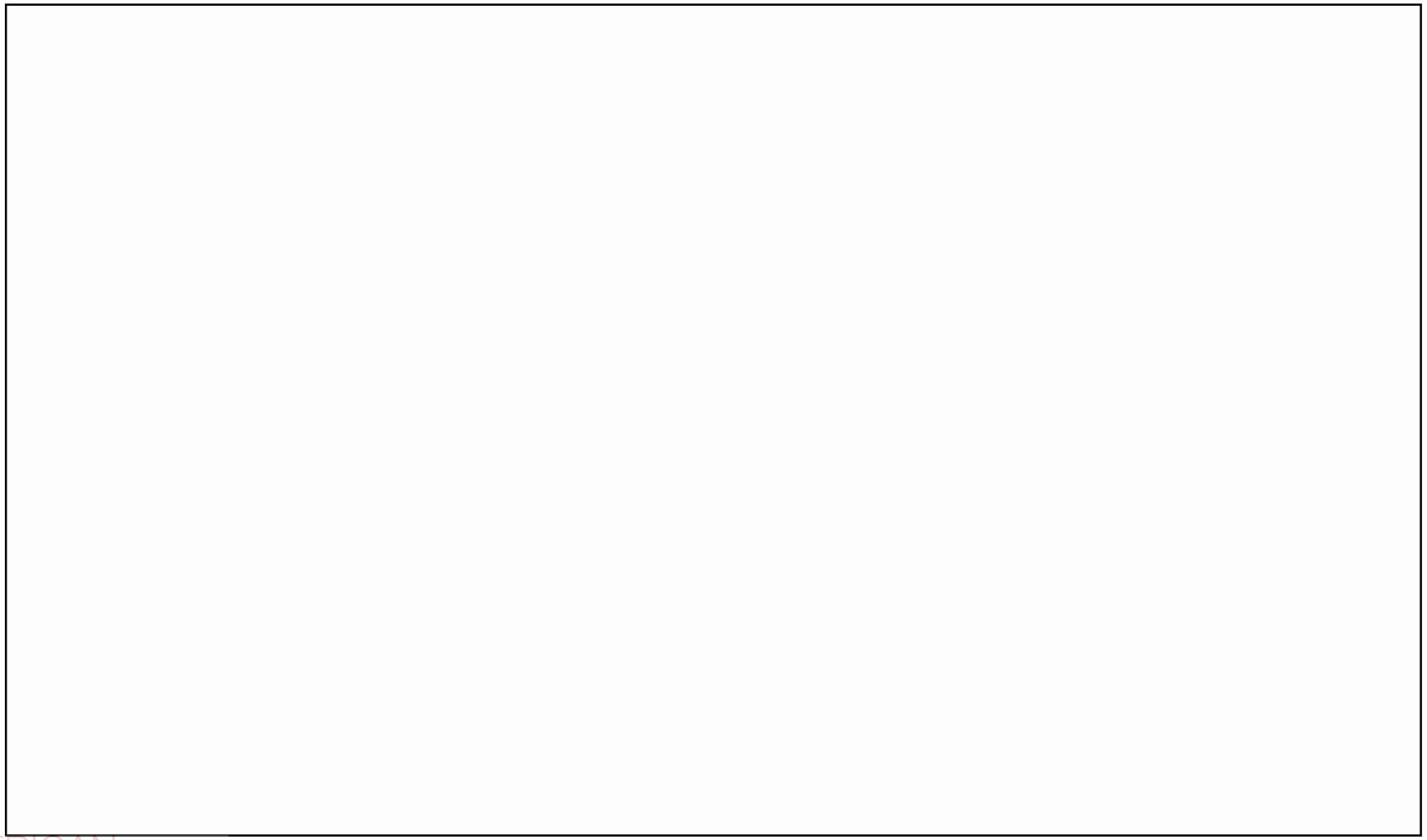

AMERICAN OVERSIGHT

Gangs: Distinctive Traits

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AMERICAN OVERSIGHT

Gangs: Distinctive Traits

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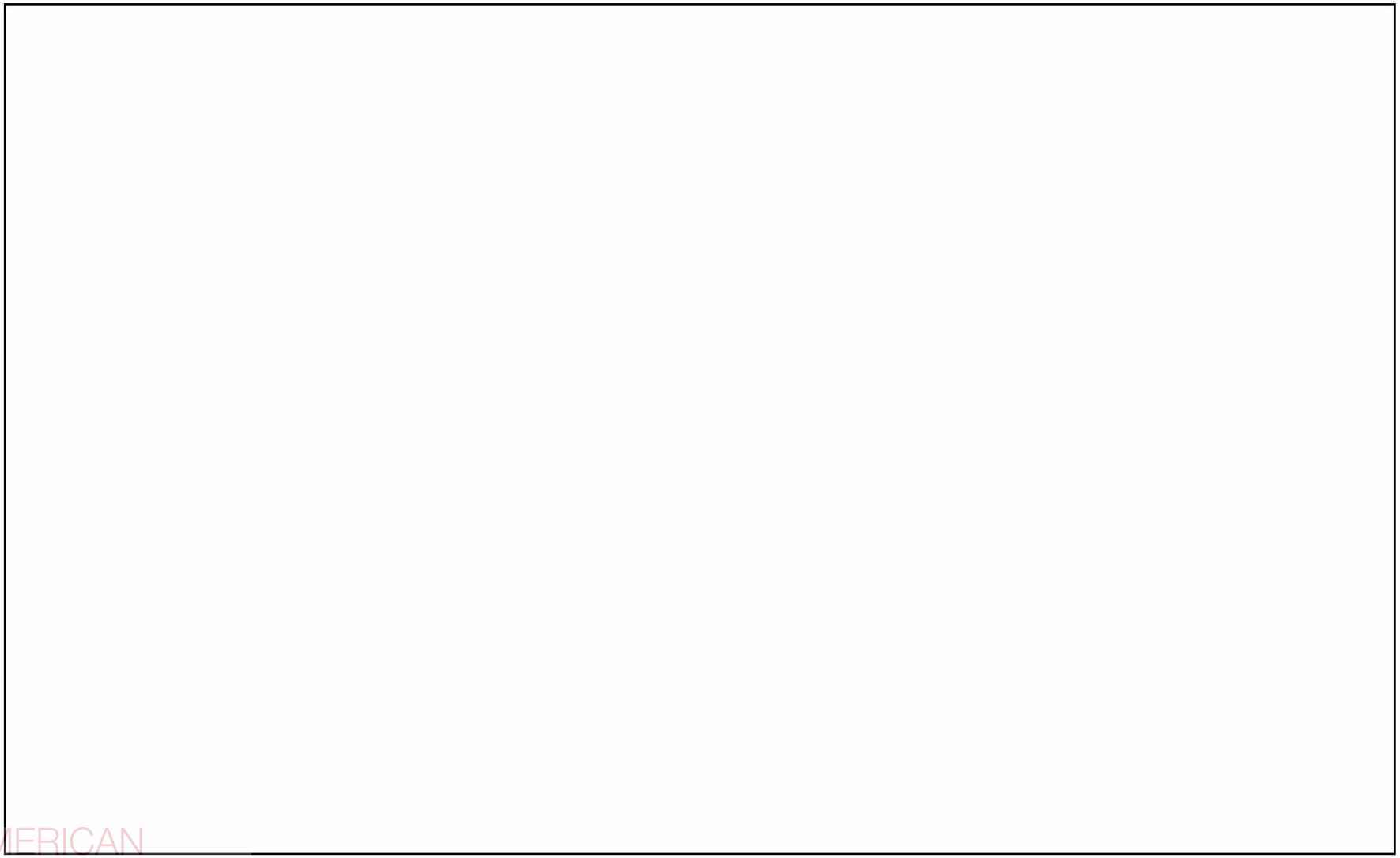

AMERICAN OVERSIGHT

Gangs: Recruitment/Coercion

- Increasing since collapse of gang truce = "collective panic"
- Conduct certain activities or work for gangs
  - Collect extortion, eavesdrop, chores, commit crimes, etc.
  - Not just membership
- Targets
  - All youth within community and in schools
  - Poor and broken families, live with grandparents, relatives in U.S., mental disabilities, psychological problems
  - As young as 9 to 12 years old (*postes*: 5 to 8 years old)
- Gender differences
  - Boys = attraction, then ask for favors
  - Girls = total victimization

AMERICAN OVERSIGHT

Gangs: Recruitment/Coercion

- Forced, voluntary, or half-voluntary/half-forced
- Refusal to join or collaborate
  - Viewed as challenge to authority or suspicion of rival affiliation
  - Results in threats, violence, or murder of individual or family member
- Options?
  - Very difficult to say no
  - Send kids to private school
  - Never leave the house - no school, work, or play
  - Flee the country
    - Hours or days to leave
    - Continuing threats and violence against family members

AMERICAN OVERSIGHT

Extortion (*La Renta*)

- Main source of revenue for gangs
  - Typically not protection, but rather social control and source of income
  - Business model
  - *Renta privada*

- Face to face, phone, or letters

- Payment
  - Periodic, sporadic, or one-time
  - Cash, goods, or services

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AMERICAN OVERSIGHT

Extortion (*La Renta*)

- Systematic vs. opportunistic
  - Everyone (institutionalized)
  - Case by case basis (perceived wealth)

- Refusal or inability to pay = threats or violence
  - Individual, employee, business, property, or family member
  - Refusal, delay, or continuing refusal can lead to escalating threats or murder
  - May continue even if business closes

- Most victims don't report to authorities

AMERICAN OVERSIGHT

Territorial and Social Control

- Goal = territorial control of areas of operation
  - Income from extortion
  - Identity, security, collaborators and sympathizers, and community that will not say anything to authorities
  - Seek to prevent infiltration of rivals
- "Invisible borders" between rival zones
- Social control
  - Viewed as de facto authorities
  - Enforce social norms via violence and threats
- Resistance to gang authority
  - Perceived or actual resistance to gang authority can lead to harm
  - Punishment depends on character of gang and type of resistance
  - But typically severe or brutal

AMERICAN OVERSIGHT

Children

- Violence
  - Targeted by gangs at home and in school
  - Youth homicide rate = among highest in the world
- Domestic and sexual violence
  - 70% experience physical violence from parents
  - 90% of sexual abuse by close male relatives
  - Underreported
- Family in the U.S.
- Child protection
  - Legislation & institutions exist, but implementation is the problem

AMERICAN OVERSIGHT

Women/Girls

- Violence against women
  - Patriarchal attitudes & *machista* culture
- Femicide = one of the highest rates in the world
  - Over 3,500 killed (2010-2017)
  - 39 murders per month (2017)
- Gangs - physical and sexual violence
  - Systematic use of sexual violence - dominance, status & revenge
  - Viewed as "property" of gangs
  - *novias de las pandillas*
  - May be "chosen" as girlfriends despite no actual relationship
  - *niñeras*

AMERICAN OVERSIGHT

Women/Girls

- Majority of violent acts committed by community & family members
- Domestic violence
  - Almost half of women experience violence from partner
- Sexual violence
  - Nearly 70% of perpetrators know the victim
  - Girls and adolescents most impacted
- Underreporting & lack of state protection

AMERICAN OVERSIGHT

LGBTI

- Widespread societal discrimination & marginalization
- Targeted for abuse and attacks
  - Over 600 murders since 1993
  - Sexual and physical violence, beatings, extortion, threats
    - 52% of transgender women - suffer threats or violence
- Systematic abuse by gangs and police
  - Gangs = sexual abuse, threats, attacks, forced labor, etc.
  - Police = abuse, extortion, false accusations, refusal to accept *denuncias*
- Lack of state protection
  - Laws and policies - often ignored or violated
  - Discrimination and lack of access to state services

AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- 1993: Post-civil war political solution
- 28,000 members
- Ineffective
  - "Like security guards"
  - Temporary presence
  - Poor relations with the community
- Repressive - use excessive force
- Lack of resources, equipment & training
- Poor working conditions & low pay



AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- Infiltration by gangs
  - Common perception, but some evidence
    - Officials expelled due to gang ties
    - Gangs have purchased police uniforms & gear

- Victimizers
  - Extra-judicial executions
    - "Shootouts" with gangs
  - Death squads
  - Human rights violations
  - Crime and corruption



AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- Anti-gang units dissolved due to allegations of human rights abuses (Feb. 2018)
  - *Grupo de Reacción Policial* (GRP)
  - *Fuerza Especializada de Reacción* (FES)

- Criticism of recent reforms
  - Units accused of human rights abuses are allegedly just dissolved & rebranded
  - Officers deployed to a new unit
  - New elite police unit = *Unidad Táctica Especializada Policial* (UTEP)

AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- "Among the most vulnerable people in El Salvador"

- Targeted by gangs, along with family members
  - Post-truce - explicit threats against police
  - Threats, attacks & murders
    - Kill a police officer = more respected within the gang
  - Live in gang-controlled neighborhoods
    - Targeted when home from work or on leave
    - Many units forbidden to wear balaclavas

- Migration - *caravana policial*?

AMERICAN OVERSIGHT

Trust in Police & Reporting Crimes

- General lack of trust
  - Fear police more than gangs in certain areas
- Do not go to police nor submit a *denuncia*
  - Perceived as a waste of time
  - Authorities do nothing - 70% of reported crimes
  - Mistrust
  - Fear reprisals
    - Gang surveillance of police stations
    - Increased extortion or killed
- May have to flee the country

AMERICAN OVERSIGHT

Fuerza Armada

- Around 25,000 troops
- Increased role in public security
  - Rapid reaction battalions
  - Special forces with police
- Human rights violations
  - Extra-judicial executions and illegal arrests
- Infiltration by gangs
- Targeted by gangs, along with family members

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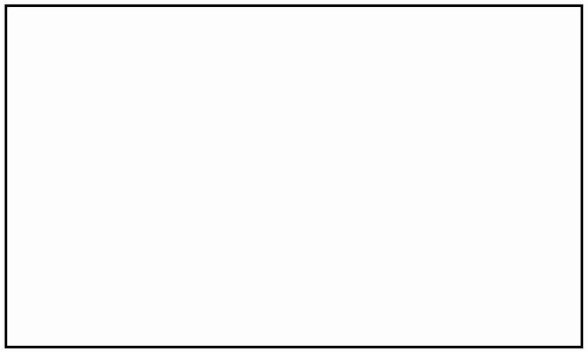

AMERICAN OVERSIGHT

Non-State Armed Groups

- *Grupos de exterminio* (death squads)
  - Alleged attacks have increased as gangs target police
  - Dressed as or similar to police/military
  - Clear pattern of "extermination violence…for purposes of social cleansing" of suspected gang members
  - Arrests of members and dismantling of death squads
  - *La Sombra Negra*
- Self-defense groups/vigilantes
- Private security guards
  - 23,000 agents

AMERICAN OVERSIGHT

Honduras

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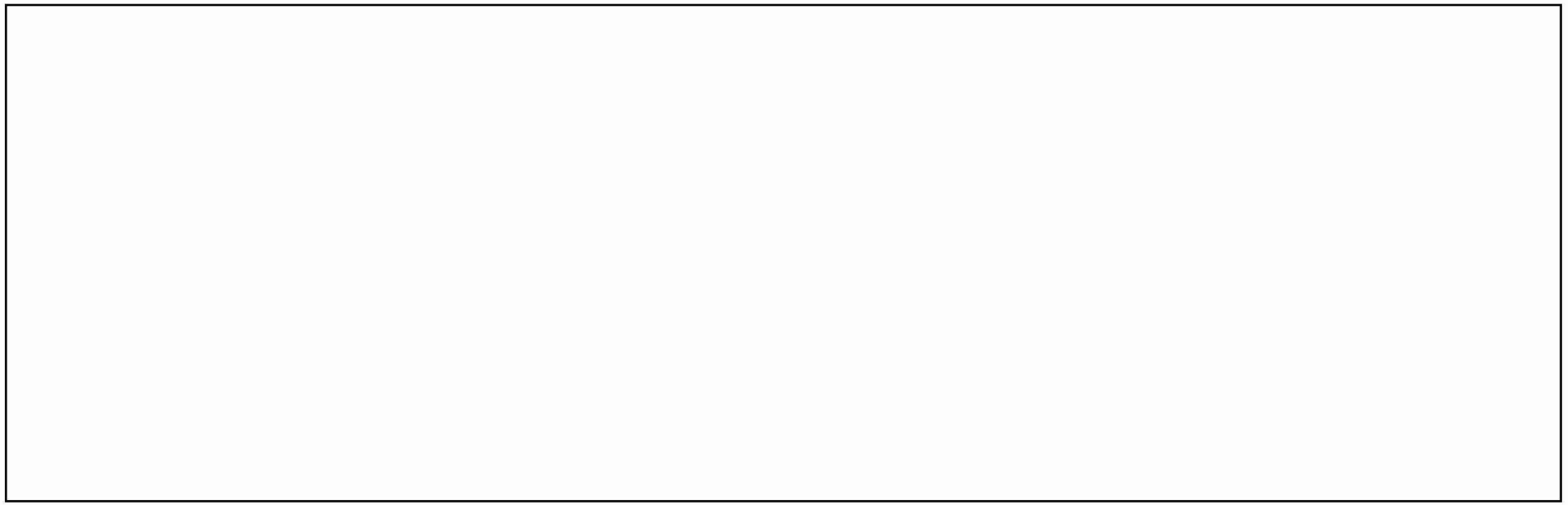

AMERICAN OVERSIGHT

Political Violence

- June 2009 coup
  - Increasing levels of violence and political violence
- Elections and primaries (2012/2013)
- 2017 Presidential Election
  - Hernandez (PN) vs. Nasralla (Alianza Opositora)
  - Allegations of irregularities
  - Protests and social unrest
  - Deaths, injuries, arrests, mistreatment during detention, illegal house raids, use of excessive force, etc.

AMERICAN OVERSIGHT

Gangs

- Barrio 18, MS-13, Chirizos, and other local gangs
- Likely have a national presence, but most prominent in cities
- Nominally hierarchical, but more horizontal
  - Leaders of cells have relative autonomy
  - Unable to exert total control over foot soldiers
- Organized crime & control of territory
  - Extortion & recruitment
  - Social & territorial control = source of revenue, recruits, status, strength, voluntary/involuntary collaborators, etc.
  - Fight for control of local drug sales (*plazas*)

AMERICAN OVERSIGHT

Transportistas

- Powerful organized crime groups
  - Drug trafficking & illicit activities
  - Prefer to use corruption and bribery rather than violence
    - Relative security within territory
- De facto control of areas of operation
  - Influence/control security forces and judicial officials
  - Links to political candidates, political elite, businessmen & landowners
  - Community members may act as lookouts or store drugs
- Violence - armed elements for enforcement and security
  - Fight for control of trafficking routes and territory
  - Assassination, threats, and violence
    - Internal disputes and punishment
    - People who pose risks or refuse to collaborate

AMERICAN OVERSIGHT

Bandas

- Armed groups that commit criminal activities in a distinct territory
  - Highly localized - operate in certain cities and rural areas
  - Violent confrontations with gangs and other *bandas*
- Different from a gang
  - More sophisticated and experienced organized crime structures (or have links to them)
  - Less identity based
- Rural/provincial areas
  - May be directed by local politicians or families
  - Reportedly terrorize local populations
  - Land and cattle theft, kidnapping, assassination, extortion, drug trafficking

AMERICAN OVERSIGHT

Children

- Violence from gangs, organized crime, security forces, and family members
- Domestic violence = serious problem
- Sexual violence and sexual predation
- Schools
  - 1 million children ages 3-17 not enrolled in school
- Child protection
  - Exists on paper, not in practice

AMERICAN OVERSIGHT

Women/Girls

- Violence against women
  - UN: “widespread and systematic”
  - Family members, partners, gangs, organized crime

- Femicide
  - 5,600 murders in last 15 years (as of 2018)
  - One woman killed every 16 hours

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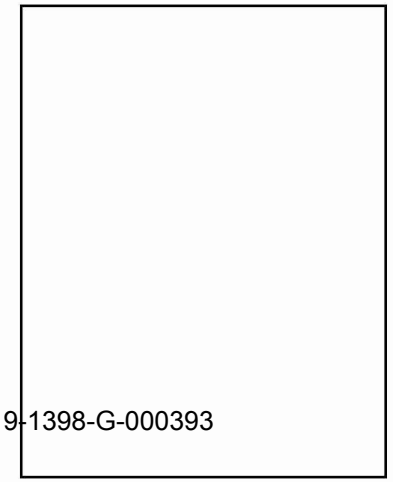

AMERICAN OVERSIGHT

Women/Girls

- Domestic & intrafamily violence
  - "culture of violence exists within households"
- Sexual violence
  - Girls and adolescents - majority of victims
  - Forced prostitution & sex trafficking
- Underreporting & impunity
  - 463 women murdered in 2016
    - 15 investigations
    - 2 convictions

AMERICAN OVERSIGHT

LGBTI

- Widespread social discrimination
- Violence increasing since 2009 coup
  - Abuse, assault, and murder
  - Transgender individuals
    - Most murders per capita in the world, with women at particular risk
- Military & police
  - Harassment and abuse
  - Allegedly responsible for majority of violent deaths
- Gangs - hatred and ill-treatment
- High levels of impunity

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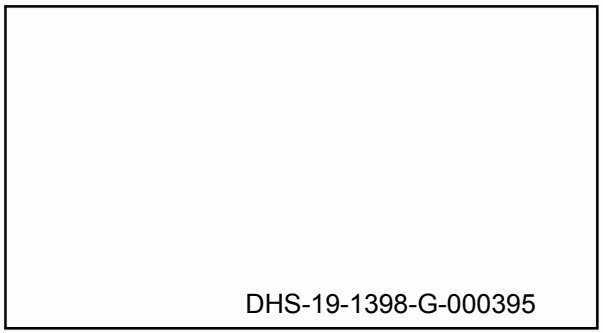

AMERICAN OVERSIGHT

Garifuna

- Caribbean coast

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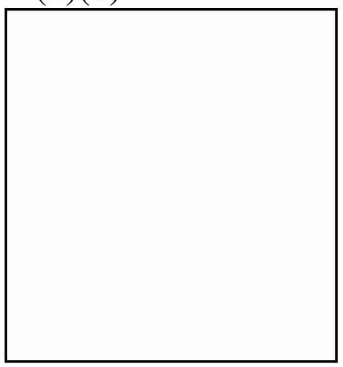
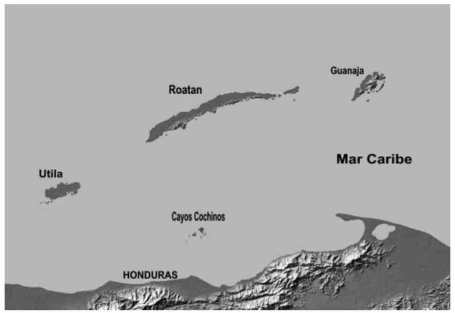


- Political & socio-economic marginalization
- Racial discrimination - hard to find jobs
- Land rights
  - Loss of ancestral and communal land (since mid-1990s)
  - Real estate and tourist development, agro-business, and drug trafficking
  - Government tries to change/ignores laws, yet claims land is respected
  - International lawsuits (IACHR)
  - Repression, threats, arson, abductions, criminalization, murder, harassment and abuse of leaders, activists & communities defending land
- Migration
  - Most have family in U.S. (est. 100,000)
  - Intense in 2013/2014 = 60 per day

AMERICAN OVERSIGHT

Isleños (Bay Island Creoles)

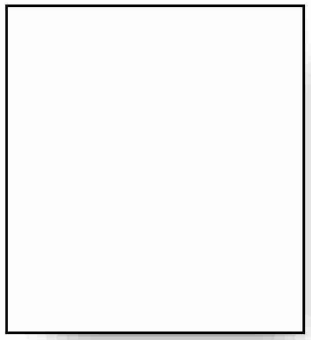
- English speaking, Afro-Honduran population
- History of marginalization
- Loss of land due to tourism (since 1990s)
  - 70% of land devoted to tourism
  - $1 million per acre
  - 75% of land is foreign owned
  - Irregularities related to real estate - illegal sales, homes ordered destroyed to sell land, etc.
- Not strongly organized to address social and economic issues



AMERICAN OVERSIGHT

Indigenous Groups

- Lenca, May Chorti, Tolupan, Garifuna, Nahua, Pech, Tawahka, Miskito
- 620,000 to 1.5 million (8%-20%)



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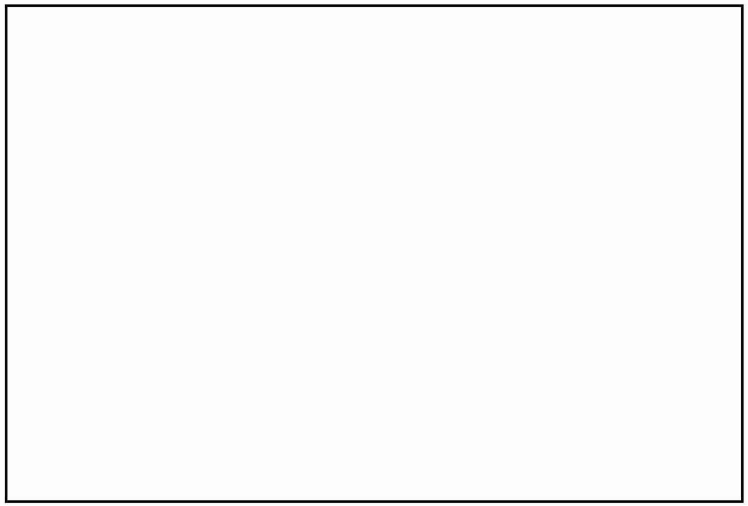
- Issues
  - Discrimination & racism
  - Socio-economic marginalization (poverty, health, education)
  - Lack of political representation and access to justice
  - Land rights
    - Expropriation, development projects, illicit activity, protected areas
    - Violence from drug traffickers, organized crime, and the state
    - Harassment, threats & murder of activists & defenders of land rights

AMERICAN OVERSIGHT

Policia Nacional de Honduras

“close to completely dysfunctional”



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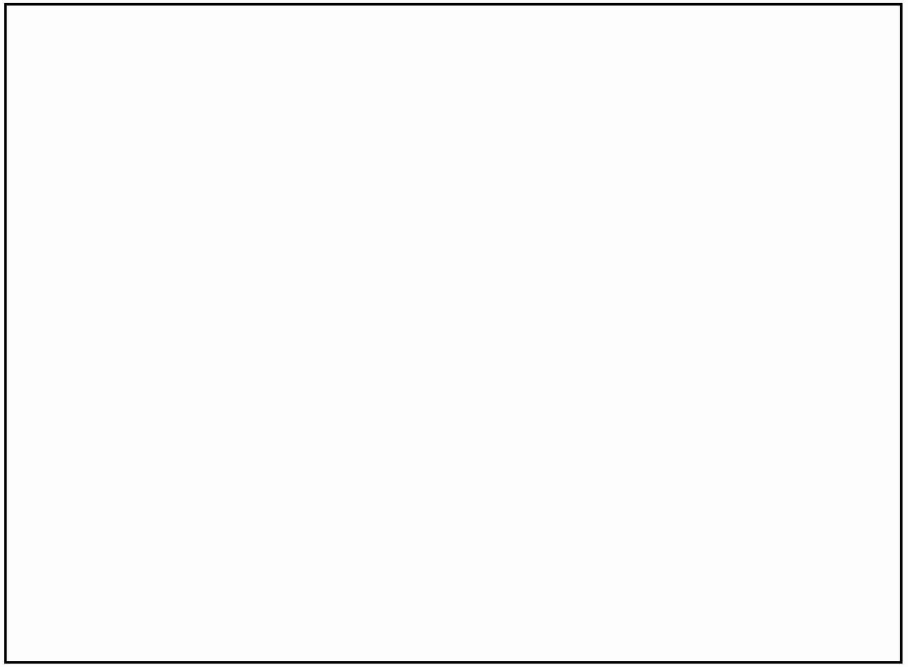

“largest criminal group in Honduras”

“Air traffic control men” for drug flights

AMERICAN OVERSIGHT

Policia Nacional de Honduras

- Unable to protect the population
  - Do not have a permanent presence in gang neighborhoods
  - Temporary presence during operations, but ineffective
- Corruption = widely documented
  - Aug. 2013: 3/4 of police "beyond saving"
- Criminal activity
  - Assassinations, drug trafficking, smuggling, robbery, extortion, kidnapping
  - Protecting drug traffickers & links to organized crime
  - Pass information, collude, or even work for gangs
- Infiltration and/or control by organized crime and gangs

AMERICAN OVERSIGHT

Policia Nacional de Honduras

- Extra-judicial killings and use of lethal force
  - Over 600 people killed since 2008
- Human rights abuses
  - Impunity and lack of investigations
- Lack resources, equipment, funding, human capital, staff, etc.
  - 14,000 police, but need 26,000
- Targeted by gangs and organized crime
  - Extortion, attack, assassination (especially if live in gang area)
  - Whistleblowers = threatened and harassed
- Police Reform Commission (est. 2016)
  - Over 5,200 employees have been purged

AMERICAN OVERSIGHT

Trust in Police & Reporting Crimes

- General lack of trust in state institutions
  - Prefer to file complaints with civil society organizations or CONADEH
  - 80% of crimes not reported
- Fear or low opinion of police
  - Working for organized crime, engaged in criminal activity, corruption, human rights violations, etc.
  - Individual officers or units may be trusted
- Police response to *denuncias*
  - Don't do anything or refuse to accept *denuncias*
  - Often warn victims of the risks they are taking
    - i.e. retaliation, stigmatization, murder, etc.

AMERICAN OVERSIGHT

Fuerzas Armadas

- Increased involvement in public security since 2011

- *Policía Militar del Orden Público* (PMOP)
  - Soldiers specialized in police functions
  - Combat organized crime and establish security in gang areas
  - Viewed more positively than the police

- Issues
  - Act with impunity - not trained, lack of civilian oversight
  - Human rights violations
    - Killing of civilians, torture, rape, kidnapping, extortion, arbitrary detention, excessive use of force, hitlist of environmental/social activists
  - Collusion with drug traffickers

- Targeted by gangs and organized crime

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AMERICAN OVERSIGHT

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Non-State Armed Groups

- Death squads
  - Extra-judicial killings of suspected gang members & low-income youth
  - Hundreds of cases documented since 2000
    - Witnesses, complaints, video evidence, etc.
  - Security forces in civilian clothing?

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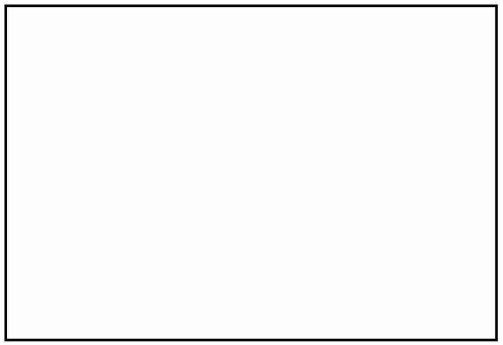

- Vigilante groups/militias
  - Offer protection, but become predatory

- Private security guards
  - 60,000 to 70,000 security guards (700 companies)
  - More than double the amount of police and military
  - UN: alleged involvement in human rights violations

AMERICAN OVERSIGHT

Guatemala

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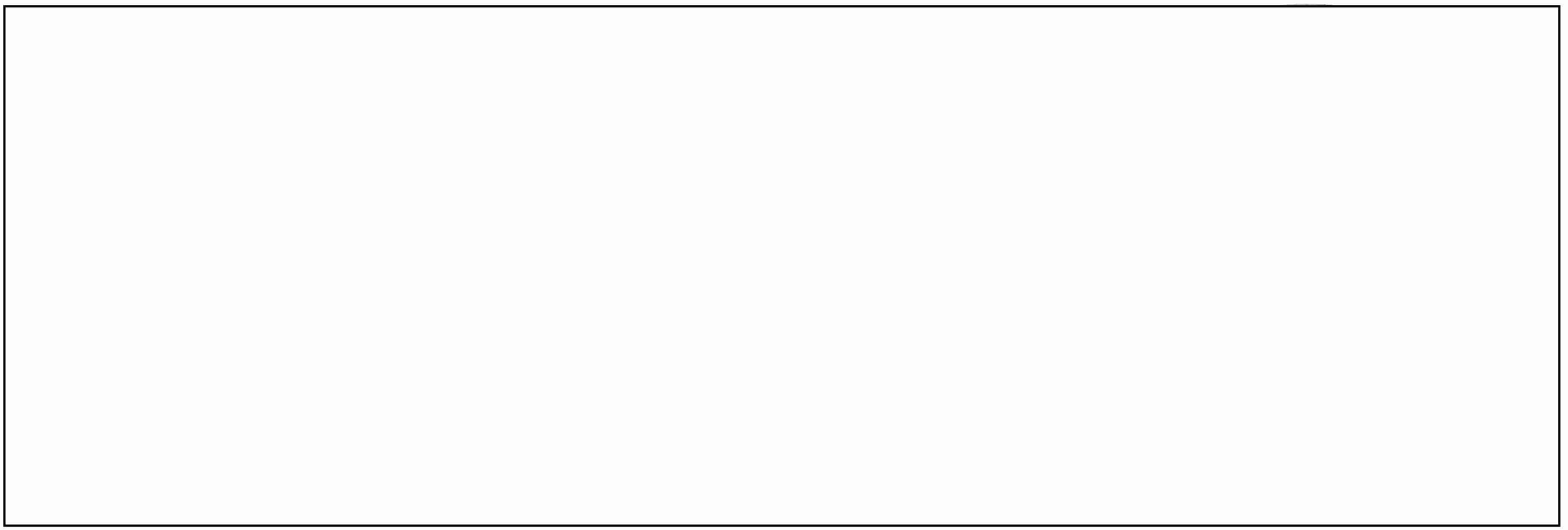

AMERICAN OVERSIGHT

Illegal Clandestine Security Apparatuses (CIACS)

- Powerful clandestine networks
  - Clandestine security and intelligence networks formed during the civil war, but not dismantled
  - "Hidden powers"
- Various types of loosely defined groups
  - May be embedded within government institutions and civil entities
  - Often reportedly include former and current high-level military officials
- Activities
  - Sophisticated criminal activities
  - Provide services to other organized crime groups
- International Commission Against Impunity in Guatemala (CICIG)
  - Formed to help investigate and dismantle them

AMERICAN OVERSIGHT

Transportistas

- Most powerful organized crime groups
  - Drug trafficking and other illicit activities
  - Rely on corruption and bribery of national and local police, military, judicial, and government officials
  - Replace state's social and security presence in certain areas

- Strongholds = eastern border with Honduras, southwest border with Mexico, southern coast, Alta Verapaz & Petén departments

- Violence
  - Fight for control of illicit activity
  - Armed elements for enforcement and security
  - Threats & assassinations
    - Internal disputes and punishment
    - Represent a challenge or oppose interests (i.e. refuse to sell land)

AMERICAN OVERSIGHT

Gangs

- MS-13, Barrio 18, & local gangs
- Geographic distribution
  - Urban areas & large cities (Guatemala City metro area)
  - Increasing in towns and population centers of more provincial departments
  - Indigenous areas?
- Organized crime and control of territory
- Gang problem not as severe as in El Salvador & Honduras
  - Fewer members
  - National presence – unlikely?
  - Responsibility for extortion?
  - Extent of social and territorial control?

AMERICAN OVERSIGHT

Land Rights

- Unequal land tenure
  - 8% of producers control 78% of land
  - Few ways to assert rights or question transfers
  - Communal landowning not protected by law
  - 800,000 landless families
- Social conflict over land
  - 1,293 land conflicts affect over 1 million people (81% indigenous)
  - Extractive industries and energy projects
  - Disputes between municipalities

AMERICAN OVERSIGHT

Children

- Societal violence
  - Family members, gangs, organized crime, security forces
- Domestic & sexual violence
- Socio-economic conditions
  - 10% of kids never attend school
  - Child labor - over 25% of the labor force
- Child protection
  - Laws and policies not effectively implemented

AMERICAN OVERSIGHT

Women/Girls

- Violence against women
  - Widespread - social and cultural norms
  - Family members, gangs, organized crime
  - 1/3 of women living with a man suffer family violence
- Femicides
  - Two women violently killed each day
- Domestic & sexual violence
- Underreporting & impunity

AMERICAN OVERSIGHT

LGBTI

- General societal discrimination
  - Access to education, health care, employment, housing
- Violence
  - Harassment, assault, abuse, murder
  - Transgender individuals
    - Second most murders per capita in the world
- Harm by gangs, police, and other public officials

AMERICAN OVERSIGHT

Indigenous Groups

- 40% - 60% of the population

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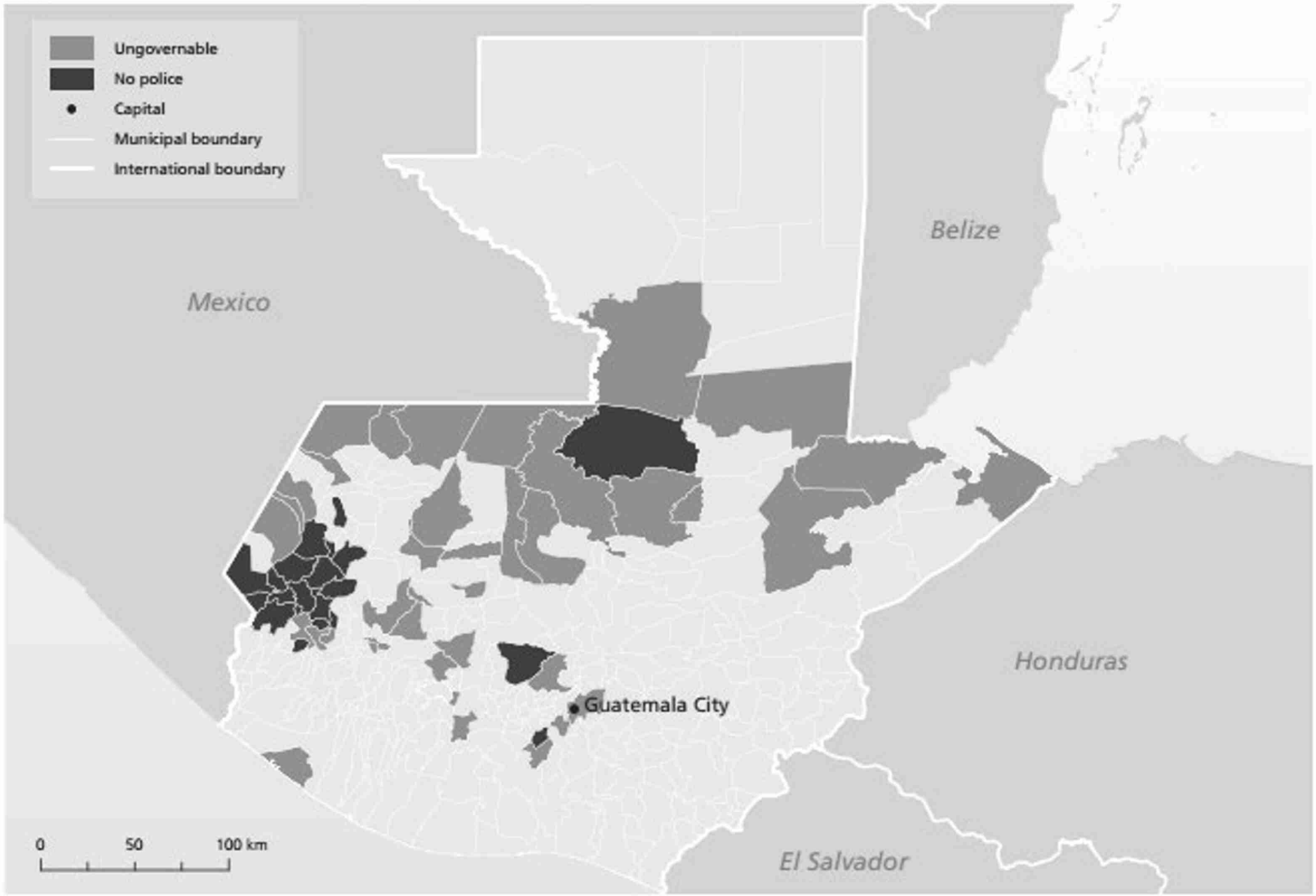
- Not homogenous
  - Maya (Western Highlands)
    - 21 different language groups
    - Intra-indigenous conflict
  - Xinca (southeast)
- Historic and structural exclusion
  - land ownership, access to services, labor conditions, formal economy, justice, representation in media, politics, etc.
- Systematic discrimination and racism
  - Normalized - “verge on segregation”
- Social conflict
  - Extractive industry & development projects
  - Activists and human rights defenders targeted and harmed

AMERICAN OVERSIGHT

Map 12: Guatemala: municipal governability, 2011



Source: UNODC, elaborated from information from the Ministerio de Gobernación (Guatemala)

AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

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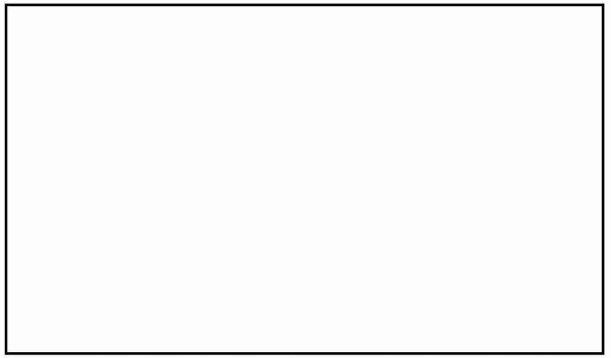

- 35,000 officers
- Corruption
- Criminal activity
  - Extortion, kidnaping, trafficking, etc.
  - 1,000 removed since 2012
- Infiltration by organized crime
- Human rights violations
  - Violent evictions of protesters and community members

AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- Sporadic presence in rural areas
- Lack necessary funding, supplies, training & personnel
- Lack necessary operational capacity
  - "Incapable or unwilling to confront criminals"
  - Temporary operations
  - Often fail to provide protection from gangs in urban areas
- Distrusted and feared
  - 76% = little to no trust
- "Well-armed criminals know there is little chance they will be caught or punished"

AMERICAN OVERSIGHT

Ejército

- 23,000 troops
- Increased involvement in public security since early 2000s
  - "Task forces" & joint military/police patrols
  - Seen as a solution, but no visible improvements in security
- Human rights concerns
  - Militarization of law enforcement
  - Past and present abuses
- March 2018: stopped performing public security functions

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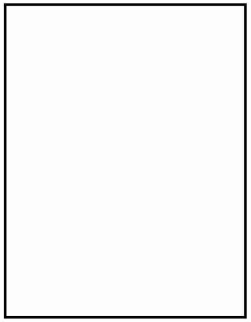

AMERICAN OVERSIGHT

Non-State Groups

- Local Security Boards (*Juntas Locales de Seguridad*) or Citizen Security Committees (*Comités de Seguridad Ciudadana*)
  - Local groups focused on community policing
  - Over 1,000 groups - 1/3 unregistered
  - Substantial degree of autonomy
  - Executions, extortion, kidnapping, curfews, illegal arrests, vigilante justice
- Vigilantism
  - Significant increase since 2004
  - Rural and indigenous communities with high levels of extortion, lack of confidence in state institutions, suspicion of outsiders
  - Mob justice, lynching, torture, etc.
- Private security guards
  - 70,000 to 150,000
  - Criminal activity, links to CIACs/organized crime, violence in land disputes

AMERICAN OVERSIGHT

Nicaragua



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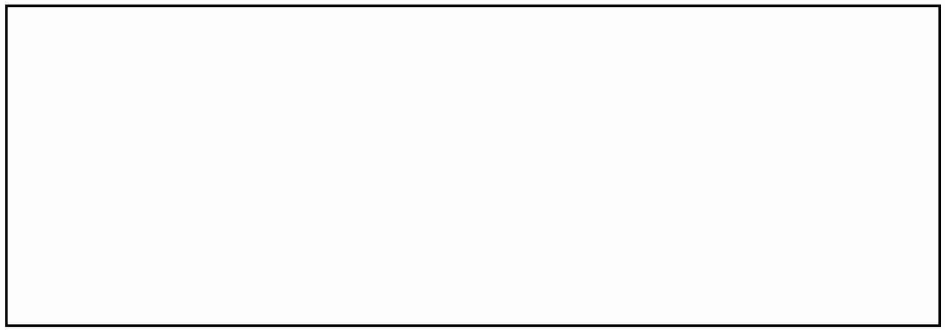
AMERICAN OVERSIGHT

The Ortega Administration

- Daniel Ortega & Rosario Murillo
  - Ortega = President (1979-1990, 2007-Present)
  - Murillo = Vice-President (2017-Present)
  - Control virtually every aspect of government and many state institutions
    - National Assembly, courts, armed forces, police, electoral council, etc.

- *Frente Sandinista de Liberación Nacional* (FSLN)
  - Ruling political party
  - State power increasingly concentrated in the hands of FSLN



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AMERICAN OVERSIGHT

Protests & Social Unrest

- Deep-rooted grievances & precipitating factors
  - Social, political, and economic discontent
  - April 2018
    - State response to forest fires in Indio Maíz Biological Reserve
    - Reforms to social security system
- Outbreak & spread of protests (mid-April 2018)
  - Initial protests repressed by police & pro-government groups
  - Social unrest spreads and morphs into campaign for political reform (i.e. end to Ortega rule)

AMERICAN OVERSIGHT

Protests & Social Unrest

- Government responds with escalation of violence & repression
  - Police & pro-government armed groups
  - Likely ordered and directed by Ortega
- Targets
  - Actual and perceived opponents of the government, including their family members
  - People who participate in protests, assist or defend the rights of protesters, express dissenting opinions, etc.
- Harm & displacement
  - 322 killed and thousands injured
  - Over 60,000 people flee the country (most to Costa Rica)

AMERICAN OVERSIGHT

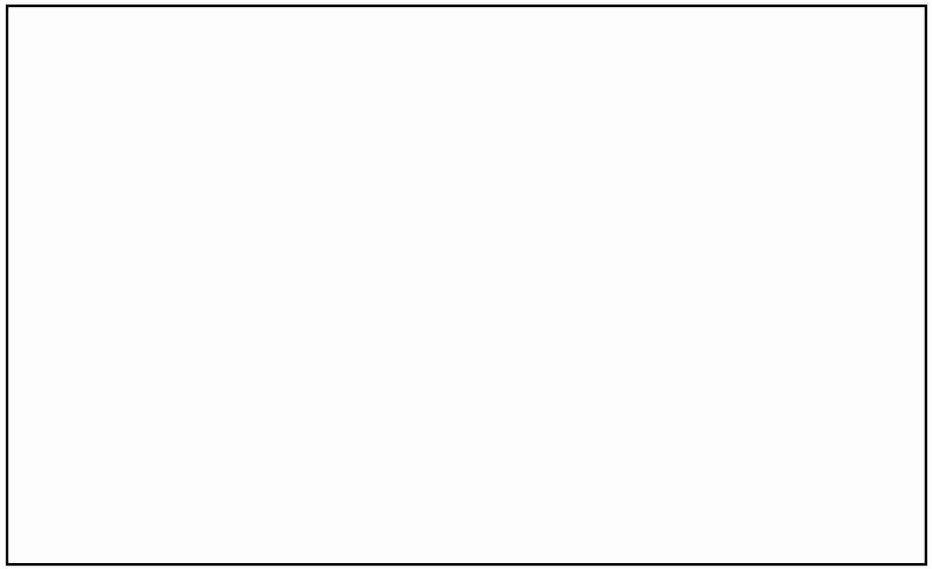
Protesters

- Wide range of social sectors oppose Ortega
  - Students, *campesinos*, private business, social movements, civil society groups, Catholic Church
- Protests, marches, rallies, occupation of universities & public buildings, roadblocks & barricades (*tranques*)
- Majority are peaceful, but some use violence
  - Respond to state violence with violence
  - Attacks against Sandinistas, government officials, security forces, public buildings, private property, etc.
- Stigmatized and blamed by the government for the violence

AMERICAN OVERSIGHT

State Repression

- Generalized repression of protests (April 18-May)
  - Violent repression and attacks by police and pro-government groups as protests spread
  - Mother's Day March (May 30) = 12 killed by snipers



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AMERICAN OVERSIGHT

Operación Limpieza (June-July)

- Forcible removal of roadblocks and barricades by state authorities and pro-government armed groups
- Incorporation of paramilitaries (parapolice)
- Increase in violence
  - Attacks against roadblocks & barricades leads to violent clashes between security forces and demonstrators
  - Murder, kidnapping, torture, disappearances, arbitrary detention, arson and looting

AMERICAN OVERSIGHT

Operación Limpieza (June-July)

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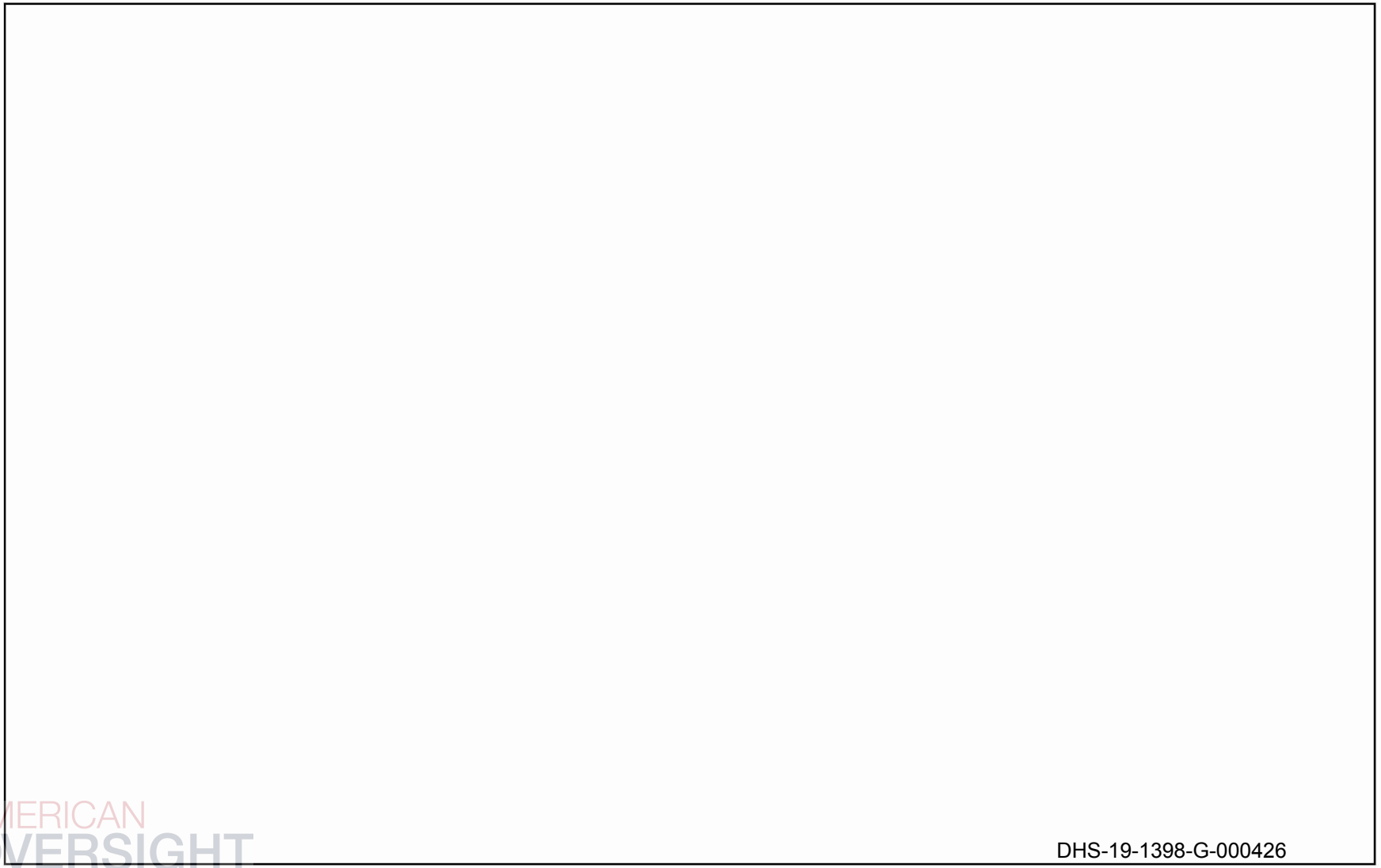

AMERICAN OVERSIGHT

State Repression

- Bureaucratic repression (mid-Jul to mid-Sep)
  - Criminalization & repression of individuals & groups perceived as supportive of protests or opposed to the government
  - Increase in arbitrary arrests and detentions
  - New anti-terrorism law

- Prohibition of social protests (starting in mid-Sep)
  - Stop protests & track down participants
    - Protests largely extinguished by the end of 2018
    - Carry the flag or sing the national anthem = viewed as subversive
  - Repression of civil society groups and media outlets

AMERICAN OVERSIGHT

State Repression

- Negotiations between the government and the opposition (February to April)
  - Repression of a protest & detention of protesters (March 16)
    - First major demonstration since mid-September
  - Government agreed to release political prisoners, but few have been released

- Collapse of talks (early April)
  - Opposition calls for a return to the streets

AMERICAN OVERSIGHT

Police

- Formerly a model force, but became partisan
  - Engage in repression or ignore actions of pro-government groups
- Repression of protests
  - Attacks; excessive use of force; extrajudicial killings; forced disappearances; arbitrary detentions; torture and mistreatment
  - Collude with, protect, or ignore actions of pro-government groups
  - Infiltrate protests, identify & hunt down opposition leaders?
- Vulnerable to harm
  - Violence against officers - 22 killed
  - Dissident officers
    - Disapproval of government methods or ask to be discharged
    - Phones hacked, threats, imprisonment, torture, killed

AMERICAN OVERSIGHT

Pro-Government Groups

- Sources use different names to refer to them
  - *Grupos de choque*, *fuerzas de choque*, *turbas sandinistas*, *grupos parapoliciales*, *parapolicias*, *elementos armados progubernamentales*, *para policiales*, *grupos para estatales*
- Appear to be two types
  - Pre-existing
  - Formed in response to 2018 protests
- Engage in repression
  - Do not identify themselves as police or state officials
  - Act parallel to police or in a coordinated manner

AMERICAN OVERSIGHT

Fuerzas de choque/turbas sandinistas/motorizados

- Formed in late 2007/early 2008
  - Participate in attacks and aggression against political opposition or expressions of social discontent
- Allegedly mobilized by FSLN
  - Members of *Juventud Sandinista*, state employees, aging or former gang members, people recruited by local political officials

AMERICAN OVERSIGHT

Fuerzas de choque/turbas sandinistas/motorizados



AMERICAN OVERSIGHT

Fuerzas de choque/turbas sandinistas/motorizados

- Suppression of anti-government protests
  - Mobilized to oppose demonstrators, organize parallel rallies, and harass and intimidate protesters
  - Use cudgels, sticks, stones, and helmets
  - Attacked protesters & engaged in arson, looting, and attacks on homes and businesses

- Act with the assent of high-level state officials and police, often jointly and in a coordinated manner

AMERICAN OVERSIGHT

Pro-Government Groups

- *Juventud Sandinista*
  - Youth movement of FSLN
  - Reportedly carried out attacks against protesters
- *Gabinetes de la Familia, la Comunidad y la Vida* (aka *Consejos de Poder Ciudadano* - CPC)
  - Community groups located in each neighborhood
  - Viewed as the main source of intelligence gathering for the government
  - Reportedly helped identify protesters and supporters
- *Comités de Liderazgo Sandinista*
  - Located within public institutions
  - Ensure public employees' participation in political acts & monitor those who do not sympathize with the government
  - Reportedly helped identify protesters and supporters

AMERICAN OVERSIGHT

Parapolice (*Parapolicia*)

- Operate as paramilitaries
  - Deadly repression of protests & attacks on opponents of Ortega
    - *Operación Limpieza*
    - Extrajudicial killings; kidnapping; forced disappearances; arbitrary detention; attacks; intimidation; arson & looting; surveillance; terrorize the public
  - More lethal & better organized than other groups

- Appearance
  - Wear ski masks, sometimes shirts of the same color (blue, green)
  - Toyota Hilux pick-ups, motorcycles, police vehicles
  - Military equipment & heavy weapons

AMERICAN OVERSIGHT

Parapolice (*Parapolicia*)







AMERICAN OVERSIGHT

Parapolice (*Parapolicia*)

- Members = unclear
  - Former police/military, former/current gang members, retired government officials, former guerrillas, *Juventud Sandinista* members, plain clothes police, local government employees?
  - Paid by the government?
  - Organized force operating within the police?

- Act with assent of high-level state officials and police, often jointly and in a coordinated manner
  - Act with total impunity
  - At times escorted by police
  - Ortega = *policias voluntarios*
  - Use of parapolice makes it harder to attribute human rights abuses to state security forces

AMERICAN OVERSIGHT

Types of Harm

- Excessive use of force
- Physical attacks
- Extrajudicial killings
- Forced disappearances
- Torture & ill-treatment (including sexual violence)
- Arbitrary or illegal detentions and arrests
- Kidnapping
- Obstructions to access medical care
  - State hospitals and medical clinics ordered to deny services to protesters
  - Police search hospitals
  - Police and parapolice prevent access to medical facilities

AMERICAN OVERSIGHT

Types of Harm

- Threats, intimidation, harassment
- Violations of due process
- Violations of free expression
- "Death lists"
- Hinder the right to access justice
- Criminalization & defamation
- House raids
- Arson, looting & robbery
- Arbitrary dismissals
  - State employees and workers at state-run institutions
  - Supported protests or defied government orders

AMERICAN OVERSIGHT

Cuba

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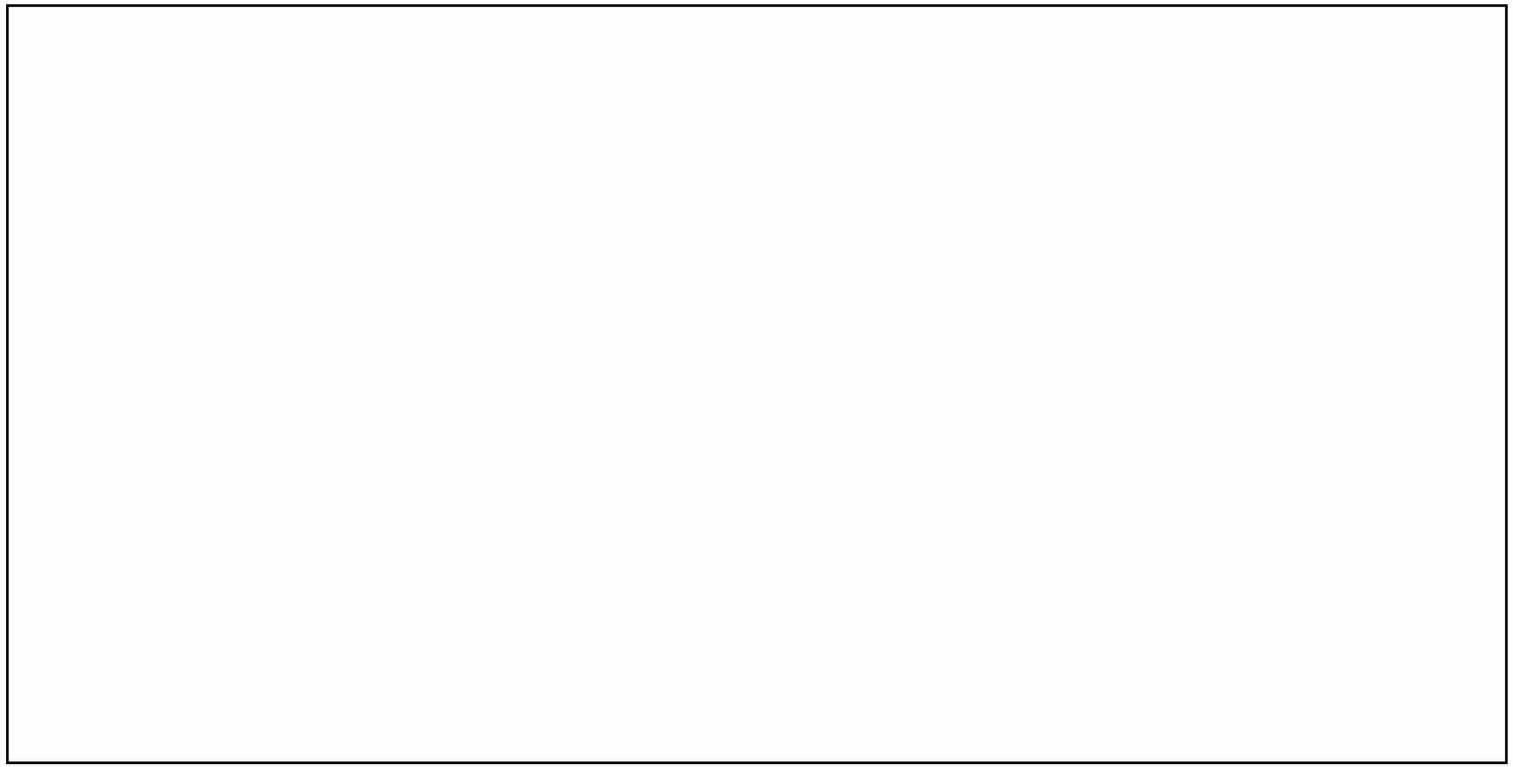

AMERICAN OVERSIGHT

COI Challenges

- Lack of objective, non-biased information
  - Cuban state run media
  - Exile community
  - Dissident groups
  - U.S. funded, independent Cuban media
- No independent human rights monitoring
- Independent Cuban media & blogs
- Cuba: Travel Regulations and Civil and Political Rights, COI Compilation (ACCORD)

AMERICAN OVERSIGHT

Cuba: State Control

- Socialist, one-party state
- Historic state monopoly/control of:
  - Economy
  - Employment
  - Housing
  - Healthcare
  - Education
  - Food production and distribution
  - Media



- Cuban government uses repression & control of resources and services to ensure conformity

AMERICAN OVERSIGHT

Cuba: Political Dissent

- Various actions may be viewed as political opposition (dissent)
  - Rights and freedoms exist, but cannot exercise them against the state & the political system
  - Dissident = anyone who engages in activities that the state deems contrary to its own political agenda
  - All dissent = "counter-revolutionary"
  - *Gusano*

- Law empowers the state to criminalize dissent
  - Vague laws - almost any act can be criminalized
    - Insult laws, insubordination, collaboration with the United States, denial of association and assembly, "dangerousness," etc.
  - "Virtually all activities are presumed illegal unless the law says otherwise"

AMERICAN OVERSIGHT

Evolution of State Repression

- Fidel Castro (1959-2006)
  - Repress all forms of dissent
    - Imprisonment, beatings, threats, surveillance, denial of basic rights
    - *"Periodic waves of heightened repression, marked by an increase in arbitrary arrests of dissenters"*
- Raul Castro (2006-2018)
  - Fewer long-term prison sentences
    - Release of most political prisoners
  - Increased use of:
    - Short-term, arbitrary arrests (prevent participation in marches or meetings)
    - Harassment and surveillance
    - "Dangerousness"
  - Limited reforms

AMERICAN OVERSIGHT

State Control Mechanisms

- Ministry of Interior
  - General Directorate for State Security
    - aka the "political police"
    - monitoring, infiltrating, and suppressing independent political activity
  - General Directorate of Internal Order
    - National Revolutionary Police (PNR)
      - Primary law enforcement organization
      - Suppress crime
      - Monitor activities after official warning
      - Support state security agents

AMERICAN OVERSIGHT

National Revolutionary Police (PNR)

- Most direct contact with the population

- *Jefe de sector*
  - Neighborhood police chief
  - Prevent crime in area of control (4 sq. km)
  - Oversee CDRs
  - Investigate crime and detain suspects
  - List of "anti-social" individuals
  - Issue warnings and fines
  - Interview citizens

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AMERICAN OVERSIGHT

Comités de Defensa de la Revolución (CDR)

- Every block in every neighborhood = 8.3 million members
- Monitor "counter-revolutionary" activity and defend the state
  - Like security cameras - always watching, even if you don't see them
- Work with security forces to suppress dissent
  - Surveillance
  - Report on fellow citizens
  - Acts of repudiation
  - Harass critics of the government
  - Keep records of residents and visitors
  - Recommendations for jobs/university
- Aesthetics, health and social issues, crime control
- Power and control reportedly on the decline



AMERICAN OVERSIGHT

Everyday forms of repression

- *Actos de repudio* (acts of repudiation)
  - Public protest outside the home of a dissident
  - Designed to humiliate, can become violent
  - Several hours
  - Supposedly neighbors, but probably government support

- Restrictions on expression & limited access to information
  - No independent media
  - Increasing control of public statements and work of intellectuals
  - Internet
    - Restricted and expensive
    - But access increasing

AMERICAN OVERSIGHT

Everyday forms of repression

- Threats and warnings
  - Implicit and explicit
  - Official warning - dangerousness and dissidents
- Invasive surveillance
  - Constant and multi-faceted
    - tap phones; hack email; bugs; clandestine searches; informants; film, observe, and photograph meetings; track movements
  - Government officials and civilians
    - State security & CDRs
- Reprisals against family members
- Fines



AMERICAN OVERSIGHT

Everyday forms of repression

- Denial of employment
  - Check with police and CDR before hiring
  - Need to be a member of the *Central de Trabajadores de Cuba* (CTC)
  - Fired for dissident group membership
- Education
  - Political clearance needed for university admission
  - Parents who teach contrary doctrine can be imprisoned
- Travel and mobility restrictions
  - Can still deny exit to dissenters, despite migration reforms
  - Decree 217 (1997): restricts internal movement of citizens
  - Prevented from leaving homes or streets during events

AMERICAN OVERSIGHT

Public Dissent

- Government claims that unrest could be an excuse for U.S. intervention
- Street demonstrations and anti-government activism are essentially forbidden
  - Protests are rare
  - Anti-Castro activity is controlled
- Uniformed police and plainclothes security forces respond quickly to protests
  - Psychological messaging
  - Strategic actions

AMERICAN OVERSIGHT

Who is a Dissident?

- Not homogenous
- Ideology
  - Democratic change
  - Apolitical
    - Practice religion
    - Organize a union
- Small and isolated groups
  - Efficiency of state at suppressing dissent
- Hundreds of organizations/groups
  - Human rights defenders
  - Journalists
  - Trade unionists
  - Political groups
  - Religious organizations
  - Civil society organizations
  - Government critics
  - Individuals who abstain from cooperating with the state

AMERICAN OVERSIGHT

Dissident Groups

- Small community
  - Groups and individuals linked to each other
- Alliances - constantly shifting
  - Boundaries not well defined
  - Prominent dissidents with own organizations
- How to define membership?
- Most active groups (recently)
  - *UNPACU*
  - *Damas de Blanco*
- Focused on international image
  - Funding and support
  - Can you trust their reporting?

UNPACU
UNION PATRIÓTICA DE CUBA

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AMERICAN OVERSIGHT

Dissident Groups: Perceptions

- Cuban government = U.S. backed mercenaries
- Cuban citizens = general skepticism
  - Not well known in Cuba
    - Successfully isolated from the population by the government
  - Not a lot of sympathy
  - Question backing and motivations
    - Funding from the United States
  - Struggle to connect with ordinary Cubans
    - Protest and denounce, but do not offer solutions to problems of daily life
  - Met with criticism and even anger

AMERICAN OVERSIGHT

Religion

- Post-revolution
  - State suppression of religion
    - Officially atheist until 1992
  - Discrimination against religious believers
    - Fired from jobs and sent to labor camps for "re-education" (1960s & early 1970s)

- Religious freedoms have expanded in the last two decades
  - Boom in evangelical worship
  - Catholic
    - 60-70% of the population
    - Catholic Church seen as a stable institution
  - Afro-Cuban & other religions

AMERICAN OVERSIGHT

Religion

- Government policies & practices restrict religious freedom
  - Monitors religious groups
  - Office of Religious Affairs: controls most aspects of religious life
    - Long waits for applications for recognition

- Restrictions/harm
  - Harass outspoken leaders
  - Prevent human rights activists from attending religious services
  - Use violence to prevent activists from protesting after religious services (*Damas de Blanco*)
  - Monitoring and surveillance
  - Climate of self-censorship

AMERICAN OVERSIGHT

Religion

- Evangelicals
  - Links to conservative missionaries from the United States?

- Construction of new churches
  - Cuba restricts ownership and construction of buildings
  - Vague status on new churches - prohibited?
  - House churches
    - Problems, but related to zoning issues?
    - Confiscation? Demolition? Prohibition?
    - Long waits for approval, if at all

AMERICAN OVERSIGHT

Religion

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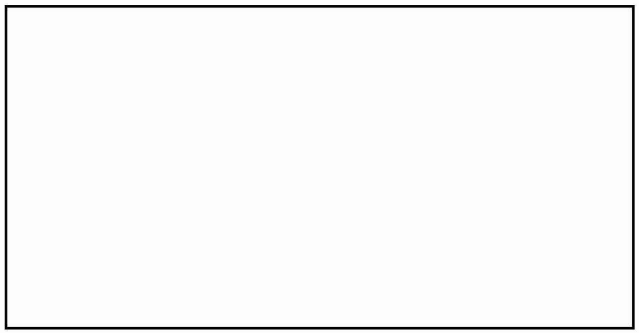

- Pastors
  - More likely to have issues
  - Detention and release

- Jehovah's Witnesses
  - Historically = "active religious enemies of the revolution"
  - Beliefs prohibit political involvement
  - Avoid university education
    - Students expected to be politically active and available for assignment for government duties after graduation
  - Lack of university education would make them ineligible for most professional careers

AMERICAN OVERSIGHT

Returnees

- Limited information available on what happens to returnees who left illegally

- Failed asylum seekers
  - Treatment upon return likely depends on what they did before they left Cuba
    - Good citizens - very little or nothing will be done
    - Wanted for felony - will be arrested
    - Family members - little repercussions, unless other issues involved
      - Relatives were high-ranking officials or broke the law

- Deserters
  - Could face consequences if they deserted while on an official mission
    - Ex. doctors, athletes

AMERICAN OVERSIGHT

Emigrants & Repatriation

- Cuban emigrants
  - Lose residency rights after 24 consecutive months outside of Cuba
  - All are eligible and can apply for repatriation
    - Unless committed "hostile acts against the state"
  - No longer stigmatized or ideologically suspicious
    - As long as they are not anti-government activists

- Return at the discretion of state officials?
  - Allegations of denials of re-entry
  - "Terrorists" and "political enemies" may be excluded from repatriation & visits

AMERICAN OVERSIGHT

Emigrants & Repatriation

- Rights of repatriated Cubans
  - Same constitutional, civil, and labor rights
  - Able to regain access to social benefits
    - Healthcare, food rations, education, etc.
  - Unable to re-obtain property confiscated by the state
- Attitudes of society
  - Too soon to tell?
  - Repatriation is not a widespread phenomenon

AMERICAN OVERSIGHT

Contact Info

RAIOResearch@uscis.dhs.gov

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Latin America

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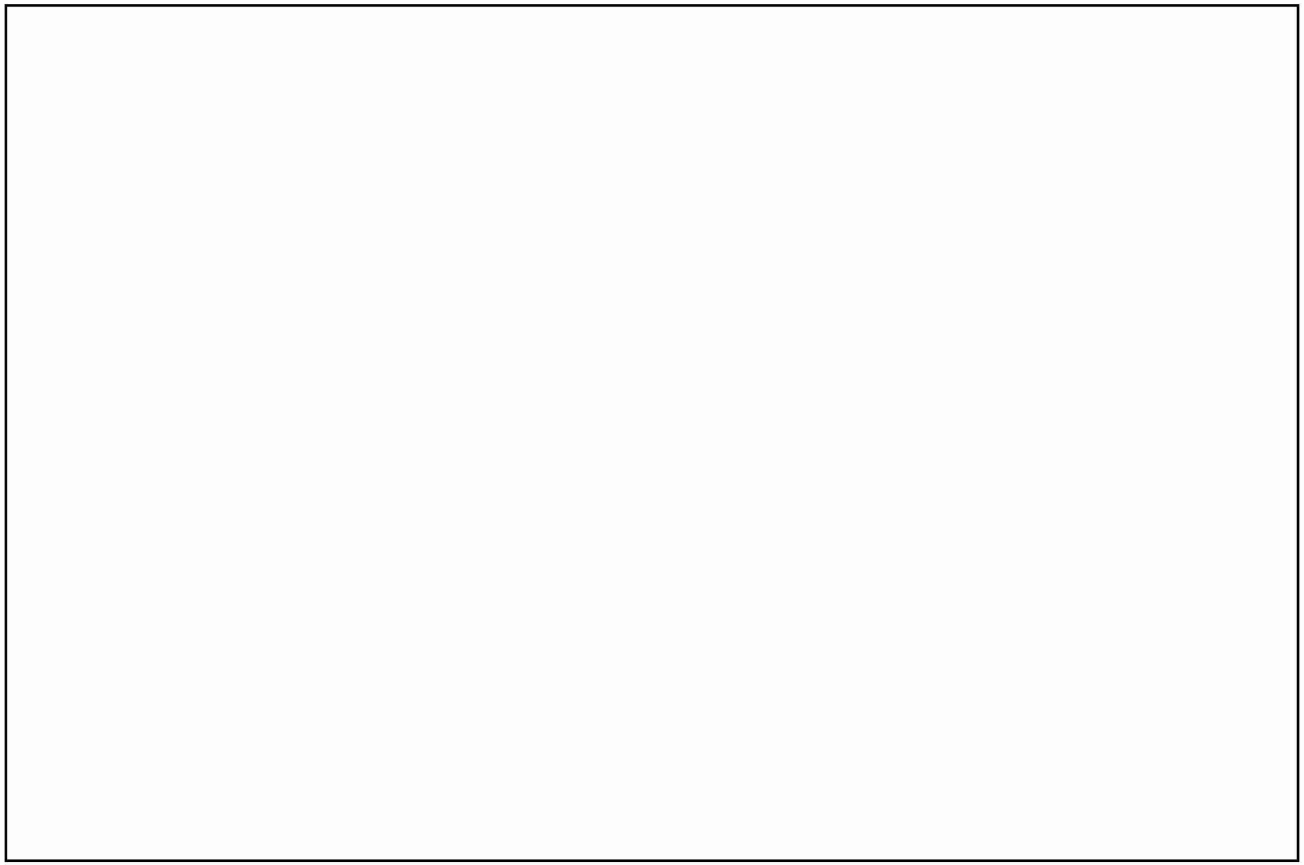
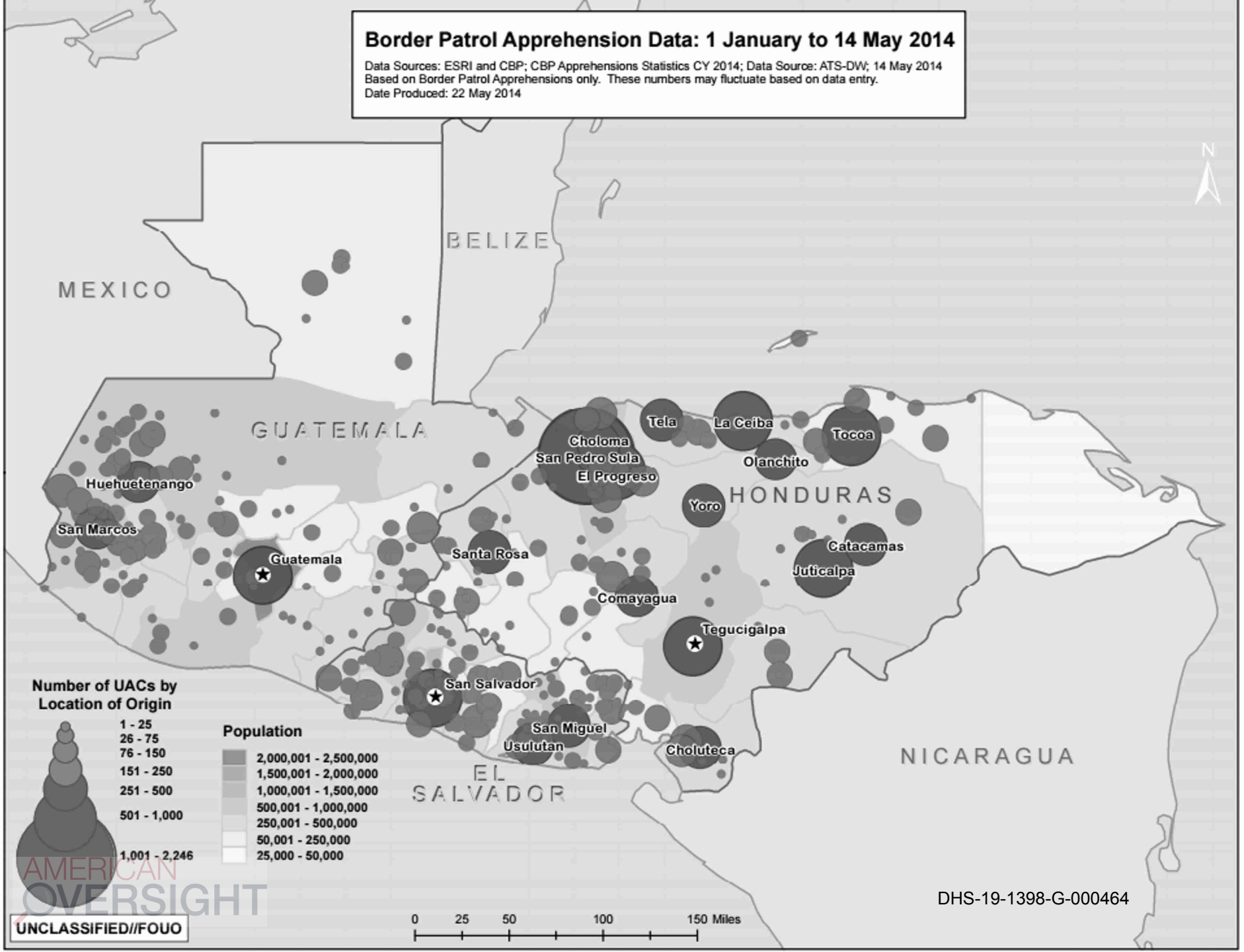


U.S. Citizenship and Immigration Services

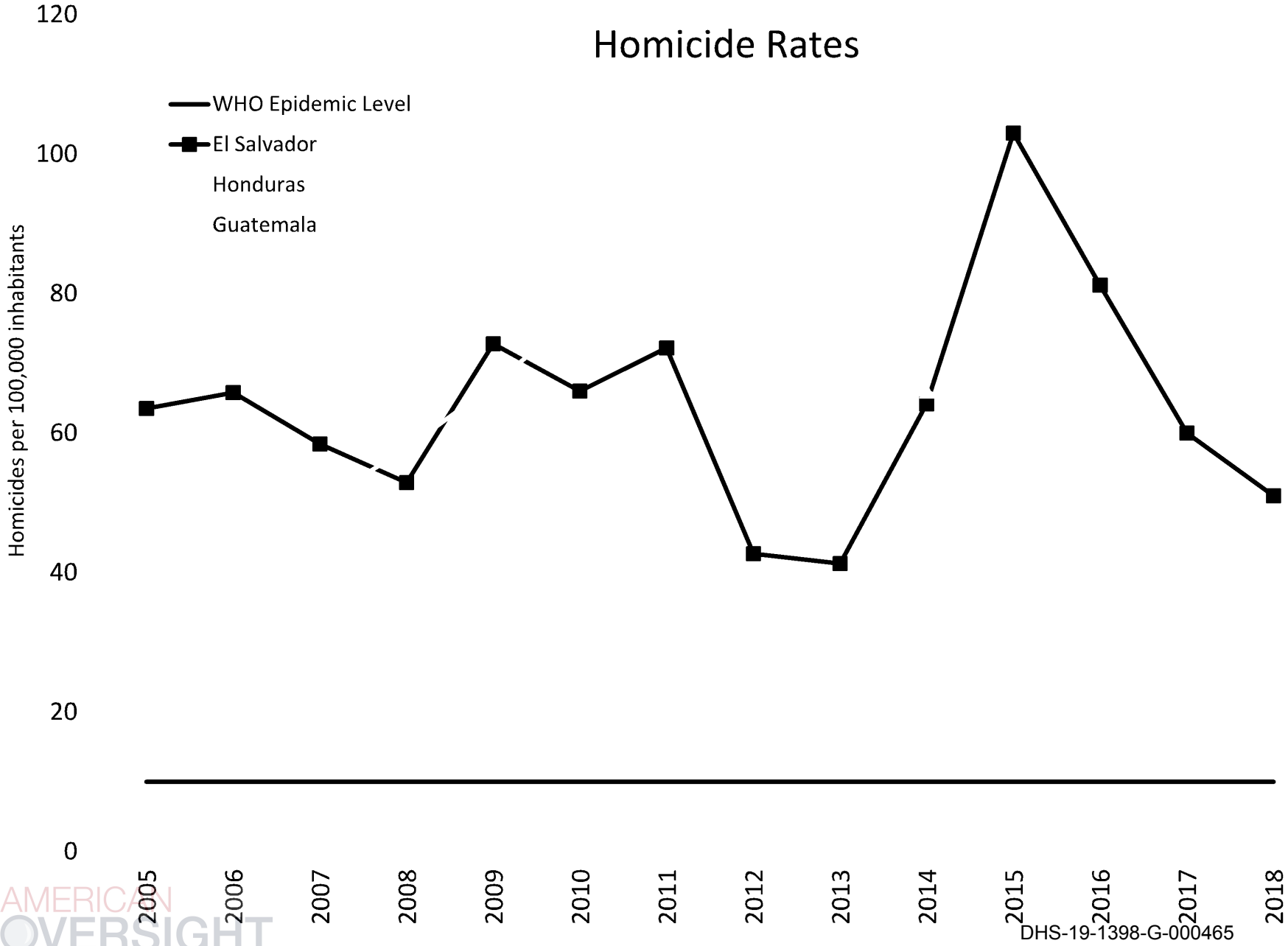
RAIO Research Unit

May 2019

DHS-19-1398-G-000463



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

El Salvador

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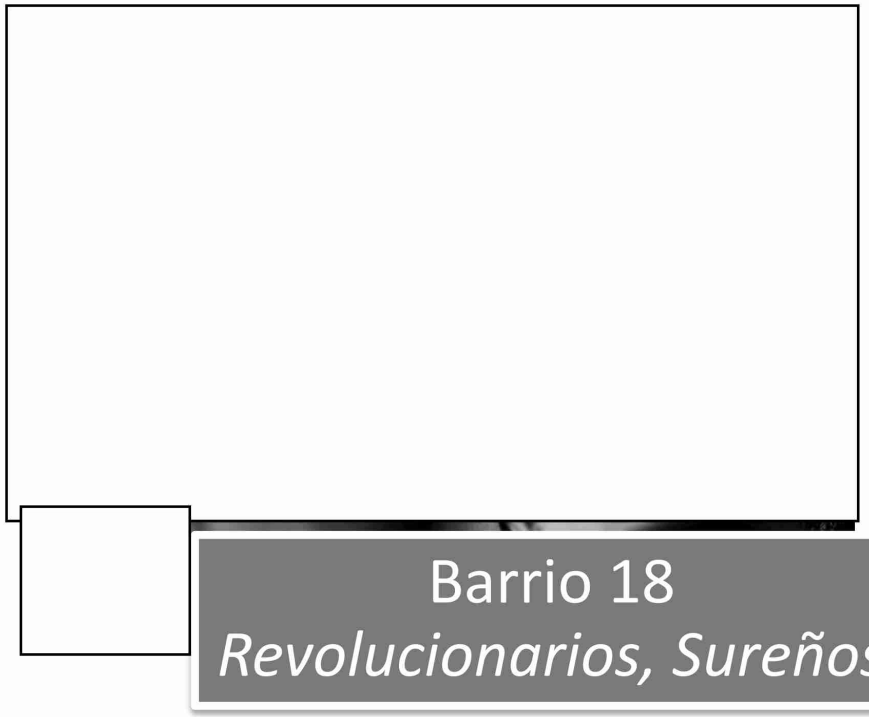
AMERICAN OVERSIGHT

Gangs



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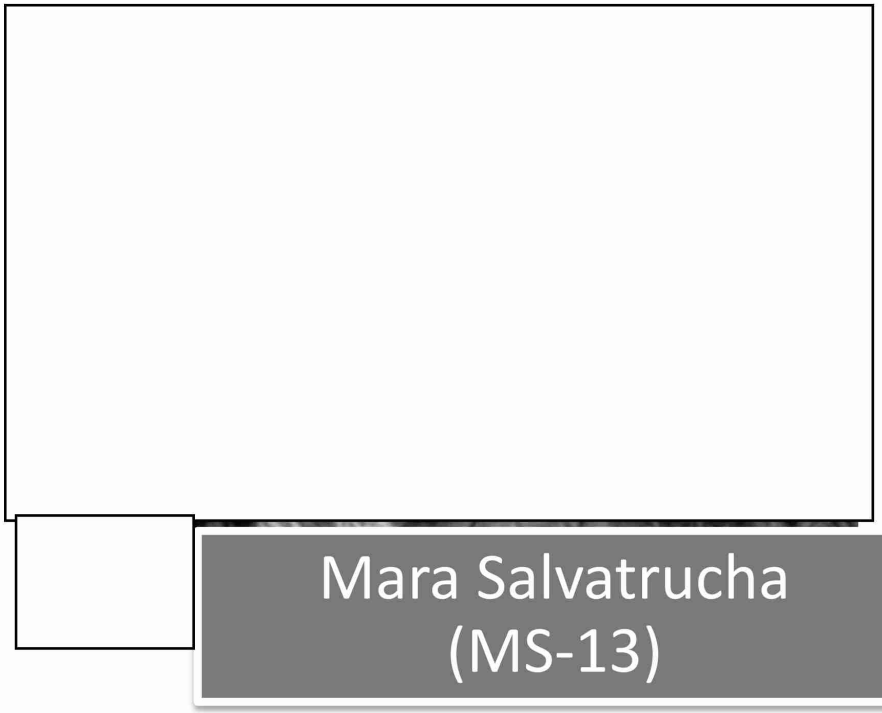


Barrio 18
Revolucionarios, Sureños

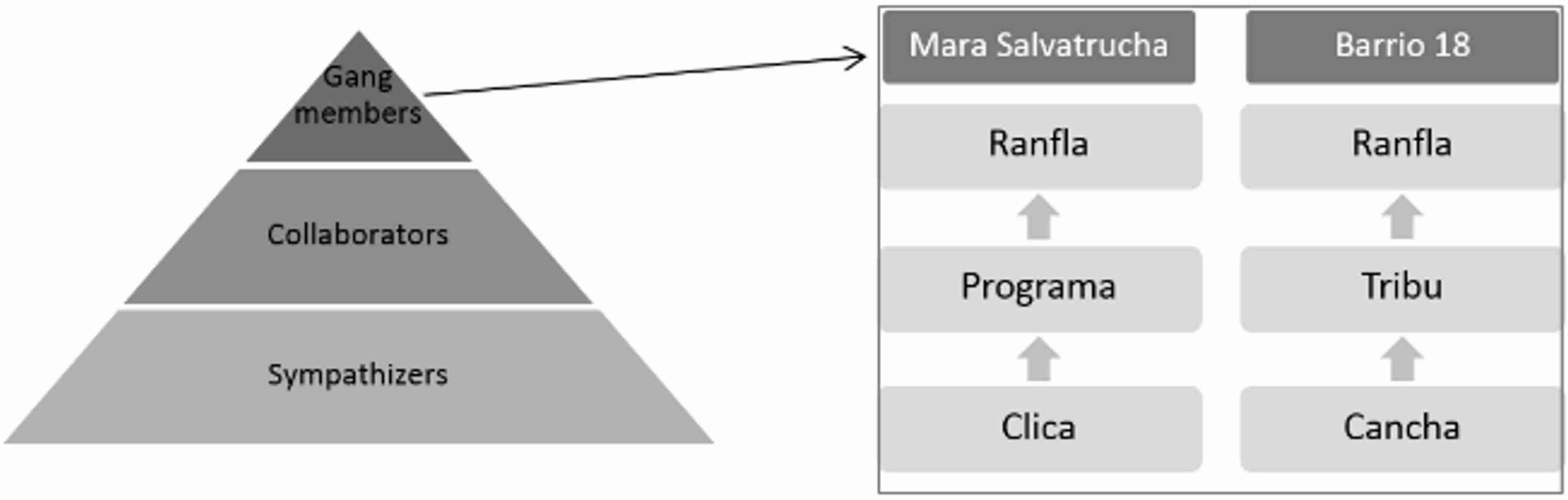
Mara Salvatrucha
(MS-13)

Other gangs: Mirada Locos 13, Mao Mao, La Maquína, La Raza, Sureños, Mara Desorden

AMERICAN OVERSIGHT

Gangs: Structure

Diagram: Gangs' structure[73]



Support structure

Internal structure

AMERICAN OVERSIGHT

Gangs

- Hierarchical
- Loose knit, disperse networks of factions
  - *Clicas* (MS-13) & *Canchas* (Barrio 18)
  - Affiliated franchises
  - Local leaders have a lot of autonomy and discretion over relationships, types of crime, and resources
  - Levels of violence and dependence on extortion may vary
- Geography
  - National influence
  - Likely have a national presence
  - Exercise de facto control in certain areas

AMERICAN OVERSIGHT

Gangs: Distinctive Traits

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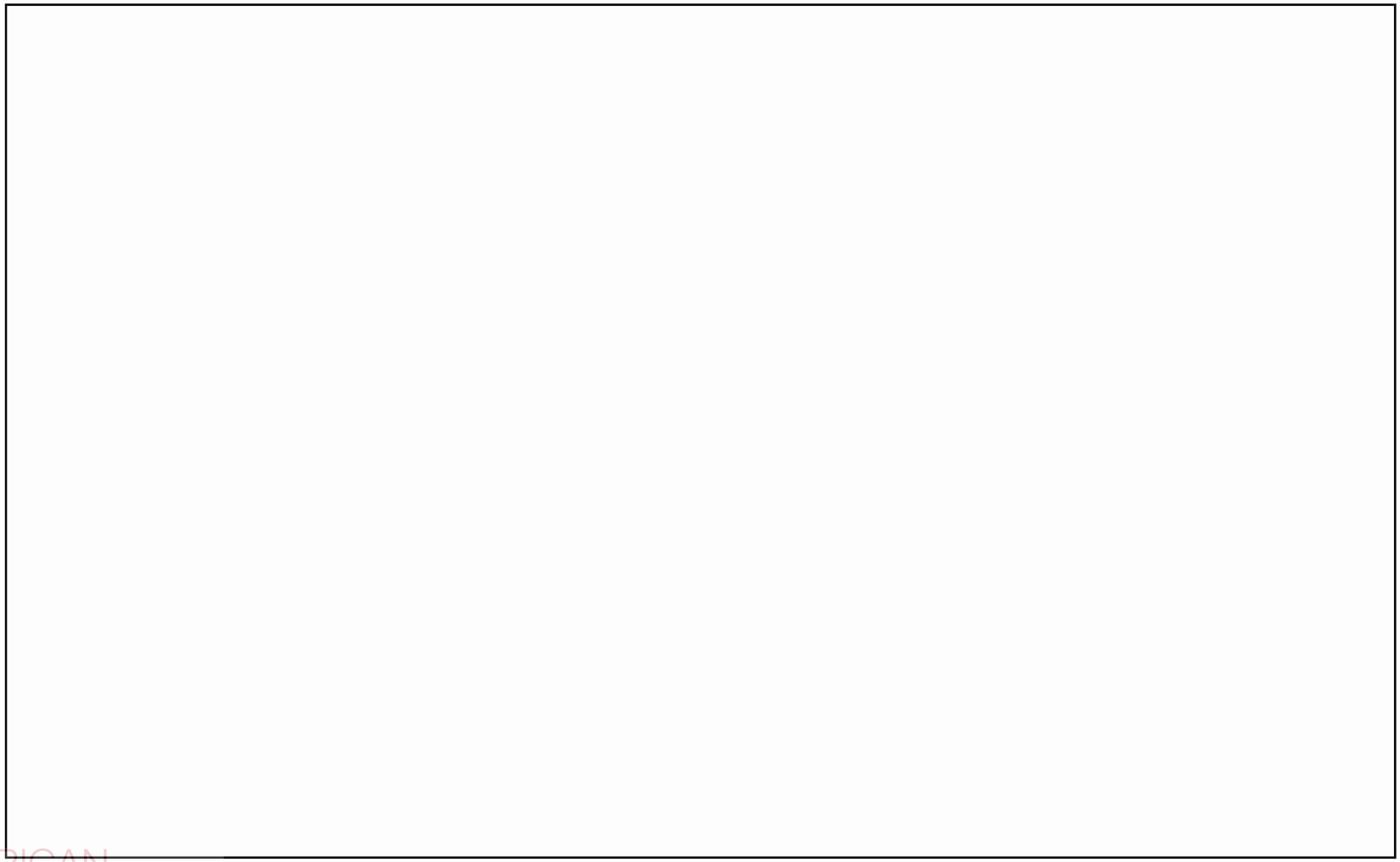

AMERICAN OVERSIGHT

Gangs: Distinctive Traits

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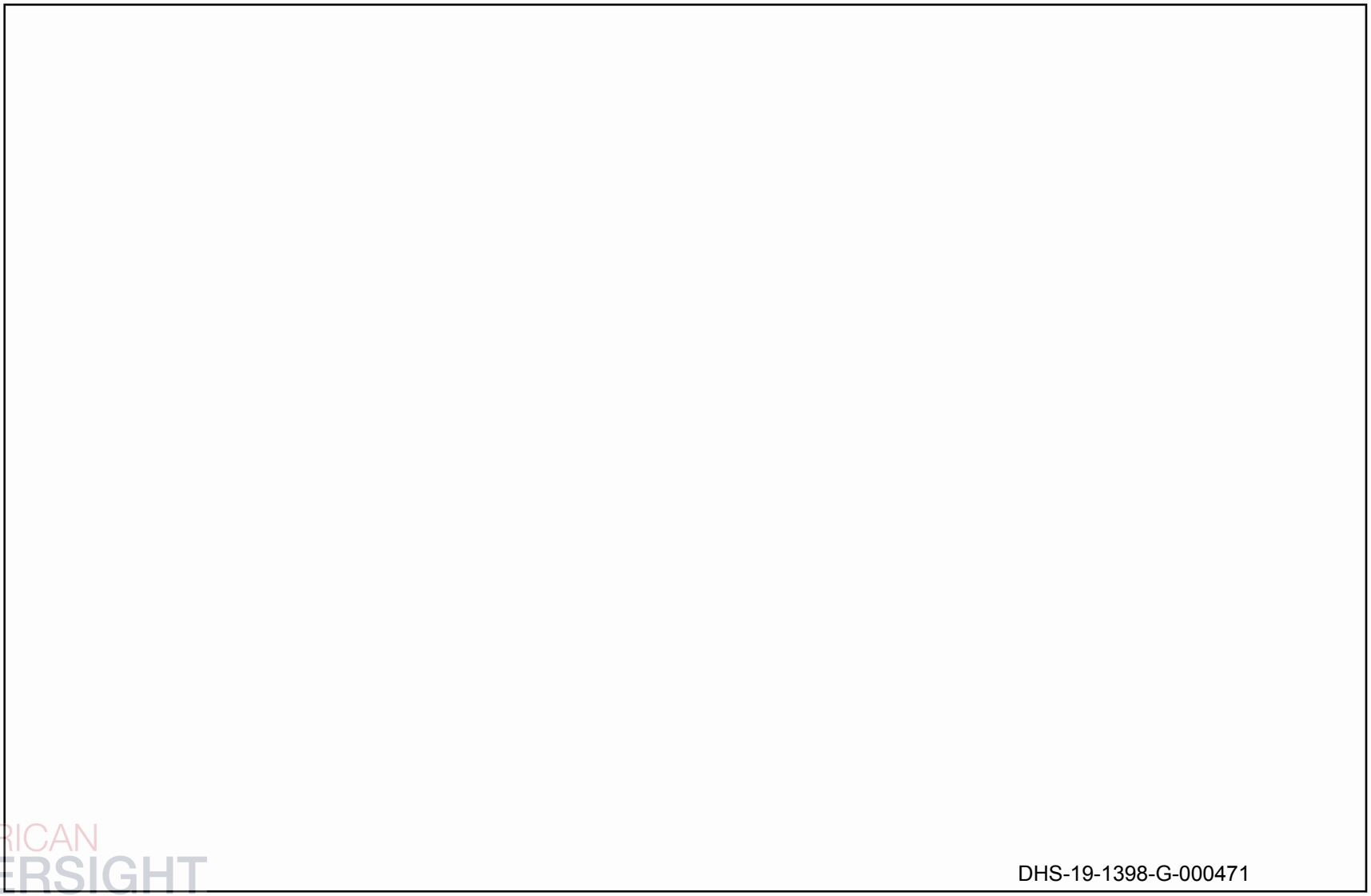

AMERICAN OVERSIGHT

Gangs: Distinctive Traits

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AMERICAN OVERSIGHT

Gangs: Recruitment/Coercion

- Increasing since collapse of gang truce = "collective panic"
- Conduct certain activities or work for gangs
  - Collect extortion, eavesdrop, chores, commit crimes, etc.
  - Not just membership
- Targets
  - All youth within community and in schools
  - Poor and broken families, live with grandparents, relatives in U.S., mental disabilities, psychological problems
  - As young as 9 to 12 years old (*postes*: 5 to 8 years old)
- Gender differences
  - Boys = attraction, then ask for favors
  - Girls = total victimization

AMERICAN OVERSIGHT

Gangs: Recruitment/Coercion

- Forced, voluntary, or half-voluntary/half-forced
- Refusal to join or collaborate
  - Viewed as challenge to authority or suspicion of rival affiliation
  - Results in threats, violence, or murder of individual or family member
- Options?
  - Very difficult to say no
  - Send kids to private school
  - Never leave the house - no school, work, or play
  - Flee the country
    - Hours or days to leave
    - Continuing threats and violence against family members

AMERICAN OVERSIGHT

Extortion (*La Renta*)

- Main source of revenue for gangs
  - Typically not protection, but rather social control and source of income
  - Business model
  - *Renta privada*

- Face to face, phone, or letters

- Payment
  - Periodic, sporadic, or one-time
  - Cash, goods, or services

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AMERICAN OVERSIGHT

Extortion (*La Renta*)

- Systematic vs. opportunistic
  - Everyone (institutionalized)
  - Case by case basis (perceived wealth)

- Refusal or inability to pay = threats or violence
  - Individual, employee, business, property, or family member
  - Refusal, delay, or continuing refusal can lead to escalating threats or murder
  - May continue even if business closes

- Most victims don't report to authorities

AMERICAN OVERSIGHT

Territorial and Social Control

- Goal = territorial control of areas of operation
  - Income from extortion
  - Identity, security, collaborators and sympathizers, and community that will not say anything to authorities
  - Seek to prevent infiltration of rivals
- "Invisible borders" between rival zones
- Social control
  - Viewed as de facto authorities
  - Enforce social norms via violence and threats
- Resistance to gang authority
  - Perceived or actual resistance to gang authority can lead to harm
  - Punishment depends on character of gang and type of resistance
  - But typically severe or brutal

AMERICAN OVERSIGHT

Children

- Violence
  - Targeted by gangs at home and in school
  - Youth homicide rate = among highest in the world
- Domestic and sexual violence
  - 70% experience physical violence from parents
  - 90% of sexual abuse by close male relatives
  - Underreported
- Family in the U.S.
- Child protection
  - Legislation & institutions exist, but implementation is the problem

AMERICAN OVERSIGHT

Women/Girls

- Violence against women
  - Patriarchal attitudes & *machista* culture
- Femicide = one of the highest rates in the world
  - Over 3,500 killed (2010-2017)
  - 39 murders per month (2017)
- Gangs - physical and sexual violence
  - Systematic use of sexual violence - dominance, status & revenge
  - Viewed as "property" of gangs
  - *novias de las pandillas*
  - May be "chosen" as girlfriends despite no actual relationship
  - *niñeras*

AMERICAN OVERSIGHT

Women/Girls

- Majority of violent acts committed by community & family members
- Domestic violence
  - Almost half of women experience violence from partner
- Sexual violence
  - Nearly 70% of perpetrators know the victim
  - Girls and adolescents most impacted
- Underreporting & lack of state protection

AMERICAN OVERSIGHT

LGBTI

- Widespread societal discrimination & marginalization

- Targeted for abuse and attacks
  - Over 600 murders since 1993
  - Sexual and physical violence, beatings, extortion, threats
    - 52% of transgender women - suffer threats or violence

- Systematic abuse by gangs and police
  - Gangs = sexual abuse, threats, attacks, forced labor, etc.
  - Police = abuse, extortion, false accusations, refusal to accept *denuncias*

- Lack of state protection
  - Laws and policies - often ignored or violated
  - Discrimination and lack of access to state services

AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- 1993: Post-civil war political solution
- 28,000 members
- Ineffective
  - "Like security guards"
  - Temporary presence
  - Poor relations with the community
- Repressive - use excessive force
- Lack of resources, equipment & training
- Poor working conditions & low pay



AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- Infiltration by gangs
  - Common perception, but some evidence
    - Officials expelled due to gang ties
    - Gangs have purchased police uniforms & gear

- Victimizers
  - Extra-judicial executions
    - "Shootouts" with gangs
  - Death squads
  - Human rights violations
  - Crime and corruption



AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- Anti-gang units dissolved due to allegations of human rights abuses (Feb. 2018)
  - *Grupo de Reacción Policial* (GRP)
  - *Fuerza Especializada de Reacción* (FES)

- Criticism of recent reforms
  - Units accused of human rights abuses are allegedly just dissolved & rebranded
  - Officers deployed to a new unit
  - New elite police unit = *Unidad Táctica Especializada Policial* (UTEP)

AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

- "Among the most vulnerable people in El Salvador"
- Targeted by gangs, along with family members
  - Post-truce - explicit threats against police
  - Threats, attacks & murders
    - Kill a police officer = more respected within the gang
  - Live in gang-controlled neighborhoods
    - Targeted when home from work or on leave
    - Many units forbidden to wear balaclavas
- Migration - *caravana policial*?

AMERICAN OVERSIGHT

Trust in Police & Reporting Crimes

- General lack of trust
  - Fear police more than gangs in certain areas
- Do not go to police nor submit a *denuncia*
  - Perceived as a waste of time
  - Authorities do nothing - 70% of reported crimes
  - Mistrust
  - Fear reprisals
    - Gang surveillance of police stations
    - Increased extortion or killed
- May have to flee the country

AMERICAN OVERSIGHT

Fuerza Armada

- Around 25,000 troops

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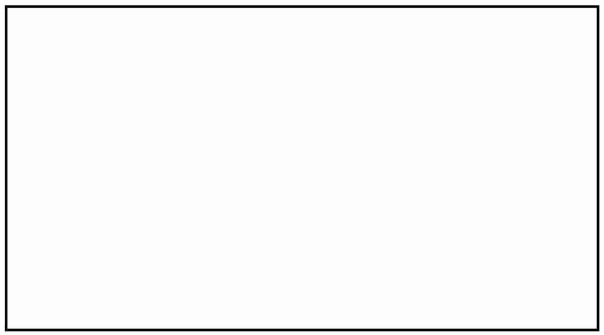

- Increased role in public security
  - Rapid reaction battalions
  - Special forces with police
- Human rights violations
  - Extra-judicial executions and illegal arrests
- Infiltration by gangs
- Targeted by gangs, along with family members

AMERICAN OVERSIGHT

Non-State Armed Groups

- *Grupos de exterminio* (death squads)
  - Alleged attacks have increased as gangs target police
  - Dressed as or similar to police/military
  - Clear pattern of "extermination violence…for purposes of social cleansing" of suspected gang members
  - Arrests of members and dismantling of death squads
  - *La Sombra Negra*
- Self-defense groups/vigilantes
- Private security guards
  - 23,000 agents

AMERICAN OVERSIGHT

Honduras

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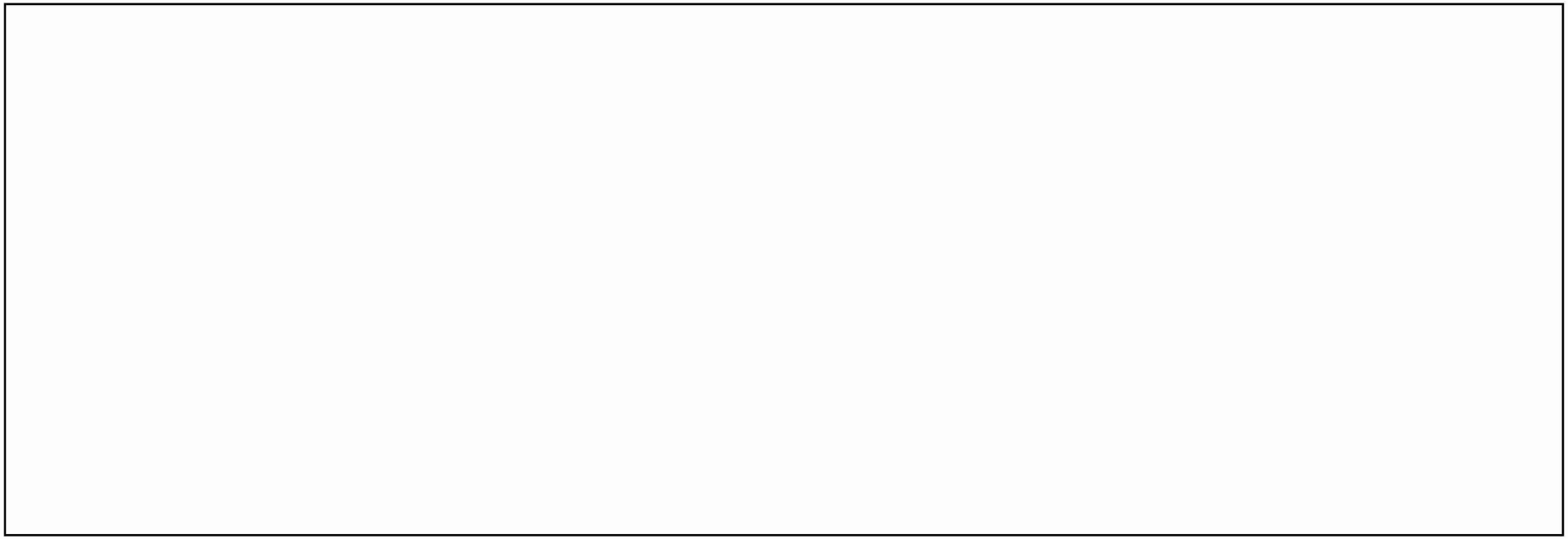

AMERICAN OVERSIGHT

Political Violence

- June 2009 coup
  - Increasing levels of violence and political violence
- Elections and primaries (2012/2013)
- 2017 Presidential Election
  - Hernandez (PN) vs. Nasralla (Alianza Opositora)
  - Allegations of irregularities
  - Protests and social unrest
  - Deaths, injuries, arrests, mistreatment during detention, illegal house raids, use of excessive force, etc.

AMERICAN OVERSIGHT

Gangs

- Barrio 18, MS-13, Chirizos, and other local gangs
- Likely have a national presence, but most prominent in cities
- Nominally hierarchical, but more horizontal
  - Leaders of cells have relative autonomy
  - Unable to exert total control over foot soldiers
- Organized crime & control of territory
  - Extortion & recruitment
  - Social & territorial control = source of revenue, recruits, status, strength, voluntary/involuntary collaborators, etc.
  - Fight for control of local drug sales (*plazas*)

AMERICAN OVERSIGHT

Transportistas

- Powerful organized crime groups
  - Drug trafficking & illicit activities
  - Prefer to use corruption and bribery rather than violence
    - Relative security within territory
- De facto control of areas of operation
  - Influence/control security forces and judicial officials
  - Links to political candidates, political elite, businessmen & landowners
  - Community members may act as lookouts or store drugs
- Violence - armed elements for enforcement and security
  - Fight for control of trafficking routes and territory
  - Assassination, threats, and violence
    - Internal disputes and punishment
    - People who pose risks or refuse to collaborate

AMERICAN OVERSIGHT

Bandas

- Armed groups that commit criminal activities in a distinct territory
  - Highly localized - operate in certain cities and rural areas
  - Violent confrontations with gangs and other *bandas*
- Different from a gang
  - More sophisticated and experienced organized crime structures (or have links to them)
  - Less identity based
- Rural/provincial areas
  - May be directed by local politicians or families
  - Reportedly terrorize local populations
  - Land and cattle theft, kidnapping, assassination, extortion, drug trafficking

AMERICAN OVERSIGHT

Children

- Violence from gangs, organized crime, security forces, and family members
- Domestic violence = serious problem
- Sexual violence and sexual predation
- Schools
  - 1 million children ages 3-17 not enrolled in school
- Child protection
  - Exists on paper, not in practice

AMERICAN OVERSIGHT

Women/Girls

- Violence against women
  - UN: “widespread and systematic”
  - Family members, partners, gangs, organized crime

- Femicide
  - 5,600 murders in last 15 years (as of 2018)
  - One woman killed every 16 hours

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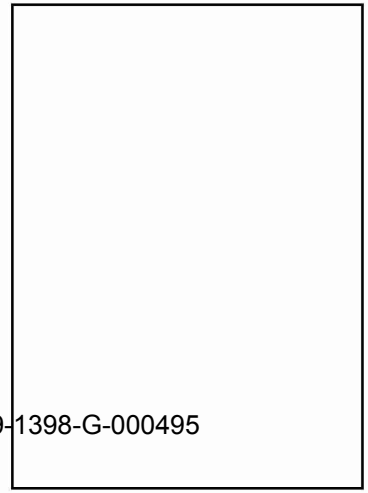

AMERICAN OVERSIGHT

Women/Girls

- Domestic & intrafamily violence
  - "culture of violence exists within households"
- Sexual violence
  - Girls and adolescents - majority of victims
  - Forced prostitution & sex trafficking
- Underreporting & impunity
  - 463 women murdered in 2016
    - 15 investigations
    - 2 convictions

AMERICAN OVERSIGHT

LGBTI

- Widespread social discrimination
- Violence increasing since 2009 coup
  - Abuse, assault, and murder
  - Transgender individuals
    - Most murders per capita in the world, with women at particular risk
- Military & police
  - Harassment and abuse
  - Allegedly responsible for majority of violent deaths
- Gangs - hatred and ill-treatment
- High levels of impunity

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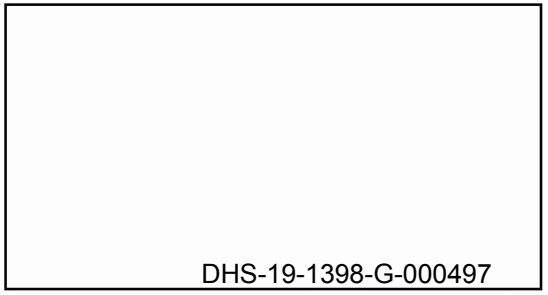

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AMERICAN OVERSIGHT

Garifuna

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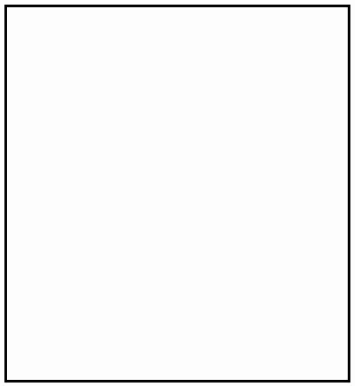
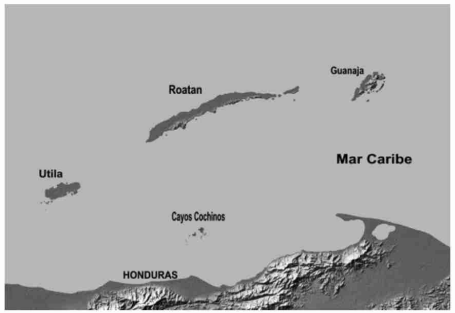


- Caribbean coast
- Political & socio-economic marginalization
- Racial discrimination - hard to find jobs
- Land rights
  - Loss of ancestral and communal land (since mid-1990s)
  - Real estate and tourist development, agro-business, and drug trafficking
  - Government tries to change/ignores laws, yet claims land is respected
  - International lawsuits (IACHR)
  - Repression, threats, arson, abductions, criminalization, murder, harassment and abuse of leaders, activists & communities defending land
- Migration
  - Most have family in U.S. (est. 100,000)
  - Intense in 2013/2014 = 60 per day

AMERICAN OVERSIGHT

Isleños (Bay Island Creoles)

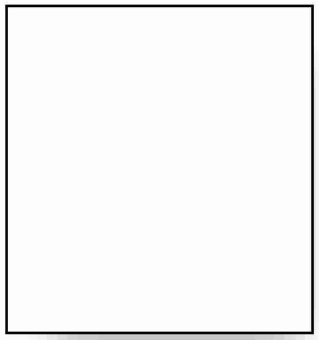
- English speaking, Afro-Honduran population
- History of marginalization
- Loss of land due to tourism (since 1990s)
  - 70% of land devoted to tourism
  - $1 million per acre
  - 75% of land is foreign owned
  - Irregularities related to real estate - illegal sales, homes ordered destroyed to sell land, etc.
- Not strongly organized to address social and economic issues



AMERICAN OVERSIGHT

Indigenous Groups

- Lenca, May Chorti, Tolupan, Garifuna, Nahua, Pech, Tawahka, Miskito
- 620,000 to 1.5 million (8%-20%)



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- Issues
  - Discrimination & racism
  - Socio-economic marginalization (poverty, health, education)
  - Lack of political representation and access to justice
  - Land rights
    - Expropriation, development projects, illicit activity, protected areas
    - Violence from drug traffickers, organized crime, and the state
    - Harassment, threats & murder of activists & defenders of land rights

AMERICAN OVERSIGHT

Policia Nacional de Honduras

“close to completely dysfunctional”

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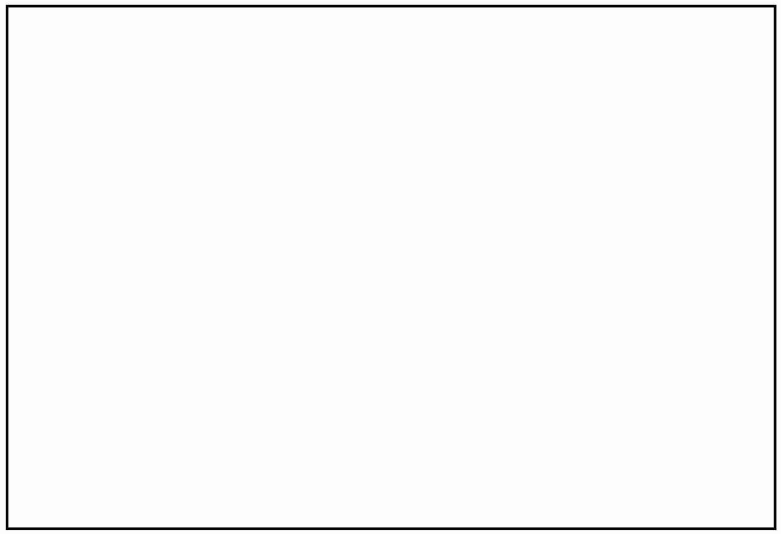

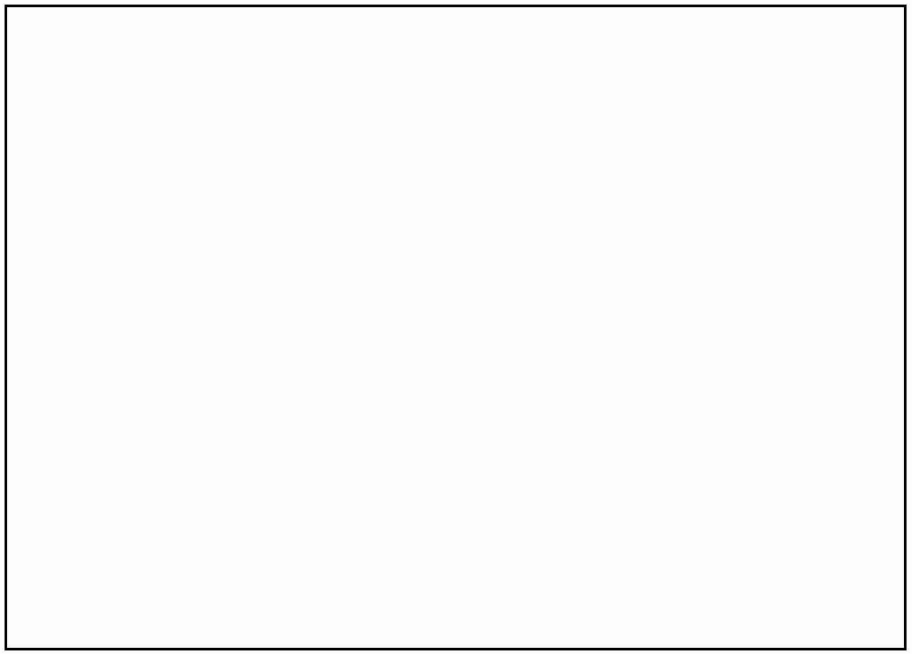

“largest criminal group in Honduras”

“Air traffic control men” for drug flights

AMERICAN OVERSIGHT

Policia Nacional de Honduras

- Unable to protect the population
  - Do not have a permanent presence in gang neighborhoods
  - Temporary presence during operations, but ineffective
- Corruption = widely documented
  - Aug. 2013: 3/4 of police "beyond saving"
- Criminal activity
  - Assassinations, drug trafficking, smuggling, robbery, extortion, kidnapping
  - Protecting drug traffickers & links to organized crime
  - Pass information, collude, or even work for gangs
- Infiltration and/or control by organized crime and gangs

AMERICAN OVERSIGHT

Policia Nacional de Honduras

- Extra-judicial killings and use of lethal force
  - Over 600 people killed since 2008
- Human rights abuses
  - Impunity and lack of investigations
- Lack resources, equipment, funding, human capital, staff, etc.
  - 14,000 police, but need 26,000
- Targeted by gangs and organized crime
  - Extortion, attack, assassination (especially if live in gang area)
  - Whistleblowers = threatened and harassed
- Police Reform Commission (est. 2016)
  - Over 5,200 employees have been purged

AMERICAN OVERSIGHT

Trust in Police & Reporting Crimes

- General lack of trust in state institutions
  - Prefer to file complaints with civil society organizations or CONADEH
  - 80% of crimes not reported
- Fear or low opinion of police
  - Working for organized crime, engaged in criminal activity, corruption, human rights violations, etc.
  - Individual officers or units may be trusted
- Police response to *denuncias*
  - Don't do anything or refuse to accept *denuncias*
  - Often warn victims of the risks they are taking
    - i.e. retaliation, stigmatization, murder, etc.

AMERICAN OVERSIGHT

Fuerzas Armadas

- Increased involvement in public security since 2011

- *Policía Militar del Orden Público* (PMOP)
  - Soldiers specialized in police functions
  - Combat organized crime and establish security in gang areas
  - Viewed more positively than the police

- Issues
  - Act with impunity - not trained, lack of civilian oversight
  - Human rights violations
    - Killing of civilians, torture, rape, kidnapping, extortion, arbitrary detention, excessive use of force, hitlist of environmental/social activists
  - Collusion with drug traffickers

- Targeted by gangs and organized crime



AMERICAN OVERSIGHT

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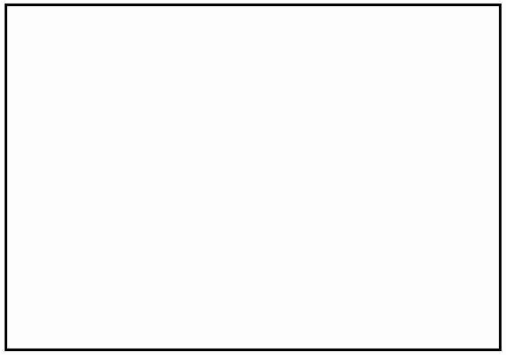
Non-State Armed Groups

- Death squads
  - Extra-judicial killings of suspected gang members & low-income youth
  - Hundreds of cases documented since 2000
    - Witnesses, complaints, video evidence, etc.
  - Security forces in civilian clothing?
- Vigilante groups/militias
  - Offer protection, but become predatory
- Private security guards
  - 60,000 to 70,000 security guards (700 companies)
  - More than double the amount of police and military
  - UN: alleged involvement in human rights violations



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AMERICAN OVERSIGHT

Guatemala

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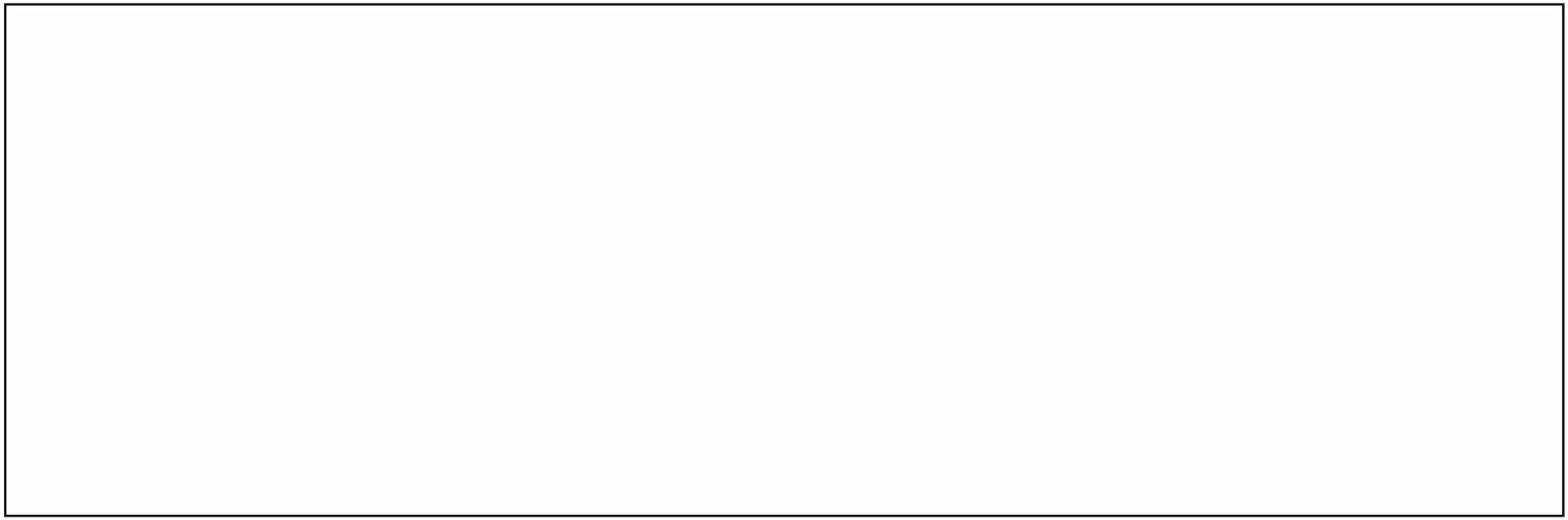

AMERICAN OVERSIGHT

Illegal Clandestine Security Apparatuses (CIACS)

- Powerful clandestine networks
  - Clandestine security and intelligence networks formed during the civil war, but not dismantled
  - "Hidden powers"
- Various types of loosely defined groups
  - May be embedded within government institutions and civil entities
  - Often reportedly include former and current high-level military officials
- Activities
  - Sophisticated criminal activities
  - Provide services to other organized crime groups
- International Commission Against Impunity in Guatemala (CICIG)
  - Formed to help investigate and dismantle them

AMERICAN OVERSIGHT

Transportistas

- Most powerful organized crime groups
  - Drug trafficking and other illicit activities
  - Rely on corruption and bribery of national and local police, military, judicial, and government officials
  - Replace state's social and security presence in certain areas

- Strongholds = eastern border with Honduras, southwest border with Mexico, southern coast, Alta Verapaz & Petén departments

- Violence
  - Fight for control of illicit activity
  - Armed elements for enforcement and security
  - Threats & assassinations
    - Internal disputes and punishment
    - Represent a challenge or oppose interests (i.e. refuse to sell land)

AMERICAN OVERSIGHT

Gangs

- MS-13, Barrio 18, & local gangs
- Geographic distribution
  - Urban areas & large cities (Guatemala City metro area)
  - Increasing in towns and population centers of more provincial departments
  - Indigenous areas?
- Organized crime and control of territory
- Gang problem not as severe as in El Salvador & Honduras
  - Fewer members
  - National presence – unlikely?
  - Responsibility for extortion?
  - Extent of social and territorial control?

AMERICAN OVERSIGHT

Land Rights

- Unequal land tenure
  - 8% of producers control 78% of land
  - Few ways to assert rights or question transfers
  - Communal landowning not protected by law
  - 800,000 landless families
- Social conflict over land
  - 1,293 land conflicts affect over 1 million people (81% indigenous)
  - Extractive industries and energy projects
  - Disputes between municipalities

AMERICAN OVERSIGHT

Children

- Societal violence
  - Family members, gangs, organized crime, security forces
- Domestic & sexual violence
- Socio-economic conditions
  - 10% of kids never attend school
  - Child labor - over 25% of the labor force
- Child protection
  - Laws and policies not effectively implemented

AMERICAN OVERSIGHT

Women/Girls

- Violence against women
  - Widespread - social and cultural norms
  - Family members, gangs, organized crime
  - 1/3 of women living with a man suffer family violence
- Femicides
  - Two women violently killed each day
- Domestic & sexual violence
- Underreporting & impunity

AMERICAN OVERSIGHT

LGBTI

- General societal discrimination
  - Access to education, health care, employment, housing
- Violence
  - Harassment, assault, abuse, murder
  - Transgender individuals
    - Second most murders per capita in the world
- Harm by gangs, police, and other public officials

AMERICAN OVERSIGHT

Indigenous Groups

- 40% - 60% of the population

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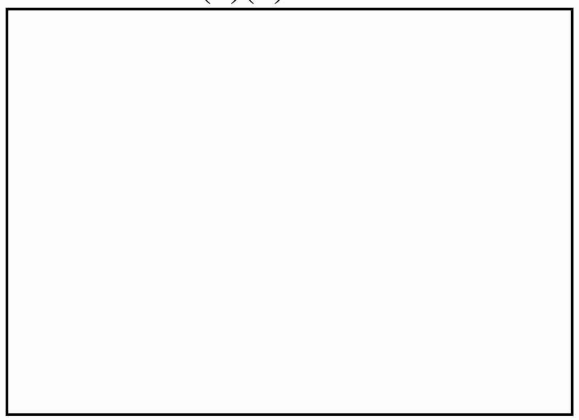
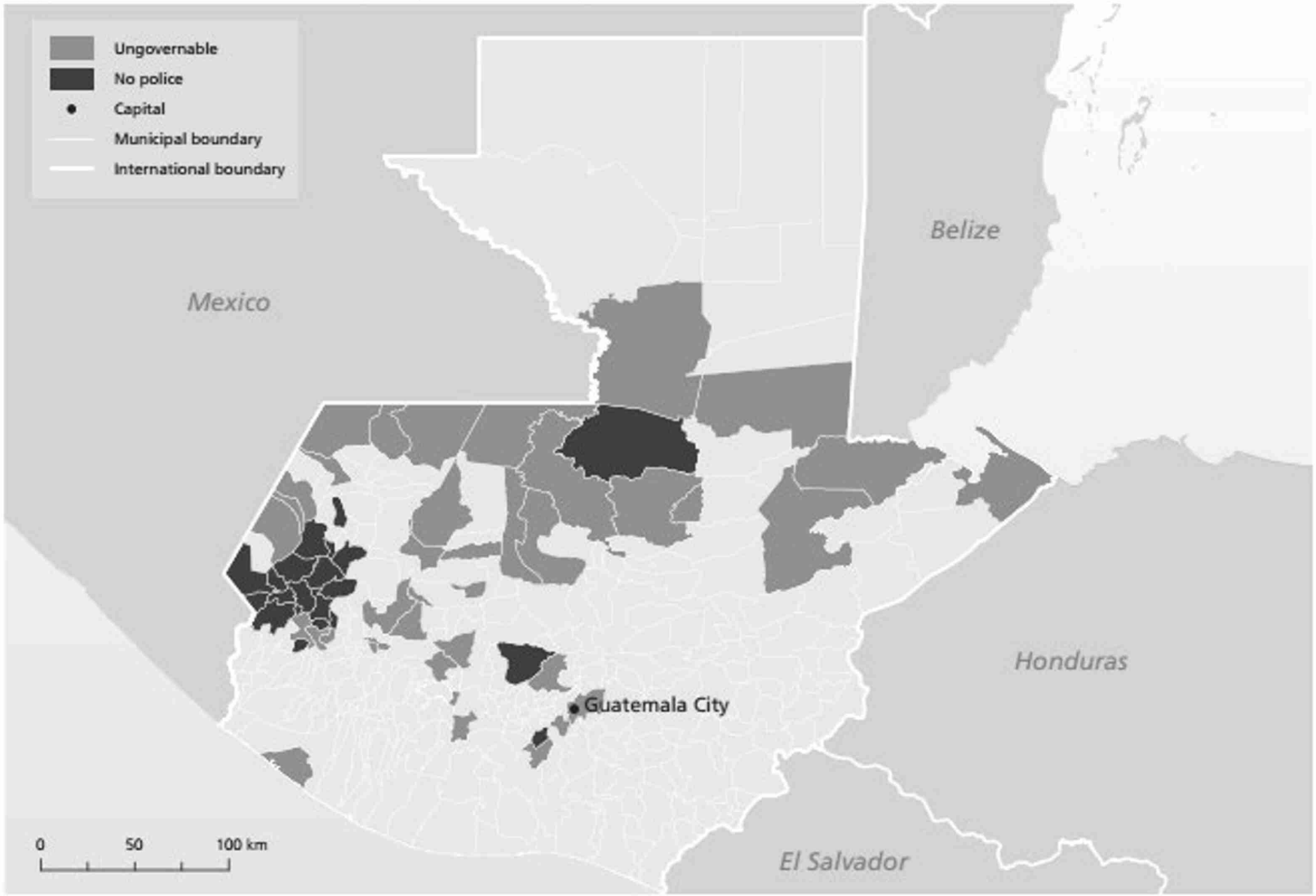


- Not homogenous
  - Maya (Western Highlands)
    - 21 different language groups
    - Intra-indigenous conflict
  - Xinca (southeast)
- Historic and structural exclusion
  - land ownership, access to services, labor conditions, formal economy, justice, representation in media, politics, etc.
- Systematic discrimination and racism
  - Normalized - “verge on segregation”
- Social conflict
  - Extractive industry & development projects
  - Activists and human rights defenders targeted and harmed

AMERICAN OVERSIGHT

Map 12: Guatemala: municipal governability, 2011



Source: UNODC, elaborated from information from the Ministerio de Gobernación (Guatemala)

AMERICAN OVERSIGHT

Policia Nacional Civil (PNC)

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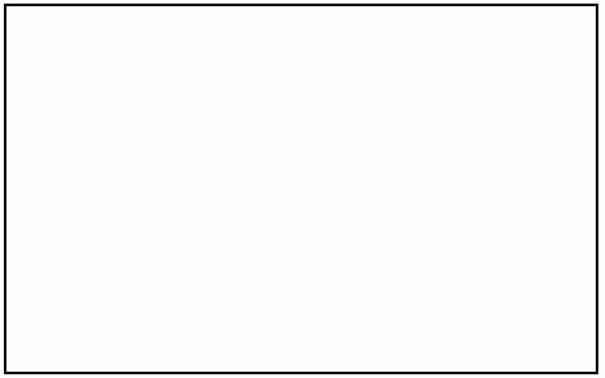


- 35,000 officers
- Corruption
- Criminal activity
  - Extortion, kidnaping, trafficking, etc.
  - 1,000 removed since 2012
- Infiltration by organized crime
- Human rights violations
  - Violent evictions of protesters and community members

AMERICAN OVERSIGHT

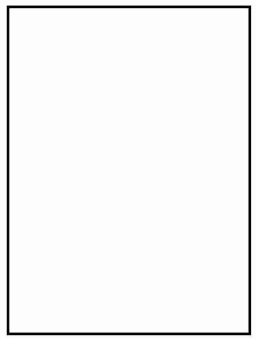
Policia Nacional Civil (PNC)

- Sporadic presence in rural areas
- Lack necessary funding, supplies, training & personnel
- Lack necessary operational capacity
  - "Incapable or unwilling to confront criminals"
  - Temporary operations
  - Often fail to provide protection from gangs in urban areas
- Distrusted and feared
  - 76% = little to no trust
- "Well-armed criminals know there is little chance they will be caught or punished"

AMERICAN OVERSIGHT

Ejército

- 23,000 troops
- Increased involvement in public security since early 2000s
  - "Task forces" & joint military/police patrols
  - Seen as a solution, but no visible improvements in security
- Human rights concerns
  - Militarization of law enforcement
  - Past and present abuses
- March 2018: stopped performing public security functions



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AMERICAN OVERSIGHT

Non-State Groups

- Local Security Boards (*Juntas Locales de Seguridad*) or Citizen Security Committees (*Comités de Seguridad Ciudadana*)
  - Local groups focused on community policing
  - Over 1,000 groups - 1/3 unregistered
  - Substantial degree of autonomy
  - Executions, extortion, kidnapping, curfews, illegal arrests, vigilante justice
- Vigilantism
  - Significant increase since 2004
  - Rural and indigenous communities with high levels of extortion, lack of confidence in state institutions, suspicion of outsiders
  - Mob justice, lynching, torture, etc.
- Private security guards
  - 70,000 to 150,000
  - Criminal activity, links to CIACs/organized crime, violence in land disputes

AMERICAN OVERSIGHT

Nicaragua



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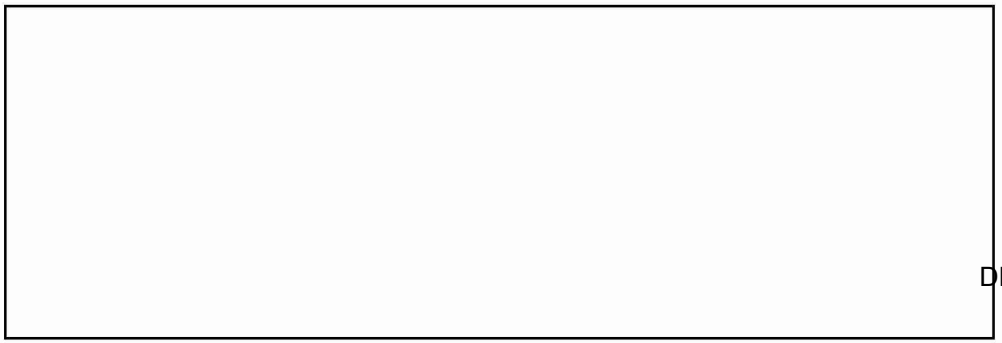
AMERICAN OVERSIGHT

The Ortega Administration

- Daniel Ortega & Rosario Murillo
  - Ortega = President (1979-1990, 2007-Present)
  - Murillo = Vice-President (2017-Present)
  - Control virtually every aspect of government and many state institutions
    - National Assembly, courts, armed forces, police, electoral council, etc.

- *Frente Sandinista de Liberación Nacional* (FSLN)
  - Ruling political party
  - State power increasingly concentrated in the hands of FSLN



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AMERICAN OVERSIGHT

Protests & Social Unrest

- Deep-rooted grievances & precipitating factors
  - Social, political, and economic discontent
  - April 2018
    - State response to forest fires in Indio Maíz Biological Reserve
    - Reforms to social security system
- Outbreak & spread of protests (mid-April 2018)
  - Initial protests repressed by police & pro-government groups
  - Social unrest spreads and morphs into campaign for political reform (i.e. end to Ortega rule)

AMERICAN OVERSIGHT

Protests & Social Unrest

- Government responds with escalation of violence & repression
  - Police & pro-government armed groups
  - Likely ordered and directed by Ortega
- Targets
  - Actual and perceived opponents of the government, including their family members
  - People who participate in protests, assist or defend the rights of protesters, express dissenting opinions, etc.
- Harm & displacement
  - 322 killed and thousands injured
  - Over 60,000 people flee the country (most to Costa Rica)

AMERICAN OVERSIGHT

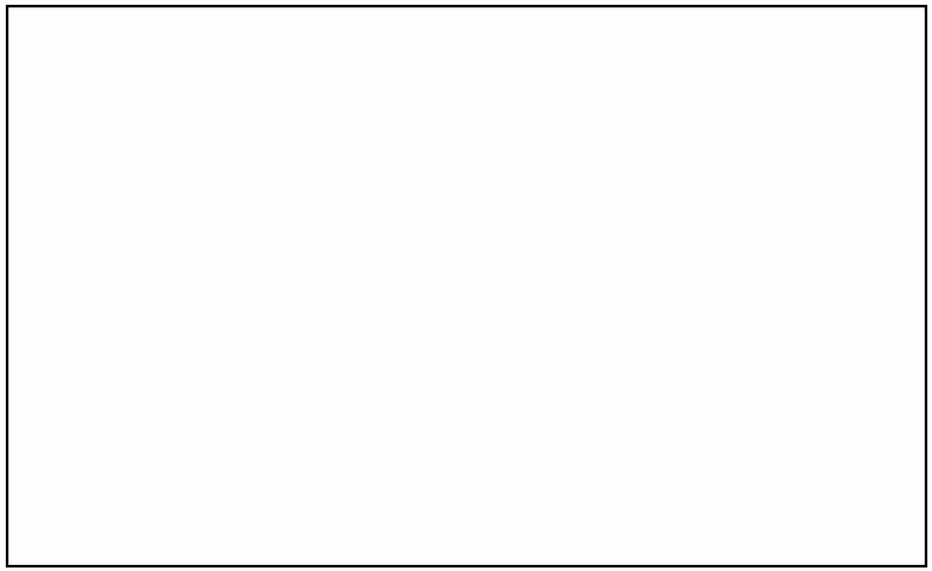
Protesters

- Wide range of social sectors oppose Ortega
  - Students, *campesinos*, private business, social movements, civil society groups, Catholic Church
- Protests, marches, rallies, occupation of universities & public buildings, roadblocks & barricades (*tranques*)
- Majority are peaceful, but some use violence
  - Respond to state violence with violence
  - Attacks against Sandinistas, government officials, security forces, public buildings, private property, etc.
- Stigmatized and blamed by the government for the violence

AMERICAN OVERSIGHT

State Repression

- Generalized repression of protests (April 18-May)
  - Violent repression and attacks by police and pro-government groups as protests spread
  - Mother's Day March (May 30) = 12 killed by snipers



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AMERICAN OVERSIGHT

Operación Limpieza (June-July)

- Forcible removal of roadblocks and barricades by state authorities and pro-government armed groups
- Incorporation of paramilitaries (parapolice)
- Increase in violence
  - Attacks against roadblocks & barricades leads to violent clashes between security forces and demonstrators
  - Murder, kidnapping, torture, disappearances, arbitrary detention, arson and looting

AMERICAN OVERSIGHT

Operación Limpieza (June-July)

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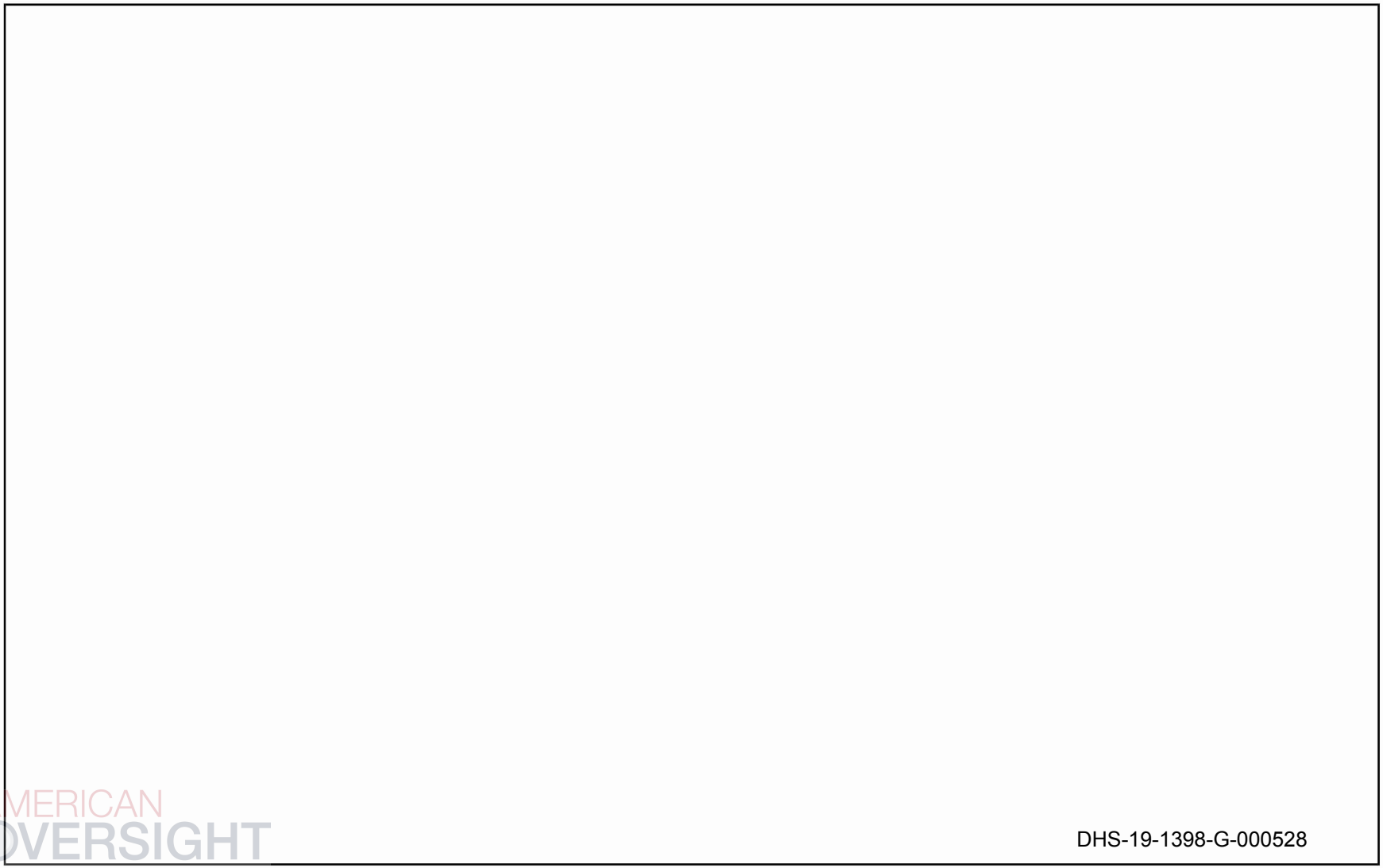

AMERICAN OVERSIGHT

State Repression

- Bureaucratic repression (mid-Jul to mid-Sep)
  - Criminalization & repression of individuals & groups perceived as supportive of protests or opposed to the government
  - Increase in arbitrary arrests and detentions
  - New anti-terrorism law

- Prohibition of social protests (starting in mid-Sep)
  - Stop protests & track down participants
    - Protests largely extinguished by the end of 2018
    - Carry the flag or sing the national anthem = viewed as subversive
  - Repression of civil society groups and media outlets

AMERICAN OVERSIGHT

State Repression

- Negotiations between the government and the opposition (February to April)
  - Repression of a protest & detention of protesters (March 16)
    - First major demonstration since mid-September
  - Government agreed to release political prisoners, but few have been released

- Collapse of talks (early April)
  - Opposition calls for a return to the streets

AMERICAN OVERSIGHT

Police

- Formerly a model force, but became partisan
  - Engage in repression or ignore actions of pro-government groups
- Repression of protests
  - Attacks; excessive use of force; extrajudicial killings; forced disappearances; arbitrary detentions; torture and mistreatment
  - Collude with, protect, or ignore actions of pro-government groups
  - Infiltrate protests, identify & hunt down opposition leaders?
- Vulnerable to harm
  - Violence against officers - 22 killed
  - Dissident officers
    - Disapproval of government methods or ask to be discharged
    - Phones hacked, threats, imprisonment, torture, killed

AMERICAN OVERSIGHT

Pro-Government Groups

- Sources use different names to refer to them
  - *Grupos de choque*, *fuerzas de choque*, *turbas sandinistas*, *grupos parapoliciales*, *parapolicias*, *elementos armados progubernamentales*, *para policiales*, *grupos para estatales*
- Appear to be two types
  - Pre-existing
  - Formed in response to 2018 protests
- Engage in repression
  - Do not identify themselves as police or state officials
  - Act parallel to police or in a coordinated manner

AMERICAN OVERSIGHT

Fuerzas de choque/turbas sandinistas/motorizados

- Formed in late 2007/early 2008
  - Participate in attacks and aggression against political opposition or expressions of social discontent
- Allegedly mobilized by FSLN
  - Members of *Juventud Sandinista*, state employees, aging or former gang members, people recruited by local political officials

AMERICAN OVERSIGHT

Fuerzas de choque/turbas sandinistas/motorizados



AMERICAN OVERSIGHT

Fuerzas de choque/turbas sandinistas/motorizados

- Suppression of anti-government protests
  - Mobilized to oppose demonstrators, organize parallel rallies, and harass and intimidate protesters
  - Use cudgels, sticks, stones, and helmets
  - Attacked protesters & engaged in arson, looting, and attacks on homes and businesses

- Act with the assent of high-level state officials and police, often jointly and in a coordinated manner

AMERICAN OVERSIGHT

Pro-Government Groups

- *Juventud Sandinista*
  - Youth movement of FSLN
  - Reportedly carried out attacks against protesters
- *Gabinetes de la Familia, la Comunidad y la Vida* (aka *Consejos de Poder Ciudadano* - CPC)
  - Community groups located in each neighborhood
  - Viewed as the main source of intelligence gathering for the government
  - Reportedly helped identify protesters and supporters
- *Comités de Liderazgo Sandinista*
  - Located within public institutions
  - Ensure public employees' participation in political acts & monitor those who do not sympathize with the government
  - Reportedly helped identify protesters and supporters

AMERICAN OVERSIGHT

Parapolice (*Parapolicia*)

- Operate as paramilitaries
  - Deadly repression of protests & attacks on opponents of Ortega
    - *Operación Limpieza*
    - Extrajudicial killings; kidnapping; forced disappearances; arbitrary detention; attacks; intimidation; arson & looting; surveillance; terrorize the public
  - More lethal & better organized than other groups

- Appearance
  - Wear ski masks, sometimes shirts of the same color (blue, green)
  - Toyota Hilux pick-ups, motorcycles, police vehicles
  - Military equipment & heavy weapons

AMERICAN OVERSIGHT

Parapolice (*Parapolicia*)







AMERICAN OVERSIGHT

Parapolice (*Parapolicia*)

- Members = unclear
  - Former police/military, former/current gang members, retired government officials, former guerrillas, *Juventud Sandinista* members, plain clothes police, local government employees?
  - Paid by the government?
  - Organized force operating within the police?

- Act with assent of high-level state officials and police, often jointly and in a coordinated manner
  - Act with total impunity
  - At times escorted by police
  - Ortega = *policias voluntarios*
  - Use of parapolice makes it harder to attribute human rights abuses to state security forces

AMERICAN OVERSIGHT

Types of Harm

- Excessive use of force
- Physical attacks
- Extrajudicial killings
- Forced disappearances
- Torture & ill-treatment (including sexual violence)
- Arbitrary or illegal detentions and arrests
- Kidnapping
- Obstructions to access medical care
  - State hospitals and medical clinics ordered to deny services to protesters
  - Police search hospitals
  - Police and parapolice prevent access to medical facilities

AMERICAN OVERSIGHT

Types of Harm

- Threats, intimidation, harassment
- Violations of due process
- Violations of free expression
- "Death lists"
- Hinder the right to access justice
- Criminalization & defamation
- House raids
- Arson, looting & robbery
- Arbitrary dismissals
  - State employees and workers at state-run institutions
  - Supported protests or defied government orders

AMERICAN OVERSIGHT

Cuba

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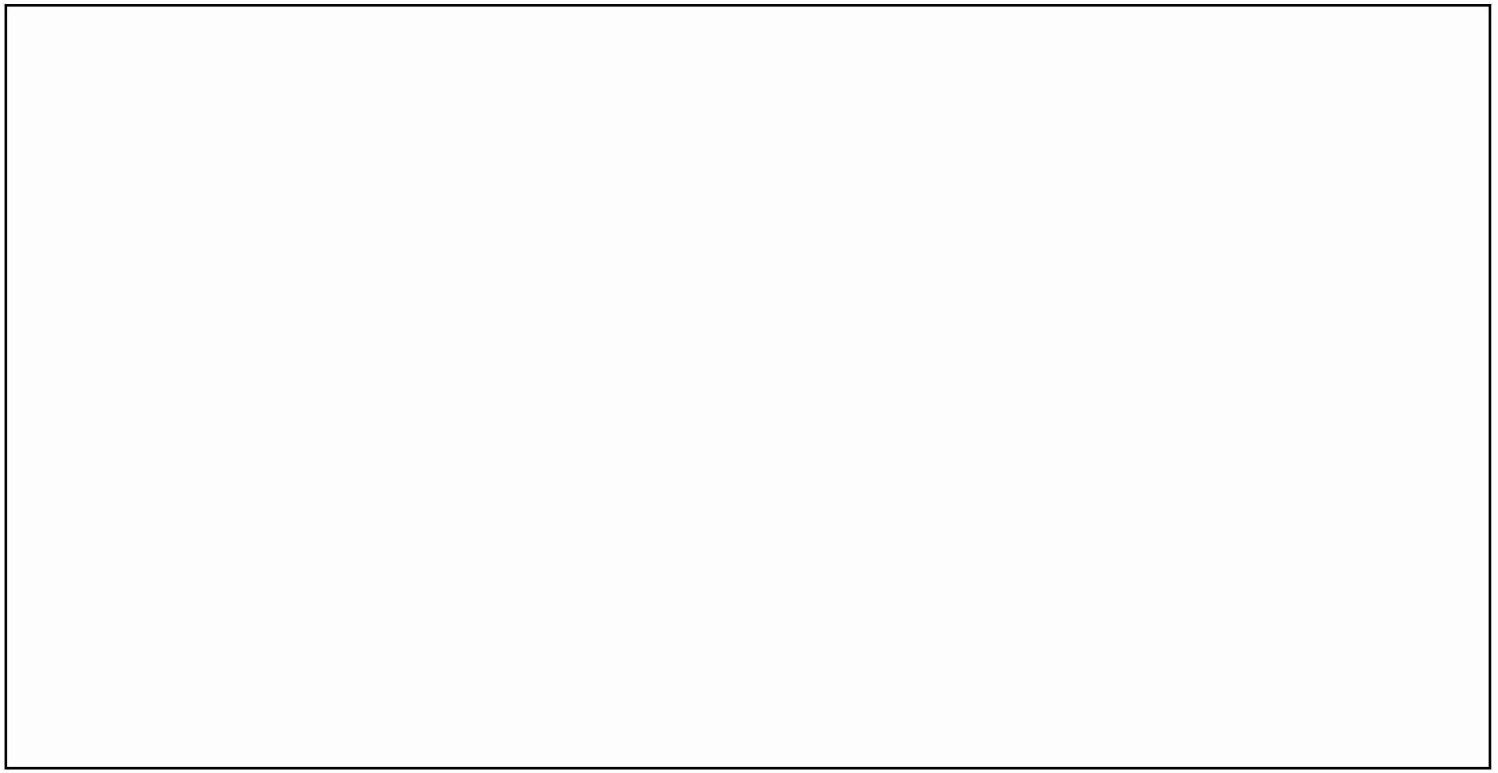

AMERICAN OVERSIGHT

COI Challenges

- Lack of objective, non-biased information
  - Cuban state run media
  - Exile community
  - Dissident groups
  - U.S. funded, independent Cuban media
- No independent human rights monitoring
- Independent Cuban media & blogs
- Cuba: Travel Regulations and Civil and Political Rights, COI Compilation (ACCORD)

AMERICAN OVERSIGHT

Cuba: State Control

- Socialist, one-party state
- Historic state monopoly/control of:
  - Economy
  - Employment
  - Housing
  - Healthcare
  - Education
  - Food production and distribution
  - Media



- Cuban government uses repression & control of resources and services to ensure conformity

AMERICAN OVERSIGHT

Cuba: Political Dissent

- Various actions may be viewed as political opposition (dissent)
  - Rights and freedoms exist, but cannot exercise them against the state & the political system
  - Dissident = anyone who engages in activities that the state deems contrary to its own political agenda
  - All dissent = "counter-revolutionary"
  - *Gusano*

- Law empowers the state to criminalize dissent
  - Vague laws - almost any act can be criminalized
    - Insult laws, insubordination, collaboration with the United States, denial of association and assembly, "dangerousness," etc.
  - "Virtually all activities are presumed illegal unless the law says otherwise"

AMERICAN OVERSIGHT

Evolution of State Repression

- Fidel Castro (1959-2006)
  - Repress all forms of dissent
    - Imprisonment, beatings, threats, surveillance, denial of basic rights
    - *"Periodic waves of heightened repression, marked by an increase in arbitrary arrests of dissenters"*
- Raul Castro (2006-2018)
  - Fewer long-term prison sentences
    - Release of most political prisoners
  - Increased use of:
    - Short-term, arbitrary arrests (prevent participation in marches or meetings)
    - Harassment and surveillance
    - "Dangerousness"
  - Limited reforms

AMERICAN OVERSIGHT

State Control Mechanisms

- Ministry of Interior
  - General Directorate for State Security
    - aka the "political police"
    - monitoring, infiltrating, and suppressing independent political activity
  - General Directorate of Internal Order
    - National Revolutionary Police (PNR)
      - Primary law enforcement organization
      - Suppress crime
      - Monitor activities after official warning
      - Support state security agents

AMERICAN OVERSIGHT

National Revolutionary Police (PNR)

- Most direct contact with the population

- *Jefe de sector*
  - Neighborhood police chief
  - Prevent crime in area of control (4 sq. km)
  - Oversee CDRs
  - Investigate crime and detain suspects
  - List of "anti-social" individuals
  - Issue warnings and fines
  - Interview citizens

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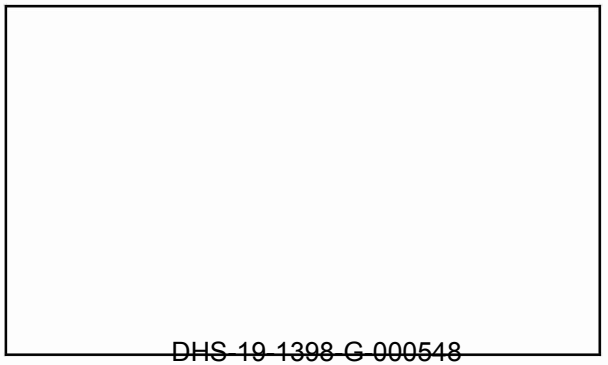

AMERICAN OVERSIGHT

Comités de Defensa de la Revolución (CDR)

- Every block in every neighborhood = 8.3 million members
- Monitor "counter-revolutionary" activity and defend the state
  - Like security cameras - always watching, even if you don't see them
- Work with security forces to suppress dissent
  - Surveillance
  - Report on fellow citizens
  - Acts of repudiation
  - Harass critics of the government
  - Keep records of residents and visitors
  - Recommendations for jobs/university
- Aesthetics, health and social issues, crime control
- Power and control reportedly on the decline



AMERICAN OVERSIGHT

Everyday forms of repression

- *Actos de repudio* (acts of repudiation)
  - Public protest outside the home of a dissident
  - Designed to humiliate, can become violent
  - Several hours
  - Supposedly neighbors, but probably government support

- Restrictions on expression & limited access to information
  - No independent media
  - Increasing control of public statements and work of intellectuals
  - Internet
    - Restricted and expensive
    - But access increasing

AMERICAN OVERSIGHT

Everyday forms of repression

- Threats and warnings
  - Implicit and explicit
  - Official warning - dangerousness and dissidents
- Invasive surveillance
  - Constant and multi-faceted
    - tap phones; hack email; bugs; clandestine searches; informants; film, observe, and photograph meetings; track movements
  - Government officials and civilians
    - State security & CDRs
- Reprisals against family members
- Fines



AMERICAN OVERSIGHT

Everyday forms of repression

- Denial of employment
  - Check with police and CDR before hiring
  - Need to be a member of the *Central de Trabajadores de Cuba* (CTC)
  - Fired for dissident group membership
- Education
  - Political clearance needed for university admission
  - Parents who teach contrary doctrine can be imprisoned
- Travel and mobility restrictions
  - Can still deny exit to dissenters, despite migration reforms
  - Decree 217 (1997): restricts internal movement of citizens
  - Prevented from leaving homes or streets during events

AMERICAN OVERSIGHT

Public Dissent

- Government claims that unrest could be an excuse for U.S. intervention
- Street demonstrations and anti-government activism are essentially forbidden
  - Protests are rare
  - Anti-Castro activity is controlled
- Uniformed police and plainclothes security forces respond quickly to protests
  - Psychological messaging
  - Strategic actions

AMERICAN OVERSIGHT

Who is a Dissident?

- Not homogenous
- Ideology
  - Democratic change
  - Apolitical
    - Practice religion
    - Organize a union
- Small and isolated groups
  - Efficiency of state at suppressing dissent
- Hundreds of organizations/groups
  - Human rights defenders
  - Journalists
  - Trade unionists
  - Political groups
  - Religious organizations
  - Civil society organizations
  - Government critics
  - Individuals who abstain from cooperating with the state

AMERICAN OVERSIGHT

Dissident Groups

- Small community
  - Groups and individuals linked to each other
- Alliances - constantly shifting
  - Boundaries not well defined
  - Prominent dissidents with own organizations
- How to define membership?
- Most active groups (recently)
  - *UNPACU*
  - *Damas de Blanco*
- Focused on international image
  - Funding and support
  - Can you trust their reporting?

UNPACU
UNION PATRIÓTICA DE CUBA

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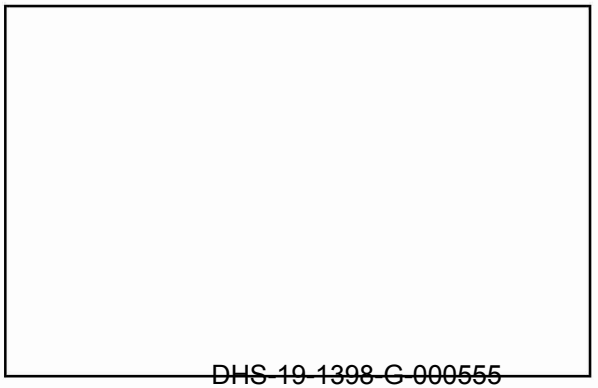

AMERICAN OVERSIGHT

Dissident Groups: Perceptions

- Cuban government = U.S. backed mercenaries
- Cuban citizens = general skepticism
  - Not well known in Cuba
    - Successfully isolated from the population by the government
  - Not a lot of sympathy
  - Question backing and motivations
    - Funding from the United States
  - Struggle to connect with ordinary Cubans
    - Protest and denounce, but do not offer solutions to problems of daily life
  - Met with criticism and even anger

AMERICAN OVERSIGHT

Religion

- Post-revolution
  - State suppression of religion
    - Officially atheist until 1992
  - Discrimination against religious believers
    - Fired from jobs and sent to labor camps for "re-education" (1960s & early 1970s)

- Religious freedoms have expanded in the last two decades
  - Boom in evangelical worship
  - Catholic
    - 60-70% of the population
    - Catholic Church seen as a stable institution
  - Afro-Cuban & other religions

AMERICAN OVERSIGHT

Religion

- Government policies & practices restrict religious freedom
  - Monitors religious groups
  - Office of Religious Affairs: controls most aspects of religious life
    - Long waits for applications for recognition

- Restrictions/harm
  - Harass outspoken leaders
  - Prevent human rights activists from attending religious services
  - Use violence to prevent activists from protesting after religious services (*Damas de Blanco*)
  - Monitoring and surveillance
  - Climate of self-censorship

AMERICAN OVERSIGHT

Religion

- Evangelicals
  - Links to conservative missionaries from the United States?

- Construction of new churches
  - Cuba restricts ownership and construction of buildings
  - Vague status on new churches - prohibited?
  - House churches
    - Problems, but related to zoning issues?
    - Confiscation? Demolition? Prohibition?
    - Long waits for approval, if at all

AMERICAN OVERSIGHT

Religion

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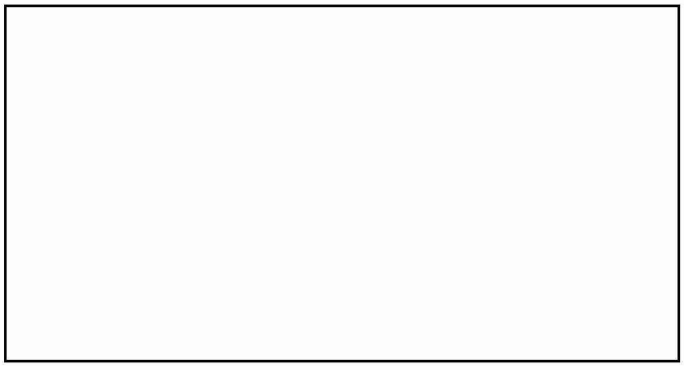


- Pastors
  - More likely to have issues
  - Detention and release

- Jehovah's Witnesses
  - Historically = "active religious enemies of the revolution"
  - Beliefs prohibit political involvement
  - Avoid university education
    - Students expected to be politically active and available for assignment for government duties after graduation
  - Lack of university education would make them ineligible for most professional careers

AMERICAN OVERSIGHT

Returnees

- Limited information available on what happens to returnees who left illegally

- Failed asylum seekers
  - Treatment upon return likely depends on what they did before they left Cuba
    - Good citizens - very little or nothing will be done
    - Wanted for felony - will be arrested
    - Family members - little repercussions, unless other issues involved
      - Relatives were high-ranking officials or broke the law

- Deserters
  - Could face consequences if they deserted while on an official mission
    - Ex. doctors, athletes

AMERICAN OVERSIGHT

Emigrants & Repatriation

- Cuban emigrants
  - Lose residency rights after 24 consecutive months outside of Cuba
  - All are eligible and can apply for repatriation
    - Unless committed "hostile acts against the state"
  - No longer stigmatized or ideologically suspicious
    - As long as they are not anti-government activists

- Return at the discretion of state officials?
  - Allegations of denials of re-entry
  - "Terrorists" and "political enemies" may be excluded from repatriation & visits

AMERICAN OVERSIGHT

Emigrants & Repatriation

- Rights of repatriated Cubans
  - Same constitutional, civil, and labor rights
  - Able to regain access to social benefits
    - Healthcare, food rations, education, etc.
  - Unable to re-obtain property confiscated by the state
- Attitudes of society
  - Too soon to tell?
  - Repatriation is not a widespread phenomenon

AMERICAN OVERSIGHT

Contact Info

RAIOResearch@uscis.dhs.gov

U.S. Citizenship and Immigration Services

FOIA CAN OVERSIGHT

India: COI for APS Officers



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

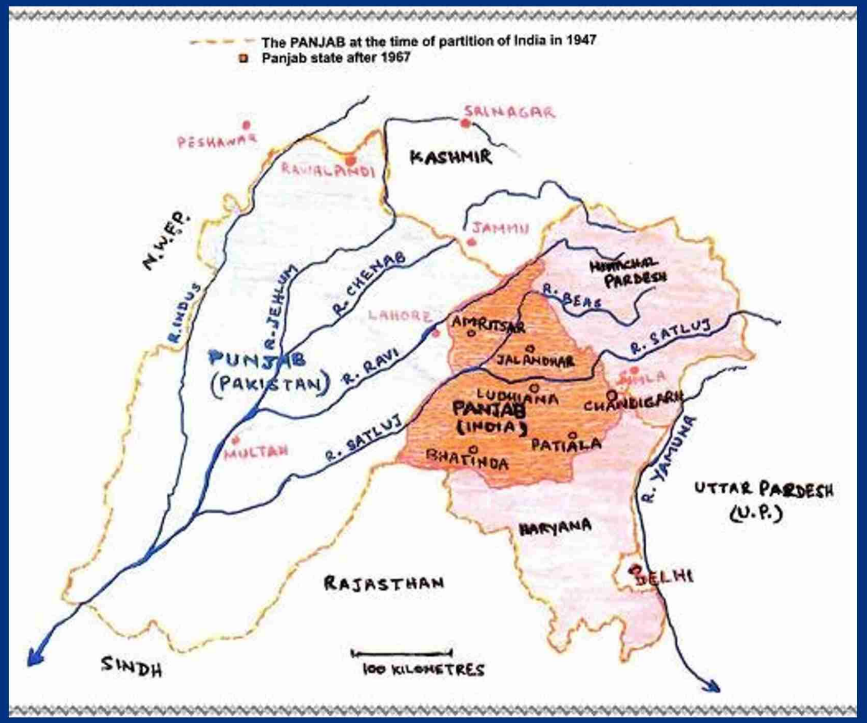
Characteristics of Claims

- Applicant supports a political party
- Not a member of the party or candidate for any office
- Activities include participating in service activities or putting up political posters
- Fears persecution by supporters of rival parties
- Does not fear persecution by police or other state-actors, but cannot seek protection from them without retaliation
- Individually threatened or attacked – Not as part of a group involved in a clash during a protest or riot

AMERICAN OVERSIGHT

Punjab





U.S. Citizenship and Immigration Services

India:
National and State Governments

Country/State	Current Governing Party	Previous Governing Party	Most Recent Election	Next Election (Expected)
India	**BJP** (May 2014-present)	Congress (May 2009 – May 2014)	April/May 2014	April/May 2019
Punjab	**Congress** (March 2017 – present)	SAD (Badal) (Jan. 2012 – March 2017)	February/March 2017	2022
Haryana	**BJP**	BJP	Oct. 2014	Oct./Nov. 2019
Rajasthan	**Congress** (Dec. 2018-present)	BJP (Dec. 2013 – Dec. 2018)	December 2018	2023
Delhi	**Aam Aadmi** (AAP) (Feb. 2015-present)	Aam Aadmi (Dec. 2013- Feb. 2015)	February 2015	2020
Madhya Pradesh	**Congress** (Nov. 2018 – present)	BJP (Dec. 2013 – Nov. 2018)	November 2018	2023
Uttar Pradesh	**BJP** (March 2017 – present)	Samajwadi Party (March 2012 – March 2017)	February/March 2017	2022

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

Indian National Congress

(b)(6)

- India's longest-standing national political party.
- In India, lost elections to the BJP in 2014.
- Won in Punjab in 2017. Congress Chief Minister swearing in March 16th.
- Governed India during the Sikh separatist movement (1980-early 1990s).

U.S. Citizenship and Immigration Services
AMERICAN OVERSIGHT

Shiromani Akali Dal (Badal)

(b)(6)

- By far the leading Akali Dal faction
- A regional political party, active almost exclusively in Punjab
- For 10 years (2007-2017) the leading party in Punjab government, in a coalition with the BJP.
- Lost 2017 elections to Congress Party.

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Bharatiya Janata Party

(b)(6)

- Currently the governing party in India's national assembly.
- In Punjab, the far weaker coalition partner of the SAD (Badal)
- Conservative and Hindu Nationalist orientation.
- Originated in the 1980s

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Aam Aadmi Party

(b)(6)

- A newcomer in Punjab politics, AAP first arose to win the Delhi elections of 2013.
- “Common Man”, anti-corruption platform
- Not successful in 2014 national elections, but came in second in 2017 state elections in Punjab.

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Indian National Lok Dal

(b)(6)

- Main opposition party in the state of Haryana, Punjab region.
- Most supporters come from the *jat* (peasant) caste.
- *See, e.g.,*
  - *NLD Demands Release of Dera Premis, Jat Agitators*, Daily World (India), Dec. 22, 2017
  - *Jats to Hold 'Baichara Nyaya Yatra' at Jind on February 15*, The Pioneer, Feb. 6, 2018

U.S. Citizenship and Immigration Services
AMERICAN OVERSIGHT

Shiromani Akali Dal (Amritsar) a/k/a Akali Dal (Singh Mann)

(b)(6)

Political Views (examples)

- Support for Khalistan (an independent Sikh state)
- Accountability for abuses against Sikhs during the separatist insurgency period (1980-early 1990s).
- *See*, Jugdep Singh Chima, *Ideological Cleavages in Sikh Politics* on the RU ECN.

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Akali Dal (Amritsar) website

(b)(6)

What is the extent of violence in Punjab today?

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- Low murder rate (2016)
  - Punjab: 2.6
  - Haryana: 3.8
  - India: 3.2
  - U.S.: 5.3
  - El Salvador: 60.1 (2017)
- Occasional clashes occur between rival groups during events such as elections, rallies, and protests.

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Targeting of rival party workers?

- No evidence of this phenomenon in Punjab/Haryana.
- Contrast:
  - Kerala, India
  - Karachi, Pakistan
- Police or security forces:
  - May arrest suspected militants
    - *See*, Terror Error: India's Falsely Accused, The Diplomat
  - Sometimes detain perceived 'radicals' during sensitive events.

AMERICAN OVERSIGHT
DHS-19-1398-G-000577

COI Resources: Well-Founded Fear

- The Shiromani Akali Dal (SAD) political party, including differences between the SAD (Badal) led by Parkash Singh Badal and the SAD (Amritsar) led by Simranjit Singh Mann; relations with authorities
  (2016-April 2018) -- IRB Canada
- Treatment of political activists and members of opposition parties in Punjab; treatment of perceived supporters of Sikh militancy by authorities
  (2017-April 2018) – IRB Canada
- Information on the Shiromani Akali Dal (Amritsar)
  RAIO Research Unit (October 2016)
- Persecution of the Shiromani Akali Dal (Mann) Party
  Law Library of Congress (August 2012)
- The Indian National Lok Dal (INLD) political party in Haryana, including treatment of members by opponents of the party; incidents of violence between INLD members and Congress Party members in Haryana
  (2009-October 2013) – IRB Canada

AMERICAN OVERSIGHT
DHS-19-1398-G-000578

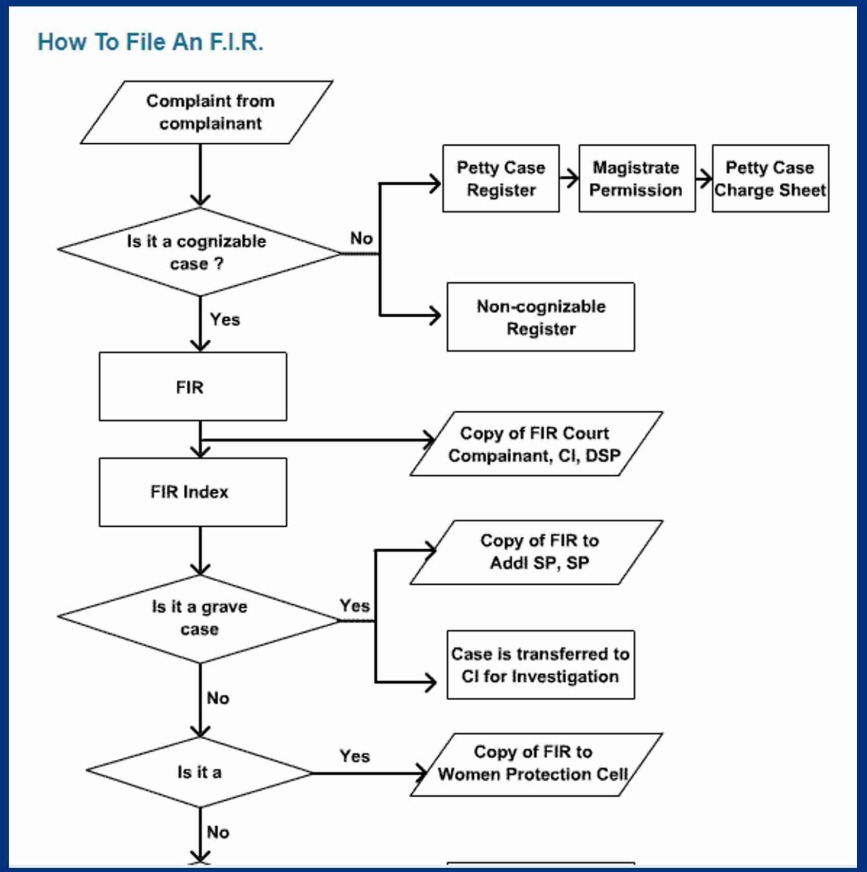
Internal Relocation and State Protection?

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

State Protection

- Policing in India
  - UK Home Office, January 2019
- Groups reported to fear retaliation by police:
  - Victims of police abuse
  - Victims of domestic violence
  - Victims of sexual violence
  - Religious minorities
  - Low-caste persons
  - LGBT persons



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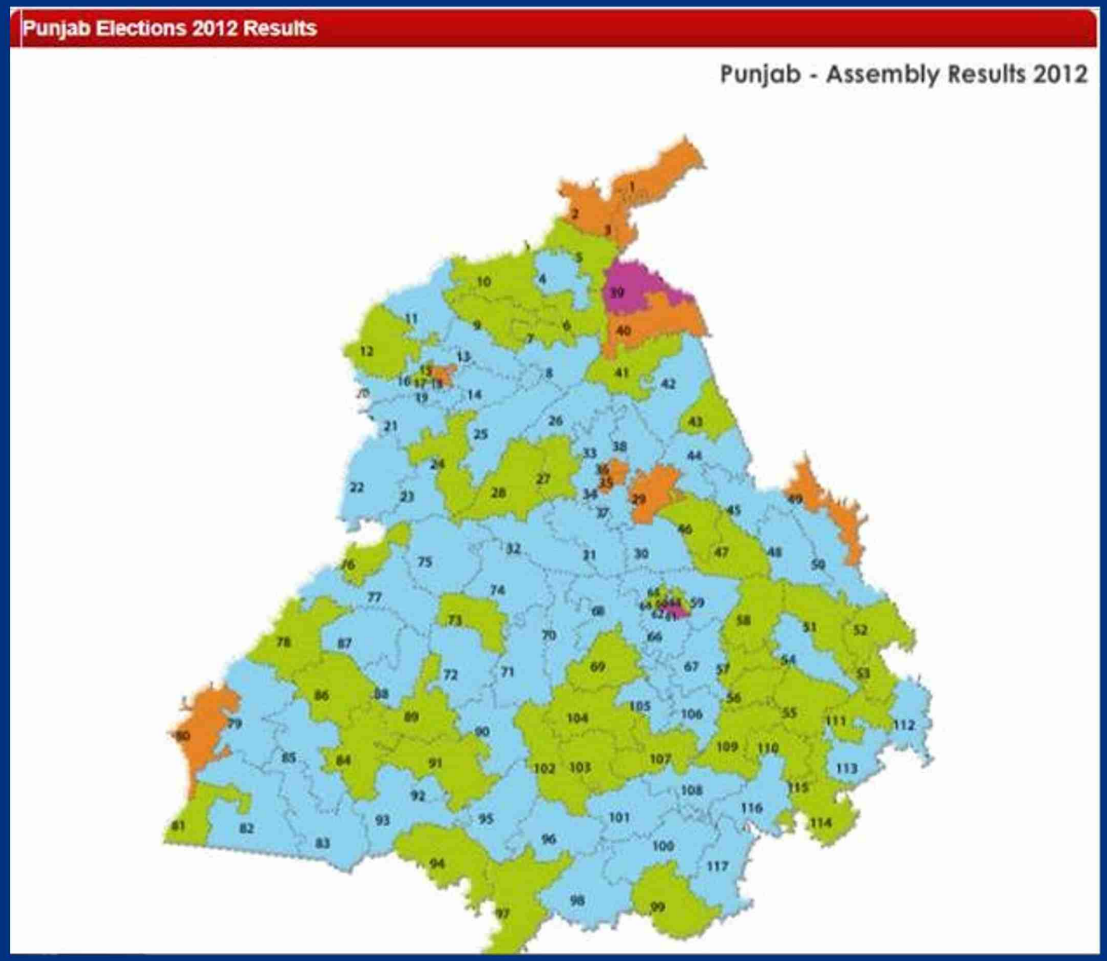
Internal Relocation: Within a State



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Internal Relocation: Countrywide

Country/State	Current Governing Party	Previous Governing Party	Most Recent Election	Next Election (Expected)
India	**BJP** (May 2014-present)	Congress (May 2009 – May 2014)	April/May 2014	April/May 2019
Punjab	**Congress** (March 2017 – present)	SAD (Badal) (Jan. 2012 – March 2017)	February/March 2017	2022
Haryana	**BJP**	BJP	Oct. 2014	Oct./Nov. 2019
Rajasthan	**Congress** (Dec. 2018-present)	BJP (Dec. 2013 – Dec. 2018)	December 2018	2023
Delhi	**Aam Aadmi** (AAP) (Feb. 2015-present)	Aam Aadmi (Dec. 2013- Feb. 2015)	February 2015	2020
Madhya Pradesh	**Congress** (Nov. 2018 – present)	BJP (Dec. 2013 – Nov. 2018)	November 2018	2023
Uttar Pradesh	**BJP** (March 2017 – present)	Samajwadi Party (March 2012 – March 2017)	February/March 2017	2022

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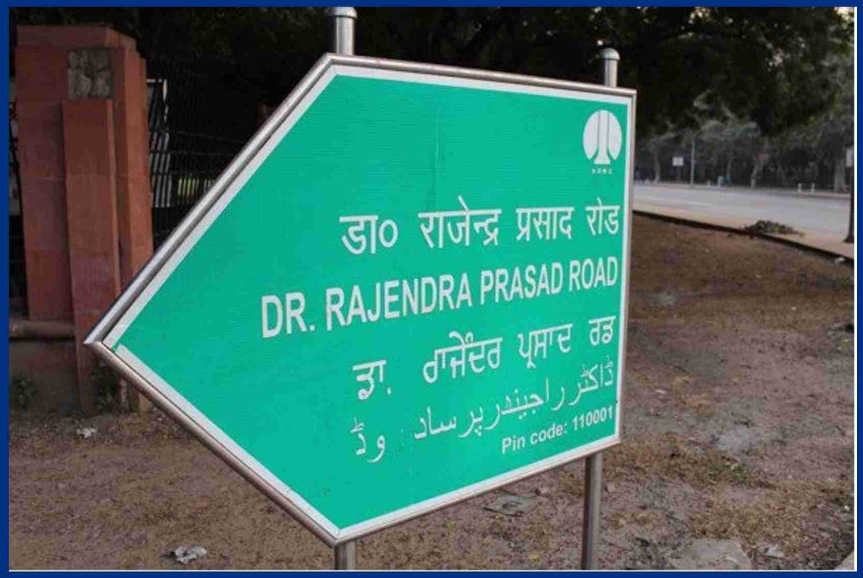
Internal Relocation: Countrywide

- Local party organizations in India are often personalized.
- National party organizations are stronger, but are weakly connected to the local ones.
  - *See*, Dishal Shrimankar, *Party Organization and the State of Political Parties in India*, Asia Dialogue
- Many states/cities have substantial populations who migrated from Punjab/Haryana: Chandigarh, Delhi, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh, and Uttaranchal



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COI Resources: Internal Relocation

- Country Policy and Information Note India: Internal Relocation

UK Home Office, January 2019

- Feasibility of Relocation of Sikhs and Members of the Shiromani Dal (Mann) Party

Law Library of Congress, June 2018

- India: Surveillance by state authorities; communication between police offices across the country, including use of the Crime and Criminal Tracking Network and Systems (CCTNS); categories of persons that may be included in police databases; tenant verification; whether police authorities across India are able to locate an individual (2016-May 2018)

IRB Canada, June 25, 2018

- India: Requirements andprocedures to obtain the Aadhaar number; use of the Aadhaar, including inaccessing housing, employment and private and public services; whetherauthorities use Aadhaar registration to track individuals across the country(2017-April 2018)

Immigration and Refugee Board of Canada, May 23, 2018

AMERICAN OVERSIGHT
DHS-19-1398-G-000584

CCTNS, Tenant Verification, and Aadhaar ID

- Crime and Criminal Tracking Network and Systems (CCTNS)
- Tenant Verification
- Aadhaar ID
  - *See also*, Aadhaar card is no more mandatory for SIM cards and bank accounts, India Today, January 2, 2019

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Conclusion

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U.S. Citizenship and Immigration Services

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Recommended Readings

- Jugdep Singh Chima, *The Shiromani Akali Dal and Emerging Ideological Cleavages in Contemporary Sikh Politics in Punjab*, Journal of Punjab Studies, Vol. 22, Issue 1, 2015.
- Dishal Shrimankar, *Party Organization and the State of Political Parties in India*, Asia Dialogue, Aug. 17, 2017.
- *Referendum 2020? Khalistan divides, unites Sikhs abroad*, Hindustan Times, Aug. 4, 2015.
- *Asylum America: Why more Indians are seeking refuge*, India Abroad, June 30, 2018.
- *Punjab elections: Congress worker injured in poll violence*, The Indian Express, Feb. 5, 2017.
- *Opposition attacks Congress over violent political clashes across Punjab*, Times of India, May 3, 2017 .

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About this presentation

- Authors: RAIO Training (RAIO.Training@uscis.dhs.gov) and Asylum Training (asylumtraining-coordinators@uscis.dhs.gov)
- Date of last revision: 5/17/2019
- This presentation is current only as of the date of the last revision.
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U.S. Citizenship and Immigration Services

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U.S. Citizenship and Immigration Services

Indian APSO Claims

Eliciting Testimony

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Roadmap

- Preliminary considerations
- Identity of persecutor
- Possession of protected characteristic
- Seriousness of harm and state action
- Internal relocation
- Chen/other serious harm
- CAT

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Areas for emphasis

- Credibility
- Burden of proof
  - Possession
  - Internal relocation

- This presentation will provide strategies, suggested lines of inquiry, and samples for eliciting testimony in these areas.

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This will take too long. I have 5 cases.

- In all cases we spend additional time eliciting testimony on the aspects of the claim that are outcome determinative.

- Be strategic in where we devote our interview time.

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Standard of Proof in CF

- CF Standard of proof: significant possibility
- EXCEPT for credibility
- Applicants must provide specific facts to meet their burden.
- Statements of belief on their own are not enough.

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Credibility vs. Lack of Specific Facts

- **Credibility:** First you said they only used hands and feet to beat you, now you say they used hockey sticks.

- **Specific Facts:** What makes you believe that supporters of the BJP could find you anywhere in India?

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Persecutor identity: Specific Facts

- Recognize the attacker? Locals? Did they know your name? How know your name?
- Were attackers party supporters? Party members? Gov't officials?
  - What makes you think that?
  - What did they do or say that makes you think that they were X?
- COI: Some evidence of politically-motivated mob violence but limited evidence that political parties or government targets individual, low-level party workers.
  - BUT absence of reporting doesn't mean events don't occur. Applicant can meet their burden through testimony.

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Persecutor identity: Specific Facts

I'm sorry to hear that sir. My question was who was it that harmed you exactly, who were these people?	Congress workers
How do you know the people who hurt you were Congress workers?	Their logos were on their shirts
When you say workers what do you mean that they were workers?	They work for the present government
How do you know based on their shirts that they work for the government?	It was a logo on the shirts
Was there something about the logo that makes you think they work for the government?	It was also written Congress party
Based on what you are telling me it sounds like you are telling me they were affiliated with a political party. What makes you think they work for the government?	I worked for the opposite party
Was there more you were going to say about that?	No
Was there anything else you saw or heard or knew that makes you think these people work for the government?	When they were beating me they said come to Congress party
Is there any other reason you think the people who beat you work for the government?	I'm sorry?
I was asking if there was any other reason you think the people who beat or threatened you work for the government?	Like I work for the party and they are also workers and they work for the party

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Possession of protected characteristic

- What level of detail can applicants reasonably be expected to provide?
  - Low-level worker vs. active member
- Most applicants claim to be low-level workers, attacked soon after began attending party events.
- Ask about personal experience rather than quizzing on party trivia.

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Possession of protected characteristic

When did you start working for Mann Party?

When did you stop working for Mann Party?

Who introduced you to the party? How introduced to party?

What actions did you have to take to join the party?

What specifically inspired you to start working for Mann Party?

What does a "worker" mean? How is it different from "member?" Why are you distinguishing between "worker" and "member?"

What did you do to help the party?

What else? What else? Anything else? [get to "no"]

How many times did you [help at weddings/camps]?

Did you [help at weddings/camps] with other party workers? What were their names? Is there a reason you cannot remember?

What was purpose of these camps? How specifically did these camps help poor people?

When did you help at [weddings/camps]?

Where did [the weddings/camps] take place?

What specifically did you do at [wedding ceremonies/camps]? What else?

Explain in detail what you did to [build tent]? What else? Is there a reason you are unable to provide me with more detail?

Who told you what to do? How did you meet this person?

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Possession: Posters

How many times did you put up posters?

How many posters would you put up in an hour?

How many hours would you work putting up posters in a given day?

Did you do this on foot, bike, car, or bus?

Did you put up posters with other party workers? If so, who?

How many people would you do this activity with?

Where did you put up posters?

How many villages?

How far from your village?

Where in the village would you put the posters?

What would you use to put up the poster? What did the posters say?

What did they look like?

How big were the posters?

How would you get the posters?

Who did you get them from?

How did you know to get them from this person?

How many posters would they give you?

How did you carry them?

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Possession: Foundation-laying

Q: What party did you work for?

A: Commonly known as the Mann party.

Q: What is the full or formal name of the Mann party?

A: I do not know, I was a low-level worker. We called it the Mann party.

Q: What was your role as a worker?

A: I helped at camps and hung posters.

Q: Apart from helping at camps and hanging posters, did you do anything else for the party?

A: No

Q: How many camps did you work at?

A: 4

Q: Apart from those 4 camps, did you ever do any other work for the party?

A: No

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Possession: Moving off script

Q: How would you hear when camps were going to be held?

A: It was known in the village.

Q: But how were you specifically told when to arrive to help?

A: Somebody told me.

Q: Was it the same person who told you when to arrive every time?

A: Yes

Q: Who was this person?

A: I don't know.

Q: How would they contact you?

A: They would just tell me.

Q: Can you give more details how you were contacted? Or who contacted you?

A: No.

Q: You said you participated in 4 camps but can't provide me with much detail about who contacted you or how you were contacted. Are there any reasons why you cannot provide more detail?

A: I was just a low-level worker.

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Possession: Lack of detail

Q: What did you do when you helped at camps?

A: I just helped.

Q: Yes but tell me how exactly you would help at the camps?

A: I did what needed to be done. I cleaned.

Q: What was the purpose of the camps?

A: To help poor people.

Q: I need you to provide more detail in your answers to my questions. Please explain to me how the camps helped poor people?

A: The camps did good things for poor people.

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Possession: Lack of detail

Q: Can you provide any additional details about how the camps helped poor people or what you did at the camps?

A: The camps were to help people and I did whatever was needed.

Q: You told me that you were a worker for the party for one year, however you have not been able to provide detailed testimony about how the camps helped the poor or what your duties were at the camps. Are there any reasons why you are unable to provide more details?

A: I was only a worker. I was not a member.

Q: How are the roles of a worker different from the roles of a member?

A: I do not know.

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Severity of Harm

- How serious was harm the applicant suffered?
- Describe medical treatment, if any?
- If threatened, why take threats seriously?

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State action

- Eliciting testimony about police reporting is opportunity to probe credibility and informs internal relocation and CAT analysis.
  - Apart from refusal to take a report, any other interactions with police?

- COI: COI indicates that some groups fear harassment from police if they report (Muslims, LGBT, DV victims). However, we are not aware of any COI supporting the notion that police don't protect supporters of political parties.

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Internal relocation: Avoid persecution

- If applicant establishes past persecution, burden shifts to DHS to establish that applicant able to internally relocate.
  1. Could applicant avoid future persecution by relocating?
  2. Would applicant's relocation be reasonable?

- Consider India COI and geography when eliciting testimony on internal relocation.

- Elicit specific facts that form the basis for applicant's belief that they could not relocate.

- Explore internal relocation to other state or city, including areas where local gov't controlled by another party.

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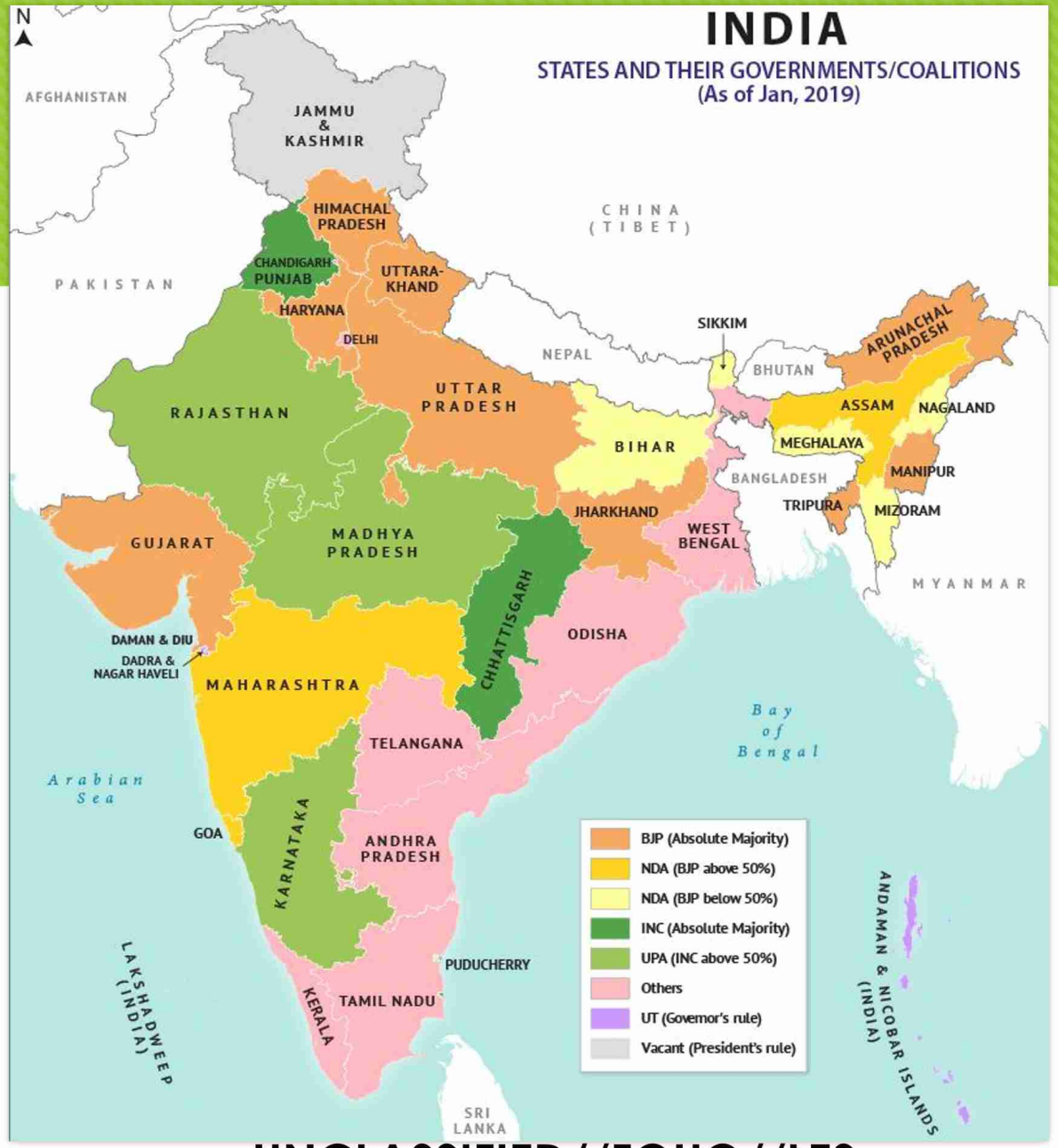

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Internal relocation: Avoid persecution

- If attackers were local supporters, what makes you think that supporters elsewhere in India would target you? Did you try living elsewhere in India?
- Did attackers every come to your house? If not, what makes you think they would look for you?
- Do you know other workers who relocated and were targeted? If not, why do you believe that you can't live elsewhere in India? Supporters ever come to your home?
- Consider COI related to localized nature of parties/intra-party communication if applicable.
- Keep in mind that party supporters may be present in states or cities controlled by another party.

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Internal relocation: Avoid persecution

Q: Could you live elsewhere in India and be safe from the Congress party supporters?
A: No. There are supporters of the Congress party all over the country.

Q: Before coming to the US did you try living in another part of India?
A: No

Q: Why did you not try living in another part of India before coming to the US?
A: My parents told me to come here.

Q: What do you think would happen to you if you lived in another part of India?
A: I do not know.

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Internal relocation: Avoid persecution

Q: Do you know other Mann party workers who were attacked, lived elsewhere in India, and were attacked again?

A: No

Q: If you didn't try living elsewhere in India, and you don't know anybody who tried living elsewhere in India, what makes you think that you couldn't live elsewhere in India and be safe from Congress party supporters?

A: I don't know. My parents told me to come here so I came.

Q: I have reports that say that low-level workers of political parties, including the Mann party, generally aren't targeted for their political opinion. However, you told me that you can't live anywhere in India and avoid being targeted. Can you explain the difference between what I read in these reports and what you are telling me?

A: Congress supporters are everywhere and they could find me anywhere.

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Internal relocation: Avoid persecution

- Applicants often claim that it would be possible to trace them online through their ID. Explore the applicant's basis for believing that this happens.
  - Where did you hear that this could happen?
  - Explain how party supporters would find you online? Would know ID number?
- Who do you fear will track you through ID? Party supporters? Police?
- Do you know anybody who this happened to?
- Present COI if applicable.

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Aadhaar card



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Internal relocation: Avoid persecution

Q: Why could you not live elsewhere in India?

A: They can track me through the Aadhaar ID.

Q: Who could track you through the Aadhaar ID?

A: The BJP supporters who attacked me.

Q: Can you explain how the BJP supporters would track you using your Aadhaar ID?

A: Everything is online.

Q: Earlier you told me you did not know whether the BJP supporters knew your name or ID number. I do not understand how they could track you through the Aadhaar ID. Can you please explain what makes you think that they could track you?

A: I do not know how it works but they could use the ID to find me online.

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Internal relocation: Avoid persecution

Q: Do you know anybody who was tracked through the Aadhaar ID?

A: No.

Q: What makes you think that the supporters could track you using this card?

A: I have heard that.

Q: Who did you hear that from?

A: I don't know, people. I have heard it.

Q: I have a report that says that the government authority that created the Aadhaar card says it is "technically impossible" to track people using the Aadhaar card. You said party supporters could track you using the Aadhaar card. Can you explain the difference between what you told me and what is written in this report?

A: I don't know how they could do it but I'm afraid they could do it.

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Internal relocation: Avoid persecution

Q: Apart from what we've talked about, are there any other reasons why you think you could not live elsewhere in India?

A: If I want to buy a SIM card or open a bank account, I need the Aadhaar card.

Q: I have reports that indicate that having an Aadhaar card is not required to buy a SIM card or open a bank account. You told me that it is required. Can you explain the difference between what I've read in the reports and what you're telling me?

A: I believe it is required for those things.

Q: Apart from what we've talked about, any other reasons why you could not live elsewhere?

A: I'm afraid to.

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Internal relocation: Avoid persecution

Q: Why could you not live elsewhere in India?

A: I would have to register with the police.

Q: What do you mean when you say "register with the police?"

A: If I rent an apartment I have to tell the police and the BJP supporters would find out where I live.

Q: You told me that the people that attacked you are BJP supporters, not members of the government. If you register with the police, how would BJP supporters find out?

A: The police help the BJP.

Q: What have you seen or heard that makes you think that the police would pass information to BJP supporters?
A: When I went to report the attack to the police they told me they would not file a report because it was against the BJP.

Q. You told me that police did not even take your name or any information from you when you tried to file your complaint. Even if you registered with police, how would police know that you were the one who tried to file complaint against the BJP?

A: They are the government. They know everything.

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Internal relocation: Reasonableness

- Freedom of movement in India
  - Police are supposed to conduct a background check for new tenants in their jurisdiction. Insufficient resources to verify every new tenant.
  - Doesn't mean party supporters would have access to this information.

- Presence of different languages, religions, groups in various regions of India, particularly in cities.

- Explore last address (often Delhi for several weeks before leaving), location of family members, experiences living elsewhere in India.

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Internal relocation: Reasonableness

Q: Other than b/c you think the BJP supporters could track you through the Aadhaar card, are there any other reasons why you cannot live elsewhere in India?

A: I only speak Gujarati. Where else could I live.

Q: Why could you not live in Mumbai, for example?

A: There are no Gujaratis in Mumbai.

Q: I have an article from the Times of India that says there are 3.5 million Gujaratis in Mumbai.

A: I do not know anybody in Mumbai.

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Sample Checklist Analysis: Reasonableness

The record establishes that, under all the circumstances, it would be reasonable for the applicant to relocate within India. The applicant indicated that, aside from his fear of Congress Party members, there were no other reasons why he could not relocate within India. The applicant is a young man and in good health. He testified that he is able to work in construction and as a laborer. These are not geographically limited skills and would be transferable to other states in India. The applicant speaks Gujarati, a language spoken in cities and states outside the state of Gujarat. As such, it is reasonable to expect he could also relocate within India.

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Chen-type Harm

- If an applicant has established past persecution and the presumption of WFF has been rebutted because the applicant can internally relocate, consider *Chen* and Other Serious Harm.
- Responses to questions we ask for other purposes can inform this consideration
- Was the past harm serious enough to constitute *Chen*-level harm?
  - Detailed testimony on harm suffered, including any lasting effects.
  - Consider applicant's testimony regarding treatment received after attack. Village doctor or extended hospital stay?

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Sample *Chen* checklist analysis

There is also no significant possibility that asylum could be granted based on the severity of the past persecution. The applicant testified that that the worst incident of harm was when Congress party workers kicked, punched, and threatened him with death on February 28, 2018. His only injuries were bruises, for which he received an injection from the local village doctor. This is insufficient to establish a significant possibility that the harm he suffered was severe enough to warrant a grant of asylum in the absence of a well-founded fear. See Matter of Chen, 20 I&N Dec. 16 (BIA 1989).

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Other Serious Harm

- Does the applicant fear any other serious harm not related to a nexus?
- Applicant's burden to establish OSH, so must provide specific facts
- Other than X, do you fear anything or anyone else in India?

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What about CAT?

- Consider whether feared harm would amount to torture
- Consider internal relocation

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Sample CAT analysis

The record does not establish a significant possibility that it is more likely than not the applicant will be subjected to severe pain or suffering in another state of India. While the applicant was harmed in Punjab and believes Congress party members could find him in another state and harm him, he did not provide any specific facts to support this belief. The Congress party members he specifically fears do not appear to know his name or even where he lived in Punjab as they never called him by name nor came to his home. Therefore, the evidence does not indicate they would locate him to harm him in other states of India. Moreover, he did not know anyone harmed by other Congress party members and country conditions reports "do not suggest that there exists a general risk in India of ill-treatment for members of the Shiromani Akali Dal (Amritsar/Mann) party." Library of Congress, India: Feasibility of Relocation of Sikhs and Members of the Shiromani Akali Dal (Mann) Party. https://www.justice.gov/file/1068936/download.

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Recap

- Identity of persecutor
- Possession of protected characteristic
- Seriousness of harm and state action
- Internal relocation
- Chen/other serious harm
- CAT

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Thank you!

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DHS-19-1398-G-000631

U.S. Citizenship and Immigration Services

CREDIBLE FEAR NONDETAINED PROCESSING PROCEDURES

USCIS ASYLUM DIVISION / OPERATIONS

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Last Updated: May 15, 2019

DHS-19-1398-G-000632

Expedited Removal/Credible Fear

U.S. Citizenship and Immigration Services

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

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Dependents in CF

U.S. Citizenship and Immigration Services

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

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Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



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Concurrently

- Concurrently means same time, same place.
- Need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

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Desires to be Included

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AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

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Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

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Explanation

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When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

AMERICAN OVERSIGHT

Use of Discretion

U.S. Citizenship and Immigration Services



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

AMERICAN OVERSIGHT
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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
  - PA and dependents detained separately (including in different asylum office jurisdictions)
  - PA and dependents not detained

AMERICAN OVERSIGHT
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Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, ask:**
  - Provide explanation to the applicant

AMERICAN OVERSIGHT
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Security Checks

- Security checks are required for each family member
- Complete a BISC for each family member



AMERICAN OVERSIGHT

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Interview – Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT

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Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Ask all applicants (adults and children) if they wish to be interviewed with or without other family members present.
- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

AMERICAN OVERSIGHT

Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

AMERICAN OVERSIGHT

Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

AMERICAN OVERSIGHT

Interview - Children

U.S. Citizenship and Immigration Services

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

AMERICAN OVERSIGHT

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Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

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AMERICAN OVERSIGHT

Interview – Summarizing Testimony

U.S. Citizenship and Immigration Services

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

AMERICAN OVERSIGHT

Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

AMERICAN OVERSIGHT
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1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars.

AMERICAN OVERSIGHT
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1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
01/01/12	June Doe	El Salvador	A123 456 789	☒ Yes	☐ No	☒ Yes	☐ No

AMERICAN OVERSIGHT
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1. Positive Adult – Service Docs

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

AMERICAN OVERSIGHT

2. Negative Adult

- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

AMERICAN OVERSIGHT

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2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not, then we issue a discretionary NTA to the parent and the under 18 year old siblings.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Age 18 and Older

- If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not, we cannot issue a discretionary NTA to the parent and other siblings

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
				☐ Yes	☐ No	☐ Yes	☐ No

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13	☐	Consultant(s)	
1.14	☒	Other(s), list:	Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.
1.15	☐	No one other than applicant and asylum officer	

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

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2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

- I-870 for each positive applicant
- CF Determination Checklist for each positive applicant
- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

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3. All Negative

U.S. Citizenship and Immigration Services

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
  - The child(ren)'s fear.

AMERICAN OVERSIGHT

3. All Negative

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requested)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

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Family Processing

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions, see your supervisor for additional guidance

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

1) Mother arrives concurrently with two minor children, ages 9 and 3. They are all in ER/CF and detained together. Mother does not establish a credible fear.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

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Important Reminders

- Only spouses and children can be dependents.
- When a parent is negative and his or her testimony does not establish a positive CF for a child, AOs must see, attempt to interview, and make a determination for each dependent.
- Summarize each person's testimony. If a parent testifies on behalf of a child, summarize that testimony.
- When everyone is negative make sure the record is fully developed for all family members.

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Important Reminders

U.S. Citizenship and Immigration Services

OUTCOME	INTERVIEW CHILD?	MANDATORY BARS	SERVICE DOCS
Positive Parent	No, unless child requests	Yes, for parent, spouse, and all children.*	I-870 and checklist for parent, NTAs for each family member
Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

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Questions?

U.S. Citizenship and Immigration Services

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About this presentation

U.S. Citizenship and Immigration Services

- Authors: RAIO Training (RAIO.Training@uscis.dhs.gov) and Asylum Training (asylumtraining-coordinators@uscis.dhs.gov)
- Date of last revision: May 15, 2019
- This presentation is current only as of the date of the last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.
- All images in this presentation were identified as free to modify, share, and use commercially through Microsoft's Bing® search engine.

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U.S. Citizenship and Immigration Services

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Disclaimer

U.S. Citizenship and Immigration Services

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

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U.S. Citizenship and Immigration Services

DEPENDENTS IN THE CREDIBLE FEAR PROCESS

USCIS ASYLUM DIVISION / OPERATIONS

AMERICAN OVERSIGHT

Last Updated: May 15, 2019

Expedited Removal/Credible Fear

U.S. Citizenship and Immigration Services

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

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Dependents in CF

U.S. Citizenship and Immigration Services

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

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Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



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Concurrently

- Concurrently means same time, same place.
- Need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

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Desires to be Included

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

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Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

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Explanation

U.S. Citizenship and Immigration Services

When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

AMERICAN OVERSIGHT

Use of Discretion

U.S. Citizenship and Immigration Services



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

AMERICAN OVERSIGHT
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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
  - PA and dependents detained separately (including in different asylum office jurisdictions)
  - PA and dependents not detained

AMERICAN OVERSIGHT

Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, provide the explanation on inclusion to the applicant (see slides 6-8)**

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Security Checks

- Security checks are required for each family member
- Complete a BISC for each family member



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Interview – Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT

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Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Ask all applicants (adults and children) if they wish to be interviewed with or without other family members present.
- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

AMERICAN OVERSIGHT

Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

AMERICAN OVERSIGHT

Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

AMERICAN OVERSIGHT

Interview - Children

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

AMERICAN OVERSIGHT

Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

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Interview – Summarizing Testimony

U.S. Citizenship and Immigration Services

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

AMERICAN OVERSIGHT

Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

AMERICAN OVERSIGHT
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1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars.

AMERICAN OVERSIGHT

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1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
01/01/12	June Doe	El Salvador	A123 456 789	☒ Yes	☐ No	☒ Yes	☐ No

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AMERICAN OVERSIGHT
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1. Positive Adult – Service Docs

U.S. Citizenship and Immigration Services

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

AMERICAN OVERSIGHT

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2. Negative Adult

- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

AMERICAN OVERSIGHT

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2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not, then we issue a discretionary NTA to the parent and the under 18 year old siblings.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

AMERICAN OVERSIGHT

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2. Negative Adult, Positive Child Age 18 and Older

U.S. Citizenship and Immigration Services

- If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not, we cannot issue a discretionary NTA to the parent and other siblings

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?	Is child included in PA's claim?
				☐ Yes ☐ No	☐ Yes ☐ No

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

DHS-19-1398-G-000703

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13	☐	Consultant(s)	
1.14	☒	Other(s), list:	Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.
1.15	☐	No one other than applicant and asylum officer	

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

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2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

- I-870 for each positive applicant
- CF Determination Checklist for each positive applicant
- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

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3. All Negative

U.S. Citizenship and Immigration Services

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
  - The child(ren)'s fear.

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3. All Negative

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requested)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

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Family Processing

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions, see your supervisor for additional guidance

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

1) Mother arrives concurrently with two minor children, ages 9 and 3. They are all in ER/CF and detained together. Mother does not establish a credible fear.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

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Important Reminders

- Only spouses and children can be dependents.
- When a parent is negative and his or her testimony does not establish a positive CF for a child, AOs must see, attempt to interview, and make a determination for each dependent.
- Summarize each person's testimony. If a parent testifies on behalf of a child, summarize that testimony.
- When everyone is negative make sure the record is fully developed for all family members.

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Important Reminders

U.S. Citizenship and Immigration Services

OUTCOME	INTERVIEW CHILD?	MANDATORY BARS	SERVICE DOCS
Positive Parent	No, unless child requests	Yes, for parent, spouse, and all children.*	I-870 and checklist for parent, NTAs for each family member
Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

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Questions?

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About this presentation

U.S. Citizenship and Immigration Services

- Authors: Asylum Operations and Los Angeles Asylum Office
- Date of last revision: May 15, 2019
- This presentation is current only as of the date of the last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.
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U.S. Citizenship and Immigration Services

DEPENDENTS IN THE CREDIBLE FEAR PROCESS

USCIS ASYLUM DIVISION / OPERATIONS

AMERICAN OVERSIGHT

Last Updated: May 15, 2019

DHS-19-1398-G-000718

Expedited Removal/Credible Fear

U.S. Citizenship and Immigration Services

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

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Dependents in CF

U.S. Citizenship and Immigration Services

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

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Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



DHS-19-1398-G-000721

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Concurrently

- Concurrently means same time, same place.
- Need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

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Desires to be Included

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

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DHS-19-1398-G-000723

Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

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Explanation

U.S. Citizenship and Immigration Services

When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

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Use of Discretion

U.S. Citizenship and Immigration Services



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
  - PA and dependents detained separately (including in different asylum office jurisdictions)
  - PA and dependents not detained

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Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, provide the explanation on inclusion to the applicant (see slides 6-8)**

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Security Checks

- Security checks are required for each family member
- Complete a BISC for each family member



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Interview –
Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

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Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Ask all applicants (adults and children) if they wish to be interviewed with or without other family members present.
- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

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Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

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Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

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Interview - Children

U.S. Citizenship and Immigration Services

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

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DHS-19-1398-G-000734

Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

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Interview – Summarizing Testimony

U.S. Citizenship and Immigration Services

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

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Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

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1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars.

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1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
				☒ Yes	☐ No	☒ Yes	☐ No
01/01/12	June Doe	El Salvador	A123 456 789				

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1. Positive Adult – Service Docs

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

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2. Negative Adult

- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

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2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not, then we issue a discretionary NTA to the parent and the under 18 year old siblings.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

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2. Negative Adult, Positive Child Age 18 and Older

- If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not, we cannot issue a discretionary NTA to the parent and other siblings

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?	Is child included in PA's claim?
				☐ Yes ☐ No	☐ Yes ☐ No

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.

1.15 ☐ No one other than applicant and asylum officer

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

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2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

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- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

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3. All Negative

U.S. Citizenship and Immigration Services

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
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3. All Negative

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requested)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

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Family Processing

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions, see your supervisor for additional guidance

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

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Important Reminders

U.S. Citizenship and Immigration Services

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Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

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Questions?

U.S. Citizenship and Immigration Services

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About this presentation

- Authors: RAIO Training (RAIO.Training@uscis.dhs.gov) and Asylum Training (asylumtraining-coordinators@uscis.dhs.gov)
- Date of last revision: May 15, 2019
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U.S. Citizenship and Immigration Services

CREDIBLE FEAR
FAMILY PROCESSING PROCEDURES

USCIS ASYLUM DIVISION / OPERATIONS

AMERICAN OVERSIGHT

Last Updated: April 2, 2018

The Plan & Quick Reference

U.S. Citizenship and Immigration Services

- Expedited Removal/Credible Fear Reminder – slide 4
- Dependents in CF and Desire to be Included– slides 5-12
- Discretion – slides 13-14
- Orientation – slides 18-19
- Security Checks – slide 20
- Interviewing – slides 21-31
- Determinations and Service Documents – slides 32-48
- Split Families (RF/CF) – slides 49-51
- Processing families detained separately or not detained – slide 52
- Scenarios and Important Reminders – slides 53-57

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Overview

U.S. Citizenship and Immigration Services

Issues may arise in any CF processing context, including:

- Family Residential Centers (FRCs)
- Adult detention facilities
- Non-detained
- Family members discovered at the time of interview

AMERICAN OVERSIGHT

Expedited Removal/Credible Fear

U.S. Citizenship and Immigration Services

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

AMERICAN OVERSIGHT

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Dependents in CF

U.S. Citizenship and Immigration Services

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

AMERICAN OVERSIGHT

Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



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AMERICAN OVERSIGHT

Concurrently

U.S. Citizenship and Immigration Services

- Concurrently means same time, same place.
- **FRC families**: to be detained together they must have arrived concurrently. Ask about other family members who arrived concurrently who are not detained in the FRC.
- **Non-FRC families and split families**: need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

AMERICAN OVERSIGHT

Desires to be Included

- **Previous guidance**: instructed AOs to ask the dependent if he or she wanted to be included on the PA's determination.
- **Current guidance**: provide an explanation to the PA and dependent and ask each person if they understand and agree.
- An indication that the PA and dependent understand and agree constitutes an expression of the dependent's desire to be included in the PA's claim.

AMERICAN OVERSIGHT
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Remember: Desires to be Included

U.S. Citizenship and Immigration Services

- Do not ask children or spouses if they want to be included on the PA's case.
- Do not ask parents if they want to be included on their child's case, and do not ask children if they want their parents to be included on their case.

AMERICAN OVERSIGHT

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Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

AMERICAN OVERSIGHT

Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

AMERICAN OVERSIGHT

Explanation

U.S. Citizenship and Immigration Services

When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

AMERICAN OVERSIGHT

Discretion

- Regulations provide that a spouse or child may be included in an applicant's CF evaluation and determination if they arrived together and the spouse or child desires to be included.
- If these criteria are met, it is USCIS **discretion** whether or not to include.
- The decision to exercise our discretion is case-specific.

AMERICAN OVERSIGHT

Use of Discretion

U.S. Citizenship and Immigration Services



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

AMERICAN OVERSIGHT
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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
  - PA and dependents detained separately (including in different asylum office jurisdictions)
  - PA and dependents not detained

AMERICAN OVERSIGHT
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Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, ask:**
  - If possible, would you like to be processed with your family members and included in your spouse or parent's CF determination?

AMERICAN OVERSIGHT

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Remember: All Families

U.S. Citizenship and Immigration Services

- The spouse or child must arrive concurrently with the PA and desire to be included.
- Only a spouse or child may be a dependent on a positive CF determination. Siblings and parents cannot be dependents.
- USCIS will not include a dependent on a negative CF determination.
- Families do not need to be detained together to be included in the positive determination or receive an NTA for purposes of family unity.

AMERICAN OVERSIGHT

FRC Orientation Procedures

U.S. Citizenship and Immigration Services

- **Applicants detained at FRCs receive a second orientation.**
- **Mandatory questions at 2nd orientation:**
  1. Which language do you prefer?
  2. Do you prefer to be interviewed by a female or male officer, or no preference?
  3. Do you prefer a female or male interpreter, or no preference?
  4. Do you understand and agree? (After providing explanation)

AMERICAN OVERSIGHT

FRC Orientation Procedures

U.S. Citizenship and Immigration Services

Documentation:

- **I-870**

1.5 01/04/18 — Date of AO orientation [MM/DD/YY]

1.6 Lack of resources — If orientation more than one week from date of detention, explain delay

1.7 01/08/2018 — Date of interview [MM/DD/YY]

1.8 Dilley, TX — Interview site

1.9 ☒ Applicant received and signed **Form M-444** and relevant *pro bono* list on 12/22/17; 01/04/18 — Date signed [MM/DD/YY]

- **Memo to file**

AMERICAN OVERSIGHT

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Security Checks

U.S. Citizenship and Immigration Services

- Security checks are required for each family member
- Complete a BISC for each family member



AMERICAN OVERSIGHT

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Interview –
Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT

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Interview – Process

1) Interview the principal applicant.

If PA Appears Positive

- FRCs: AOs do not need to physically see and attempt to interview the children.
- Non-detained: AOs must physically see all children.

If PA Appears Negative

- AOs must ask the parent about his or her children's potential fears.
- If parent's testimony doesn't establish a positive CF for children, AOs must physically see all children and attempt to interview them.

AMERICAN OVERSIGHT
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Interview - Rapport

U.S. Citizenship and Immigration Services

- It's important to establish rapport with all applicants, especially with children.
- AOs may use the background gathering portion of the interview as a time to build rapport.
- Include a summary of rapport-building in the Q&A for each person interviewed.
- As you are building rapport, determine whether the child is capable of testifying in a meaningful manner.
- Consult the Children's Claims Lesson Plan on ways to build rapport with children.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Ask all applicants (adults and children) if they wish to be interviewed with or without other family members present.
- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Explain to the parent that the presence of children at the interview may impact their willingness to disclose details of traumatic events and impact the interview.
- Maintain flexibility in rescheduling an interview when there are possible concerns about a child's presence at the interview.
- AOs should explain to a parent whose child is present that the interview may be rescheduled if the parent needs to arrange for child care.
- If parent is caring for a sick child that may warrant a reschedule.

AMERICAN OVERSIGHT

Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

AMERICAN OVERSIGHT

Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

AMERICAN OVERSIGHT

Interview - Children

U.S. Citizenship and Immigration Services

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

AMERICAN OVERSIGHT

DHS-19-1398-G-000788

Interview – FRC Mandatory Questions

U.S. Citizenship and Immigration Services

Always ask these questions at the FRCs:

- Have you ever been harmed by a family member?
- Has/have your children ever been harmed by a family member?
- Have you ever been harmed by anyone you were in a relationship with?
- Have your children ever been harmed by anyone you were in a relationship with?
- Is there anything/anyone else you fear that we have not discussed today?

AMERICAN OVERSIGHT

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Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

AMERICAN OVERSIGHT

Interview – Summarizing Testimony

U.S. Citizenship and Immigration Services

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

AMERICAN OVERSIGHT

Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

AMERICAN OVERSIGHT

1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars. The parent may respond to mandatory bar questions on behalf of her children, unless there are indications that one or more bars may apply. Even then, if a child is unable to meaningfully respond the parent may respond on the child's behalf.

AMERICAN OVERSIGHT
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1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
				☒ Yes	☐ No	☒ Yes	☐ No
01/01/12	June Doe	El Salvador	A123 456 789				

AMERICAN OVERSIGHT
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1. Positive Adult – Service Docs

U.S. Citizenship and Immigration Services

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

AMERICAN OVERSIGHT

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2. Negative Adult

U.S. Citizenship and Immigration Services

- USCIS will not exercise its discretion to include a dependent in a PA's negative determination.
- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- **If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not:**
  - We can use our discretion to place the child's parent(s) and any siblings under age 18 into §240 proceedings in the interest of family unity.
  - While we may refer to the child as the "principal applicant" in this context, the parent(s) and sibling(s) do not become dependents.
  - We are using DHS discretion to NTA parent(s) and any siblings under age 18 based on the child's positive CF determination.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

AMERICAN OVERSIGHT
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DHS-19-1398-G-000797

2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- We cannot NTA parent(s) and sibling(s) under 18 years old for purposes of family unity unless they cannot establish CF on their own.
- Family unity interests are not implicated until and unless it is determined that the parent(s) and sibling(s) under 18 years old cannot establish CF on their own.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Age 18 and Older

U.S. Citizenship and Immigration Services

If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not:

- Generally we cannot use our discretion to place the child's parent(s) and any siblings into §240 proceedings in the interest of family unity.
- The policy to issue discretionary NTAs was adopted to promote family unity is only for children under age 18 who cannot establish CF.
- Check with your supervisor. In some locations ICE ERO has been amenable to our use of discretion in cases with this scenario.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?	Is child included in PA's claim?
				☐ Yes ☐ No	☐ Yes ☐ No

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

DHS-19-1398-G-000802

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13	☐	Consultant(s)	
1.14	☒	Other(s), list:	Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.
1.15	☐	No one other than applicant and asylum officer	

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

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2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

- I-870 for each positive applicant
- CF Determination Checklist for each positive applicant
- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

AMERICAN OVERSIGHT
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3. All Negative

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
  - The child(ren)'s fear.

AMERICAN OVERSIGHT
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3. All Negative

U.S. Citizenship and Immigration Services

- Where no immediate family members are found to have a credible fear, the APSO follows procedures for preparing, serving, and processing each family member's decision for a negative CF determination.
- Each family member receives his or her own CF determination, including his or her own I-870 and CF Determination Checklist.
- The parent's I-870 should indicate that the child is not included in the parent's negative determination.

AMERICAN OVERSIGHT

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3. All Negative

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requested)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

AMERICAN OVERSIGHT
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Family Processing – Split RF/CF

U.S. Citizenship and Immigration Services

- We cannot include a child in a parent's positive RF determination
- We will not issue an NTA to the child based on the parent's positive RF determination.
- APSOs may use the parent's Q&A as a basis for a positive CF finding for a child as long as the parent's agreement to her testimony being included in the child's application is documented on the parent and child's Q&A and I-870.
- APSOs must screen everyone for mandatory bars.
- As in CF, if the child is incapable of testifying, clearly document this and ask the parent if she is willing to testify on the child's behalf.

AMERICAN OVERSIGHT

Family Processing – Split RF/CF

- Where the parent is in RF and the children are in ER/CF, and;
- Where one sibling has a positive CF determination but the other children under 18 do not;
- Issue NTAs for those other siblings (except siblings age 18 and over) for family unity.

AMERICAN OVERSIGHT
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Family Processing – Split RF/CF Documents

- Parent receives positive or negative RF determination
- I-870 for each child
- CF Determination Checklist for each child
- I-862 for each positive child (check box that respondent has demonstrated a credible fear of persecution or torture)
- I-869 and I-863 (if requested) for each negative child
- Interview notes (separate, or clearly documenting each person's claim was fully explored)

AMERICAN OVERSIGHT

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Non-FRC Families

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions coordinate with the other asylum office.

AMERICAN OVERSIGHT

Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

1) Mother arrives concurrently with two minor children, ages 9 and 3. They are all in ER/CF and detained together. Mother does not establish a credible fear.

AMERICAN OVERSIGHT

Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

AMERICAN OVERSIGHT
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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

3) Mother arrives concurrently with two minor children and they are detained together. The mother is in RF and children are in CF.

AMERICAN OVERSIGHT

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Important Reminders

- Only spouses and children can be dependents.
- Ensure parent is aware of the availability of childcare and how child's presence may impact her ability to testify.
- When a parent is negative and his or her testimony does not establish a positive CF for a child, AOs must see, attempt to interview, and make a determination for each dependent. Each applicant has the right to an individual CF determination.
- Summarize each person's testimony. If a parent testifies on behalf of a child, summarize that testimony.
- Build rapport with all applicants. Note in the Q&A how you established rapport with children.
- When everyone is negative make sure the record is fully developed for all family members.

AMERICAN OVERSIGHT

Important Reminders

U.S. Citizenship and Immigration Services

OUTCOME	INTERVIEW CHILD?	MANDATORY BARS	SERVICE DOCS
Positive Parent	No, unless child requests	Yes, for parent, spouse, and all children.*	I-870 and checklist for parent, NTAs for each family member
Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

AMERICAN OVERSIGHT

Questions?

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

DEPENDENTS IN THE CREDIBLE FEAR PROCESS

USCIS ASYLUM DIVISION / OPERATIONS

AMERICAN OVERSIGHT

Last Updated: May 20, 2019

DHS-19-1398-G-000819

Expedited Removal/Credible Fear

U.S. Citizenship and Immigration Services

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

AMERICAN OVERSIGHT

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Dependents in CF

U.S. Citizenship and Immigration Services

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

AMERICAN OVERSIGHT

Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



DHS-19-1398-G-000822

AMERICAN OVERSIGHT

Concurrently

- Concurrently means same time, same place.
- Need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

AMERICAN OVERSIGHT
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Desires to be Included

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

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AMERICAN OVERSIGHT
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Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

AMERICAN OVERSIGHT

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Explanation

U.S. Citizenship and Immigration Services

When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

AMERICAN OVERSIGHT

Use of Discretion

U.S. Citizenship and Immigration Services



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

AMERICAN OVERSIGHT
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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
  - PA and dependents detained separately (including in different asylum office jurisdictions)
  - PA and dependents not detained

AMERICAN OVERSIGHT
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Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, provide the explanation on inclusion to the applicant (see slides 6-8)**

AMERICAN OVERSIGHT

Security Checks

- Security checks are required for each family member
- Complete a BISC for each family member



AMERICAN OVERSIGHT
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Interview – Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT
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Interview - Rapport

- It's important to establish rapport with all applicants, especially with children.
- AOs may use the background gathering portion of the interview as a time to build rapport.
- Include a summary of rapport-building in the Q&A for each person interviewed.
- As you are building rapport, determine whether the child is capable of testifying in a meaningful manner.
- Consult the Children's Claims Lesson Plan on ways to build rapport with children.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Ask all applicants (adults and children) if they wish to be interviewed with or without other family members present.
- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Explain to the parent that the presence of children at the interview may impact their willingness to disclose details of traumatic events and impact the interview.
- Maintain flexibility in rescheduling an interview when there are possible concerns about a child's presence at the interview.
- AOs should explain to a parent whose child is present that the interview may be rescheduled if the parent needs to arrange for child care.
- If parent is caring for a sick child that may warrant a reschedule.

AMERICAN OVERSIGHT

Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

AMERICAN OVERSIGHT

Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

AMERICAN OVERSIGHT

Interview - Children

U.S. Citizenship and Immigration Services

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

AMERICAN OVERSIGHT

Interview – Mandatory Dependent Questions

U.S. Citizenship and Immigration Services

Always ask these questions when there are dependents:

- Have you ever been harmed by a family member?
- Has/have your children ever been harmed by a family member?
- Have you ever been harmed by anyone you were in a relationship with?
- Have your children ever been harmed by anyone you were in a relationship with?
- Is there anything/anyone else you fear that we have not discussed today?

AMERICAN OVERSIGHT

Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

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Interview – Summarizing Testimony

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

AMERICAN OVERSIGHT

Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

AMERICAN OVERSIGHT
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1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars.

AMERICAN OVERSIGHT

1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
01/01/12	June Doe	El Salvador	A123 456 789	☒ Yes	☐ No	☒ Yes	☐ No

AMERICAN OVERSIGHT
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1. Positive Adult – Service Docs

U.S. Citizenship and Immigration Services

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

AMERICAN OVERSIGHT

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2. Negative Adult

U.S. Citizenship and Immigration Services

- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not, then we issue a discretionary NTA to the parent and the under 18 year old siblings.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Age 18 and Older

U.S. Citizenship and Immigration Services

- If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not, generally we will not issue a discretionary NTA to the parent and other siblings

AMERICAN OVERSIGHT

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
				☐ Yes	☐ No	☐ Yes	☐ No

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT
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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

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2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

- I-870 for each positive applicant
- CF Determination Checklist for each positive applicant
- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

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3. All Negative

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
  - The child(ren)'s fear.

AMERICAN OVERSIGHT

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3. All Negative

U.S. Citizenship and Immigration Services

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requests or refuses to request/decline IJ review)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

AMERICAN OVERSIGHT

Family Processing

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination, unless the spouse or child wants a separate CF determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions, see your supervisor for additional guidance

AMERICAN OVERSIGHT

Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

1) Mother arrives concurrently with two minor children, ages 9 and 3. They are all in ER/CF and detained together. Mother does not establish a credible fear.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

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Important Reminders

U.S. Citizenship and Immigration Services

- Build rapport with the applicants.
- Only spouses and children can be dependents.
- When a parent is negative and his or her testimony does not establish a positive CF for a child, AOs must see, attempt to interview, and make a determination for each dependent.
- Summarize each person's testimony. If a parent testifies on behalf of a child, summarize that testimony.
- When everyone is negative make sure the record is fully developed for all family members.

AMERICAN OVERSIGHT

Important Reminders

U.S. Citizenship and Immigration Services

OUTCOME	INTERVIEW CHILD?	MANDATORY BARS	SERVICE DOCS
Positive Parent	No, unless child requests	Yes, for parent, spouse, and all children.*	I-870 and checklist for parent, NTAs for each family member
Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

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Questions?

U.S. Citizenship and Immigration Services

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- Authors: Asylum Operations and Los Angeles Asylum Office
- Date of last revision: May 20, 2019
- This presentation is current only as of the date of the last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.
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U.S. Citizenship and Immigration Services

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AMERICAN OVERSIGHT

Disclaimer

U.S. Citizenship and Immigration Services

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

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

DEPENDENTS IN THE CREDIBLE FEAR PROCESS

USCIS ASYLUM DIVISION / OPERATIONS

AMERICAN OVERSIGHT

Last Updated: May 20, 2019

Expedited Removal/Credible Fear

U.S. Citizenship and Immigration Services

- Each individual is placed into ER separately and has the right to an individual CF determination.
- **ALL** potential asylum seekers must be given the opportunity to be heard.

AMERICAN OVERSIGHT

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Dependents in CF

U.S. Citizenship and Immigration Services

- A **spouse or child may** be included in an applicant's CF evaluation and determination.
- To be included as a dependent, the spouse or child must:
    1. Arrive in the United States **concurrently** with the principal alien (PA);
    2. **Desire to be included** in the PA's determination.

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Spouse or Child

U.S. Citizenship and Immigration Services

Only a spouse or child may be a dependent:

- **Spouse**: includes common law and same sex if recognized by law where the marriage took place
- **Child**: unmarried, under age 21



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Concurrently

- Concurrently means same time, same place.
- Need evidence that they arrived concurrently. Evidence can be found in:
  - I-213 narrative
  - EARM Event ID #

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Desires to be Included

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided and response:

- *Your spouse and/or child may be included in your credible fear claim if they arrived in the United States with you and want to be included in your claim. If your spouse and/or child are included in your claim and you are found to have a credible fear, then they will also be found to have a credible fear.*
- *If you are not found to have a credible fear we will not include your spouse and/or child in that determination. Instead we will make a separate credible fear determination for your spouse and/or child.*
- *Do you understand and agree?*

AMERICAN OVERSIGHT
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Explanation

U.S. Citizenship and Immigration Services

AOs must explain to the entire family and document the explanation was provided:

- *You, your spouse, and your child(ren) each have the right to speak with an asylum officer separately. We will ask your spouse and/or child(ren) whether they want to interviewed with you or separately from you.*
- *We may speak with your child about any possible claim he or she may have. If we are unable to speak with your child because he or she is too young to talk or understand then we will ask you to testify on behalf of your child.*

AMERICAN OVERSIGHT

Explanation

U.S. Citizenship and Immigration Services

When the child appears unable to respond:

- Document that you have informed the parent that the child appears unable to respond and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to respond due to her age. Would you like to respond on behalf of your child?*
- Where the parent answers for the child, document that the parent is speaking for the child to confirm understanding of and agreement to USCIS policy to include the child on the parent's determination if it is positive.

AMERICAN OVERSIGHT

Use of Discretion

U.S. Citizenship and Immigration Services



Generally, **use** discretion and **include** a spouse or child when PA receives a **positive** CF determination.



Generally, **do not** use discretion and **do not** include a spouse or child when PA receives a **negative** CF determination.

AMERICAN OVERSIGHT
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Dependents and Detention

- USCIS has discretion to process dependents together with the principal applicant in any custody arrangement:
  - PA and dependents detained together
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  - PA and dependents not detained

AMERICAN OVERSIGHT
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Best Practice to Identify Families

U.S. Citizenship and Immigration Services

- **During ALL CF interviews, ask:**
  - Did any family members travel with you to the United States? Who?
  - Did you arrive together?
- **If the applicant says that he or she arrived with a spouse, child, or parent, provide the explanation on inclusion to the applicant (see slides 6-8)**

AMERICAN OVERSIGHT
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Security Checks

- Security checks are required for each family member
- Complete a BISC for each family member



AMERICAN OVERSIGHT
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Interview – Documenting Family Members Present

U.S. Citizenship and Immigration Services

- Note all family members present at the interview in I-870 section 1.14.

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's son, A123456789

1.15 ☐ No one other than applicant and asylum officer

AMERICAN OVERSIGHT

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Interview - Rapport

- It's important to establish rapport with all applicants, especially with children.
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AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

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- Consider privacy of family members, particularly with regard to sensitive topics such as rape and domestic violence.
- Ask all applicants (adults and children) at the beginning of the interview if they feel comfortable proceeding and follow up if the applicant indicates he or she is not comfortable.

AMERICAN OVERSIGHT

Interview – Confidentiality and Privacy

U.S. Citizenship and Immigration Services

- Explain to the parent that the presence of children at the interview may impact their willingness to disclose details of traumatic events and impact the interview.
- Maintain flexibility in rescheduling an interview when there are possible concerns about a child's presence at the interview.
- AOs should explain to a parent whose child is present that the interview may be rescheduled if the parent needs to arrange for child care.
- If parent is caring for a sick child that may warrant a reschedule.

AMERICAN OVERSIGHT

Interview - Children

- If a child appears unable to testify, document that you have informed the parent that the child appears unable to testify and that you asked the parent if he or she will speak on behalf of the child.
- **For example**: *It appears that your child is not able to testify today due to her age. Would you like to testify on behalf of your child?*
- Where the parent answers for the child, document that the parent is testifying about the child's fear.

AMERICAN OVERSIGHT

Interview - Children

- Ask children which language they would like their interview to be conducted in.
- Ask children if they would prefer to be interviewed by a female or male officer.
- Ask children if they would prefer a female or male interpreter.
- Remember to provide paragraph 1.28 to each person you interview, including children.

AMERICAN OVERSIGHT

Interview - Children

U.S. Citizenship and Immigration Services

- When interviewing children, fully develop the record (actively listen, ask relevant follow-up questions).
- Adjust your language to make it child-friendly and understandable.
- No age limit: even very young children may be able to establish a credible fear of persecution or torture.
- If child is unable to testify the parent may testify on behalf of the child.
- Even if the child is able to testify, the parent can always add testimony.
- Remember: children may need breaks more frequently than adults.

AMERICAN OVERSIGHT

DHS-19-1398-G-000883

Interview – Mandatory Dependent Questions

U.S. Citizenship and Immigration Services

Always ask these questions when there are dependents:

- Have you ever been harmed by a family member?
- Has/have your children ever been harmed by a family member?
- Have you ever been harmed by anyone you were in a relationship with?
- Have your children ever been harmed by anyone you were in a relationship with?
- Is there anything/anyone else you fear that we have not discussed today?

AMERICAN OVERSIGHT

Interview – Mandatory Bars & Adverse Info Memo

U.S. Citizenship and Immigration Services

- Each immediate family member, regardless of age, must be screened for mandatory bars to asylum.
- The parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if the child is unable to meaningfully respond the parent may respond on the child's behalf.
- Mandatory bars do not impact the CF determination.
- APSOs must complete a *Memo of Adverse Information* whenever they have reasonable grounds to believe that a mandatory bar may apply to an applicant, except the firm resettlement bar.

AMERICAN OVERSIGHT

Interview – Summarizing Testimony

U.S. Citizenship and Immigration Services

- Summarize every claim in the summary, including the children's claims. If a child is able to testify in a meaningful way, then summarize the child's testimony back to the child, along with any additional testimony from the parent.
- If the child cannot testify in a meaningful way, then summarize the parent's testimony about the child's fear to the parent.
- The notes must clearly reflect each applicant's summarized claim.

AMERICAN OVERSIGHT

Case Outcomes

1. Positive adult (either spouse)
2. Negative adult, positive child
3. Negative adult, negative child

AMERICAN OVERSIGHT
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1. Positive Adult

- No separate credible fear determination is necessary for the spouse and/or unmarried children under 21 who arrived concurrently with the principal applicant.
- AOs do not need to interview the spouse and/or children.
- AOs must screen all immediate family members for mandatory bars.

AMERICAN OVERSIGHT

1. Positive Adult - Documenting

U.S. Citizenship and Immigration Services

Update the adult's I-870 sections 2.13 – 2.18 with information about spouse and children.

2.13 Marital status: ☐ Single ☒ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☒ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☒ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

John Doe, El Salvador, A123 456 788

2.17 Children: ☒ Yes ☐ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?		Is child included in PA's claim?	
				☒ Yes	☐ No	☒ Yes	☐ No
01/01/12	June Doe	El Salvador	A123 456 789				

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1. Positive Adult – Service Docs

- I-870 for positive adult applicant
- CF Determination Checklist for positive adult applicant
- I-862 for each immediate family member who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes

AMERICAN OVERSIGHT

2. Negative Adult

- AOs must make separate credible fear determinations for the spouse/child. Parent's testimony may establish a claim for a child.
- If parent's testimony does not establish a claim for a child, AOs must attempt to interview each dependent child and specifically ask them if they are afraid to return, even if there is no prior indication of a fear.
- If other spouse is positive, follow procedures for positive adult.
- Multiple children may each be able to establish credible fear.

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Under 18 Years Old

U.S. Citizenship and Immigration Services

- If a child under 18 years old is found to have a credible fear and the parent(s) and other under 18 year old siblings are not, then we issue a discretionary NTA to the parent and the under 18 year old siblings.
- **We cannot issue discretionary NTAs to siblings age 18 and older who cannot establish CF.**

AMERICAN OVERSIGHT

2. Negative Adult, Positive Child Age 18 and Older

U.S. Citizenship and Immigration Services

- If a child aged 18 and older is found to have a credible fear and the parent(s) and other siblings are not, generally we will not issue a discretionary NTA to the parent and other siblings

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document persons present at the interview in I-870 section 1.14

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☒ Other(s), list: Applicant's mother, A123 456 789

1.15 ☐ No one other than applicant and asylum officer

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

If positive family member is a child, do not list parents or siblings in section 2.18.

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed

2.14 Did spouse arrive with applicant? ☐ Yes ☐ No

2.15 Is spouse included in applicant's claim? ☐ Yes ☐ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location **(if with applicant, provide A-Number)**:

_____

_____

2.17 Children: ☐ Yes ☒ No

2.18 List any children (*Use the continuation section to list any additional children)*:

Date of birth (MM/DD/YY)	Name	Citizenship	Present location **(if w/PA, list A-Numbers)**	Did child arrive with PA?	Is child included in PA's claim?
				☐ Yes ☐ No	☐ Yes ☐ No

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

Document in the comment section of the I-870 that, as an exercise of discretion, the positive finding is used as a basis for issuing NTAs for the entire immediate family (except siblings age 18 and older).

ADDITIONAL INFORMATION/CONTINUATION

A# 123 456 789, June Doe, is the applicant.

The applicant's parent and sibling were also screened for credible fear. They did not establish a credible fear of persecution and there is not a significant possibility that they could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

Therefore, we are exercising discretion to place the applicant's parent and sibling into 240 proceedings in the interest of family unity.

A123 456 787, Jane Doe, DOB 01/01/1978, applicant's parent
A123 456 788, Jim Doe, DOB 02/02/2012, applicant's sibling

DHS-19-1398-G-000896

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf annotate the I-870 so it clearly reflects the parent testified on behalf of the child and whether the child was present at the interview.

1.12 Persons present at the interview (check which apply)

1.13	☐	Consultant(s)	
1.14	☒	Other(s), list:	Applicant's mother, A123 456 789. The applicant's mother testified on his/her behalf. The applicant was not present at the interview.
1.15	☐	No one other than applicant and asylum officer	

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2. Negative Adult, Positive Child Under 18 - Documenting

U.S. Citizenship and Immigration Services

When the parent testifies on the child's behalf make a credibility determination about the parent's testimony.

4.1 ☒ ~~There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.~~ *Applicant's mother found credible.*

4.2 ☐ Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 ☐ Testimony was internally inconsistent on material issues.

4.4 ☐ Testimony lacked sufficient detail on material issues.

4.5 ☐ Testimony was not consistent with country conditions on material issues.

- **Also annotate how the child's identity was established**

4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 ☒ *Applicant's mother's* ~~Applicant's own~~ credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 ☐ Passport which appears to be authentic.

4.28 ☐ Other evidence presented by applicant or in applicant's file (List): _____

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DHS-19-1398-G-000898

2. Negative Adult, Positive Child Under 18 - Service Docs

U.S. Citizenship and Immigration Services

- I-870 for each positive applicant
- CF Determination Checklist for each positive applicant
- I-862 for each immediate family member (parent, siblings under 18)* who arrived concurrently. Check box that respondent has demonstrated a credible fear of persecution or torture.
- Interview notes clearly documenting that each immediate family member's claim was fully explored
- Family unity NTA memo to file

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DHS-19-1398-G-000899

3. All Negative

- APSOs must physically see and attempt to speak to each family member and ask questions about a fear of return.
- The record must clearly reflect that APSOs explored all possible claims for each family member:
  - The parent's fear for herself;
  - The parent's fear for her child(ren); and
  - The child(ren)'s fear.

AMERICAN OVERSIGHT
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3. All Negative

U.S. Citizenship and Immigration Services

- I-870 for each family member
- CF Determination Checklist for each family member
- I-869 for each family member
- I-863 for each family member (if requests or refuses to request/decline IJ review)
- Interview notes (separate, or clearly documenting each person's potential claim was explored)

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Family Processing

- If they arrived concurrently with the PA, a spouse and/or child of a PA who was found positive for CF may be joined as a dependent at any time.
- There is no need to interview a spouse or child dependent if PA received a positive determination, unless the spouse or child wants a separate CF determination.
- Everyone must be screened for potential mandatory bars.
- If immediate family members are in separate jurisdictions, see your supervisor for additional guidance

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

1) Mother arrives concurrently with two minor children, ages 9 and 3. They are all in ER/CF and detained together. Mother does not establish a credible fear.

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Family Processing - Scenarios

U.S. Citizenship and Immigration Services

How do you process this case?

2) Mother arrives concurrently with spouse, one 15 year old child, and one 19 year old child. They are all in ER/CF and detained separately.

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Important Reminders

- Build rapport with the applicants.
- Only spouses and children can be dependents.
- When a parent is negative and his or her testimony does not establish a positive CF for a child, AOs must see, attempt to interview, and make a determination for each dependent.
- Summarize each person's testimony. If a parent testifies on behalf of a child, summarize that testimony.
- When everyone is negative make sure the record is fully developed for all family members.

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Important Reminders

U.S. Citizenship and Immigration Services

OUTCOME	INTERVIEW CHILD?	MANDATORY BARS	SERVICE DOCS
Positive Parent	No, unless child requests	Yes, for parent, spouse, and all children.*	I-870 and checklist for parent, NTAs for each family member
Negative Parent, Positive Child under 18 years old	Maybe. If parent's testimony doesn't establish a positive CF for child, AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870 and checklist for each positive child, NTAs for purposes for family unity for parent(s) and siblings under 18 years old who are unable to establish CF.
Negative Parent, Positive Child 18 years old and over	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, and NTA for positive child. I-870, checklist, I-869 and I-863 (as requested) for each negative family member.
Negative Parent, Negative Child	Yes. AOs must see and attempt to interview all children.	Yes, for parent, spouse, and all children.*	I-870, checklist, I-869 and I-863 (as requested) for each family member.

*Parent may respond to mandatory bar questions on behalf of herself and her children, unless there are indications that one or more bars may apply to a child. Even then, if a child is unable to meaningfully respond the parent may respond on behalf of the child.

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Questions?

U.S. Citizenship and Immigration Services

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About this presentation

U.S. Citizenship and Immigration Services

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- Date of last revision: May 20, 2019
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Disclaimer

U.S. Citizenship and Immigration Services

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

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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;

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(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.

AMERICAN OVERSIGHT

EPS Grounds

Murder, rape, or sexual abuse of a minor
Illicit trafficking in firearms or destructive devices
Offenses relating to explosive materials or firearms
Crimes of violence where the penalty is at least one year
Kidnapping/ abduction
Child pornography
Peonage, slavery, involuntary servitude, and trafficking in persons
Alien smuggling
Human Rights violators or Interpol hits
Re-entry after an order of exclusion, deportation or removal, subsequent to conviction for a felony where a Form I-212 Application HAS NOT been approved
Known, suspected/ affiliated, or former gang members

NS Grounds

212(a)(3)(A)	212(a)(3)(B)
(i)(I) Espionage or sabotage • Former intelligence officer, military or members of gov. can fall in this category.	(i)(I) Engaged in a terrorist activity • Providing material support (i)(II) engaged or likely to engaged in a terrorist activity after entry (i)(III) with intent to cause death or serious bodily harm.
(i)(II) Unlawful exports	(i)(IV) is a representative of terrorist organization
(ii) Any other unlawful activity	(i)(V) is a Member of a Tier I or Tier II terrorist organization
(iii) Use of force … to oppose, control, or force the overthrow of the U.S. government	(i)(VI) is a member of a Tier III terrorist organization, unless did not and should not have known it was a Tier III
	(i)(VII) Espouse or endorses, or persuades others to espouse or endorse terrorist activity
	(i)(VIII) Received military from terrorist org.
	(i)(IX) Spouse/Child of above named alien if activity occurred within 5 years.

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FDNS Contact by Facility

Detention Facility	FDNS Office	Office Email

(b)(7)(c)

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FDNS IN APSO

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FDNS IO role/ purpose

- Address and resolve any system check issues or other concerns that surface during the course of asylum prescreening
- Identify and track potential patterns related to fraud, public safety, or NS threats relevant to CF/RF cases

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Who should adjudicators seek help from?

FDNS IOs

- Systems check-related notes directing contact with other agencies
- Guidance on any known investigations or LIRs involving CF/RF applicants
- Acting on referrals on fraud, public safety or NS concerns
- Other follow up requiring contact with other agencies

Supervisors/ Training Officers

- Other systems check-related questions
- General credibility concerns or strategies
- Lines of questioning
- Questions concerning whether an FDNS referral is warranted
- Implications of referred issues to APSO determinations

AMERICAN OVERSIGHT

How to get assistance from FDNS

1. Talk to your Supervisor or the duty Supervisor
2. With a Supervisor's approval, contact FDNS—
   - For **referrals**, complete an **adverse information memo** for review and submission by Supervisor to the FDNS inbox
   - For issues discovered…

Before the interview	email the FDNS IO
During the interview	email the FDNS IO
After the interview	submit an adverse information memo to the FDNS IO

   - For Highlight issues of concern and when appropriate, refer to any systems checks with relevant information.

AMERICAN OVERSIGHT

Egregious Public Safety (EPS)

- An EPS case is defined by USCIS and ICE as a case where information indicates the alien is ***under investigation for, has been arrested for (without disposition)***, **or** ***has been convicted*** of, any of the following:

1. Murder, rape, or sexual abuse of a minor
2. Illicit trafficking in firearms or destructive devices
3. Offenses relating to explosive materials or firearms
4. Crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year. (Felony)
5. Kidnapping/Abduction
6. Child pornography
7. Peonage, slavery, involuntary servitude, and trafficking in persons
8. Alien smuggling
9. Human Rights Violators
10. Known or Suspected Street Gang Members (Includes Cartels)
11. Interpol Hits

AMERICAN OVERSIGHT

What is **NOT** EPS?

- Traffic violations
- Crimes of violence where term of imprisonment is less than a year
- Non-violent Crimes
- Any other crimes not listed as an EPS ground
- Drug Offenses:
  - *Caveat:* Develop the record to ascertain whether there is a connection to an EPS ground (gangs or cartels)
- Military training and/or service
  - *Caveat:* Develop the record to eliminate any possible human right violator or NS issues.

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FAQs

(b)(7)(e)

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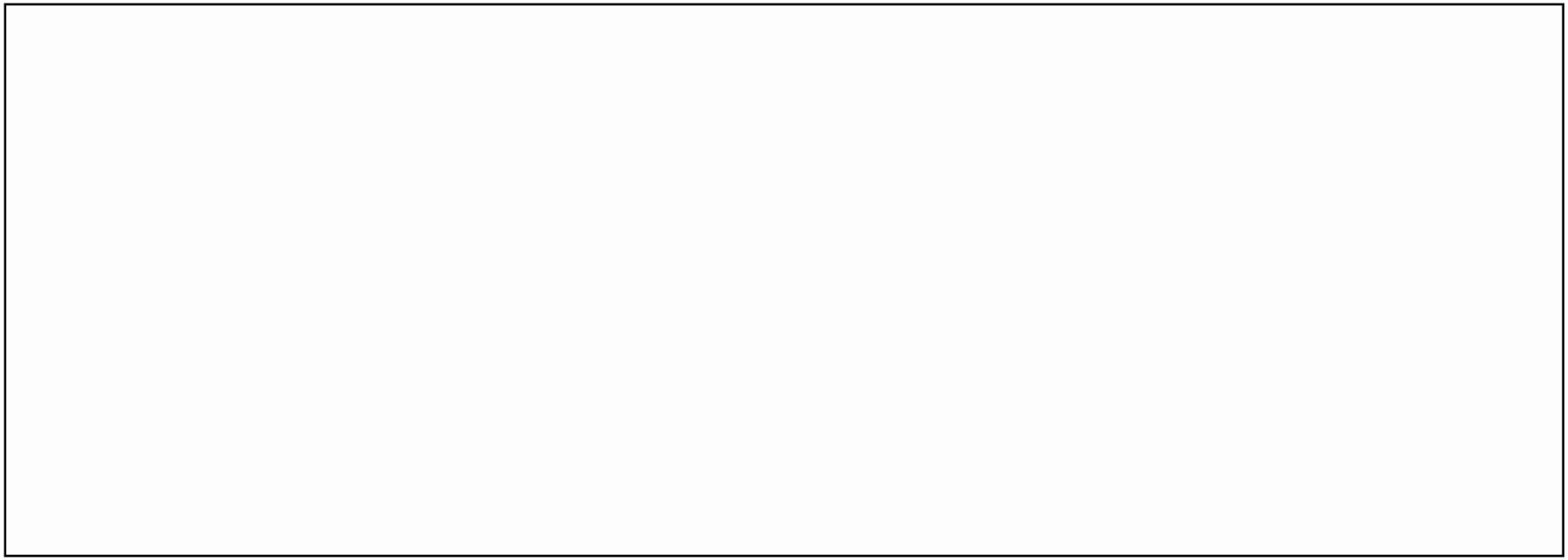
What FDNS does with EPS referrals?



(b)(7)(e)

AMERICAN OVERSIGHT

National Security (NS) Concerns

An NS 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 sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B).

Individual / Organization + **Connection to** + **NS ground from INA** = **National Security Concern**

AMERICAN OVERSIGHT

NS Grounds

212(a)(3)(A)	212(a)(3)(B)
(i)(I) Espionage or sabotage • Former intelligence officer, military or members of gov. can fall in this category.	(i)(I) Engaged in a terrorist activity • Providing material support (i)(II) engaged or likely to engaged in a terrorist activity after entry (i)(III) with intent to cause death or serious bodily harm.
(i)(II) Unlawful exports	(i)(IV) is a representative of terrorist organization
(ii) Any other unlawful activity	(i)(V) is a Member of a Tier I or Tier II terrorist organization
(iii) Use of force … to oppose, control, or force the overthrow of the U.S. government	(i)(VI) is a member of a Tier III terrorist organization, unless did not and should not have known it was a Tier III
	(i)(VII) Espouse or endorses, or persuades others to espouse or endorse terrorist activity
	(i)(VIII) Received military from terrorist org.
	(i)(IX) Spouse/Child of above named alien if activity occurred within 5 years.

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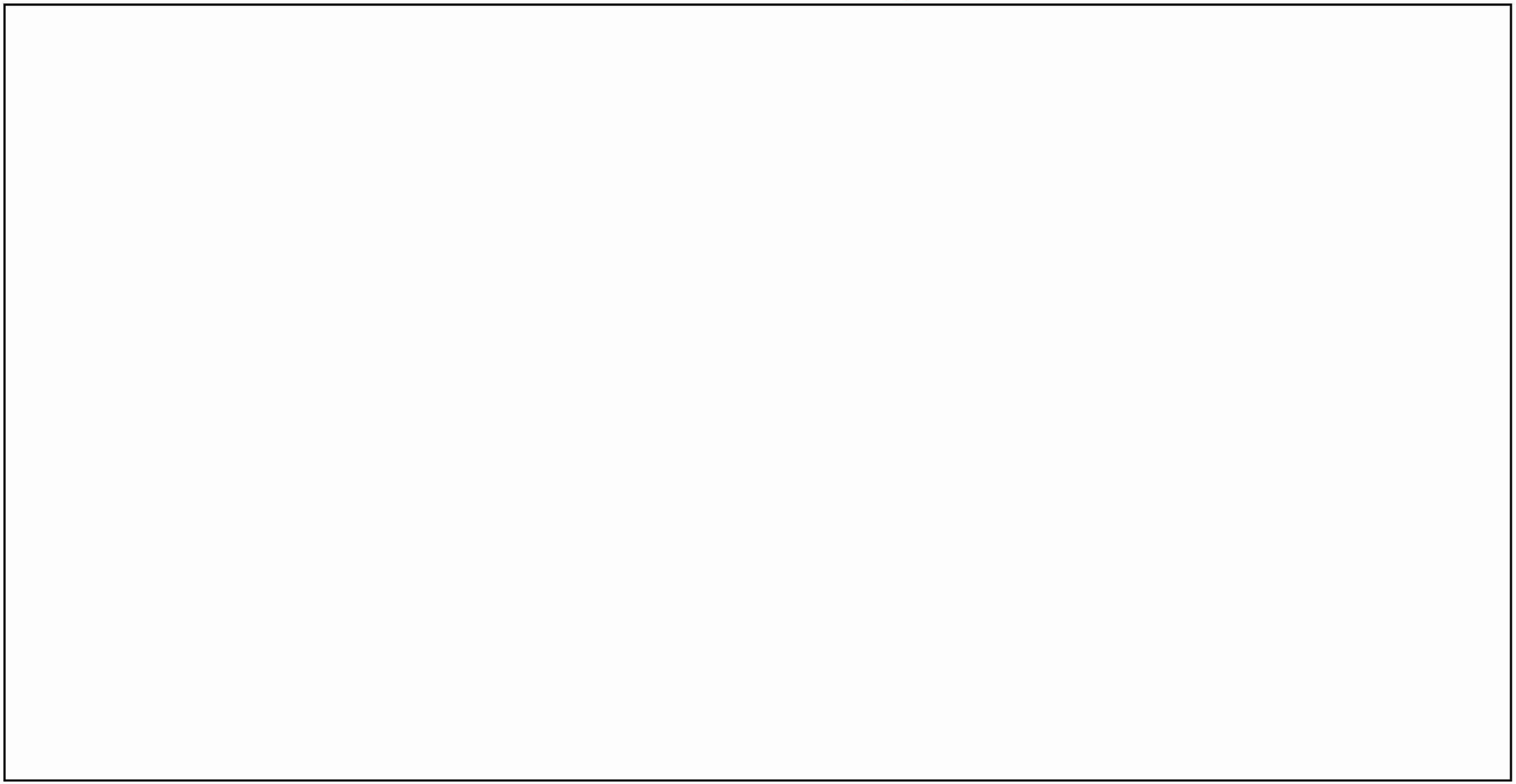
What to look for:
NS Indicators in Testimony

(b)(7)(e)



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What AOs should include in Adverse Info Memo

(b)(7)(e)

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U.S. Citizenship and Immigration Services

FRAUD DETECTION AND NATIONAL SECURITY IN THE APSO CONTEXT

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FDNS OVERVIEW

U.S. Citizenship and Immigration Services

FDNS Mission Statement: FDNS will safeguard the integrity of the nation's lawful immigration system by leading agency efforts to combat fraud, detect national security and public safety threats, and maximize law enforcement and Intelligence Community partnerships.

Each Asylum Office has an FDNS Supervisory Immigration Officer (SIO) and a team of FDNS Immigration Officers (FDNS IOs) responsible for activities including:

- Support for adjudicators
- Liaising with law enforcement agencies
- Administrative investigation of cases referred to FDNS for fraud, public safety, or national security concerns.

AMERICAN OVERSIGHT

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FDNS DUTY OFFICER ROLE

U.S. Citizenship and Immigration Services

- Each office typically assigns an FDNS IO to be the Duty Officer (DO) on a rotating basis
- FDNS Duty Officer is the primary point of contact for officers seeking immediate assistance with a fraud, public safety, or national security issue
- FDNS Duty Officer will
  - Address and resolve any system check issues or other concerns that surface during the course of asylum prescreening
  - Identify and track potential patterns related to fraud, public safety, or NS threats relevant to CF/RF cases

AMERICAN OVERSIGHT

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WHO SHOULD ADJUDICATORS CONTACT FOR ASSISTANCE?

U.S. Citizenship and Immigration Services

FDNS Immigration Officers

- Systems check-related notes directing contact with other agencies
- Guidance on any known investigations or Local Intelligence Reports (LIRs) involving CF/RF applicants
- Acting on referrals on fraud, public safety, or NS concerns
- Other follow-up requiring contact with other agencies

Asylum Supervisors/Training Officers

- Other systems check-related questions
- General credibility concerns or strategies
- Lines of questioning
- Questions concerning whether an FDNS referral is warranted
- Impact of issues included in an FDNS referral on APSO determinations

AMERICAN OVERSIGHT

UNCLASSIFIED / FOR OFFICIAL USE ONLY/ LAW ENFORCEMENT SENSITIVE

How to Request Assistance from FDNS

U.S. Citizenship and Immigration Services

1. Talk to your Supervisor or the Duty Supervisor
2. With a Supervisor's approval, contact FDNS –
   - For FDNS **referrals**, complete a **Memo of Adverse Information** for review and submission by Supervisor to the FDNS inbox. Highlight issues of concern and when appropriate, refer to any systems checks with relevant information.
   - For issues discovered…

Before the interview	Email the FDNS IO
During the interview	Email the FDNS IO
After the interview	Submit an adverse information memo to the FDNS IO

AMERICAN OVERSIGHT

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Egregious Public Safety (EPS)

U.S. Citizenship and Immigration Services

An EPS case is defined by USCIS and ICE as a case where information indicates the alien is ***under investigation for, has been arrested for (without disposition)***, **or** ***has been convicted*** of, any of the following:

Murder, rape, or sexual abuse of a minor
Illicit trafficking in firearms or destructive devices
Offenses relating to explosive materials or firearms
Crimes of violence for which the term of imprisonment imposed or where the penalty for a pending case is at least one year
An offense relating to the demand for or receipt of ransom
An offense relating to child pornography
An offense relating to peonage, slavery, involuntary servitude, or trafficking in persons
An offense relating to alien smuggling
Human Rights Violators, known or suspected street gang members, or INTERPOL hits
Re-entry after an order of exclusion, deportation, or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has not been approved

AMERICAN OVERSIGHT

UNCLASSIFIED / FOR OFFICIAL USE ONLY/ LAW ENFORCEMENT SENSITIVE

What is NOT EPS?

- Traffic violations
- Crimes of violence where term of imprisonment is less than a year
- Non-violent Crimes
- Any other crimes not listed as an EPS ground
- Drug Offenses:
  - *Caveat:* Develop the record to ascertain whether there is a connection to an EPS ground (gangs or cartels)
- Military training and/or service
  - *Caveat:* Develop the record to eliminate any possible human right violator or NS issues.

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What does FDNS do with EPS referrals?

U.S. Citizenship and Immigration Services

FDNS reviews all EPS referrals to determine if there is enough information to make a referral to ICE.

If a referral to ICE is warranted, FDNS duty IO will:

1. Email/call the ERO DO.

   For local cases, OPLA may also notified.

2. Complete & upload an RTI (Referral to ICE) in DS.

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National Security Concerns

U.S. Citizenship and Immigration Services

An NS 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 sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B).

Individual / Organization + **Connection to** + **NS ground from INA** = **National Security Concern**

AMERICAN OVERSIGHT

UNCLASSIFIED / FOR OFFICIAL USE ONLY/ LAW ENFORCEMENT SENSITIVE

National Security Grounds

U.S. Citizenship and Immigration Services

INA 212(a)(3)(A)
Any alien who…seeks to enter the United States to engage solely, principally, or incidentally in:
(i)(I) Any activity to violate any law of the United States relating to espionage or sabotage or
(i)(II) Any activity 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

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UNCLASSIFIED / FOR OFFICIAL USE ONLY/ LAW ENFORCEMENT SENSITIVE

National Security Grounds

U.S. Citizenship and Immigration Services

INA 212(a)(3)(B)
(i) In general, Any alien who-
(I) has engaged in a terrorist activity;
(II) 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 of a terrorist organization or a political, social, or other group that endorses or espouses terrorist activity;
(V) is a member of a terrorist organization
(VI) is a member of a terrorist organization, 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 from or on behalf of any organization that, at the time the training was received, was a terrorist organization; 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

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What to Look For: NS Indicators in Testimony

U.S. Citizenship and Immigration Services

(b)(7)(e)

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What to Look For – System Checks

(b)(7)(e)

U.S. Citizenship and Immigration Services

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STATISTICS

U.S. Citizenship and Immigration Services

COUNTRY	CF FY 18	% OF TOTAL
HONDU	25991	25.82%
GUATE	25122	24.96%
ELSAL	13527	13.44%
INDIA	8216	8.16%
MEXIC	6983	6.94%
CUBA	5992	5.95%
NICAR	1814	1.80%
BRAZI	1797	1.79%
CHINA	1449	1.44%
ECUAD	1261	1.25%
BANGL	795	0.79%
NEPAL	731	0.73%
CAMER	571	0.57%
VENEZ	561	0.56%
ERITR	508	0.50%

COUNTRY	CF FY 19	% OF TOTAL
HONDU	17737	26.87%
GUATE	10896	16.51%
CUBA	8572	12.99%
ELSAL	7905	11.98%
INDIA	3894	5.90%
NICAR	3501	5.30%
MEXIC	2564	3.88%
ECUAD	2216	3.36%
CHINA	1494	2.26%
VENEZ	910	1.38%
BANGL	748	1.13%
CAMER	720	1.09%
BRAZI	470	0.71%
SRILA	266	0.40%
NEPAL	259	0.39%

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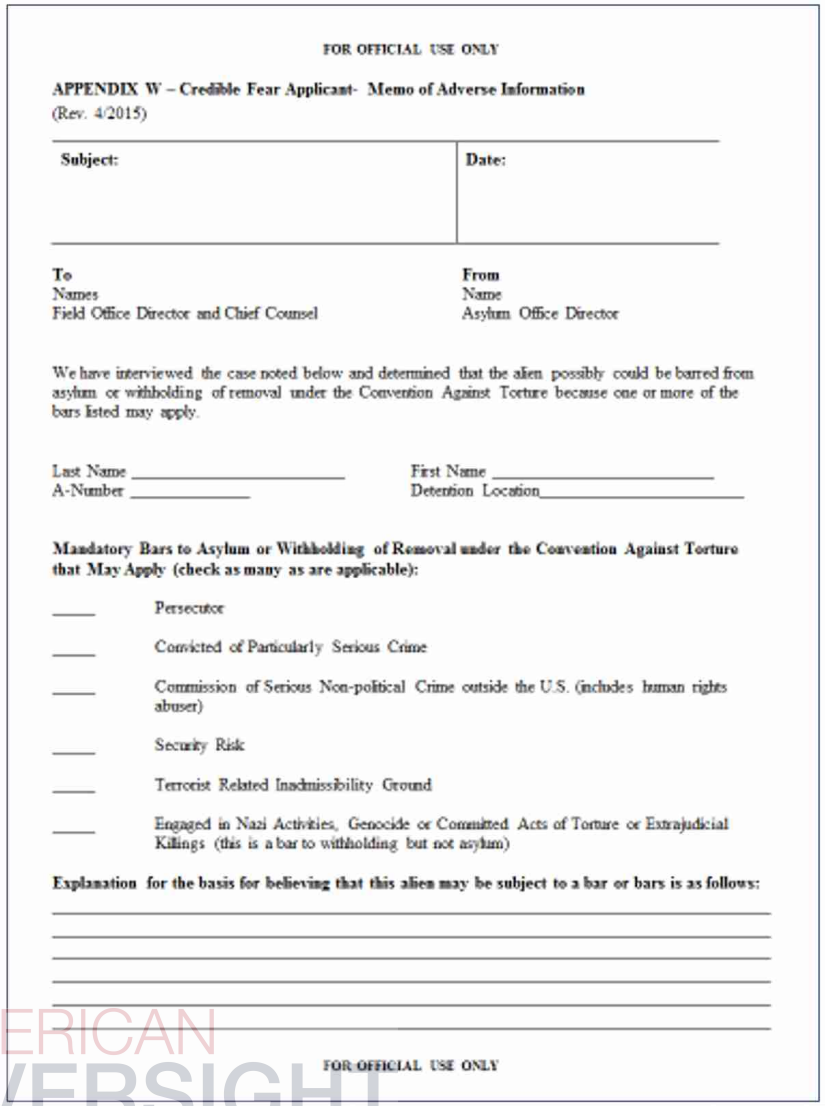
MEMO OF ADVERSE INFORMATION



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APPENDIX W – Credible Fear Applicant- Memo of Adverse Information
(Rev. 4/2015)

Subject:	**Date:**

To
Names
Field Office Director and Chief Counsel

From
Name
Asylum Office Director

We have interviewed the case noted below and determined that the alien possibly could be barred from asylum or withholding of removal under the Convention Against Torture because one or more of the bars listed may apply.

Last Name _____ First Name _____
A-Number _____ Detention Location_____

Mandatory Bars to Asylum or Withholding of Removal under the Convention Against Torture that May Apply (check as many as are applicable):

____ Persecutor

____ Convicted of Particularly Serious Crime

____ Commission of Serious Non-political Crime outside the U.S. (includes human rights abuser)

____ Security Risk

____ Terrorist Related Inadmissibility Ground

____ Engaged in Nazi Activities, Genocide or Committed Acts of Torture or Extrajudicial Killings (this is a bar to withholding but not asylum)

Explanation for the basis for believing that this alien may be subject to a bar or bars is as follows:

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Complete a Memo of Adverse Information whenever there are reasonable grounds to believe that a mandatory bar (other than firm resettlement) may apply.

The memo should include:

(b)(7)(e)

-
-

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What to Include in a Memo of Adverse Information

(b)(7)(e)

U.S. Citizenship and Immigration Services

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About this presentation

U.S. Citizenship and Immigration Services

- Authors: RAIO FDNS Branch, ZAR/ZAC FDNS, ZLA FDNS, and Asylum Training (asylumtraining-coordinators@uscis.dhs.gov)
- Date of last revision: May 15, 2019
- This presentation is current only as of the date of the last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.
- All images in this presentation were identified as free to modify, share, and use commercially through Microsoft's Bing® search engine.

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U.S. Citizenship and Immigration Services

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Disclaimer

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

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Alien Number: A
Name: ,
Country:
Asylum Office:

Date:
Asylum Officer:
___ #
Start: .m. Stop: .m.

RECORD OF CREDIBLE FEAR INTERVIEW

The following notes are not a verbatim transcript of this interview. These notes are recorded to assist the individual officer in making a credible fear determination and the supervisory asylum officer in reviewing the determination. Please follow instructions and prompts carefully and remove any questions from the notes that are not asked during the interview. All information in brackets should be replaced with information specific to each individual applicant.

☐ **Interpreter placed under oath**
Do you swear/affirm that you will truthfully, literally, and fully interpret the questions asked by the asylum officer and the answers given by the applicant; that you will not add to, delete from, comment on, or otherwise change the matter to be interpreted; and that you will immediately notify the officer in this case if you become aware of your inability to interpreter in a neutral manner on account of a bias for or against the applicant or the applicant's race, religion, nationality, membership in a particular social group, or political opinion? Do you further affirm that you understand that all matters discussed in this interview are confidential and that you will not share what you hear today with any other person?

Introduction: My name is Officer [APSO name]. I will be conducting your interview today. We are having this interview today because you have expressed a fear of returning to your country.

Question	*Answer*
Are you comfortable doing your interview in [language] today?	
Do you speak any other languages well?	
Do you still fear returning to your country? (If no, explore whether the applicant wishes to dissolve his/her credible fear claim.)	
Do you have a legal representative or consultant helping you with your credible fear case? (If yes, record info)	
(If no) You are permitted to have a legal representative or consultant present at your credible fear interview. You may reschedule your interview in order to have time to find a legal representative/consultant, if you would like. Do you want to proceed with your interview today without a legal representative/consultant? (If no, take appropriate steps to ensure that the applicant is interviewed with one present.)	

AMERICAN OVERSIGHT

Alien Number: A
Name: ,
Country:
Asylum Office:

Date:
Asylum Officer:
___ #
Start: .m. Stop: .m.

(If applicant wants to proceed without) To confirm, you are comfortable proceeding today without a legal representative or consultant?	
(Explore possibility of spouse/child dependent) At the time that you entered the US most recently, were you traveling together with any members of your family?	
What was the last day you left your country?	
What date did you most recently enter the US?	
Where did you enter the US?	
Had you ever entered the US before? (If so) When? Where? Were you ever deported?	
(For Guatemalan/Salvadoran applicants alive in 1990 re: ABC class membership) When is the first time you entered the U.S.?	
You received a form called the M-444 describing the credible fear process on [date]. Do you recall receiving that form?	
Did you understand the information contained in form M-444? (If no, take measures to ensure understanding.)	

☐ **Applicant placed under oath**

Do you swear/affirm that you will tell the truth, the whole truth, and nothing but the truth during your interview today?

☐ **Information in Section 1.28 of Form I-870 provided to applicant**

Question	*Answer*
Do you have any questions about what was just read to you? (The record must reflect each question and answer.)	
So far, have you had any problems or difficulty hearing or understanding the interpreter?	
Do you feel comfortable talking to a [fe]male officer and/or a [fe]male interpreter today?	
(If no) Would you like us to accommodate you by having a [fe]male officer or [fe]male interpreter instead?	
(If telephonic) Is anyone in the room with you right now?	

AMERICAN OVERSIGHT

Alien Number: A
Name: ,
Country:
Asylum Office:

Date:
Asylum Officer:
___ #
Start: .m. Stop: .m.

(If yes) Are you comfortable telling me information about your credible fear claim with this person in the room?	
Do you have any medical conditions, physical or mental?	
(If yes) Does your medical condition affect your ability to participate in the interview today?	
Are you currently taking any medications?	
At this time, do you feel comfortable speaking with me about the reasons why you fear returning to your country?	

Biographical Information

(Record all required I-870 biographic information directly into the Form I-870. Record any other biographical questions asked below (e.g., education, occupation).)

Question	*Answer*

Information About Fear Claim

Please note that highlighted text is to be used only as a guide for suggested lines of inquiry under certain topics. Officers should formulate additional questions and follow up on answers as needed.

AMERICAN OVERSIGHT

Alien Number: A
Name: ,
Country:
Asylum Office:

Date:
Asylum Officer:
___ #
Start: .m. Stop: .m.

Identity of Persecutor/Torturer & Harm • *Whom do you fear in your country?* • *Apart from anyone you have already mentioned, do you fear any other person or group?* • *Have you ever experienced any problems involving any person who is a member of the government or the police in your country?* • *To your knowledge, is there any connection between any of the persons that you fear and any member of the government or the police in your country?* • *Have you ever experienced harm in your country?* • *In what way did [feared entity] harm you?* • *When did you first begin to experience problems with [feared entity] in your country? (establish timeline of events)* • *In what way do you think [feared entity] would harm you if you returned to [country]?* *CAT* • *(If feared entity is public official) How do you know that [feared entity] is a police officer/soldier/etc.?* • *(If feared entity is not a public official) What would happen if you reported [feared entity] to the police in [country]?* • *Do you know anyone else who has reported [feared entity] to the police in [country]? If so, what did they report? How did the police respond?* • *If [public official] knew that [feared entity] was about to harm you, what would they do?*	*Persecution* • *Why do you think [feared entity] was or would be motivated to harm you?* • *Did [feared entity] say anything to you about why [s]he wanted to harm you?* • *Do you know of others who were harmed by [feared entity]?* • *Did you report any past harm to any authority?* • *(If applicant reported) How did the authority respond?* • *(If applicant did not report) Why didn't you report to the authorities?* • *(If no past harm) Would the police or government protect you from the harm you fear?* • *(If the applicant has already established a protected characteristic) How would [feared entity] be aware of [protected characteristic] if you returned to [country]?* • *How would [feared entity] be able to harm you if you returned to [country]?* • *(If no past harm) If [feared entity] never harmed you in the past, why do you think [feared entity] would harm you now?* *Internal Relocation* • *Could you move to another part of your country and be safe?* • *(If no) Why not?* *(If so) Is there a reason you cannot move somewhere else in [country]?*

Question	*Answer*

Additional Nexus Questions

Ask these additional nexus questions if the determination appears to be negative.

Question	*Answer*
Have you ever been threatened and/or harmed because of your religion in your country?	
Do you fear being threatened/harmed because of your religion if you return?	
Have you ever been threatened and/or harmed because of your political opinion in your country?	

AMERICAN OVERSIGHT

Alien Number: A
Name: ,
Country:
Asylum Office:

Date:
Asylum Officer:
___ #
Start: .m. Stop: .m.

Do you fear being threatened/harmed because of your political opinion if you return?	
Have you ever been threatened/harmed because of your race/ethnicity in your country?	
Do you fear being threatened/harmed because of your race/ethnicity if you returned?	
Have you ever been threatened/harmed because of you nationality in your country?	
Do you fear being threatened/harmed because of your nationality if you returned?	
Have you ever been threatened/harmed because of any special characteristic that you have (i.e. physical trait, particular belief or behavior, etc.)	
Do you fear being harmed in the future because of a special characteristic that you have if you return?	

Additional Follow-Up

Ask additional questions if the applicant did not initally express fear to CBP/ICE or if there are inconsistencies between the applicant's initial statement to the CBP or ICE official and his/her testimony.

Question	*Answer*

Mandatory Bars

Question	*Answer*
Have you ever asked for or been offered asylum/residence or any other immigration benefit or status in any other country?	
Have you ever harmed anyone for any reason?	
Have you ever committed a crime anywhere in the world?	
Have you ever been convicted of a crime in any country?	
Have you ever been arrested anywhere in the world?	
Were you ever in the military or police force?	

AMERICAN OVERSIGHT

Alien Number: A
Name: ,
Country:
Asylum Office:

Date:
Asylum Officer:
___ #
Start: .m. Stop: .m.

Have you ever been a member of a gang, terrorist organization or any other violent group?	
Have you ever been a member of any group that supports the use of violence or terrorism?	
Have you ever provided any type of support, like food, housing, money, weapons, transportation, or anything else, to a gang, terrorist organization, or any other violent group?	

Concluding Questions

Question	*Answer*
Is there anyone or anything else other than what you told me today that you fear in your country? (If yes, follow up as appropriate.)	
Did you understand my questions today?	
Did you understand the interpreter today?	
Interpreter, did you understand the applicant?	

AMERICAN OVERSIGHT

Alien Number: A	Date:
Name: ,	Asylum Officer:
Country:	___ #
Asylum Office:	Start: .m. Stop: .m.

Summary of Testimony

☐ **APSO summarized case as required by 8 CFR 208.30(d)(6) (See suggested script below).**

You testified today to the following:

[If past harm] *You were harmed by* ***[relevant entit(ies)]*** *in* ***[country]***. ***[Type of harm suffered and when harm occurred]***. ***[Feared entit(ies)]*** *harmed you because* ***[reason(s) for harm]***. *You* ***[reported/did not report]*** *the harm you suffered to* ***[relevant government entit(ies)]***. ***[If applicant reported]*** ***[Relevant government entit(ies)]*** *responded by* ***[government response]***. ***[If applicant did not report]*** *You did not report because* ***[reason why applicant did not report to the relevant government entit(ies)]***.

[If relevant]

If you return to your country at this time, you believe that ***[feared entit(ies)]*** *will* ***[feared future harm]*** *because* ***[reason you would be harmed in the future]***. *If you report* ***[feared entit(ies)]*** *to* ***[relevant government entit(ies)]***, *you believe they will respond by* ***[predicted government response]*** *because* ***[reason for predicted government response]***. ***[If relevant, include facts indicating relationship between public official and feared entit(ies)].*** *You believe you* ***[can/cannot]*** *relocate within* ***[country]*** *because* ***[reason why he/she can/cannot safely and reasonably relocate]***.

Question	*Answer*
Is this summary accurate?	
Do you have any changes/corrections to this summary?	

☐ **Information in Section 3.2 of Form I-870 provided to applicant**

Do you have any questions about what was just read to you?	
Do you have any questions for me before we conclude?	

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U.S. Citizenship and Immigration Services

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Local Procedures for Non-detained Credible Fear Interviews

Los Angeles Asylum Office

AMERICAN OVERSIGHT

Who are Non-Detained applicants?

- Applicants who have been released, but who are properly in credible fear proceedings.

- Substantively, there are no differences between how non-detained cases and detained cases are adjudicated. However, there are some administrative issues that we will cover today.

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Interview Prep

- Do we have all the referral docs for the applicant? Do we have it for the dependents? If not, check with your supervisor.
- Did applicant file an I-589, Affirmative Asylum Applicaiton? If yes, make sure to read through the I-589 and any supplemental docs *before* the interview. If there are inconsistencies between information provided during the interview and the I-589, you must confront on this.
- Please read through all the referral docs prior to the interview. Please pay close attention to the sworn statement and the I-213, and be ready to confront on any inconsistencies between the interview testimony and the information in the referral docs.

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Late Arrivals

- If an applicant arrives within 30 minutes from their scheduled start time, please process the case as normal.

- There is no set policy for applicants who arrive 30 minutes after their scheduled interview. These will be considered on a case-by-case basis.

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