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

March 31, 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 nineth production of responsive records, which consists of 985 pages that are responsive to your request. 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.

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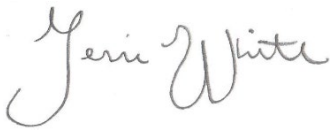
The enclosed record consists of the best reproducible copies available. Certain pages contain marks that appear to be blacked-out information. The black marks were made prior to our receipt of the file and are not information we have withheld under the provisions of the FOIA or PA.

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)

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Interview Procedures

- Non-detained applicants are **not** required to bring interpreters with them. If the applicant requests to use his/her own interpreter after you have explained to the applicant that we have professional interpreters that we use on the phone, then you use the interpreter with a monitor.

- Attempt to contact all three vendors prior to proceeding without a monitor, starting with the primary vendor and then moving on to the secondary and tertiary vendor outlined for the office.
- If a monitor from each vendor is unavailable after 5 minutes, you can continue without a monitor. If an applicant brings an interpreter who is struggling with interpreting, please use one of our approved interpreter services instead and ask the interpreter to wait in the waiting room.
- Make sure to verify the applicant's **current** mailing address. If the applicant provides a new address, please update Global. Make sure to use the current address on the NTA, if the case is a positive.
- Please get two phone numbers where an applicant can be reached. If they only have one, this is ok. This is important in case we need to call them back in for a follow-up.

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M-444/ Orientation

- If the referral documents or the A-file do not include a signed and dated Form M-444 or the non-detained applicant did not understand the form, the officer must request that the interpreter read the Form M-444 to the applicant and, after answering any questions, asks the applicant to sign and date the form at the conclusion of the orientation.
- If the applicant refuses to sign the form, the officer notes the applicant's refusal in the alien's signature space. This must be done at the time of the credible fear interview, prior to beginning the substantive part of the interview.

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Forms

- I-870 : Everything should be the same as a detained case, with the exception of the boxes referencing detention dates and locations. Please write in “non-detained” for these responses.
- Non-detained NTAs:
  - Use the templates provided. Put the applicant’s address at the top of the NTA.
  - If applicant has been paroled, make sure to remove the language referencing parole.

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Decision Service

- All cases should be pick-ups ***unless your supervisor approves a mailout*.** Please make sure to give the applicant a pick-up/mailout notice and place a copy in the file.
- **All negative decisions must be issued in person and cannot be mailed out.**
- If applicant speaks a rare language, please put a note on the front of the file so we can order the interpreter prior to the service date.

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Processing Family Units Reminders

- Provide explanation about adding dependents to entire family and confirm understanding
- If the principal appears to be a negative, you **must** interview the dependents to see if they can establish a claim on their own.
- Officers are required to explore CAT in the principal's interview even when the principal has established a claim for the dependent.
- All dependents must be asked the mandatory bar questions. There is no age cut-off. Parent can testify on behalf of child if they appear unable to testify.

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Processing Family Units Required Forms

- **Parent establishes a positive claim**
  - Parent requires all forms (Checklist, I-870, I-862, security checks)
  - Dependents need I-862s and security checks only

- **Child establishes a positive claim (parent is negative)**
  - Child who established positive claim requires all forms (Checklist, I-870, I-862, security checks)
  - Relatives need I-862s, security checks and family unity memo.

- **All family members are negatives**
  - Each individual needs an I-870, a checklist, security checks and all required docs for a negative service (I-863, I-869)

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About this presentation

- Authors: Los Angeles Asylum Office, Asylum QA, Ops and Asylum Training (asylumtraining-coordinators@uscis.dhs.gov)
- 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.
- 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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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.

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A Number: A Number		**Interview Date**: Interview Date
Name: Last Name, First Name		**Asylum Officer**: ZLA Number
Country: Country		**Interpreter**: Service LionBridge
Asylum Office: ZLA	**Start**: Start Time	**Stop**: Stop Time

QUESTIONS & ANSWERS

INTERVIEW INITIATED: Start Time

INTERPRETER OATH

Officer	Interpreter
Hello Interpreter, you are going to be interpreting for a credible fear interview today. Do you have the I-870 form?	
I will now swear you in. Do you affirm that you will truthfully, literally, and fully interpret the questions asked by the 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?	
Do you affirm that you will immediately notify the officer if you become aware of your inability to interpret in a neutral manner on account of a bias against the applicant or the applicant's race, religion, nationality, membership in a particular social group, or political opinion?	
Do you affirm that you understand that all matters discussed in this interview are confidential?	
Thank you. I will now connect you to the applicant.	

INTRODUCTION

Officer	Applicant
Hello, I am an asylum officer. I am going to be asking you some questions to determine if you are eligible to have an asylum hearing before a judge.	
The interpreter on the phone will help us to understand each other so you do not need to speak any English today. Do you understand?	
Just to confirm, what is your native language?	
You previously indicated that you were afraid to return to your country. Are you still afraid to return?	

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Are you comfortable proceeding with the interview today? (If NO, must ask WHY?)	

CONFIDENTIALITY

Everything you say today is confidential. Your interpreter has been placed under oath and has sworn to keep everything confidential.

ATTORNEY

Officer	Applicant
Do you have an attorney or a consultant?	
• If No: During this interview, you have the right to be represented by an attorney or to consult with any person. Would you like to proceed with this interview without an attorney or consultant or would you like to reschedule so that you have time to find an attorney?	
• If Yes: You have the right to have your attorney or consultant present for our interview, typically over the phone. Do you want me to call and see if representative is available to participate in the interview?	
What is your attorney's name and phone number?	
Your attorney is not available at this time. Would you like to proceed with the interview or would you like to reschedule for another time?	

SECTION 1.28

Your interpreter is now going to read you an explanation of the purpose of the interview and a few instructions. Interpreter please read Section 1.28 of the I-870 to the applicant.

Interpreter reads: The purpose of this interview is to determine whether you may be eligible for asylum or protection from removal to a country where you fear persecution or torture. I am going to ask you questions about why you fear returning to your country or any other country you may be removed to. It is very important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons why you fear harm. The information you tell me about the reasons for your fear will not be disclosed to your government, except in exceptional circumstances. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain.

Officer	Applicant
Do you understand what was just read to you?	
Do you have any questions about it?	

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APPLICANT OATH

Officer	Applicant
Before we begin, I will place you under oath. Please raise your right hand.	
Do you promise that the testimony you are about to give will be the whole truth and nothing false?	
Thank you. You may lower your hand.	

M-444

Officer	Applicant
Do you remember being given a form when you first entered the US, that you signed on, ____ , that gave some information about this credible fear process?	
Do you have any questions about the purpose of this interview or that form?	

BIOGRAPHIC INFORMATION - I-870

Officer	Applicant
[Officer confirms information on the I-870]	
Did anyone in your family enter the US with you at the same time?	
Did your spouse arrive with you to the US?	
• Do you want your spouse included in your claim?	
• If yes, do you know your spouse's A Number and birth date?	
Did your child(ren) arrive with you to the US?	
• If so, were you separated from your child?	
• If separated, do you need help locating your child?	
• Do you want your child(ren) included in your claim?	
• If yes, do you know the A number of your child(ren)?	
Do you currently have any medical conditions (physical or mental)?	
How have you been treated while at the detention center?	

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BACKGROUND QUESTIONS

Officer	Applicant
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?	
• When?	
• Where?	
• Were you ever deported?	

ABC QUESTIONS – Guatemala and El Salvador

Officer	Applicant
When was the first time you entered the US?	
Have you ever entered the US before that date?	
Have you ever applied for any immigration benefits or attempted to gain any legal status in the US before? (Examples: TPS, asylum, etc)	

CLAIM OF PERSECUTION

Past Persecution

Officer	Applicant
Now I am going to ask you some questions about why you do not want to return to your country.	

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Did you report this incident to the police or some other safety official?	
Did they/do you think they could have helped you?	
Besides what we have already talked about, were you harmed or threatened in any other way?	

Well-Founded Fear

What do you fear would happen to you if you returned to your country?	
Could you move to any other part of your country and be safe? Why?	

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ADDITIONAL NEXUS QUESTIONS

I understand everything that you have told me about so far. Now I am going to ask you a few questions to determine if there are *other* reasons you may fear returning to your country that we have not already talked about. I will ask you if you have ever been harmed or fear harm for specific reasons. Please focus on the reason that I am asking you about. If you do not fear harm for that reason, just say no.

Officer	Applicant
Besides what we have already talked about, have you ever been harmed or are you afraid of being harmed because of your ethnicity?	
Besides what we have already talked about, have you ever been harmed or do you fear being harmed because of your nationality?	
Besides what we have already talked about, have you ever been harmed or are you afraid of being harmed because of your religion?	
Besides what we have already talked about, have you ever been harmed or are you afraid of being harmed because of your political opinions?	
Have you ever been threatened or harmed by a family member?	
Do you fear that a family member will harm you in the future?	
Other than what we have already talked about, have you ever been harmed or do you fear being harmed because of any special characteristic you have? [physical trait, particular belief or behavior, etc.]	
Besides what we have already talked about, have you been harmed or do you fear being harmed because you belong to a group that is different or looked down on in your community?	
Is there anything else that is important to your claim that we have not yet discussed?	

CONVENTION AGAINST TORTURE

Officer	Applicant
Have you ever had any problems with the government of your country? By government I mean police, any public official, or any person	

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associated with the government.	

Are you afraid of anyone who works for the government of your country, including the police?	
Do you think the government or police of your country can protect you from harm? Why?	
Do you have any reason to believe that the government or police of your country would cause you severe harm or torture you if you return?	
• Do you think the government or police of your country would help you if they knew you were being harmed by [torturer]?	
• Do you fear that police or someone from the government of your country would look the	

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other way if they were aware you were being harmed? Why think that?	
• Would the police or any government official allow [torturer] to hurt you if the police or any government official knew what was happening? How do you know?	
• Do you believe that the police or military is working with the people who are trying to harm you?	
• Do you think that the police would harm you if the people you fear asked/told them to?	
Is there any other reason you are afraid to return to your country?	

I-213

Officer	Applicant
My records show that, when you were being interviewed by an immigration official at the border, you said you did not have any fear of returning to your country. Can you explain why you said that?	

MANDATORY BARS

Officer	Applicant
Other than your current detention, have you ever been arrested in any country including your own?	
Have you ever been accused of committing any crime in any country, including your own?	
Have you ever done anything to harm or injure another person or helped anyone to harm or injure another person?	
Have you ever served in the police or the military?	
Have you ever had permission to live in any country other than your own?	
Have you ever been a member of or supported a group which promotes violence or uses weapons?	
Have you ever done anything that anyone might consider a terrorist activity?	

ATTORNEY'S CLOSING REMARKS

Officer	Applicant

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Counselor, do you have any questions for the applicant?	
Would you like to make a closing statement?	

SECTION 3.2

Officer	Applicant
Those are all my questions. The interpreter is now going to read you an explanation of what will happen after this interview. Interpreter, please read section 3.2 to the applicant.	
Do you understand what was read to you?	
Do you have any questions about what was just read to you?	

CASE SUMMARY

I will now read you a brief summary of what you told me today. Please wait until I have read the entire summary before you make any comments.

You testified that	
Officer	**Applicant**
Is this summary correct?	
Do you have any questions?	

Conclusion

- This is the end of the interview. Please place the phone on the desk in front of you, but do not hang up the phone. Let the officer know you are done.
- Counselor, thank you for your participation today. You may disconnect from the line.
- Interpreter, thank you for your service today. You may disconnect.

INTERVIEW CONCLUDED: Stop Time

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A#: DATE:
NAME: AO:
COUNTRY: OFFICE: ZLA

CREDIBLE FEAR NOTES

Applicant's name:

Applicant/Interpreter Monitor Oaths administered

Paragraph 1.28, Form I-870 read to the applicant

DATE:

COUNTRY:

ASYLUM OFFICER:

INTERVIEW INITIATED: XX:XX PST

INTERPRETER: Language: Lionbridge # XXXXXX

☒ Call Interpreter
Hello interpreter. This is a credible fear interview. Please have form I-870 available for reference. I'm going to place you under oath.

☒ Administered Interpreter Oath

Officer	Interpreter
Do you 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 interpret 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?	**Yes**
Do you affirm that you understand that the matters discussed during this interview are confidential?	**Yes**

INTERPRETER: Interpreter, please introduce yourself to the applicant.

Introduction: Hello. My name is Officer _____and I will be conducting your interview today through an interpreter. We are having this interview today because you have expressed a fear of returning to your country, and today we will discuss what those fears may be.

Q: What is your best language?
A:

Q: Do you speak any other languages?
A:

Q. Do you still fear return to your country?
A.

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A#: DATE:
NAME: AO:
COUNTRY: OFFICE: ZLA

Q: Do you have an attorney or a consultant?
A:

If No Attorney:
Q: An attorney is not required for this interview. However, during this interview, you have the right to have an attorney or consultant present if you would like one. Would you like to have your interview today by yourself or would you like to reschedule so that you can have more time to find an attorney?
A:

If reschedule:
Q: We will reschedule your interview as soon as possible. Please be sure to start looking for an attorney immediately so that you will be ready for the next interview.
A:

If Yes Attorney:
Q: What is your attorney's name and contact information?
A:

Q: Ok, I'm going to attempt to contact your attorney.
A:

If Attorney unavailable:
Q: Your attorney is unavailable today. An attorney is not required for this interview. However, during this interview, you have the right to have an attorney or consultant present if you would like one. Would you like to have your interview today by yourself or would you like to reschedule so that your attorney can be present?
A:

Q: Do you or your children have any medical or health issues that I should be aware of?
A:

Q: Does this health issue affect your memory?
A:

Q: Have you informed the facility of these health issues?
A:

Q: Just so you know, we have a supervised child waiting area where your child can wait while we conduct your interview. Are you comfortable proceeding today with your child here in the room. [If child in waiting room ask if parent is comfortable with child in the waiting room].
A:

Q. Now the interpreter will now read you information that explains to you the purpose of this interview.

☒ Interpreter read Section 1.28 (Form I-870) to applicant
Interpreter, please read Paragraph 1.28 to the Applicant.

Q. Do you have any questions about what was just read to you?
A.

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A#: DATE:
NAME: AO:
COUNTRY: OFFICE: ZLA

☒ Applicant received and signed M-444 before interview
Q. My records reflect that you received an orientation about the credible fear process on [date]. That would have included information about this interview and your right to hire an attorney. Is that correct?
A.

Q. Did you understand the orientation?
A.

☒ Complete interpreter information

☒ Administered Applicant Oath
Before we begin, I need to place you under oath. Please raise your right hand.
Do you swear to tell the truth, the whole truth and nothing but the truth?
A.

Thank you, you may place your hand down. The interpreter has been sworn in by me earlier and s/he has promise to keep everything we discuss today confidential. Please speak loudly and clearly into the phone and please speak in short sentences. I'm just going to start by asking some questions about your background information.

NOTE: 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. THERE MAY BE AREAS OF THE INDIVIDUAL'S CLAIM THAT WERE NOT EXPLORED OR DOCUMENTED FOR PURPOSES OF THIS THRESHOLD SCREENING.

Q. Did you enter the country with your child? Name and DOB?
A.
Q. If yes, were you separated from your child?
A.
Q. If separated, where are they currently?
A.
Q. Do you need help locating your child?
A.

Q. Did you enter the country with any other members of your family? Name and DOB? If yes, where are they currently?
A.

[See I-870]

Q. How are you being treated at the facility?
A.

[If PA is Salvadoran or Guatemalan and was alive in 1990, you must ask them questions to determine if they are ABC class members. This includes whether the applicant has previously been to the US, and if so, when and how many times; has the applicant ever applied for any sort of benefit in the US or filed

AMERICAN OVERSIGHT

paperwork for status in the US; and whether the applicant's parents ever came to the US and if so, whether they filed for asylum or another benefit. You MUST also fill out an ABC checklist for these cases]

Q. Right now your child/ren is/are included on your case, which means s/he/they will receive the same decision as you. Would you like him/her/them to continue to be on your case?
A.

Q. Since your child/ren is so young and unable to testify themselves, are you willing to testify on their behalf?
A.

Q. Would your child like to be included on your application?
A.

[NOTE: if child/ren is/are old enough to testify for themselves, the questions must be asked to each child whether they want to be on their parents' case.]

CREDIBLE FEAR INTERVIEW - CLAIM

We are about to begin discussing the substance of your claim for asylum. It is in your best interest to keep your responses short with plenty of pauses so that the interpreter can accurately translate your responses. If what you say is too long for the interpreter to interpret, s/he will stop you. Please listen to my questions carefully and answer directly.

Any of you can talk to me today about a fear you have. Do you understand? (Record answers for all family members old enough to communicate with APSO.)

Are you comfortable proceeding with your children here in the room?

During any part of the testimony that becomes graphic or sensitive: Would you be more comfortable talking to me with your children in another room?

Q. Why do you fear return to your home country?
A.

Q: Have you ever been threatened by any family members?

Q. Have you ever been harmed by a family member?

Q. Did you report the incident(s) to the police?
A.

Q: Why did you not report the incident to the police?
A:

Q. Have you ever been threatened and/or harmed or do you fear harm/threats on account of your religion in your country?

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A.

Q. Have you ever been threatened and/or harmed or do you fear harm/threats on account of your race/skin color in your country?
A.

Q. Have you ever been threatened and/or harmed or do you fear harm/threats on account of your nationality, in your country?
A.

Q. Have you ever been threatened and/or harmed or do you fear harm/threats on account of your political opinion in your country?
A.

Q. Is there any characteristic you have or anything about you that would make people in your society want to harm you? Is there any characteristic you have that people in your area would not approve of?
A.

Q. Do you fear being threatened or harmed for any other reasons if you were to return?
A.

Q. Do you feel that you could be safe in another part of your country?
A.

Q. Why do you feel that you could not be safe in another part of [country]?
A.

CAT

I am going to ask you a series of questions regarding mistreatment at the hands of public officials and persons associated with public officials. It is important that you understand what I mean when I say "public officials." Public officials are people who work for the government of [country] and have some type of authority. Public officials may include people such as police officers, soldiers, mayors, prosecutors, judges, and other government officials and employees. Would a public official harm you if your returned to [country]?

Have you ever had any problems with a public official?

Is there any connection between the people you fear and the government of your country?

Are you afraid a public official would harm you if you returned to your country?

Q: Do you believe that the police or government are working with the people who are trying to harm you?

Q: Will you be harmed by anyone who has the government's permission or consent?

Q: Do you fear that a public official would look the other way if they were aware that you were being harmed?

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Q: Could the police or government protect you from the people you fear?

Q. How do you know that the government cannot protect you?

Q. Where did you learn this?

Are there other reasons we have not discussed that you are afraid for your children or yourself?
Is there anything else **any of you** would like to add? (This question must be posed to children old enough to communicate with APSO. Record all answers.)

[Elements of torture for reference: DO NOT INCLUDE IN FINAL NOTES] the pain or suffering, physical or mental, feared by the applicant would reach the level of severity required to constitute torture; the pain or suffering feared would be inflicted by, at the instigation of, or with the consent or acquiescence of a public official or other individual acting in an official capacity; the applicant would be in the custody or physical control of the feared torturer; the pain or suffering feared would be specifically intended by the offender to inflict severe pain or suffering on the applicant; and the pain or suffering feared would not be pursuant to lawful sanctions.

Bars

Q. Have you ever harmed anyone for any reason?
A.

Q. Have you ever committed a crime in any country?
A.

Q. Have you ever been convicted of a crime in any country?
A.

Q. Have you ever committed an armed act or an act that could be considered a terrorist act?
A.

Q. Have you ever been a member of an armed group or a group that could be considered a terrorist group?
A.

Q. Have you ever provided any type of support, like food, housing, money, weapons, or transportation to a person or group who commits armed acts?
A.

Q. Have you lived or applied to live in any other countries?
A.

[Note: these questions have to be asked of EVERY applicant. If an applicant is to young to testify, you can phrase it as "have you or your children ever…"]

Runway [If applicable – if the 867B indicates that the person did not claim fear]

AMERICAN OVERSIGHT

A#: DATE:
NAME: AO:
COUNTRY: OFFICE: ZLA

Q. On XX/XX/XX, you told the Immigration Officers that your purpose of entering the US was for your [from 867B], correct?
A.

Q. Why didn't you tell the Immigration Officers that you were afraid to return to your country?
A.

LAST CHECK FOR UNDERSTANDING

Q: Did you understand the questions that I asked?

Q: Did you understand your interpreter?

Q: Interpreter, did you understand the applicant?

REVIEW OF SUMMARY OF TESTIMONY
☒ **APSO SUMMARIZED THE CASE TO THE APPLICANT AS REQUIRED BY SECTION 3.3, FORM I-870**

Summary of testimony
You testified that you are afraid to return to XXX because you have been….You believe if you returned the harm will continue and the government cannot protect you. You testified that you You did not report to the police because. You believe that if you return to Choose an item. you will be killed.

Q: Is this summary correct?
A:

Q: Are there any changes or additions you would like to make?
A:

Q: Is there anything else that is important to your claim that we have not yet discussed?
A:

INTERVIEW CLOSING
☒ Interpreter Please Read **Section 3.2** (I-870) to applicant

Q: Do you understand what was read to you?
A:

Q: Do you have any comments or questions?
A:

That concludes the interview today.

AMERICAN OVERSIGHT

A#:
NAME:
COUNTRY:

DATE:
AO:
OFFICE: ZLA

INTERVIEW CONCLUDED: XX:XX PST

AMERICAN OVERSIGHT

U. S. Department of Homeland Security

Notice of Referral to Immigration Judge

Applicant Name **Applicant Address**	**Date** **A-File** A
Name LAST NAME, First name	**Country of Citizenship**
Place and Manner of Arrival At [or near] POE; entry without inspection/afoot	**Date of Arrival** On or about [date]

To immigration judge:

☒ 1. The above-named alien has been found inadmissible to the United States and ordered removed pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act). A copy of the removal order is attached. The alien has requested asylum and/or protection under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act and 8 CFR § 208.30(g).

☐ 2. The above-named alien arrived in the United States as a stowaway and has been ordered removed pursuant to section 235(a)(2) of the Act. The alien has requested asylum and/or withholding of removal under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

☐ 3. The above-named alien arrived in the United States in the manner described below and has requested asylum and/or withholding of removal under the Convention against Torture. The matter is referred for a determination in accordance with 8 CFR § 208.2(c). Arrival category (check one):

☐ Crewmember/applicant ☐ Crewmember/refused ☐ Crewmember/landed
☐ Crewmember/violator ☐ VWP/applicant ☐ VWP/violator
☐ 235(c) order ☐ S-visa nonimmigrant ☐ Stowaway: credible fear determination attached

☐ 4. The above-named alien has been ordered removed by an immigration officer pursuant to section 235(b)(1) of the Act. A copy of the removal order is attached. In accordance with section 235(b)(1)(C) of the Act, the matter is referred for review of that order. The above-named alien claims to be (check one):

☐ a United States citizen ☐ a lawful permanent resident alien
☐ an alien granted refugee status under section 207 of the Act ☐ an alien granted asylum under section 208 of the Act.

☐ 5. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the Department of Homeland Security (DHS) has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **does not** have a reasonable fear of persecution or torture. The alien has requested a review of that determination in accordance with 8 CFR §§ 208.31(f) and (g).

☐ 6. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the DHS has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **has** a reasonable fear of persecution or torture. The matter has been referred for a determination in accordance with 8 CFR § 208.31(e).

☐ 7. The Secretary of Homeland Security has determined that the release from custody of the above-named alien who is under a final order of removal would pose a special danger to the public according to the standards set in 8 CFR § 241.14(f)(1). The DHS has therefore invoked procedures to continue the alien's detention even though there is no significant likelihood that the alien will be removed from the United States in the reasonably foreseeable future. The matter is referred to the immigration judge for a review of this determination in accordance with 8 CFR § 241.14(g).

AMERICAN OVERSIGHT

U. S. Department of Homeland Security

Notice of Referral to Immigration Judge

NOTICE TO APPLICANT

You are ordered to report for a hearing before an immigration judge for the reasons stated above. Your hearing is scheduled on

To be determined (Date) at To be determined (Time) You are to appear at

EOIR 606 S. Olive Street, 15th Floor, Los Angeles, CA 90014
(Complete office address)

☒ You may be represented in this proceeding, at no expense to the government, by an attorney or other individual authorized and qualified to represent persons before an Immigration Court. If you wish to be so represented, your attorney or representative should appear with you at this hearing. In the event of your release from custody, you must immediately report any change of your address to the Immigration Court on Form EOIR-33, which is provided with this notice. If you fail to appear for a scheduled hearing, a decision may be rendered in your absence.

☒ You may consult with a person or persons of your own choosing prior to your appearance in Immigration Court. Such consultation is at no expense to the government and may not unreasonably delay the process.

☒ Attached is a list of recognized organizations and attorneys that provide free legal service.

(Signature and title of immigration officer)

CERTIFICATE OF SERVICE

☒ The contents of this notice were read and explained to the applicant in the _____ language.

☒ The original of this notice was delivered to the above-named applicant by the undersigned on _____ and the alien has been advised of communication privileges pursuant to 8 CFR 236.1(e). Delivery was made:

☒ in person ☐ by certified mail, return receipt # _____ requested ☐ by regular mail

(Signature and title of immigration officer)

Attachments to copy presented to immigration judge:

☐ Passport
☐ Visa
☐ Form I-94
☐ Forensic document analysis
☐ Fingerprints and photographs
☐ EOIR-33
☒ Form I-860
☒ Form I-869
☐ Form I-898
☐ Asylum Officer's reasonable fear determination worksheet (I-899)
☒ Asylum officer's credible fear determination worksheet (I-870)

☐ **FOR 8 CFR 241.14(f) CASES ONLY:** Written statement including summary of the basis for the Secretary's determination to continue the alien in detention, and description of the evidence relied on in finding the alien specially dangerous (with supporting documents attached).

☐ **FOR 8 CFR 241.14(f) CASES ONLY:** Written notice advising the alien of initiation of proceedings and informing alien of procedures governing the Reasonable Cause Hearing at 8 CFR 241.14(h).

☐ Other (specify): _____

AMERICAN OVERSIGHT
DHS-19-1398-H-000028

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

Record of Negative Credible Fear Finding and Request For Review by Immigration Judge

Alien File Number: ### ## ###

1. To be explained to the alien by the asylum officer:

U.S. Citizenship and Immigration Services (USCIS) has determined that you do not have a credible fear of persecution or torture pursuant to 8 CFR 208.30 for the following reason(s):

A. ☐ You have not established a credible fear of persecution in your country of nationality, country of last habitual residence, or a country to which you have been ordered removed because:

- ☐ You have not indicated that you were harmed in the past and you have not expressed fear of future harm.
- ☐ There is no significant possibility that you could establish in a full hearing that the harm you experienced and/or the harm you fear is on account of your race, religion, nationality, political opinion, or membership in a particular social group.
- ☐ You have not indicated that you were harmed in the past, and there is no significant possibility that you could establish in a full hearing that the harm you fear is well founded.
- ☐ There is no significant possibility that you could establish in a full hearing that the harm you experienced or fear was/is sufficiently serious to amount to persecution.
- ☐ There is no significant possibility that you could establish in a full hearing that the entity that harmed you or would harm you was/is an agent of the government or an entity the government was/is unable or unwilling to control.

AND

☐ You have not established a credible fear of torture in a country to which you have been ordered removed because you have not established that there is a significant possibility that:

- ☐ You would suffer severe physical or mental pain or suffering.
- ☐ The harm you fear would be specifically intended to inflict severe physical or mental pain or suffering.
- ☐ The harm you fear would be 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.
- ☐ The harm you fear would be inflicted while you are in the custody or physical control of the offender.
- ☐ The harm you fear would not arise only from, would not be inherent in, and would not be incidental to, lawful sanctions.

B. ☐ Considering the totality of the circumstances and all relevant factors, you have not established that your testimony is credible.

Therefore, you are ordered removed from the United States. You may request that an Immigration Judge review this decision.

If you request that an Immigration Judge review this decision, you will remain in detention until an Immigration Judge reviews your case. That review could occur as long as 7 days after you receive this decision.

If you do not request that an Immigration Judge review the decision, you may be removed from the United States immediately.

2. To be completed by the alien:

☐ **Yes, I request Immigration Judge review** of the decision that I do not have a credible fear of persecution or torture.

☐ **No, I do not request Immigration Judge review** of the decision that I do not have a credible fear of persecution or torture.

Applicant's Last Name/ Family Name (Print)	Applicant's First Name (Print)	Applicant's Signature

Asylum Officer's Last Name (Print)	Asylum Officer's First Name, (Print)	Date

The contents of this form were read and explained to the applicant in the _____ language

Interpreter used:

By telephone (list interpreter service /ID number used _____).

In person (I, _____ , certify that I am fluent in both the _____ and English languages. I interpreted the above information completely and accurately to the alien.)

Interpreter's Signature	Date

AMERICAN OVERSIGHT

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

Record of Determination/Credible Fear Worksheet

___ ___ ___	ZLA	___ ___ ___ ___ ___ ___ ___ ___ ___	_____
District Office Code	Asylum Office Code	Alien's File Number	Alien's Last/ Family Name
_____	_____	_____	
Asylum Officer's Last Name	Asylum Officer's First Name	Alien's Nationality	

All statements in italics must be read to the applicant

SECTION I: INTERVIEW PREPARATION

1.1 ___ ___/___ ___/___ ___ Date of arrival [MM/DD/YY]

1.2 _____ Port of arrival

1.3 ___ ___/___ ___/___ ___ Date of detention [MM/DD/YY]

1.4 _____ Place of detention

1.5 ___ ___/___ ___/___ ___ Date of AO orientation [MM/DD/YY]

1.6 _____ If orientation more than one week from date of detention, explain delay

1.7 ___ ___ / ___ ___ / ___ ___ Date of interview [MM/DD/YY]

1.8 _____ Interview site

1.9 ☒ Applicant received and signed **Form M-444** and relevant *pro bono* list on ___ ___ / ___ ___ / ___ ___ Date signed [MM/DD/YY]

1.10 Does applicant have consultant(s)? ☐ Yes ☐ No

1.11 If yes, consultant(s) name, address, telephone number and relationship to applicant

_____

_____

1.12 Persons present at the interview (check which apply)

1.13 ☐ Consultant(s)

1.14 ☐ Other(s), list: Telephonic Interpreter

1.15 ☐ No one other than applicant and asylum officer

1.16 Language used by applicant in interview: _____

1.17	_____	☒ Yes ☐ No	_____	_____
	Interpreter Service, Interpreter ID Number.	Interpreter Has Forms	Time Started	Time Ended
1.18	_____	☐ Yes ☐ No	_____	_____
	Interpreter Service, Interpreter ID Number.	Interpreter Has Forms	Time Started	Time Ended
1.19	_____	☐ Yes ☐ No	_____	_____
	Interpreter Service, Interpreter ID Number.	Interpreter Has Forms	Time Started	Time Ended

1.20 ☐ Interpreter **was not changed** during the interview

1.21 ☐ Interpreter **was changed** during the interview for the following reason(s):

1.22 ☐ Applicant requested a female interpreter replace a male interpreter, or *vice versa*

1.23 ☐ Applicant found interpreter was not competent

1.24 ☐ Applicant found interpreter was not neutral

1.25 ☐ Officer found interpreter was not competent

1.26 ☐ Officer found interpreter was not neutral

1.27 ☐ Bad telephone connection

1.28 ☒ Asylum officer read the following paragraph to the applicant at the beginning of the interview:

The purpose of this interview is to determine whether you may be eligible for asylum or protection from removal to a country where you fear persecution or torture. I am going to ask you questions about why you fear returning to your country or any other country you may be removed to. It is very important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons why you fear harm. The information you tell me about the reasons for your fear will not be disclosed to your government, except in exceptional circumstances. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain.

AMERICAN OVERSIGHT

Alien's File Number:

SECTION II: BIOGRAPHIC INFORMATION

2.1 _____

Last Name/ Family Name [ALL CAPS]

2.2 _____ 2.3 _____

First Name Middle Name

2.4 ___ ___/___ ___/___ ___ 2.5 Gender ☐ Male ☐ Female

Date of birth [MM/DD/YY]

2.6 _____

Other names and dates of birth used

2.7 _____ 2.8 _____

Country of birth Country (countries) of citizenship (list all)

2.9 _____

Address prior to coming to the U.S. (List Address, City/Town, Province, State, Department and Country).

2.10 _____ 2.11 _____ 2.12 _____

Applicant's race or ethnicity Applicant's religion All languages spoken by applicant

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
				☐ Yes	☐ No	☐ Yes	☐ No
				☐ Yes	☐ No	☐ Yes	☐ No
				☐ Yes	☐ No	☐ Yes	☐ No
				☐ Yes	☐ No	☐ Yes	☐ No
				☐ Yes	☐ No	☐ Yes	☐ No

AMERICAN OVERSIGHT

2.19 Does applicant claim to have a medical condition (physical or mental), or has the officer observed any indication(s) that a medical condition exists? If YES, answer questions 2.20 and 2.21 and explain below. ☐ Yes ☐ No

2.20 Has applicant notified the facility of medical condition? ☐ Yes ☐ No

2.21 Does applicant claim that the medical condition relates to torture? ☐ Yes ☐ No

2.22 Does the applicant have a relative, sponsor or other community ties, including spouse or child already listed above? ☐ Yes ☐ No

2.23 If YES, provide information on relative or sponsor (use continuation section, if necessary):

Name _____ Relationship _____

Address _____ Telephone Number _____

☐ Citizen ☐ Legal Permanent Resident ☐ Other

SECTION III: 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.
There may be areas of the individual's claim that were not explored or documented for purposes of this threshold screening.

The asylum officer must elicit sufficient information related to both credible fear of persecution and credible fear of torture to determine whether the applicant meets the threshold screening. Even if the asylum officer determines in the course of the interview that the applicant has a credible fear of persecution, the asylum officer must still elicit any additional information relevant to a fear of torture. Asylum officers are to ask the following questions and may use the continuation sheet if additional space is required. If the applicant replies YES to any question, the asylum officer must ask follow-up questions to elicit sufficient details about the claim in order to make a credible fear determination.

3.1 a. *Have you or any member of your family ever been mistreated or threatened by anyone in any country to which you may be returned?*

☐ Yes ☐ No _____

b. *Do you have any reason to fear harm from anyone in any country to which you may be returned?*

☐ Yes ☐ No

c. If YES to questions *a* and/or *b*, was it or is it because of any of the following reasons? (Check each of the following boxes that apply).

☐ Race ☐ Religion ☐ Nationality ☐ Membership in a particular social group ☐ Political Opinion

3.2 ☒ At the conclusion of the interview, the asylum officer must read the following to applicant:

AMERICAN OVERSIGHT

Alien's File Number:

If the Department of Homeland Security determines you have a credible fear of persecution or torture, your case will be referred to an immigration court, where you will be allowed to seek asylum or withholding of removal based on fear of persecution or withholding of removal under the Convention Against Torture. The Field Office Director in charge of this detention facility will also consider whether you may be released from detention while you are preparing for your hearing. *If the asylum officer determines that you do not have a credible fear of persecution or torture, you may ask an Immigration Judge to review the decision. If you are found not to have a credible fear of persecution or torture and you do not request review, you* ***may be removed*** *from the United States as soon as travel arrangements can be made. Do you have any questions?*

3.3 ☒ At the conclusion of the interview, the asylum officer must read a summary of the claim, consisting of the responses to Questions 3.1 a-c and information recorded in the Additional Information/Continuation section, to applicant.

****Typed Question and Answer (Q&A) interview notes and a summary and analysis of the claim must be attached to this form for all negative credible fear decisions. These Q&A notes must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues and that the applicant was given every opportunity to establish a credible fear.

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

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.~~ *The applicant is 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.

Nexus

4.6 ☐ Race 4.7 ☐ Religion 4.8 ☐ Nationality 4.9 ☐ Membership in a Particular Social Group

(Define the social group): _____

4.10 ☐ Political Opinion 4.11 ☐ Coercive Family Planning [CFP] 4.12 ☐ No Nexus

Credible Fear Finding

4.13 ☐ Credible fear of **persecution** established.

OR

4.14 ☐ Credible fear of **torture** established.

OR

4.15 ☐ Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 ☐ Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 ☐ Particularly Serious Crime 4.18 ☐ Security Risk 4.19 ☐ Aggravated Felon

4.20 ☐ Persecutor 4.21 ☐ Terrorist 4.22 ☐ Firmly Resettled

4.23 ☐ Serious Non-Political Crime Outside the United States

4.24 ☐ Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

AMERICAN OVERSIGHT

DHS-19-1398-H-000033

Alien's File Number:

C. Identity:

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

4.26 ☐ 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): _____

_____

4.29 ☐ Applicant's identity was **not** determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1	_____ Asylum officer name and ID CODE (print)	5.2	_____ Asylum officer's signature	5.3	___ ___/___ ___/___ ___ Decision date
5.4	_____ Supervisory asylum officer name	5.5	_____ Supervisor's signature	5.6	___ ___/___ ___/___ ___ Date supervisor approved decision

ADDITIONAL INFORMATION/CONTINUATION

AMERICAN OVERSIGHT

DHS-19-1398-H-000034

ASYLUM DIVISION INTERPRETER SERVICES

LAST UPDATED MAY, 2019

[redacted]

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INTERPRETER SERVICES

- The Asylum Division uses contracted interpreters to conduct APSO interviews (Credible Fear and Reasonable Fear). The interpreter interprets the statements made by the officer and the applicant from English to a second language and vice versa.
  - Interpreters are generally secured on an on-demand basis and are over the phone. In person interpretation may be available for rare circumstances (i.e., sign language interpretation).
  - This differs from Affirmative Asylum interviews, where applicants are required to provide their own interpreters. The Asylum Division uses the contracted interpreters to monitor the applicant provided interpreters.
  - Contracted interpreters are cleared to work for USCIS and sign asylum specific confidentiality neutrality statements. See Asylum Division procedures for more information on placing interpreters under oath.

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INTERPRETER SERVICES

- For rare languages where it is difficult to secure an interpreter, the Asylum Division may allow for relay interpreting.
  - This is most commonly seen with indigenous Central American languages where the interpreter is fluent in the indigenous language and Spanish.
- Asylum Division policy permits officers to conduct interviews in a language other than English only if the officer has been certified by the Department of State.
  - Information on the certification process can be found on the Interpreter Log Home Page
  -
    - Language Certification Memorandum
    - Language Certification SF-182 PALMS
    - Language Certification Speaking Test

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VENDORS

- The Asylum Division currently contracts with three vendors for interpreter services:
  - Language Line
  - Lionbridge
  - Transperfect

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VENDOR PRIORITIES

- Each office has a priority they are required to use for dialing interpreters. This helps distribute the workload across the three vendors.
- If the primary vendor does not have a cleared interpreter available, or a reasonable period of waiting time has passed without being connected to an interpreter (at least 3 minutes / typically 5 minutes), the secondary vendor can be called. If the secondary vendor is also unable to provide an interpreter, the tertiary vendor can be called.
- While on TDY use the priority for the TDY location.
  - These priorities are outlined in the August 13, 2018 Memo from John Lafferty: Update to Interpreter Services Realignment.
- Rare languages may require pre-scheduling. Ask the local office for procedures on pre-scheduling for rare languages.

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VENDOR PRIORITIES

Distribution of Interpreter Vendors for All Cases (Effective 08/09/218)			
Office	**Primary Vendor**	**Secondary Vendor**	**Tertiary Vendor**
ZAR (Includes ZAC)	Transperfect	Language Line	Lionbridge
ZCH	Transperfect	Language Line	Lionbridge
ZHN (Includes ZOL)	Language Line	Lionbridge	Transperfect
ZLA	Lionbridge	Transperfect	Language Line
ZMI	Lionbridge	Transperfect	Language Line
ZNK (Includes ZBO)	Lionbridge	Transperfect	Language Line
ZNY	Lionbridge	Transperfect	Language Line
ZSF	Transperfect	Language Line	Lionbridge

AMERICAN OVERSIGHT

PINS

- Each Asylum Division staff member and TDY employee needing to use interpreter services will be issued a PIN for each vendor. The PIN provides access to the vendor and helps to identify the employee for billing purposes. PINs should not be shared between employees.
  - Asylum Division staff PINs will be assigned under the home office. TDY employees PINs will be assigned under the Headquarters billing category.
  - You should receive an automated e-mail from the ECN with each PIN that was issued. You can also view your PINs on the right side of the interpreter log home page.
  - https://ecn.uscis.dhs.gov/team/raio/Asylum/AsylumPII/InterpreterLog/SitePages/Home.aspx

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DIALING INSTRUCTIONS

Staff must use the dialing instructions associated with the PIN in order for the PIN to be accepted by the vendor.

- For TDY employees outside of the Asylum Division, use the dialing instructions for Headquarters.

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DIALING INSTRUCTIONS – LANGUAGE LINE

Language Line

- **Call Phone #: 1-866-874-3972**
- **Enter 6 digit client ID#**
  - ZHQ: [redacted] (b)(6)
- **Select Language**
- **Enter 4 digit pin#**
- **Enter 2 digit interview code**
  - 11 – Affirmative Asylum
  - 22 – Credible Fear
  - 33 – Reasonable Fear
  - 44 – Safe Third Country
  - 55 – I-730 Petition
  - 66 – Other
  - 77 – Termination

AMERICAN OVERSIGHT

DIALING INSTRUCTIONS – LIONBRIDGE

Lionbridge

- **Call Toll Free #: 1-877-347-5264**
- **Site Pin #:**
  - ZHQ - [redacted] (b)(6)
- **Enter Pin #**
- **Select Interview Type**
- **Select Language**
  - Press 1 for Spanish
  - Press 2 for Mandarin
  - Press 3 for Arabic
  - Press 4 for Punjabi
  - Press 5 for Gujarati
  - Press 6 for Russian
  - Press 7 for Amharic
  - Press 8 for Nepalese
  - Press 9 for French
  - For any other language needs or concerns, press 0 for operator assistance

AMERICAN OVERSIGHT

DIALING INSTRUCTIONS – TRANSPERFECT

Transperfect

- **Call the phone number associated with the office:**
  - ZHQ: 844-789-1960
- **Enter the four digit pin number**
- **Service Type:**
  - 1 = On Demand
  - 2 = Scheduled
- **Call Type:**
  - 1 = Credible Fear
  - 2 = Reasonable Fear
  - 3 = Safe 3rd Country
  - 4 = Affirmative Asylum
- **Need to add third party**:
  - 1 = Yes
  - 2 = No
- **Select language**:
  - Spanish = 772
  - Mandarin = 626
  - Russian = 787
  - Punjabi = 786
  - Arabic = 272
  - Gujarati = 485
  - Haitian Creole = 424
  - Hindi = 446
  - Portuguese = 767

AMERICAN OVERSIGHT

DOCUMENTING USAGE – INTERPRETER LOG

- The Asylum Division tracks calls using the ECN. This helps with billing purposes and contract enforcement. There must be a log entry to cover each call made to a vendor.
- Instructions on how to enter a call in the interpreter log:
  - Sample scenarios with screenshots:

AMERICAN OVERSIGHT

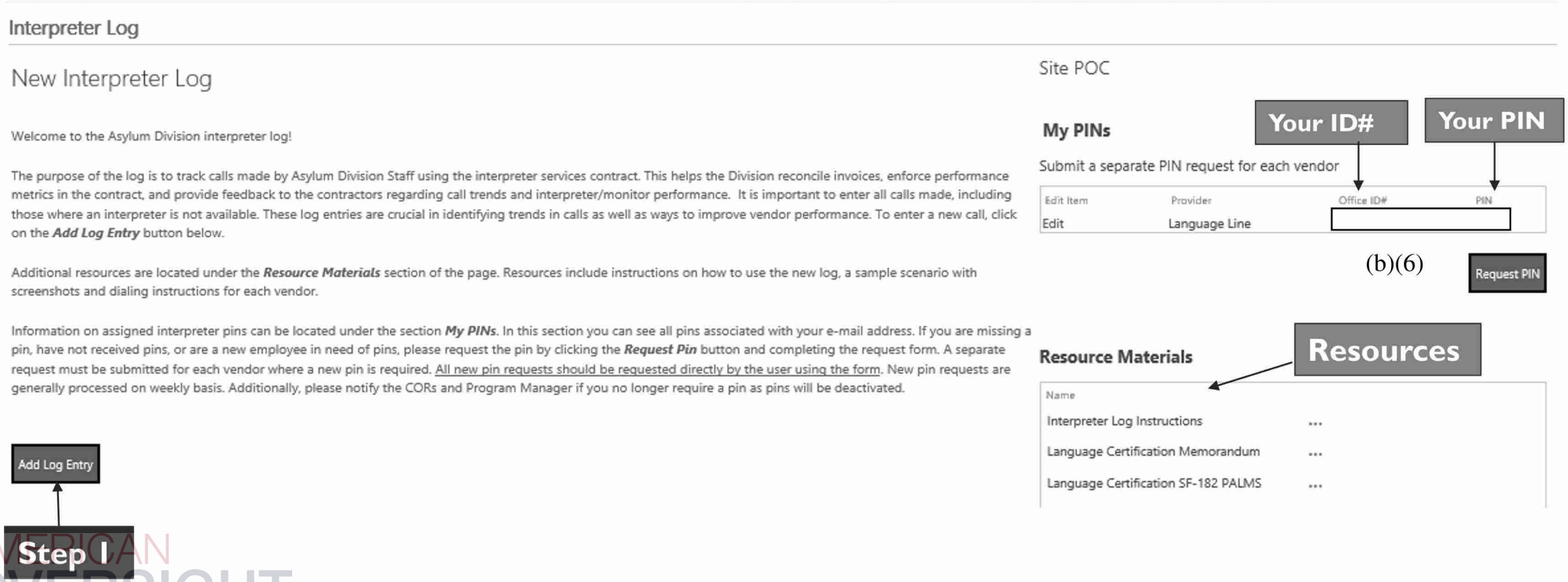
DOCUMENTING USAGE – INTERPRETER LOG

- STEP 1 – Click Add Log Entry: Use Internet Explorer to open the interpreter log:

- STEP 2 – Enter Basic Case Information
  - Note: The log is used to compare against the billable invoice. Therefore, if the same interpreter is used for a series of interviews, you can add that into the log as one entry and indicate the multiple A#s in the A# field. This will help match the total duration of the log entry to the invoiced billable amount.
- STEP 3 – Enter Specific Call Information
- STEP 4 – Wait Times and Feedback
- STEP 5 - Identify if Additional Calls were Required to Complete Case/Entry (repeat as needed)
  - This feature is used where multiple calls were required to complete a specific case, because an interpreter was not available from the vendor, an issue resulted in disconnection and calling back, etc. The basic case information will populate to the subsequent entries.
- STEP 6 – Save and Submit Entry

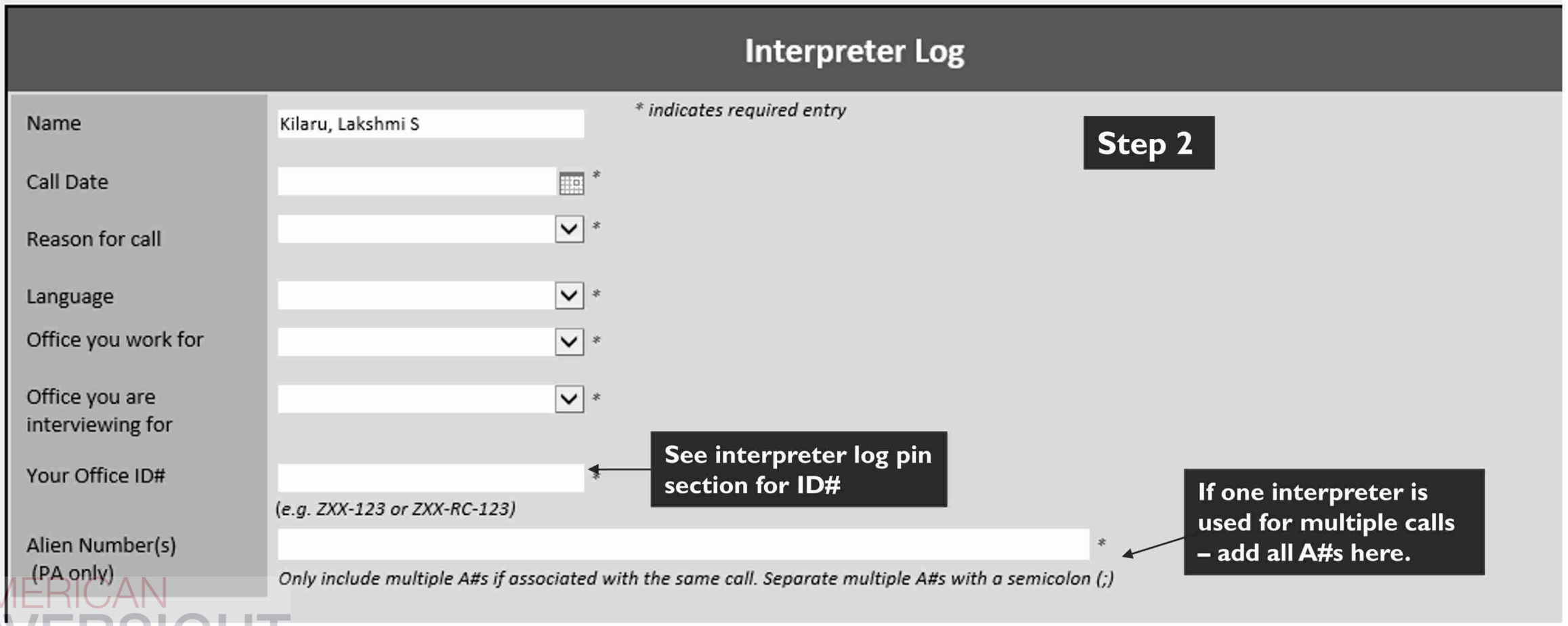
AMERICAN OVERSIGHT

INTERPRETER LOG - SCREENSHOTS



AMERICAN OVERSIGHT

INTERPRETER LOG - SCREENSHOTS



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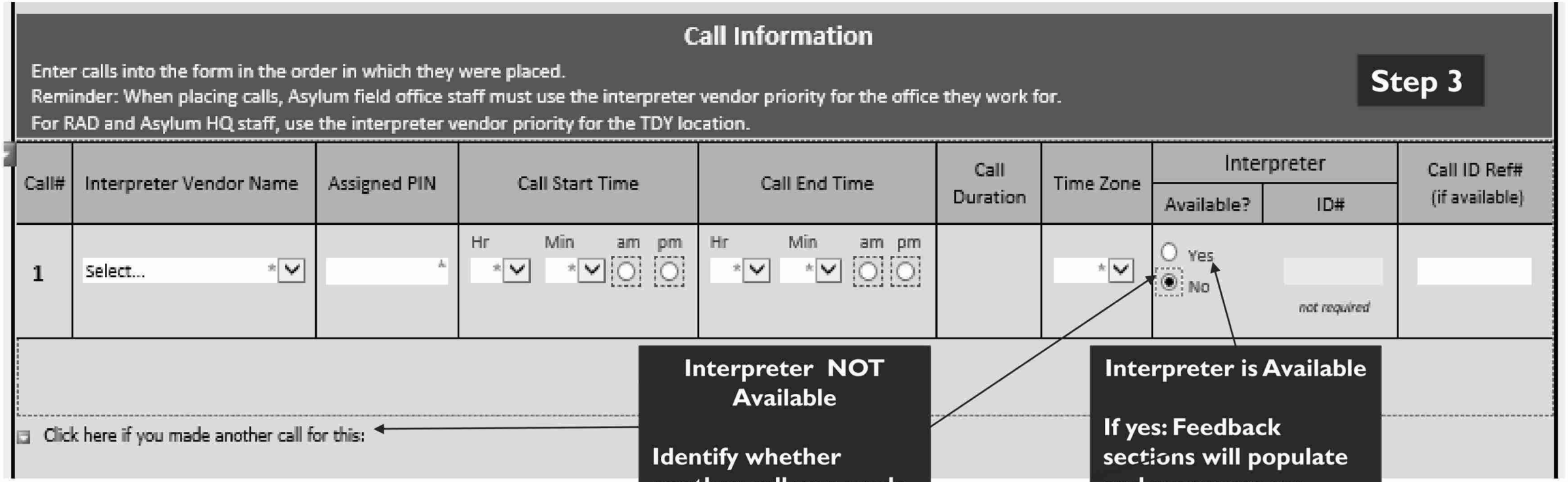

Call Information

Enter calls into the form in the order in which they were placed.
Reminder: When placing calls, Asylum field office staff must use the interpreter vendor priority for the office they work for.
For RAD and Asylum HQ staff, use the interpreter vendor priority for the TDY location.

Step 3

Call#	Interpreter Vendor Name	Assigned PIN	Call Start Time	Call End Time	Call Duration	Time Zone	Interpreter		Call ID Ref# (if available)
							Available?	ID#	
1	Select...		Hr Min am pm	Hr Min am pm			Yes / No	not required	

Click here if you made another call for this:

Interpreter NOT Available

Identify whether another call was made to complete the case and add the information here.

Interpreter is Available

If yes: Feedback sections will populate and responses are required.

AMERICAN OVERSIGHT

INTERPRETER LOG - SCREENSHOTS



Step 4

Wait time and feedback only for calls where an interpreter was available.

If feedback box is selected, a comment is required to justify performance deductions.

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INTERPRETER LOG - SCREENSHOTS



Step 5

Was another call made to complete the case? If Yes click here

Call Information

Enter calls into the form in the order in which they were placed.
Reminder: When placing calls, Asylum field office staff must use the interpreter vendor priority for the office they work for.
For RAD and Asylum HQ staff, use the interpreter vendor priority for the TDY location.

Call#	Interpreter Vendor Name	Assigned PIN	Call Start Time	Call End Time	Call Duration	Time Zone	Interpreter		Call ID Ref# (if available)
							Available?	ID#	
1	Select...		Hr Min am pm	Hr Min am pm			Yes / No	not required	

Click here if you made another call for this:

If another call was made, you'll repeat Steps 3 and 4.

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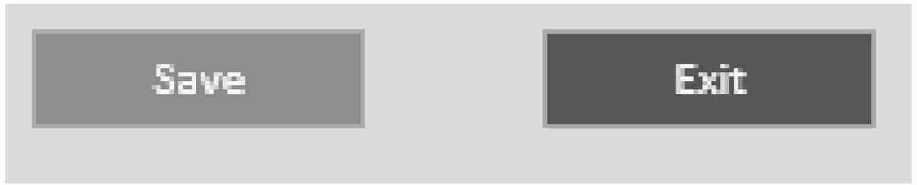
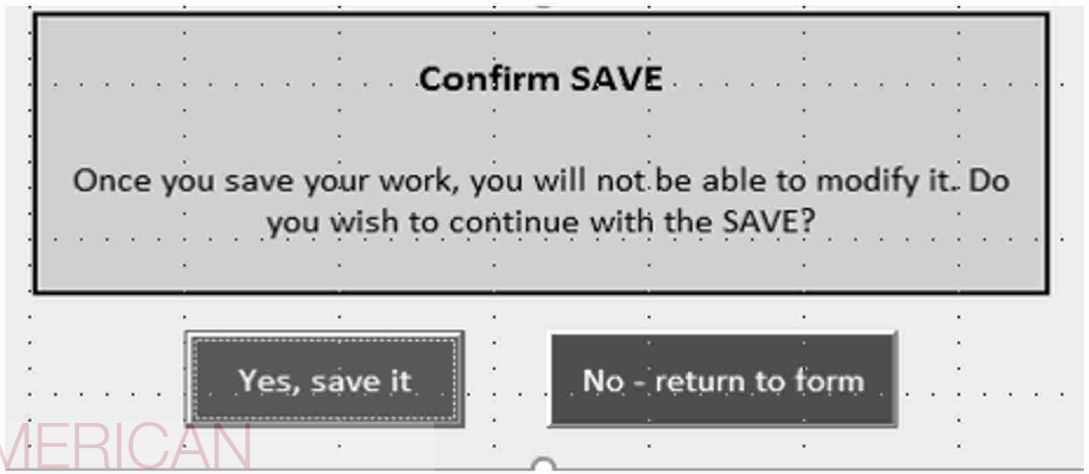
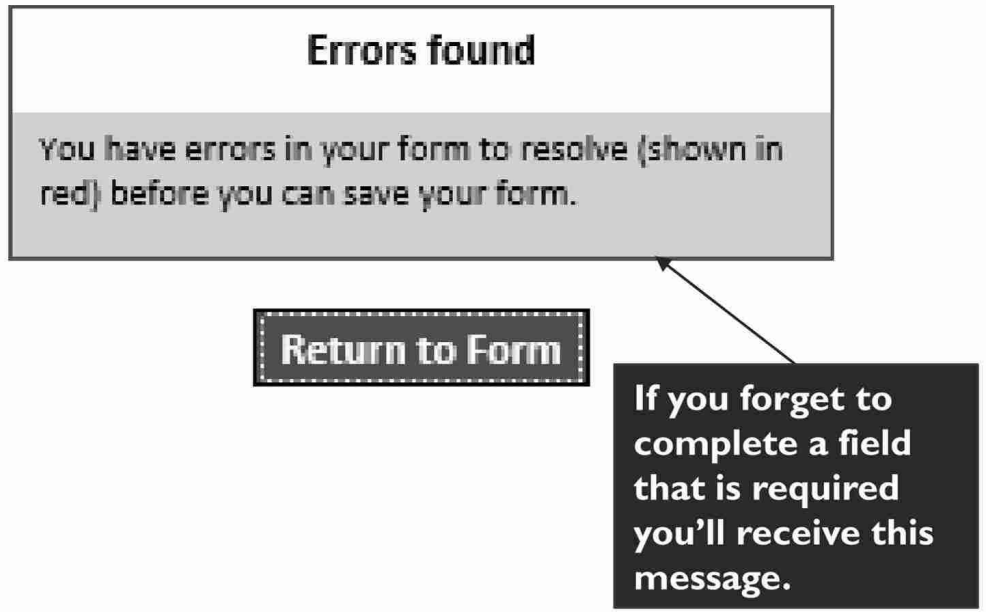
INTERPRETER LOG - SCREENSHOTS

Step 6







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TIPS

- Check with your local office on policies regarding using the same interpreter for consecutive interviews. Please note that if long delays will pass between interviews, interpreters should not be kept on the line for billing purposes.
- Interpreting remotely can be challenging. Please ensure that interpreters receive adequate breaks. This will help promote accurate interpretation.
- If you have an issue the interpreter services or a specific interpreter that requires immediate attention (egregious behavior by the interpreter requiring immediate reporting, system wide technical issues resulting in the inability to use interpreter services, etc) please report the incident either to your local office or by using the "report an issue" button on the interpreter log.



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QUESTIONS?

If you have any questions, please feel free to contact Lakshmi Kilaru ( )

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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.

U.S. Citizenship and Immigration Services

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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.

U.S. Citizenship and Immigration Services

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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.

U.S. Citizenship and Immigration Services

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Interview Procedures

- Non-detained applicants are **not** required to bring interpreters with them. If the applicant requests to use his/her own interpreter after you have explained to the applicant that we have professional interpreters that we use on the phone, then you use the interpreter with a monitor.

- Attempt to contact all three vendors prior to proceeding without a monitor, starting with the primary vendor and then moving on to the secondary and tertiary vendor outlined for the office.
- If a monitor from each vendor is unavailable after 5 minutes, you can continue without a monitor. **If an applicant brings an interpreter who is struggling with interpreting, please use one of our approved interpreter services instead and ask the interpreter to wait in the waiting room.**
- Make sure to verify the applicant's **current** mailing address. If the applicant provides a new address, please update Global. Make sure to use the current address on the NTA, if the case is a positive.
- Please get two phone numbers where an applicant can be reached. If they only have one, this is ok. This is important in case we need to call them back in for a follow-up.

U.S. Citizenship and Immigration Services

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M-444/ Orientation

- If the referral documents or the A-file do not include a signed and dated Form M-444 or the non-detained applicant did not understand the form, the officer must request that the interpreter read the Form M-444 to the applicant and, after answering any questions, asks the applicant to sign and date the form at the conclusion of the orientation.
- If the applicant refuses to sign the form, the officer notes the applicant's refusal in the alien's signature space. This must be done at the time of the credible fear interview, prior to beginning the substantive part of the interview.

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Forms

- I-870 : Everything should be the same as a detained case, with the exception of the boxes referencing detention dates and locations. Please write in “non-detained” for these responses.
- Non-detained NTAs:
  - Use the templates provided. Put the applicant’s address at the top of the NTA.
  - If applicant has been paroled, make sure to remove the language referencing parole.

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Decision Service

- All cases should be pick-ups ***unless your supervisor approves a mailout*.** Please make sure to give the applicant a pick-up/mailout notice and place a copy in the file.
- **All negative decisions must be issued in person and cannot be mailed out.**
- If applicant speaks a rare language, please put a note on the front of the file so we can order the interpreter prior to the service date.

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Processing Family Units Reminders

- Provide explanation about adding dependents to entire family and confirm understanding
- If the principal appears to be a negative, you **must** interview the dependents to see if they can establish a claim on their own.
- Officers are required to explore CAT in the principal's interview even when the principal has established a claim for the dependent.
- All dependents must be asked the mandatory bar questions. There is no age cut-off. Parent can testify on behalf of child if they appear unable to testify.

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Processing Family Units Required Forms

- **Parent establishes a positive claim**
  - Parent requires all forms (Checklist, I-870, I-862, security checks)
  - Dependents need I-862s and security checks only

- **Child establishes a positive claim (parent is negative)**
  - Child who established positive claim requires all forms (Checklist, I-870, I-862, security checks)
  - Relatives need I-862s, security checks and family unity memo.

- **All family members are negatives**
  - Each individual needs an I-870, a checklist, security checks and all required docs for a negative service (I-863, I-869)

U.S. Citizenship and Immigration Services

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About this presentation

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Local Procedures for Non-detained Credible Fear Interviews

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AMERICAN OVERSIGHT

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  - Checklist, I-870, and I-862 for parent
  - Dependents need I-862s and security checks only

- **Child establishes a positive claim (parent is negative)**
  - Checklist, I-870, and I-862 for child who established positive claim
  - Relatives need I-862s, security checks and family unity memo.

- **All family members are negatives**
  - Each individual needs an I-870, a checklist and all required docs for a negative service.

AMERICAN OVERSIGHT

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U.S. Citizenship and Immigration Services

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CREDIBLE FEAR ADJUDICATION SNAPSHOT

Review File

- Ensure necessary jurisdiction documents are in the file: I-860, I-867a/b, M-444 signed/dated
- Review I-213 (either in file or on EARM)
- Note any prior interview attempts

Forms

- I-870, complete as much information as possible

Security Checks

- Print CHECKS tab (from Global)
- Complete and initial BISC and print all required printouts
- Complete TECS Hit Resolution Memo, if applicable

Initiating Interview

- If telephonic: wait for call from facility
- If onsite at facility: officers will escort applicant to interview room (other local procedures may apply)

Dissolutions

- Read required portions of dissolution form and ask mandatory questions
- Complete dissolution form and have applicant sign form (if telephonic, follow local procedure)

Interview

- Call interpreter service and note interpreter number. Place interpreter under oath.
- Introduce yourself
- Establish understanding with interpreter. Ask if applicant is speaking their best language.
  - For **rare language**, follow local procedures and complete memo if applicable
  - If applicant is **unable to communicate** for any other reason, reach out to your supervisor
- Explain confidentiality
- Ask if applicant has an **attorney**
  - If yes, ask if applicant wants attorney present. Call attorney if applicant requests that attorney be present and note on I-870/notes.
  - If no, inform applicant of right to attorney/consultant and ask if wishes to proceed.
  - If applicant requests **reschedule** to obtain an attorney and this is the first request, follow local procedures for notifying facility of reschedule. If it is the second request, ask about steps taken to obtain attorney and remind applicant that we cannot unnecessarily delay their case so may have to proceed at next interview. If applicant requests a third reschedule, ask about steps taken to obtain an attorney and then check with your supervisor before granting reschedule.
- Have interpreter read section 1.28 of I-870 and confirm understanding
- Place applicant under **oath**
- Confirm receipt and understanding of the **M-444**. If applicant states did not receive or understand, have interpreter read M-444. Note on I-870 that applicant was re-oriented on [date].
- Review biographical section of **I-870**
- Ask **ABC Questions** for Guatemalans and Salvadorans who were born before 1990
- Complete credible fear interview (persecution/CAT)
  - Ask nexus questions if possible negative
- Ask **mandatory bar questions**
- Have interpreter read section 3.2 of I-870 and ensure understanding
- Read **summary** of testimony back to applicant

Closing Out Case

- Fill out **interpreter log**
- Complete **ABC Checklist** for Guatemalans and Salvadorans who were born before 1990.
- Complete credible fear **checklist**
- For **positive** determinations, complete I-862 (NTA)
- For **negatives**, complete I-863 and I-869
- Enter decision in **Global**.
- Complete **Adverse Information Memo** and flag mandatory bars in Global and I-870, if applicable
- Submit case for supervisor review

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Nexus:

Corey Cappelloni and Erin McEvoy, HQ Asylum Division

May, 2019

AMERICAN OVERSIGHT

Nexus to a Protected Ground

* Nexus=Connection

* 5 Protected Grounds/Characteristics:
    1. Race
    2. Religion
    3. Nationality
    4. Political Opinion
    5. Particular Social Group (this afternoon)

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Who is a refugee

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

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Nexus/ "On account of"

* Nexus is the ***connection*** between an act of persecution (the harm) and the victim's protected characteristic (race, religion, etc.).

* Need **both** harm and connection

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Figure out the reason (the why the on account of) in these examples:

- [redacted]
  - [redacted]
  - [redacted]

(b)(6)

- [redacted]
  - [redacted]
  - [redacted]

(b)(6)

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The hard part of our job is to figure out if the bad stuff happens “on account of” of race, religion, nationality, political opinion, or particular social group.

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On Account Of

* Do not conflate possessing a protected ground (nationality, race etc.) with nexus.

* Remember that even if an applicant establishes that she has a protected characteristic, she must still establish that she was persecuted, or has a well-founded fear of persecution, on account of the protected characteristic.

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On Account Of

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

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

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What motivates the persecutor

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

AMERICAN OVERSIGHT

Evidence may be:

- **Direct** - such as a death threat letter or statement that references the protected characteristic
- Or
  - **Circumstantial** (relies on reasonable inferences)

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Circumstantial Evidence

* (b)(6)

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Punitive or malignant intent is not required for an applicant to establish a nexus to a protected characteristic. For example, the persecutor may believe that he or she is actually helping the applicant.

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* The persecutor's motivations may change: initial motivation is not determinative

* There can be more than one reason motivating the persecutor (mixed motives)

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REAL ID Act and "mixed motivation"

* The REAL ID Act introduced the "*one central reason*" standard
* The Real ID Act has many provisions, but as it regards *nexus*, it applies only to asylum
* However the "*one central reason*" language has been interpreted consistent with prior BIA "mixed motives" precedent decisions and the analysis in cases involving mixed motivation is essentially the same for refugee and asylum adjudication

AMERICAN OVERSIGHT

One central reason?

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

AMERICAN OVERSIGHT

Identifying the 5 Protected Characteristics

* Applicants are expected to provide facts, not legal constructions or conclusions
* In each case you must consider all possible grounds
* Grounds may overlap
* Each of the protected characteristics may be imputed

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On account of **RACE**

* Broad construction of the term *race*
* The question is: how is *race* viewed in the social context of where the protection claim arises – depending on where the claim arises from, race could refer to a biological grouping, a linguistic group, a family origin, or something else.

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THE 1935 NUREMBERG RACE LAWS

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

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Racial laws in South Africa

* Prohibited *mixed marriages* (1949)
* Adultery *immoral* between white and black people (1950)
* National registry of everyone's *race (1950)*
* Forced physical separation between white and "coloured"

AMERICAN OVERSIGHT

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





AMERICAN OVERSIGHT

What you must remember about *race*

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

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

AMERICAN OVERSIGHT

On account of **NATIONALITY**

* Broad construction of the term

* It may refer to ethnicity, common descent, cultural affiliation, linguistic grouping, biological characteristics, tribal, clan as well as citizenship

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Practical Exercise

(b)(6)

DISCUSSION:

1. Does the harm experienced by the applicant constitute persecution?
2. Was the harm suffered by the applicant on account of a protected ground in the refugee definition, and if so, which one (s)?
3. What facts support your conclusion?
4. What additional info, if any, would help evaluate this claim?

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On account of **RELIGION**

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

UNHCR Handbook, paragraph 71

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Religion in its widest concept

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

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Mr. (b)(6)

- (b)(6)

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No requirement to conceal

* See *Zhang v. Ashcroft*, 388 F. 3d 713, 719 (9th Cir. 2004)(per curiam) rejecting IJ's finding that petitioner could avoid persecution by practicing Falun Gong in secret.

* See also, *Muhur v. Ashcroft*, 355 F. 3d 958 (7th Cir. 2004) finding that immigration judge erred that Eritrean Jehovah's Witness "can escape the notice of the persecutors by concealing one's religion."

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Conversion

- In some countries it may be illegal to convert from one religion to another, and the penalties may be severe.

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Compliance with religious laws

* Punishment for refusal to comply with religious norms or laws (such as dress codes or gender roles based on religious principles) may, in some cases, constitute persecution on account of religion.

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The Board found persecution on account of religion, for example, in a case where a fundamentalist Muslim father harmed his daughter because of her more liberal views of Islam.

In re S-A-, 22 I&N Dec. 1328 (BIA 2000)

AMERICAN OVERSIGHT

On account of **POLITICAL OPINION**

* Not just participation in political party or process

* Evidence of verbal or openly expressed behavior by the applicant in furtherance of a particular cause

* Nexus LP at section 8.1 has a list of of non-traditional expressions of political opinion

AMERICAN OVERSIGHT

A few examples of expressions of possible political opinion

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

AMERICAN OVERSIGHT

Resistance to Gangs

* Merely resisting the demands of a gang (i.e. recruitment, extortion etc.), by itself, is typically not viewed as a political opinion.

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Whistleblowing, exposing government corruption

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

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

AMERICAN OVERSIGHT

Conscription and military service

* Generally, punishment for draft evasion lacks the "on account of" requirement
* Exceptions where evidence may show nexus:
  * Disproportionate punishment (on account of a protected ground)
  * Military activity condemned by int'l community
    * *Matter of A-G-*; *M.A. v. INS* (condemnation must come from int'l gov't agencies)
    * *Barrazza v. INS*; *Ramos-Vazquez v. INS* (specific acts contrary to int'l norms of human conduct)

AMERICAN OVERSIGHT

Coercive Population Control (CPC)

- In 1996, Congress amended 101(a)(42):

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

AMERICAN OVERSIGHT

Coercive Population Control (CPC)

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

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Purely personal problems

* **A purely personal problem is one that arises from a dispute, or situation (often a crime) unrelated to any of the five protected grounds.** For example, fear of *retribution* from a victim of a car accident for which the applicant was responsible is a good example of a *purely* personal problem.
* <u>But be careful</u>: what appears to be a purely personal problem sometimes is not, or it may start as purely personal and develop into something involving a protected characteristic.

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Particular Social Groups

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



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Particular Social Group – 3-part test

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

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

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



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Matter of Acosta

19 I&N Dec. 211 (BIA 1985)

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

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Immutable Characteristic

* Unchangeable

or

* Fundamental to Identity or Conscience

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Characteristic

Defined as:

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

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

Characteristic may include:

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

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Fundamental

Generally consider:

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

Also consider:

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

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Social Distinction

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

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

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

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

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Social Distinction

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

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

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Social Distinction Continued

* Must be evaluated on case-by-case and society-by-society basis
* Officers' duty to elicit information to develop the record

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Evidence of Social Distinction

* Testimony
* Country conditions information

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Particularity

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

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

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

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Particularity

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

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Are these groups “particular” ?

* The wealthy
* Lawyers
* Women
* Widows

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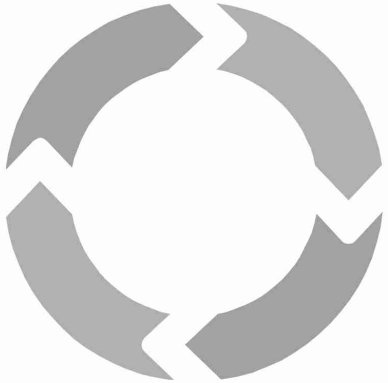
Other Requirements

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

* Avoid Circular Reasoning



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On Account Of

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

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

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Imputed Membership

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

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Exercise 1

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Domestic Violence PSGs--BIA

Matter of A-R-C-G- (2014) - Overruled

* "Married women in Guatemala who are unable to leave their relationship"

Matter of A-B- (2018)

* "El Salvadoran women who are unable to leave their domestic relationships where they have children in common"

Grace (2018)

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Affirmative Cases

* ICE GUIDANCE
* USCIS GUIDANCE

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Domestic Violence PSGs-Cir. Courts

* Implied PSG
  * *Hui v. Holder*, 769 F.3d 984 (8th Cir. 2014).
* PSG not viable
  * *Vega Ayala v. Lynch*, 833 F.3d 34 (1st Cir. 2016)
    * "Salvadoran women in intimate relationships with partners who view them as property" not immutable or socially distinct.
* Not a member
  * *Marikasi v. Lynch*, 840 F.3d 281 (6th Cir. 2016)
  * *Cardona v. Sessions*, 848 F.3d 519 (1st Cir. 2017)
  * *Fuentes-Erazo v. Sessions*, 848 F.3d 847 (8th Cir. 2017)

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Nexus to Family Membership: Gang Targeting

Courts finding a possible nexus:

* *Hernandez-Avalos v. Lynch* (4th Cir. 2015).
  * When mother threatened with death if she did not allow her son to join a gang, the gang leveraged her maternal authority to control her son's activities.
* *Cordova v. Holder* (4th Cir. 2014).
  * Applicant targeted by gang because his cousin and uncle were members of a rival gang (applicant NOT a gang member).
* *Crespin-Valladares v. Holder* (4th Cir. 2011).
  * Recognizing family members of prosecutorial witnesses who testify against MS-13.

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Nexus to Family Membership: Gang Targeting

Courts finding a possible nexus:

* *Flores Rios v. Lynch* (9th Cir. 2015).
  * Gang members killed applicant's father and murdered and threatened other family members planning to testify. Remanded for consideration of nexus to family.
* *Aldana-Ramos v. Holder* (1st Cir. 2014).
  * Remanded for consideration of nexus to family. Gang targeted two brothers, even after they exhausted the family's money from the family business in paying the father's ransom, and the gang nonetheless killed their father.

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Nexus to Family Membership: Gang Targeting

Court finding no nexus:

* *Perlera-Sola v. Holder* (1st Cir. 2012).
  * Shooting of father, and phone threats and drive-by shooting on family's pig farm by unknown individuals did not establish nexus to family.
* *Ramirez-Mejia v. Lynch* (5th Cir. 2015).
  * That gang members sought information from applicant about her brother, without more, did not support that gang targeted her due to her family relationship.
  * *Matter of L-E-A-,* (BIA 2017)--Stayed

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Female Genital Mutilation (FGM)

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

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

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FGM Exercise

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Forced and Early Marriage

* ***What are some possible reasons***
  * poverty
  * settling debt
  * "punishment" for rapist
* ***What are some of the questions to distinguish between arranged and forced marriage***
  * Level of coercion
  * Ability to avoid the marriage
  * Consequences for refusing to submit

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Honor Crimes

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

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

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Law Enforcement Assistance

Matter of C-A-

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

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Witnesses

Cases recognizing witness PSGs:

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

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Law Enforcement Assistance: Lack of Consistent Precedent

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

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Law Enforcement Assistance: Lack of Consistent Precedent

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

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

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Law Enforcement Assistance

* No bright line rule re proposed PSG. Elicit information re persecutor's motive, circumstances of threats received, & similarly situated individuals. Review COI.
* If a valid proposed PSG exists, then examine nexus.

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Law Enforcement Assistance in the U.S.

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

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Former Gang Members

Fourth, Sixth and Seventh Circuits

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

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

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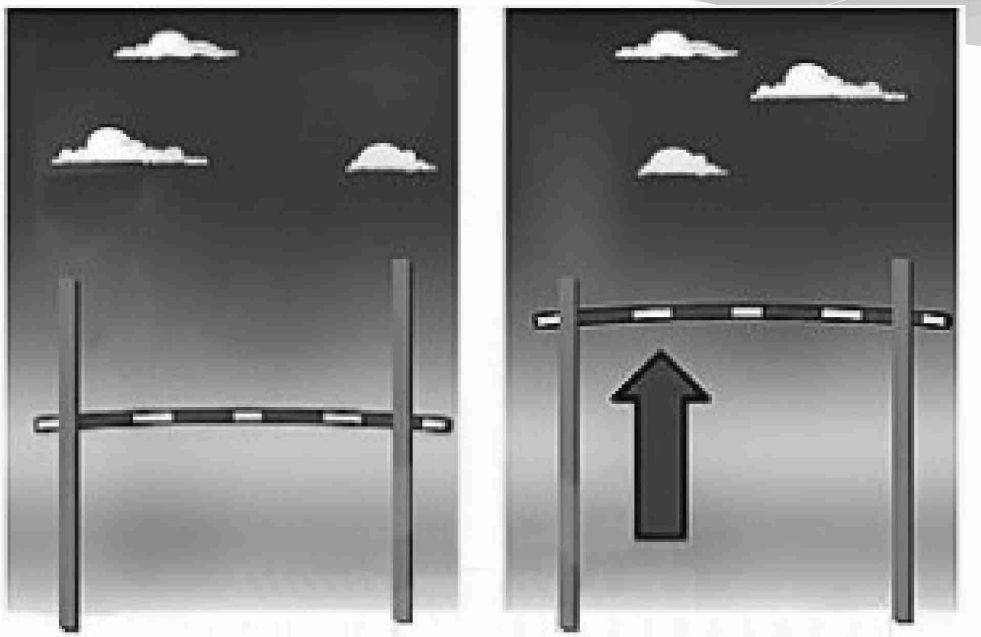
CF/RF vs. Affirmative



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Review:
Road Map for PSG Claims

Ask

* Is there a common, immutable characteristic?
* Does the society in question distinguish people with the characteristic?
* Is the group defined with particularity?

Avoid

* Claims based on past criminal, terrorist or persecutory activity
* Circular reasoning



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

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Inhibiting Factors During Interview

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

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

The presence of relatives or the interpreter

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

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Effective Interviewing Techniques

Suggested Interview Techniques

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

Examples of Questions to Elicit Sensitive Information

* Open ended questions

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About this presentation

- Authors: RAIO Training (RAIO.Training@uscis.dhs.gov) and Asylum Training (asylumtraining-coordinators@uscis.dhs.gov)

- Date of last revision: May 14, 2019
- This presentation is current only as of the date of the last revision.
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Questions?

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FACT PATTERN PSG - 1 (b)(6)

.

DISCUSSION:

1. What is the harm the applicant fears? Does it constitute persecution?

2. Is the harm the applicant fears on account of membership in a particular social group?

   Explain.

3. What other information would you like to know? What questions would you ask the applicant?

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Instructor Notes PSG FACT PATTERN 2:

Background
This fact pattern is from **Temu v. Holder**, ___ F.3d ___ (4th Cir. 2014):

The IJ found that the applicant's proposed group lacked the elements of immutability, particularity and social visibility. The IJ further found that even assuming the applicant's proposed group was valid, he failed to show he was persecuted on account of his membership in the group. The BIA adopted the IJ's findings and conclusions. The BIA did grant CAT relief.

4th Circuit finding on nexus: In spite of stringent standard of review, court could not uphold BIA's finding that the applicant was not persecuted on account of his proposed group. The court noted that the BIA credited all of the applicant's testimony.

It is important to remember that you should not analyze each characteristic of a group separately and reject one piece at a time. In a case **involving a proposed social group of Tanzanians who exhibit erratic behavior and suffer from bipolar disorder**, the Fourth Circuit concluded that the Board "erred because it broke down [the petitioner's] group into pieces and rejected each piece, rather than analyzing his group as a whole."[1] The court noted that "erratic behavior," by itself, might lack particularity, but when combined with bipolar disorder, the group would satisfy the particularity requirement.[2] The Fourth Circuit cautioned not to "miss the forest for the trees

With regard to particularity, the court – the court also noted that those suffering from bi-polar disorder have well-defined identifiable characteristics – citing the Diagnostic and Statistical Manual of Mental Disorders.

Using the term "social visibility," but essentially applying the social distinction test, the court found that the petitioner "appears to have a strong case for social visibility," as Tanzanians with severe mental illnesses are singled out for abuse in hospitals and prisons and are labeled "mwenda wazimu."[3]

The Asylum Division has granted asylum to people with disabilities when the applicant established that he or she was persecuted in the past or would be persecuted in the future on account of his or her membership in a particular social group, defined as individuals who share those disabilities. The proper analysis is whether 1) the disability is immutable; 2) persons who share that disability are socially distinct in the applicant's society; and 3) the group is particularly defined.

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[1] *Temu v. Holder*, 740 F.3d 887, 895 (4th Cir. 2014).

[2] *Id.*

[3] *Id.* at 893.

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FACT PATTERN PSG - 1 (b)(6)

DISCUSSION:

1. What is the harm the applicant fears? Does it constitute persecution?

2. Is the harm the applicant fears on account of membership in a particular social group?

   Explain.

3. What other information would you like to know? What questions would you ask the applicant?

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Practical Exercise 2: (b)(6)

1. Is the applicant a member of a cognizable PSG? If so, how would you formulate the PSG?
2. Is there anything else that should be explored in determining whether the applicant is a member of a PSG?
3. Was the applicant targeted on account of her membership within a PSG? What facts would you rely upon?

Instructor's Notes Practical Exercise 3: (b)(6)

1.

2. It appears there is enough for a legally sufficient positive.
3. Yes. The gang's statements that make reference to her authority over her son. Threatened the applicant and no one else.
    a. refused did the recruitment begin? Was anything about Walter or the family in general mentioned?

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(b)(6)

Practical Exercise 2:

1. Is the applicant a member of a cognizable PSG? If so, how would you formulate the PSG?
2. Is there anything else that should be explored in determining whether the applicant is a member of a PSG?
3. Was the applicant targeted on account of her membership within a PSG? What facts would you rely upon?

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Practical Exercise 3: (b)(6)

1. Is the applicant a member of a cognizable PSG? If so, how would you formulate the PSG? Would this PSG need analysis on the checklist?
2. Is there anything else that should be explored in determining whether the applicant is a member of a PSG?
3. What type of testimony should the AO elicit to show social distinction? What are some examples of country conditions that might show social distinction?
4. Was the applicant targeted on account of his membership within a PSG? What facts would you rely upon?
5. Consider the impact of the following factual modifications:
    a. What if Marvin never went through with the trial, but he still received threats because the gang believed he testified in court? How would this impact the adjudication?

Instructor's Notes Practical Exercise 5: (b)(6)

1.
2. Yes, social distinction.
3. Was the applicant treated differently after he testified? How were others who testified against the gang treated in the neighborhood? Are there any programs or initiatives that protect witnesses?
4. Yes. The phone call.

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5.

a. the PSG would remain the same, however he would be an imputed member for the PSG.

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Practical Exercise 3: (b)(6)

1. Is the applicant a member of a cognizable PSG? If so, how would you formulate the PSG?
2. Is there anything else that should be explored in determining whether the applicant is a member of a PSG?
3. What type of testimony should the AO elicit to show social distinction? What are some examples of country conditions that might show social distinction?
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U.S. Citizenship and Immigration Services

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Nexus:

Corey Cappelloni and Erin McEvoy, HQ Asylum Division

May 14, 2019

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Nexus to a Protected Ground

* Nexus=Connection

* 5 Protected Grounds/Characteristics:
    1. Race
    2. Religion
    3. Nationality
    4. Political Opinion
    5. Particular Social Group (this afternoon)

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Who is a refugee

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

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Nexus/ "On account of"

* Nexus is the ***connection*** between an act of persecution (the harm) and the victim's protected characteristic (race, religion, etc.).

* Need **both** harm and connection

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Figure out the reason (the whythe on account of) in these examples:

- Police imprisoned John because John spoke against the president's political party.
  - Why was John imprisoned?
  - Is there a *nexus*, a connection between the reason that John was imprisoned and a protected ground?

- Edwin may be killed by government agents because he is believed to be a Christian.
  - Why could Edwin be killed?
  - Is there a nexus, a connection between the reason that Edwin may be killed and a protected ground?

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The hard part of our job is to figure out if the bad stuff happens “on account of” of race, religion, nationality, political opinion, or particular social group.

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On Account Of

* Do not conflate possessing a protected ground (nationality, race etc.) with nexus.

* Remember that even if an applicant establishes that she has a protected characteristic, she must still establish that she was persecuted, or has a well-founded fear of persecution, on account of the protected characteristic.

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On Account Of

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

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

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What motivates the persecutor

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

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Evidence may be:

- **Direct** - such as a death threat letter or statement that references the protected characteristic

- Or

- **Circumstantial** (relies on reasonable inferences)

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Circumstantial Evidence

* Alberto the coal miner labor union organizer.

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Punitive or malignant intent is not required for an applicant to establish a nexus to a protected characteristic. For example, the persecutor may believe that he or she is actually helping the applicant.

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* The persecutor's motivations may change: initial motivation is not determinative

* There can be more than one reason motivating the persecutor (mixed motives)

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REAL ID Act and "mix motivation"

* The REAL ID Act introduced the "*one central reason*" standard
* The Real ID Act has many provisions, but as it regards *nexus*, it applies only to asylum
* However the "*one central reason*" language has been interpreted consistent with prior BIA "mixed motives" precedent decisions and the analysis in cases involving mixed motivation is essentially the same for refugee and asylum adjudication

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One central reason?

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

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Identifying the 5 Protected Characteristics

* Applicants are expected to provide facts, not legal constructions or conclusions
* In each case you must consider all possible grounds
* Grounds may overlap
* Each of the protected characteristics may be imputed

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On account of **RACE**

* Broad construction of the term *race*
* The question is: how is *race* viewed in the social context of where the protection claim arises – depending on where the claim arises from, race could refer to a biological grouping, a linguistic group, a family origin, or something else.

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THE 1935 NUREMBERG RACE LAWS

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

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Racial laws in South Africa

* Prohibited *mixed marriages* (1949)
* Adultery *immoral* between white and black people (1950)
* National registry of everyone's *race (1950)*
* Forced physical separation between white and "coloured"

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





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What you must remember about *race*

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

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

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On account of **NATIONALITY**

* Broad construction of the term

* It may refer to ethnicity, common descent, cultural affiliation, linguistic grouping, biological characteristics, tribal, clan as well as citizenship

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Practical Exercise

(b)(6)

DISCUSSION:

1. Does the harm experienced by the applicant constitute persecution?
2. Was the harm suffered by the applicant on account of a protected ground in the refugee definition, and if so, which one (s)?
3. What facts support your conclusion?
4. What additional info, if any, would help evaluate this claim?

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On account of **RELIGION**

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

UNHCR Handbook, paragraph 71

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Religion in its widest concept

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

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Mr. (b)(6)

- (b)(6)

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No requirement to conceal

* See *Zhang v. Ashcroft*, 388 F. 3d 713, 719 (9th Cir. 2004)(per curiam) rejecting IJ's finding that petitioner could avoid persecution by practicing Falun Gong in secret.

* See also, *Muhur v. Ashcroft*, 382 F. 3d 653 (7th Cir. 2004) finding that immigration judge erred that Eritrean Jehovah's Witness "can escape the notice of the persecutors by concealing one's religion."

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Conversion

- In some countries it may be illegal to convert from one religion to another, and the penalties may be severe.

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Compliance with religious laws

* Punishment for refusal to comply with religious norms or laws (such as dress codes or gender roles based on religious principles) may, in some cases, constitute persecution on account of religion.

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The Board found persecution on account of religion, for example, in a case where a fundamentalist Muslim father harmed his daughter because of her more liberal views of Islam.

In re S-A-, 22 I&N Dec. 1328 (BIA 2000)

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On account of **POLITICAL OPINION**

* Not just participation in political party or process
* Evidence of verbal or openly expressed behavior by the applicant in furtherance of a particular cause
* Nexus LP at section 8.1 has a list of of non-traditional expressions of political opinion

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A few examples of expressions of possible political opinion

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

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Resistance to Gangs

* Merely resisting the demands of a gang (i.e. recruitment, extortion etc.), by itself, is typically not viewed as a political opinion.

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Whistleblowing, exposing government corruption

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

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

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Conscription and military service

* Generally, punishment for draft evasion lacks the "on account of" requirement
* Exceptions where evidence may show nexus:
  * Disproportionate punishment (on account of a protected ground)
  * Military activity condemned by int'l community
    * *Matter of A-G-*; *M.A. v. INS* (condemnation must come from int'l gov't agencies)
    * *Barrazza v. INS*; *Ramos-Vazquez v. INS* (specific acts contrary to int'l norms of human conduct)

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Coercive Population Control (CPC)

- In 1996, Congress amended 101(a)(42):

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

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Coercive Population Control (CPC)

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

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Purely personal problems

* **A purely personal problem is one that arises from a dispute, or situation (often a crime) unrelated to any of the five protected grounds.** For example, fear of *retribution* from a victim of a car accident for which the applicant was responsible is a good example of a *purely* personal problem.
* <u>But be careful</u>: what appears to be a purely personal problem sometimes is not, or it may start as purely personal and develop into something involving a protected characteristic.

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Particular Social Groups

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



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Particular Social Group – 3-part test

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

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

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



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Matter of Acosta
19 I&N Dec. 211 (BIA 1985)

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

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Immutable Characteristic

* Unchangeable

or

* Fundamental to Identity or Conscience

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Characteristic

Defined as:

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

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

Characteristic may include:

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

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Fundamental

Generally consider:

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

Also consider:

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

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Social Distinction

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

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

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

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

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Social Distinction

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

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

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Social Distinction Continued

* Must be evaluated on case-by-case and society-by-society basis
* Officers' duty to elicit information to develop the record

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Evidence of Social Distinction

* Testimony
* Country conditions information

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Particularity

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

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

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

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Particularity

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

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Are these groups “particular” ?

* The wealthy
* Lawyers
* Ranchers
* Women
* Widows

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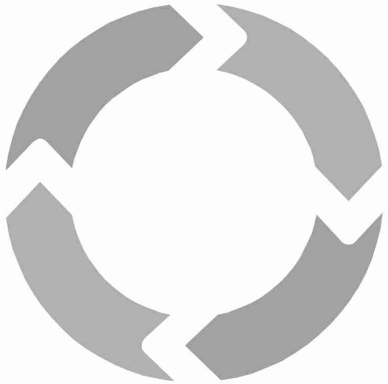
Other Requirements

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

* Avoid Circular Reasoning



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On Account Of

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

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

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Imputed Membership

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

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Exercise 1

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Domestic Violence PSGs--BIA

Matter of A-R-C-G- (2014)

* "Married women in Guatemala who are unable to leave their relationship"

Matter of A-B- (2018)

* "El Salvadoran women who are unable to leave their domestic relationships where they have children in common"

Grace (2018)

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Affirmative Cases

* ICE GUIDANCE
* USCIS GUIDANCE

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Domestic Violence PSGs-Cir. Courts

* Implied PSG is viable
  * *Hui v. Holder*, 769 F.3d 984 (8th Cir. 2014).
* PSG not viable
  * *Vega Ayala v. Lynch*, 833 F.3d 34 (1st Cir. 2016)
    * "Salvadoran women in intimate relationships with partners who view them as property" not immutable or socially distinct.
* Not a member
  * *Marikasi v. Lynch*, 840 F.3d 281 (6th Cir. 2016)
  * *Cardona v. Sessions*, 848 F.3d 519 (1st Cir. 2017)
  * *Fuentes-Erazo v. Sessions*, 848 F.3d 847 (8th Cir. 2017)

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Nexus to Family Membership: Gang Targeting

Courts finding a possible nexus:

* *Hernandez-Avalos v. Lynch* (4th Cir. 2015).
  * When mother threatened with death if she did not allow her son to join a gang, the gang leveraged her maternal authority to control her son's activities.
* *Cordova v. Holder* (4th Cir. 2014).
  * Applicant targeted by gang because his cousin and uncle were members of a rival gang (applicant NOT a gang member).
* *Crespin-Valladares v. Holder* (4th Cir. 2011).
  * Recognizing family members of prosecutorial witnesses who testify against MS-13.

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Nexus to Family Membership: Gang Targeting

Courts finding a possible nexus:

* *Flores Rios v. Lynch* (9th Cir. 2015).
  * Gang members killed applicant's father and murdered and threatened other family members planning to testify. Remanded for consideration of nexus to family.
* *Aldana-Ramos v. Holder* (1st Cir. 2014).
  * Remanded for consideration of nexus to family. Gang targeted two brothers, even after they exhausted the family's money from the family business in paying the father's ransom, and the gang nonetheless killed their father.

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Nexus to Family Membership: Gang Targeting

Court finding no nexus:

* *Perlera-Sola v. Holder* (1st Cir. 2012).
  * Shooting of father, and phone threats and drive-by shooting on family's pig farm by unknown individuals did not establish nexus to family.
* *Ramirez-Mejia v. Lynch* (5th Cir. 2015).
  * That gang members sought information from applicant about her brother, without more, did not support that gang targeted her due to her family relationship.
  * *Matter of L-E-A-,* (BIA 2017)--Stayed

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Female Genital Mutilation (FGM)

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

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

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FGM Exercise

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DHS-19-1398-H-000244

Forced and Early Marriage

* ***What are some possible reasons***
  * poverty
  * settling debt
  * "punishment" for rapist
* ***What are some of the questions to distinguish between arranged and forced marriage***
  * Level of coercion
  * Ability to avoid the marriage
  * Consequences for refusing to submit

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Honor Crimes

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

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

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Law Enforcement Assistance

Matter of C-A-

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

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Witnesses

Cases recognizing witness PSGs:

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

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Law Enforcement Assistance: Lack of Consistent Precedent

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

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Law Enforcement Assistance: Lack of Consistent Precedent

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

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

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Law Enforcement Assistance

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

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Law Enforcement Assistance in the U.S.

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

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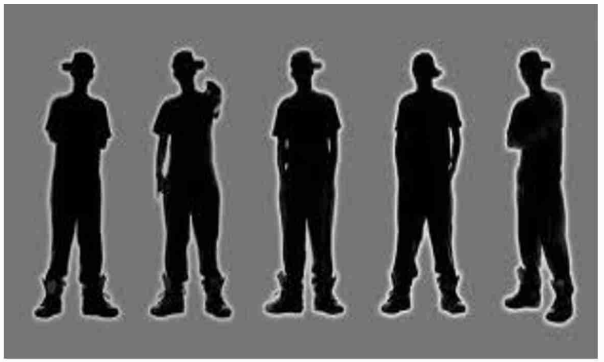
Former Gang Members

Fourth, Sixth and Seventh Circuits

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

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



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

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

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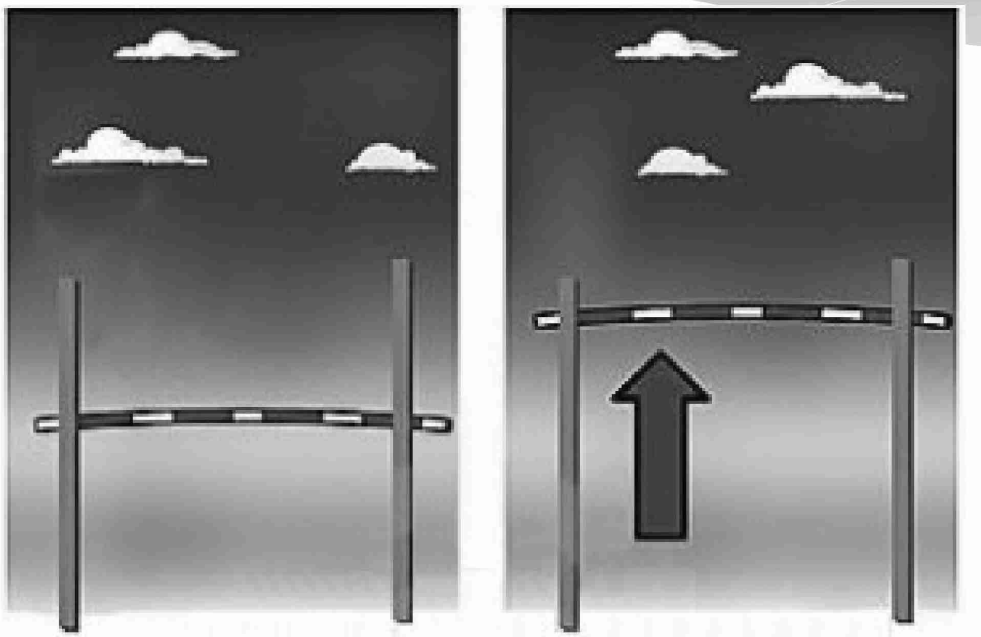
CF/RF vs. Affirmative



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Review:
Road Map for PSG Claims

Ask

* Is there a common, immutable characteristic?
* Does the society in question distinguish people with the characteristic?
* Is the group defined with particularity?

Avoid

* Claims based on past criminal, terrorist or persecutory activity
* Circular reasoning



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

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Inhibiting Factors During Interview

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

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

The presence of relatives or the interpreter

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

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

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Effective Interviewing Techniques

Suggested Interview Techniques

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

Examples of Questions to Elicit Sensitive Information

* Open ended questions

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Questions?

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Latin America

U.S. Citizenship and Immigration Services

RAIO Research Unit

June 2019

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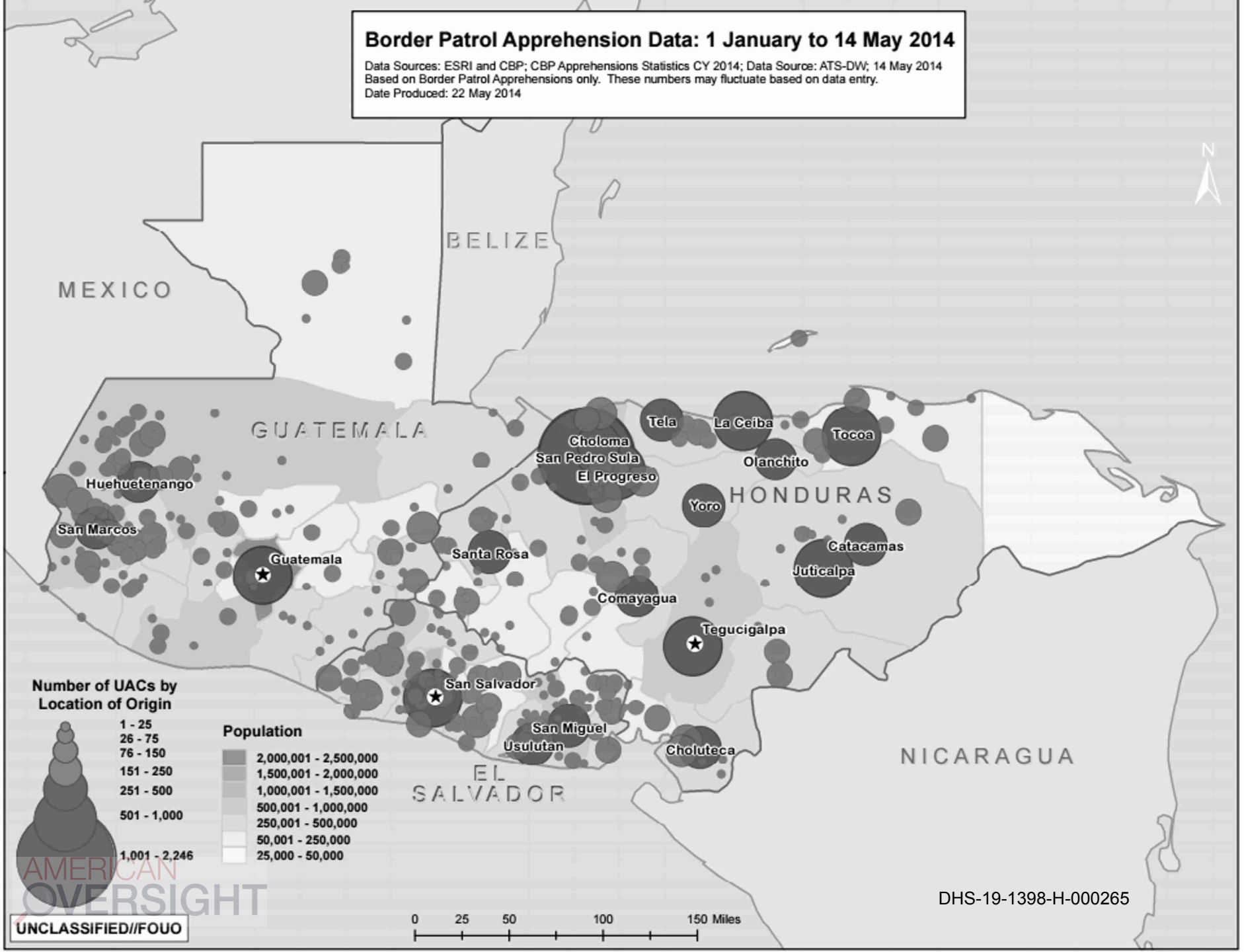
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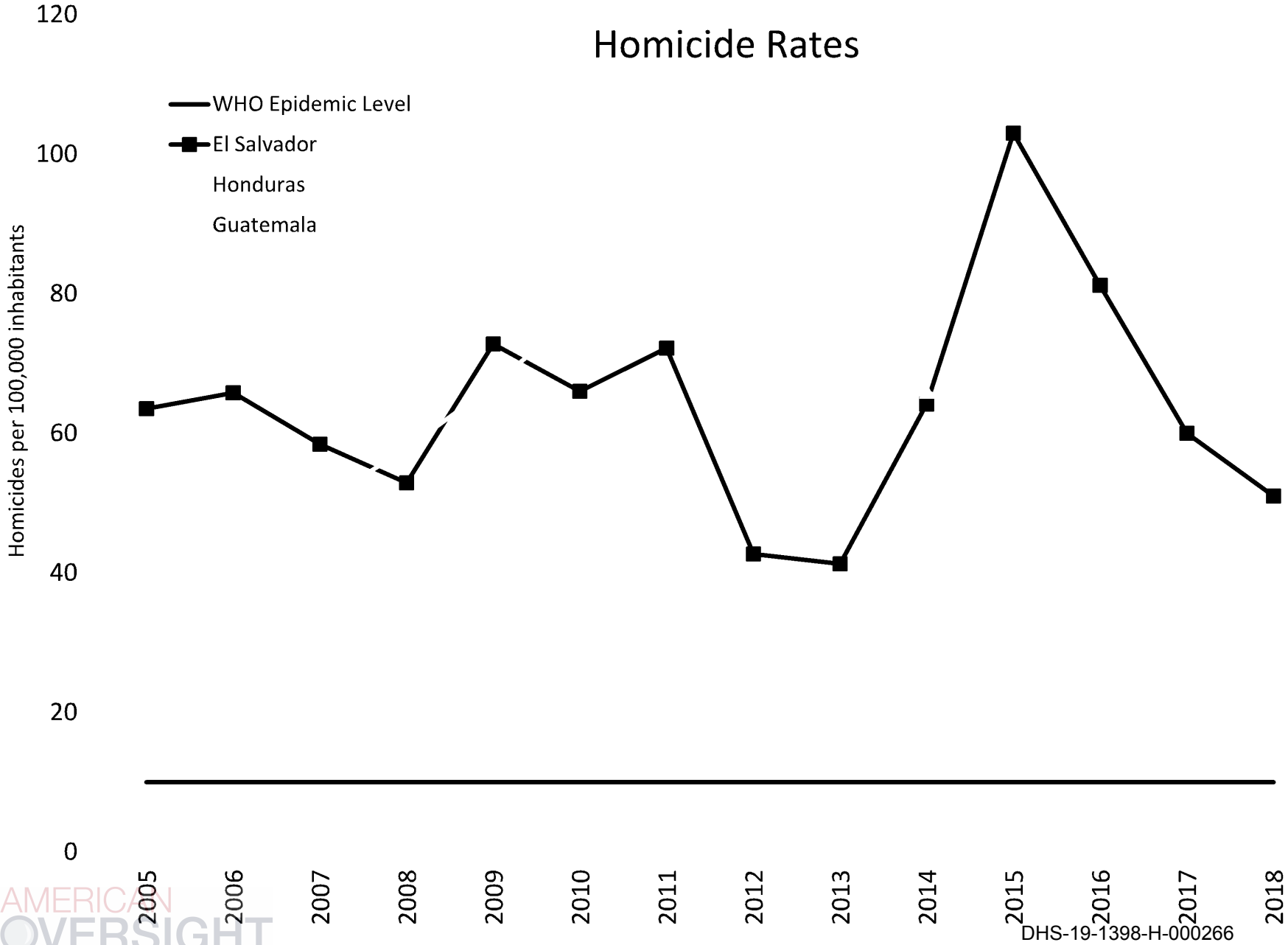

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El Salvador



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Gangs



Barrio 18
Revolucionarios, Sureños



Mara Salvatrucha
(MS-13)

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

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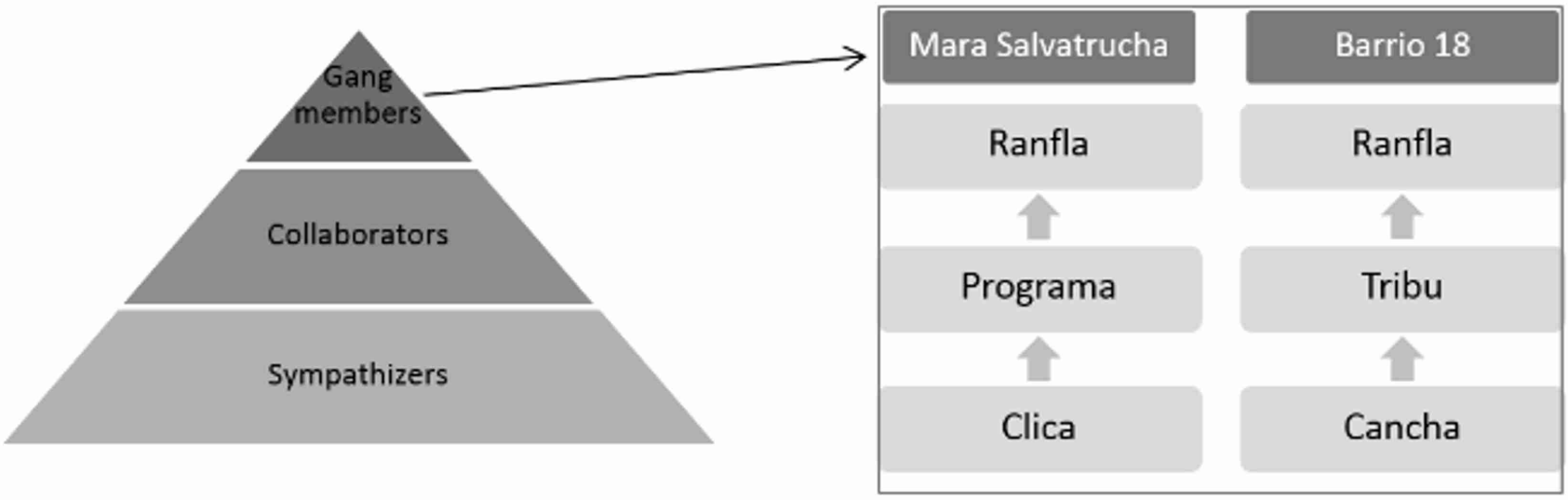
Gangs: Structure

Diagram: Gangs' structure[73]



Support structure

Internal structure

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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 & dependence on extortion may vary
- Geography
  - National influence
  - Likely have a national presence
  - Exercise de facto control in certain areas

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Gangs: Distinctive Traits

- Traditionally = "identified themselves through gang-related tattoos and style of dress and appearance"

- *Mano dura*
  - Certain appearances & behaviors serve as evidence of gang membership and lead to arrest
  - Tattoos, apparel, mode of dress, hair cut style, hand signals, physical appearance, etc.

- Today = "No distinctive trait to indicate who is a gang member"
  - Decreasing use of tattoos to avoid identification
  - Dressing more discretely

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Gangs: Distinctive Traits

- Tattoos = could indicate gang membership or affiliation
  - Traditional symbol of identity & group membership
  - Ritualized for gang members
  - No longer tattooing & hiding/removing existing tattoos
- Tattoos = social stigmatization & discrimination
  - Tattoos are linked to criminality & gangs in El Salvador
  - Employment discrimination, arrests, potential attacks from rivals, etc.
- Communication
  - Distinctive vocabulary, hand & body signs, and written codes
  - Hand signals no longer widely used in public
- Numbers: 13 & 18

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Gangs: Distinctive Traits

- Certain brands or styles reportedly restricted to gang members
  - Shoes, dress/clothing, haircut/color
  - Sign of status
  - Potential indication of membership or affiliation

- Awareness
  - Most people likely know certain brands and styles are used specifically by gang members
  - Not all youth may be aware of the link or danger
  - Popular brands & lack of other options

- Possession of a distinctive trait could lead to harm
  - Actual or perceived gang membership or affiliation
  - Targeted by gangs or police

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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

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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

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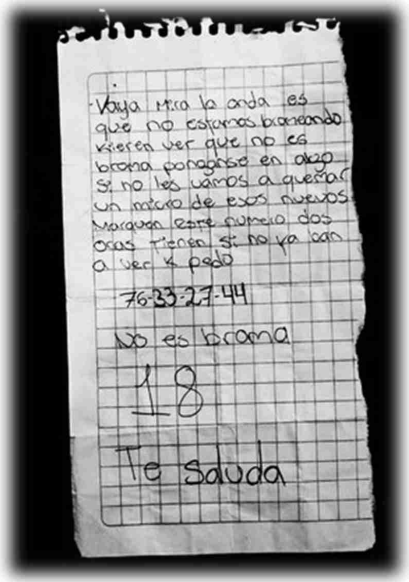
Extortion (*La Renta*)

- 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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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

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Territorial & 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 & 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

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Women/Girls

- Violence against women
  - Patriarchal attitudes & *machista* culture
  - 67% of women have suffered some form of violence
- Femicide = one of the highest rates in the world
  - Over 3,500 killed (2010-2017)
  - One femicide every 24 hours (2018)
- Gangs - physical & 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*

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Women/Girls

- Majority of violent acts committed by community & family members
- Domestic violence
  - Nearly 48% of women have suffered some form of violence in the home
- Sexual violence
  - Nearly 70% of perpetrators know the victim
  - Girls & adolescents most impacted
- Underreporting & lack of state protection

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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

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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



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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

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



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

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

AMERICAN OVERSIGHT

Garifuna

- Caribbean coast
- Political & socio-economic marginalization
- Racial discrimination - hard to find jobs
- Migration
  - Most have family in U.S. (est. 100,000)
  - Intense in 2013/2014 = 60 per day

AMERICAN OVERSIGHT

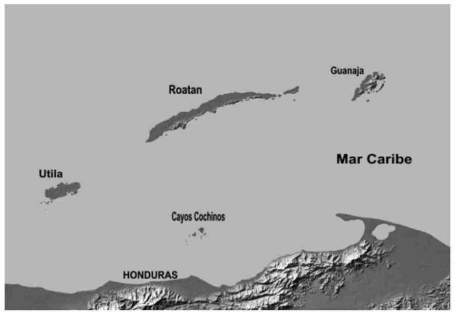
Garifuna

- 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

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%)
- 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”





“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

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

AMERICAN OVERSIGHT

Guatemala



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 the state's social & 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 & 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

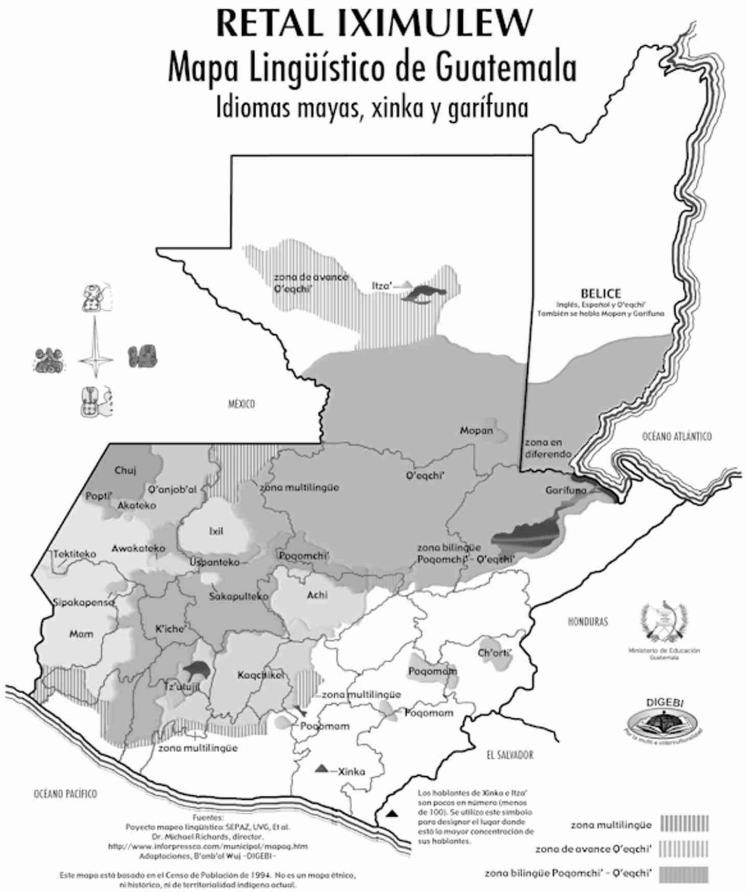
LGBTI

- 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
- Not homogenous
  - Maya (Western Highlands)
    - 21 different language groups
    - Intra-indigenous conflict
  - Xinca (southeast)
  - Garifuna (Caribbean)



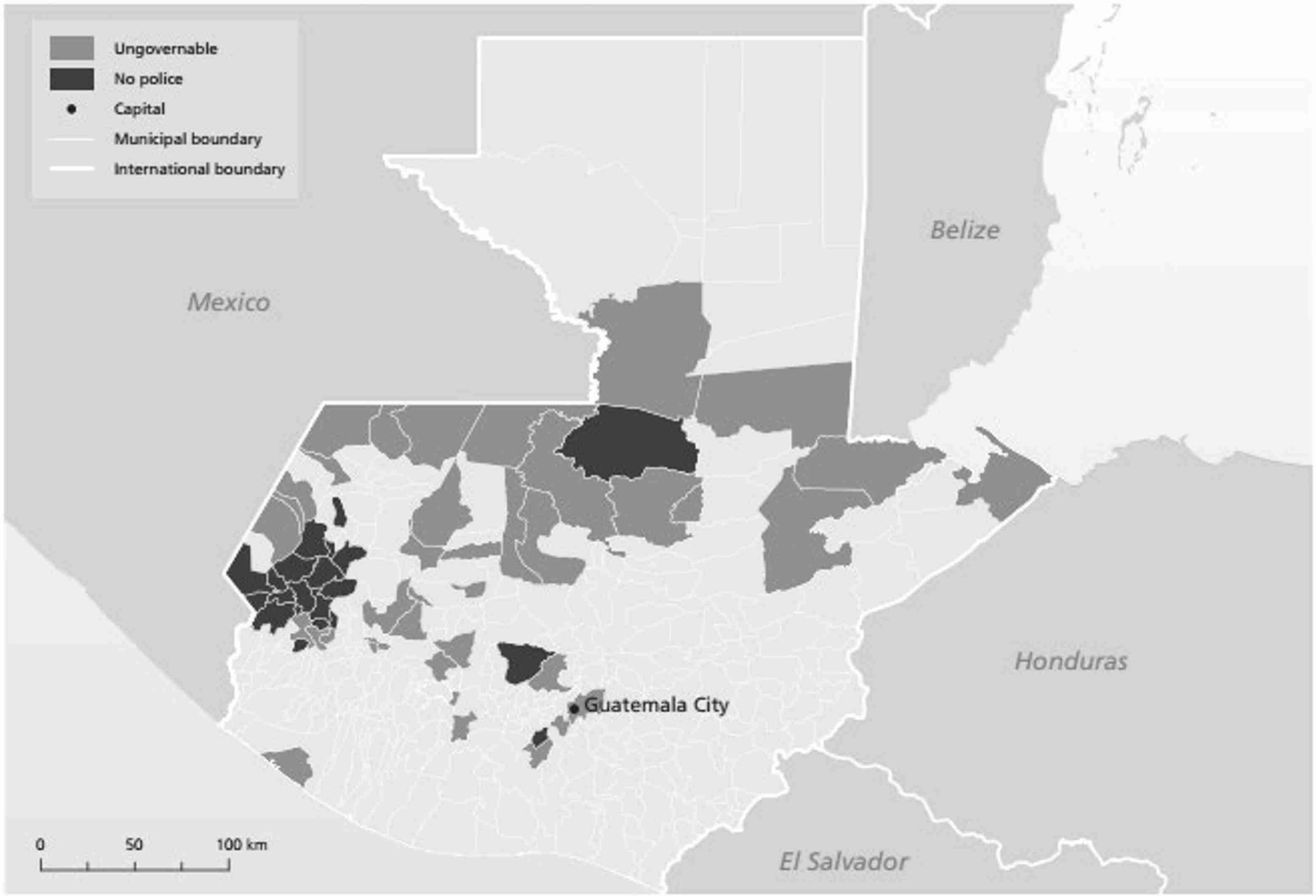
AMERICAN OVERSIGHT

Indigenous Groups

- Historic & structural exclusion
  - land ownership, access to services, labor conditions, formal economy, justice, representation in media, politics, etc.
- Systematic discrimination & racism
  - Normalized - “verge on segregation”
- Social conflict
  - Extractive industry & development projects
  - Activists & 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)

- 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 & present abuses
- March 2018: stopped performing public security functions

AMERICAN OVERSIGHT

Non-State Groups

- Local Security Boards (*Juntas Locales de Seguridad*) & Citizen Security Committees (*Comités de Seguridad Ciudadana*)
  - Local groups focused on community policing
  - Over 1,000 groups - 1/3 unregistered
  - Substantial degree of autonomy
  - Extrajudicial executions, extortion, kidnapping, curfews, illegal arrests, vigilante justice

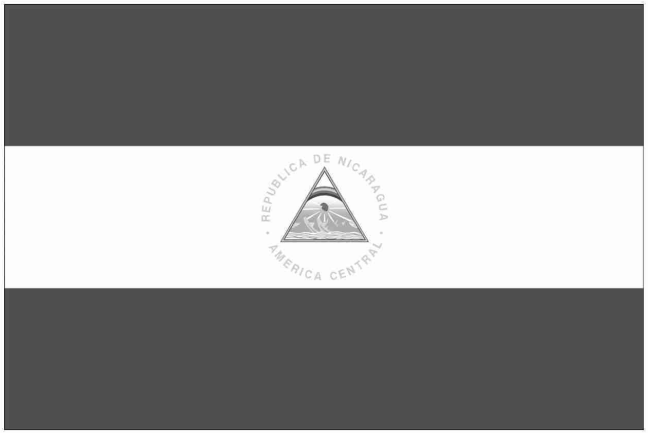
AMERICAN OVERSIGHT

Non-State Groups

- Vigilantism
  - Significant increase since 2004
  - Rural & indigenous communities with high levels of extortion, lack of confidence in state institutions, suspicion of outsiders, etc.
  - 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

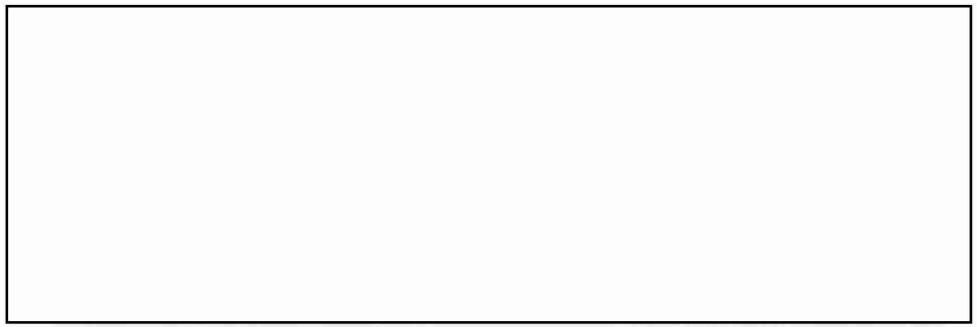


AMERICAN OVERSIGHT

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
  - At least 325 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 & 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



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)









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

- On and off negotiations between the government & the opposition (since February)
  - Government agreed to release all political prisoners by June 18
  - Opposition claims political prisoners remain (as of June 10)
- Repression of a protest & detention of protesters (March 16)
  - First major demonstration since mid-September
- Amnesty law (June)
  - Criticized by the opposition & local and international human rights organizations

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



AMERICAN OVERSIGHT

COI Challenges

- Objective & non-biased COI is limited
  - Cuban state run media
  - Exile community
  - Dissident groups
  - Independent Cuban media & blogs

- No independent human rights monitoring

- Cuba: Travel Regulations and Civil and Political Rights, COI Compilation (ACCORD)

AMERICAN OVERSIGHT

COI Challenges

- Based on open source COI, this presentation attempts to provide a framework for how the Cuban government has historically engaged in repression & targeted government opponents

- Limitations
  - To what extent are tools of repression applied against the population at large?
    - High-profile dissidents vs. average Cuban citizens
  - Difficulty of using open source COI to independently verify claims
  - Individuals who have spent time on the ground, including U.S. government personnel, may at times have better COI than what is publically available

AMERICAN OVERSIGHT

Cuba: State Control

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



- *"Within the Revolution, everything. Against the Revolution, nothing."* - Fidel Castro (1961)

AMERICAN OVERSIGHT

State Repression: Political Dissent

- Dissent = political opposition
  - Any activity that the state deems contrary to its own political agenda
  - Viewed as "counter-revolutionary"
  - Individuals labeled as dissidents

- *Gusano* ("worm")
  - Derogatory term used to describe individuals perceived to be:
    - in opposition to the government
    - critical of revolutionary ideology
    - spies of the United States
  - Historically used to refer to Cuban exiles

AMERICAN OVERSIGHT

State Repression: Legal Foundation

- Highly restrictive, vague & broadly defined laws
  - Almost any act of dissent can be deemed criminal in some way
  - *"Virtually all activities are presumed illegal unless the law says otherwise"*

Dangerousness	Aggression
Contempt	Defamation
Insubordination	Enemy propaganda
Collaboration with the U.S.	Failing to pay fines
Public disorder	Lack of respect
Hijacking	Contempt of authority
Terrorism	Acting against 'the independence or the territorial integrity of the state'
Sabotage	
Espionage	

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 detentions & arrests
    - Harassment & surveillance
    - "Dangerousness"
  - Limited reforms



AMERICAN OVERSIGHT

State Control Mechanisms

- Ministry of the Interior
  - General Directorate for State Security
    - aka the "political police"
    - Units responsible for 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)

- Have the most direct contact with the population
- *Jefe de sector* = neighborhood police chief
  - Prevent crime in area of control (4 sq. km)
  - Investigate crime & detain suspects
  - List of "anti-social" individuals
  - Issue warnings & fines
  - Interview citizens
  - Oversee CDRs



- No reliable crime statistics, but violent crime is reportedly not common

AMERICAN OVERSIGHT

Comités de Defensa de la Revolución (CDR)

- Every block in every neighborhood = 8.3 million members
- Monitor "counter-revolutionary" activity & 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 & control reportedly on the decline



AMERICAN OVERSIGHT

State Control Mechanisms

- *Brigadas de Respuesta Rápida* (BRR)
  - 1991: Pan-American Games
  - Civilians/informers/Communist Party sympathizers
  - Counteract demonstrations by government critics in front of the media
- *Expedientes escolares y laborales*
  - Academic & labor files maintained by the government
  - Record actions & statements regarding loyalty
  - Record must be acceptable before advancing to a new school or position
- Migration authorities & housing officials

AMERICAN OVERSIGHT

Repression

- Arbitrary detentions or arrests
  - Often used to prevent participation in marches or meetings to discuss politics
  - Arrest orders - rarely presented to justify detentions
  - Detainees are often beaten, threatened, and held incommunicado for hours or days
  - Repeated detentions or arrests = can result in stigma and loss of employment

AMERICAN OVERSIGHT

Repression

- Politically motivated trials & prosecutions
  - Due process violations
    - Summary trials, falsified evidence, closed to the public, etc.
  - Lack of judicial independence & impartiality

- Imprisonment
  - Excessive imprisonment for minor infractions
  - Forced interrogations
  - Inhumane conditions - leads to hunger strikes

AMERICAN OVERSIGHT

Repression

- Physical assault
  - Violent beatings & excessive use of force
  - Government officials (during detentions)
  - Citizens (during acts of repudiation)

- *Actos de repudio* (acts of repudiation)
  - Public protest/shaming of dissidents & other individuals
  - Designed to humiliate, harass & intimidate, but can become violent
  - Allegedly dissatisfied citizens, but likely organized by the government

AMERICAN OVERSIGHT

Repression

- Invasive surveillance
  - Constant & multi-faceted
    - tap phones; hack email; bugs; clandestine searches; informants; film, observe, and photograph meetings; track movements
  - Government officials & civilians
    - Security officials & CDRs
- Seizure of property
  - Journalists, dissidents, etc.



DHS-19-1398-H-000360

AMERICAN OVERSIGHT

Repression

- Harassment & discrimination
  - Reportedly increasing in recent years
  - Designed to wear out dissidents
- Threats, warnings, intimidation, blackmail, etc.
  - Implicit & explicit
  - Official warning - dangerousness and dissidents
- Smear campaigns & defamation
- Fines

AMERICAN OVERSIGHT

Repression

- Limited access to information & restrictions on freedom of expression
  - State owns virtually all traditional media
  - Independent press is illegal & its publications are deemed enemy propaganda
  - Internet
    - Limited access, high costs, slow speeds, blocking of sites, surveillance, etc.
    - Access increasing in recent years
  - Blocking & censorship of cell and SMS service

AMERICAN OVERSIGHT

Repression

- Restrictions on freedom of association
  - Effective ban on the registration of independent organizations
    - Human rights groups, trade unions, media outlets, etc.

- Travel & mobility restrictions
  - Prevent individuals from traveling abroad
  - Decree 217 (1997): restricts internal movement of citizens
  - Prevent individuals from leaving homes or streets during events

AMERICAN OVERSIGHT

Repression

- Denial or loss of educational opportunities
  - Political clearance needed for university admission
  - Students can be expelled from school
  - Professors may be fired
- Reprisals against family members
  - Government tries to isolate family of dissidents from their neighbors
  - Attacks, threats, harassment, loss of jobs, etc.

AMERICAN OVERSIGHT

Repression: Employment

- State retains control over all forms of employment
  - Public/state sector = 72% of labor force
  - Non-state & self-employment
- Control of employment used to silence dissent & criticism
  - Political activism, criticism/disapproval, etc.
- Underground economy/black market
  - Nearly all Cubans participate
  - Mostly overlooked, although periodic crackdowns do occur

AMERICAN OVERSIGHT

Repression: State Employment

- Discrimination in access to jobs due to political views
  - Political clearance needed to obtain public jobs
    - Check with state security, intelligence, neighbors, etc.
    - *"You aren't trustworthy"*
  - Criminal record = almost impossible to work for the state

- Labor files (*expedientes laborales*)
  - Government hold files on individuals from university through their entire working life in the state sector
  - Reportedly contain information on political views

AMERICAN OVERSIGHT

Repression: State Employment

- Pressure to promote state ideology & participate in pro-government activities
  - Attend/participate in marches, meetings of the Communist Party or official trade union, acts of repudiation, etc.
  - Refusal = reportedly noted in files, job loss/denial, etc.
- Discriminatory & politically motivated dismissals
  - Fired, demoted, or censured for expressing dissenting opinions or affiliating with independent groups
  - Harassed until only option is to leave job
- Dissidents = nearly impossible to find work

AMERICAN OVERSIGHT

Self-Employment

- History
  - Started in the 1970s, but emphasized or deemphasized over time based on economic conditions
  - Expansion in 2009-2010

- *Cuentapropistas* = self-employed workers
  - Nearly 600,000 (13% of the labor force)

- Mostly limited to semi-skilled or unskilled work
  - 123 categories of jobs
  - Virtually impossible for university graduates or professionals to work in their fields

AMERICAN OVERSIGHT

Self-Employment

- Sector is highly regulated
  - Must apply for a license from the state
  - Pay monthly taxes
  - Oversight & performance requirements

- Potential violations, penalties & fines
  - Inspections
  - People called in to discuss irregularities
  - Penalties for infractions
    - Preventative notifications, fines, suspensions of authorization, decommissioning or definitive canceling of authorization, etc.

AMERICAN OVERSIGHT

Self-Employment

- Many purchase goods & supplies on the black market
  - Mostly stolen from state-owned businesses & resold
  - Could be fined or lose license
- Sanctions imposed by inspectors & police
  - Could be charged with criminal offenses
- Allegations of political discrimination
  - Regulations arbitrarily & disproportionately applied against anyone critical of the government
  - Further harassment of former state employees who were fired from their jobs
  - Denial of licenses to dissidents

AMERICAN OVERSIGHT

"Dangerousness"

- *Estado peligroso* or *peligrosidad*

- Provisions in the penal code with a range of sanctions based on/for:
  - The proclivity of an individual to commit a crime
  - The perceived likelihood of potential future actions that could be "anti-social"
  - Individuals who have relations with people who:
    - are considered "potentially dangerous for society"
    - "pose a threat to the social, economic or political order of the socialist state"

AMERICAN OVERSIGHT

"Dangerousness"

- Imprecise & subjective
  - Broad & vague terms = could cover almost any activity
  - Allows for arbitrary application by authorities
- Proclivity to commit a crime
  - No actual criminal act need to have occurred
  - Suspicion that an individual might commit an offense in the future
- Associating with a "dangerous person"

AMERICAN OVERSIGHT

"Dangerousness"

- Mostly used as a tool to control anti-social behaviors
  - Substance abuse
  - Public drunkenness
  - Prostitution
  - Unemployed & unable to find work
  - Self-employed without authorization
  - Young people who refused to report to work centers
  - Repeat offenders of laws restricting change of domicile
  - Individuals who attempted to leave the country

AMERICAN OVERSIGHT

"Dangerousness"

- Used against perceived political opponents or individuals who do not cooperate with the state
  - Participate in protests or marches
  - Hand out copies of the Universal Declaration of Human Rights
  - Write critical news articles
  - Try to organize independent unions
  - Fail to attend pro-government rallies
  - Fail to belong to official party organizations

AMERICAN OVERSIGHT

"Dangerousness"

- Punishment
  - Official warnings
  - "Therapy"
  - Police surveillance
  - "Reeducation"
    - Internment in a specialized work or study institution for 1 to 4 years
    - Internment usually changed to imprisonment
- Dissidents
  - Cannot get jobs because they are considered dangerous
  - Considered dangerous because they do not have jobs

AMERICAN OVERSIGHT

Official Organizations

- *Partido Comunista de Cuba* (PCC)
  - Only legal political party
  - Invitation only
- *Unión de Jóvenes Comunistas* (UJC)
  - "Voluntary & selective" (ages 16-30)
- *Confederación de Trabajadores de Cuba* (CTC)
  - Worker's union
- *Federación de Mujeres Cubanas* (FMC)









AMERICAN OVERSIGHT

DHS-19-1398-H-000376

Dissident Groups

- Not homogenous
- Ideology
  - Democratic change
  - Apolitical
    - Practice religion
    - Organize a union
- Small & isolated
  - Efficiency of the 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: Perceptions

- Cuban government = agents of the U.S. government
- Cuban citizens = general skepticism
  - Not well-known in Cuba
    - Successfully isolated from the population by the government
  - Not a lot of sympathy
  - Question backing & 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 & even anger

AMERICAN OVERSIGHT

Public Dissent

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

AMERICAN OVERSIGHT

Travel & Migration

- Migratory & travel restrictions since the 1960s
  - Exit permit & letter of invitation
    - Exit permit = historically denied to government critics & family members
- Defectors/illegal migrants
  - Considered counter-revolutionaries
  - Lost rights & properties
  - Barred to return to Cuba
    - Depended on officials in power
    - 5, 8, 10 years or life
  - Limitations on migration of family members for reunification

AMERICAN OVERSIGHT

2013 Migration Reforms

- Eliminate the exit permit
  - Travel to & work in third countries
- Allow temporary re-entry of migrants
  - Rafters, doctors, athletes, etc. who meet certain criteria
  - Others may still be barred
- End automatic loss of property
- If wish to return, can reapply for residency
- Allowable time overseas extended from 11 months to 2 years

AMERICAN OVERSIGHT

Current Travel Restrictions

- Most Cubans only need a passport & visa (if required) to travel internationally
- Some individuals still need permission to travel
  - Highly specialized medical personnel
  - Military or security personnel
  - Many government officials
  - Some human rights activists or former political prisoners
- Government has broad discretionary powers to restrict travel
  - On the grounds of "defense and national security" or "other reasons of public interest"
  - Have been used against those who express dissent

AMERICAN OVERSIGHT

Current Travel Restrictions

- Enforcement
  - Denial or confiscation of passports
  - Outbound migratory inspections
  - Arrests & detentions to prevent dissidents from leaving the country
    - Detained or prevented from going to the airport (miss flights)
- Dissidents
  - Many prominent dissidents have traveled abroad & returned
  - Some dissidents out on parole or facing court action have not been able to travel
  - Human rights activists have been denied permission to participate in workshops, events, or training programs

AMERICAN OVERSIGHT

Emigration & Attempted Emigration

- Still viewed as an expression of discontent with the political/economic system?
  - "Deserters," "traitors," "counter-revolutionaries"
  - Allegations of stigmatization & discrimination, detentions, exclusion from state employment, reprisals against family members
- Individuals seeking to migrate legally
  - Allegations of police interrogation, fines, harassment, intimidation & dismissal from jobs
  - Government employees - sometimes lost positions when plans became known

AMERICAN OVERSIGHT

Illegal Exit

- Rafters (*balseros*)
  - Traditional method of irregular migration
    - Across the Florida Straits to the U.S., usually with homemade vessels
  - Declined in recent years
    - 2013 Migration Reforms
    - End of "wet foot, dry foot" policy (Jan. 2017)

- 1994-1995 U.S-Cuba Migration Accords
  - *"agreed not to prosecute or retaliate against migrants returned from international or U.S. waters, or from the Guantanamo U.S. Naval Station, after attempting to emigrate illegally if they had not committed a separate criminal offense."*

AMERICAN OVERSIGHT

Illegal Exit

- Legal repercussions
  - First-time rafters = up to 3 years imprisonment or a fine of 500 CUP ($20)
  - Organizes, promotes, or incites an illegal exit = up to 5 years imprisonment

- Discretionary application of laws
  - Most rafters - allegedly fined and/or briefly detained
  - Punishment could be more severe for military or police defectors, or those traveling with children
  - Allegations of stigmatization, discrimination, denial of access to state jobs, “dangerousness,” etc.

AMERICAN OVERSIGHT

Emigrants & 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
    - Good citizens = very little or nothing will be done
    - Wanted for a felony = will be arrested

AMERICAN OVERSIGHT

Emigrants & Returnees

- Family members of migrants
  - Limited information
  - Little repercussions, unless other issues involved
    - Relatives were high-ranking officials or broke the law
    - Some family members of former government officials allegedly lost public benefits or were denied passports
- Deserters
  - Limited information
  - Could face consequences if they deserted while on an official mission
    - Ex. doctors, athletes, military

AMERICAN OVERSIGHT

Emigrants & Returnees

- Cuban emigrants
  - Lose residency rights after 24 consecutive months outside of Cuba
  - Virtually all are eligible & can apply for repatriation
    - Unless committed "hostile acts against the state"
  - No longer stigmatized or ideologically suspicious
    - Unless they are anti-government activists

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

AMERICAN OVERSIGHT

Emigrants & Returnees

- Rights of repatriated Cubans
  - Same constitutional, civil & 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 mass phenomenon, but also not a rare occurrence

AMERICAN OVERSIGHT

Playing Loud Music

- *"Music of all types — salsa, reggaeton, pop — blares at top volume at all hours of the day."*

  -Associated Press, 2016

- Nine days of national mourning for Fidel Castro
  - Nov.-Dec. 2016
  - Ban on playing live or recorded music
    - Havana - "notable lack of amplified music"
  - Allegations from dissidents
    - Warnings & threats from security forces, including to jail individuals playing or listening to music in public or at home

AMERICAN OVERSIGHT

Pressure to Vote

- While not obligatory, Cubans have allegedly been pressured to vote by state & party officials & citizens

- Alleged tactics
  - Get out the vote campaign
  - Excess number of polling stations
  - Keep track of who has voted
  - Home visits - remind or ask why you have not yet voted
  - Take ballots to your house

- Refusal to vote - viewed as a challenge to the political/ economic system?

AMERICAN OVERSIGHT

Referendum on New Constitution

- Draft approved in July 2018
- Three-month public consultation process
  - Circulated throughout the country for a public comment period
  - 112,000 public meetings at workplaces, schools & community centers
    - Over 8 million people reportedly participated
  - Hundreds of thousands of suggestions for changes
    - 66% of speakers addressed same-sex marriage (most opposed)
    - 179,000 people signed a petition against same-sex marriage
- Final version approved in December 2018

AMERICAN OVERSIGHT

Referendum on New Constitution

- *"modest economic and social changes while maintaining the one-party socialist system"*

- What's in it?
  - Constitución de la República de Cuba
  - Cuba's New Constitution, Explained, WOLA, Feb. 26, 2019
  - Cuba approves new constitution amid unprecedented opposition. What changes?, Miami Herald, Feb. 25, 2019.
  - Explainer: What is old and new in Cuba's proposed constitution, Reuters, Feb. 21, 2019

AMERICAN OVERSIGHT

Referendum on New Constitution

- Government = vote "Yes"
  - Campaign for approval in state-run media, public spaces & social media
  - Advocacy by celebrities & politicians
  - *#YoVotoSí & #CubaVotaSí*

- Frame "Yes" as a matter of patriotism
  - At times, accusations that those who vote "No" were siding with Cuba's "traditional enemies"
  - *"I will vote 'yes' because there are two groups, the 'yes' and the 'no'…The ones calling us to vote 'no' are the traitorous enemies of Cuba."* – Former Cuban spy, in a video posted by the government on social media

AMERICAN OVERSIGHT

Referendum on New Constitution

- Opponents = vote "No" or boycott
  - Dissidents & exiles
    - Process is fraudulent & entrenches communism
  - Evangelicals
    - Concerns about potential for same-sex marriage in the future
    - Some pastors promoted "No" from the pulpit
  - Catholic Church
    - Voiced criticism of certain elements
- Campaign was stifled or censured by the state
  - Few public displays supporting "No"
    - T-Shirts, Twitter (*#YoVotoNo* & *#YoNoVoto*), protests

AMERICAN OVERSIGHT

Referendum on New Constitution

- Results of referendum (Feb. 2019)
  - **Participation**: 84.4% of eligible voters
  - **Yes**: 86.85% (6.82 million)
  - **No**: 9% (706,000)
  - **Spoiled or Blank**: 4.5% (325,000)

- Over 2.1 million people voted "No" or didn't vote
  - *"'"No" votes, abstentions, or null ballots should not be equated with support for the Cuban opposition."*

AMERICAN OVERSIGHT

Allegations of Government Tactics

- Crackdown on Cubans working on "No" campaign
  - Dissidents prevented from campaigning or protesting
  - Harassment, detention & beatings by state security
  - Seized computers, USB drives & work materials from homes
  - Surveillance by the military
- Some churches pressured to instruct members to vote "Yes"
  - Pastor threatened - would be treated as a "counter-revolutionary"
- Detention of activists who tried to observe polls

AMERICAN OVERSIGHT

Medical Professionals

- International missions
  - Primary source of state income
  - Poor living & working conditions
- Defections
  - Low pay & lack of professional development
  - Opportunities to work in third countries
  - Cuban Medical Professionals Parole Program (ended in Jan. 2017)
  - May face issues if they deserted from an official mission
- State policies
  - Severe travel & migration restrictions to prevent "brain drain"
  - Sep. 2015 - incentives to return (no punishment, guaranteed job, etc.)
  - Dec. 2015 - re-imposed exit permit for specialists

AMERICAN OVERSIGHT

Contact Info

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U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Country of Origin Information (COI) Research



Research Unit (RU)

Refugee, Asylum and International Operations

June 2019

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

The Genesis of the Research Unit (RU)

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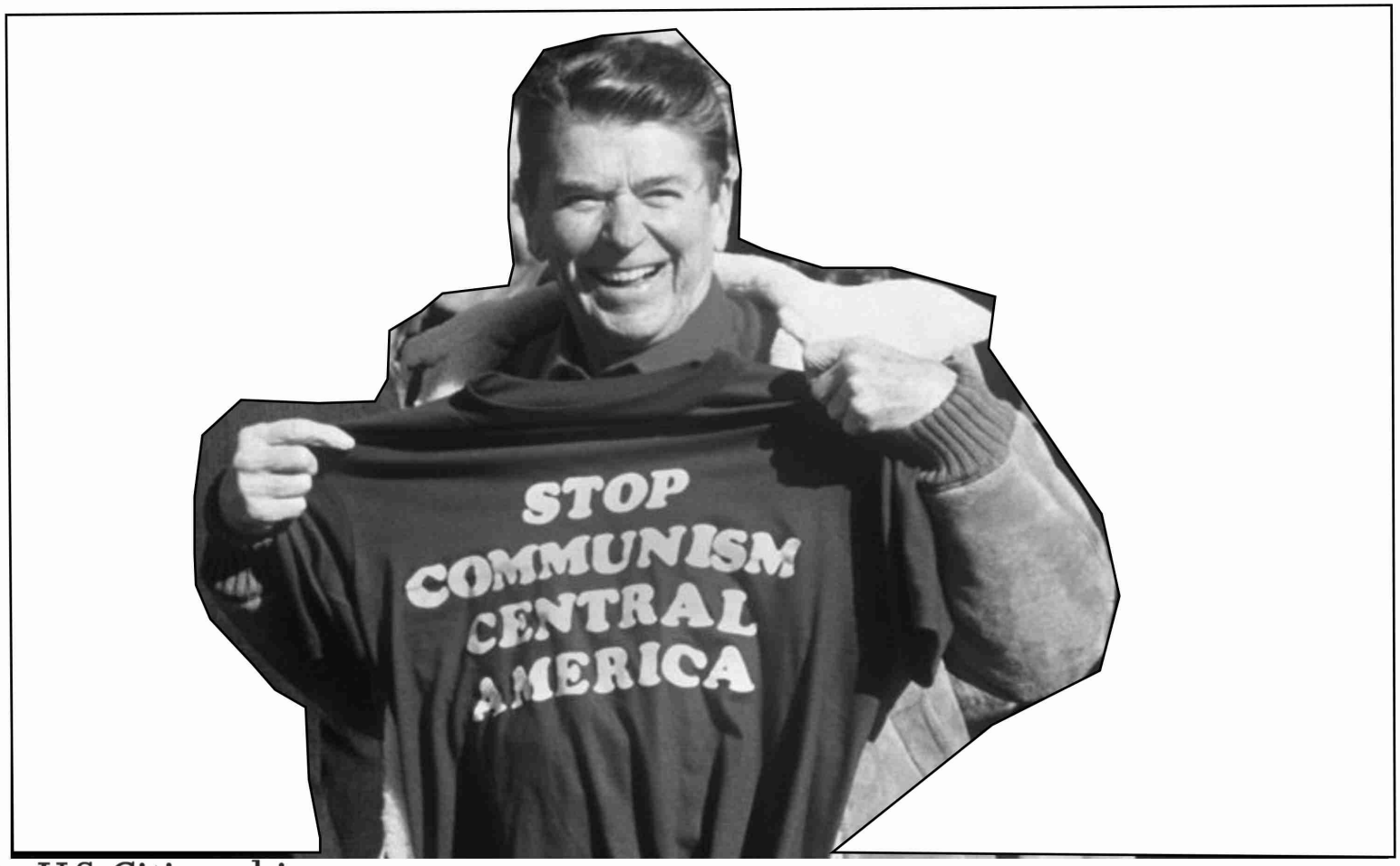


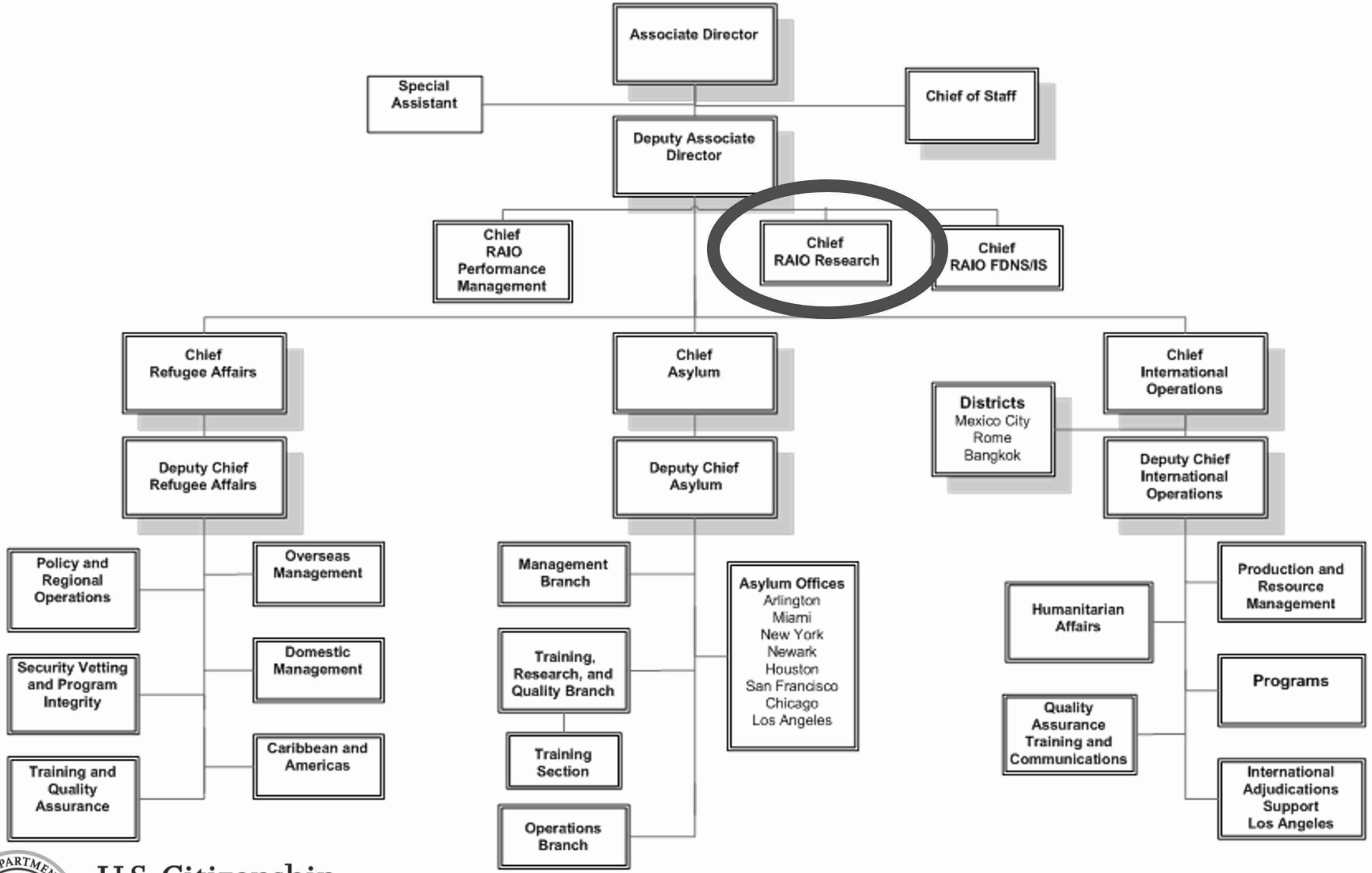
U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

The RU was Established as an Independent Entity for COI

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

RAIO and RU



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

RU's Vision and Mission

Vision

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

Mission

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

Sources: Suggested Starting Point

- Research Unit ECN
- Refworld (UNHCR)
- ecoi.net (European Country of Origin Information Network)
- [redacted] (security-related)
- Google

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U.S. Citizenship and Immigration Services

CANCELLED
CORRIGHT

Reading Suggestions (LAC)

- InSight Crime
- The Guardian
- The New York Times
- The Washington Post
- Associated Press
- The New Humanitarian

U.S. Citizenship and Immigration Services

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Reading Suggestions (LAC)

- Miami Herald (Cuba, Haiti, Venezuela, Colombia)
- Los Angeles Times (Mexico)
- Google Alerts (specific countries/topics)
- LANIC
  - Lists of newspapers and news outlets by country (no longer updated)
- NACLA

Reading Suggestions (LAC)

- RAIO Research Unit ECN
  - News Summary Bulletin (monthly)
  - Query Reponses
  - Country pages (links on home page)
- Immigration and Refugee Board of Canada (IRB)
  - National Documentation Packages (updated periodically)
  - Responses to Information Requests
- LatinNews
  - Weekly, monthly, and issue specific reports

The Research Unit Can Help You With:

- General background information about a country conditions issue
- Information to help you prepare to interview a specific case
- Information to help you reach a decision on a specific claim
- Sources of info that you could cite in support of your decision

DHS-19-1398-H-000411

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

AMERICAN OVERSIGHT

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:

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U.S. Citizenship and Immigration Services

FOIA CAN INSIGHT

Research Unit Country Pages



RAIO Research Unit

All RU Products

RU Products include all relevant materials created by the Research Unit since its inception, including query responses, training materials, TPS reports, etc

Our team is available to assist you; please send your questions to: Raioresearch@uscis.dhs.gov

Please help us serve you better by completing the Research Unit Feedback Survey.

Africa

- Burundi
- 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

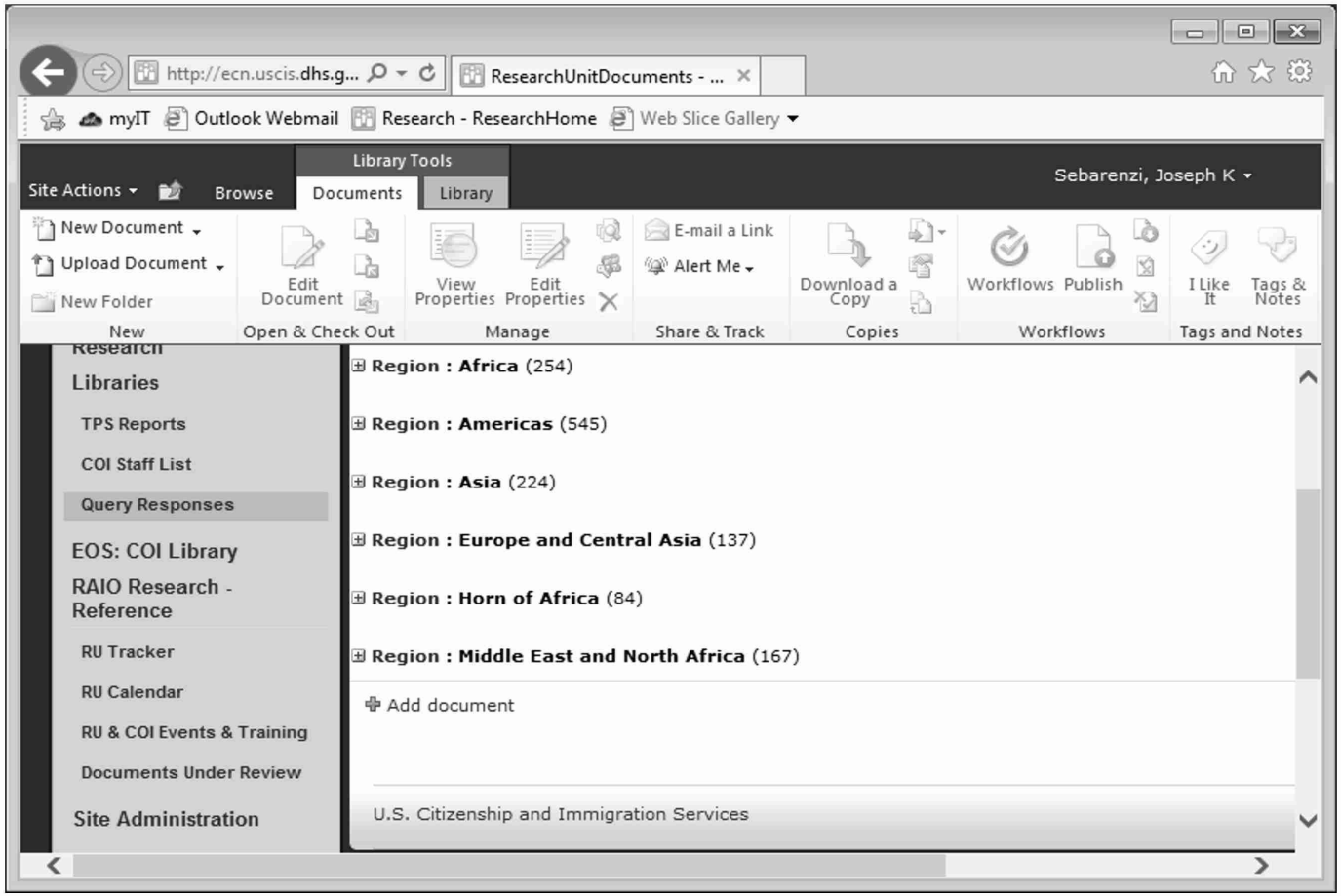
- Brazil
- Central American Gangs
- Colombia
- Cuba
- Ecuador
- El Salvador
- Guatemala
- Haiti
- Honduras
- Jamaica
- Mexico
- Nicaragua
- Peru
- Venezuela

Middle East & North Africa

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Query Responses



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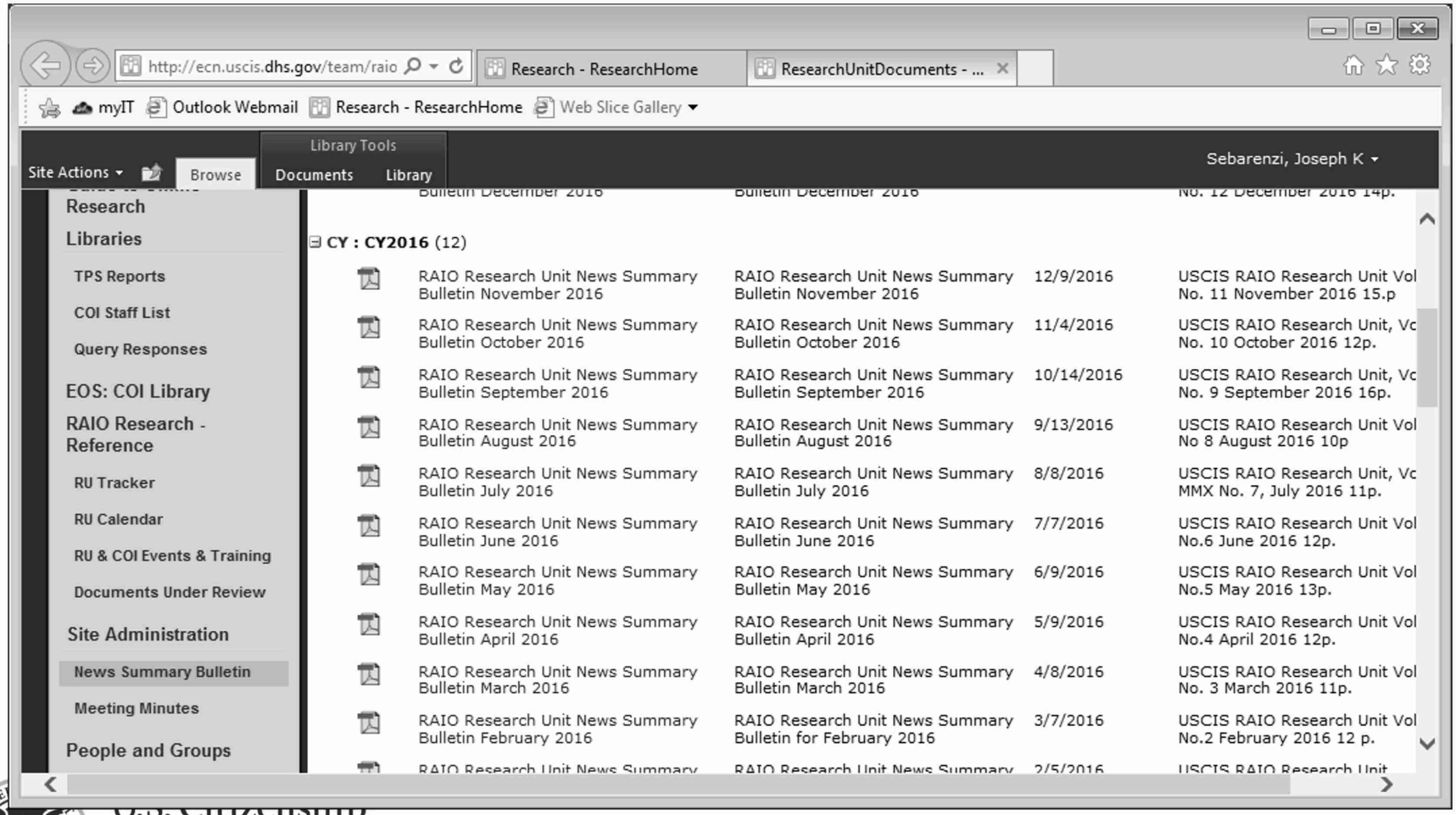
FOIA CAN FORESIGHT

News Summary Bulletin



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AMERICAN OVERSIGHT

Monthly News Summary Bulletin



U.S. Citizenship and Immigration Services

REFUGEE, ASYLUM, & INT'L OPERATIONS RESEARCH UNIT

NEWS SUMMARY

HIGHLIGHTS

A COMPILATION OF ARTICLES ON HUMAN RIGHTS AND SOCIOPOLITICAL DEVELOPMENTS

RESEARCH UNIT PRODUCTS

Visit the RAIO Library for articles noted here and other resources. The RAIO Library is a centralized historical database with over 70,000 titles, including documents no longer available on the internet. Maintained and updated by RAIO staff, the Library has proven to be a valuable research tool featuring an easy-to-use, one-stop search engine.

NAVIGATION

Asia 1
Europe & Central Asia 2
Latin America & Caribbean 3
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

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AMERICAN OVERSIGHT

Contact Info

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U.S. Citizenship and Immigration Services

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India: COI for APS Officers



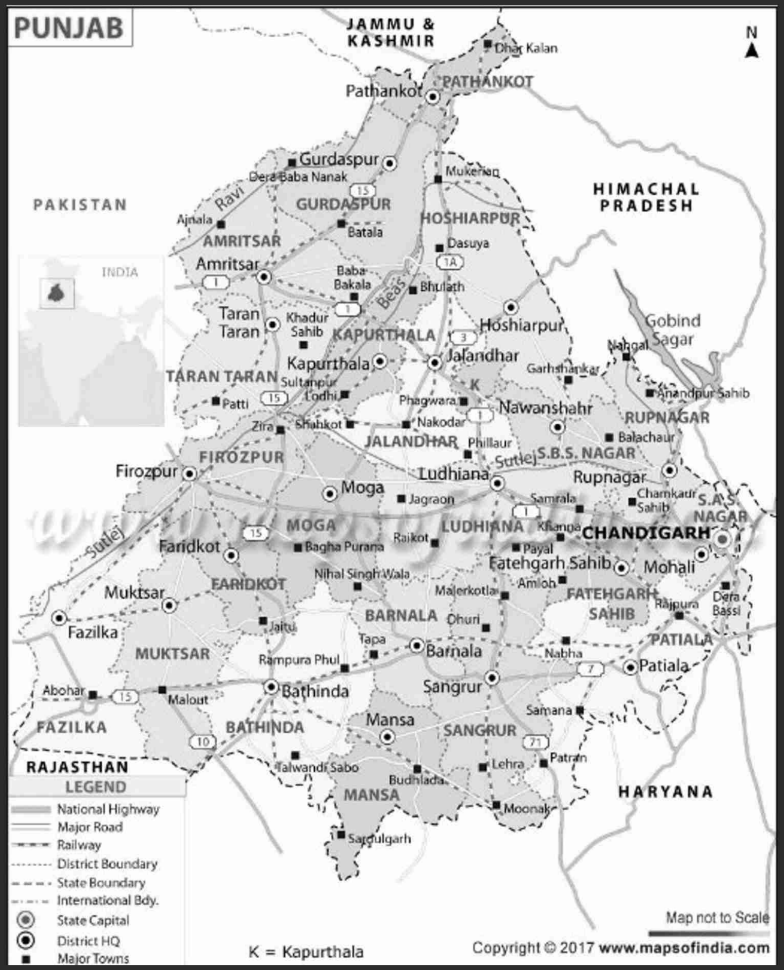
U.S. Citizenship and Immigration Services
AMERICAN OVERSIGHT

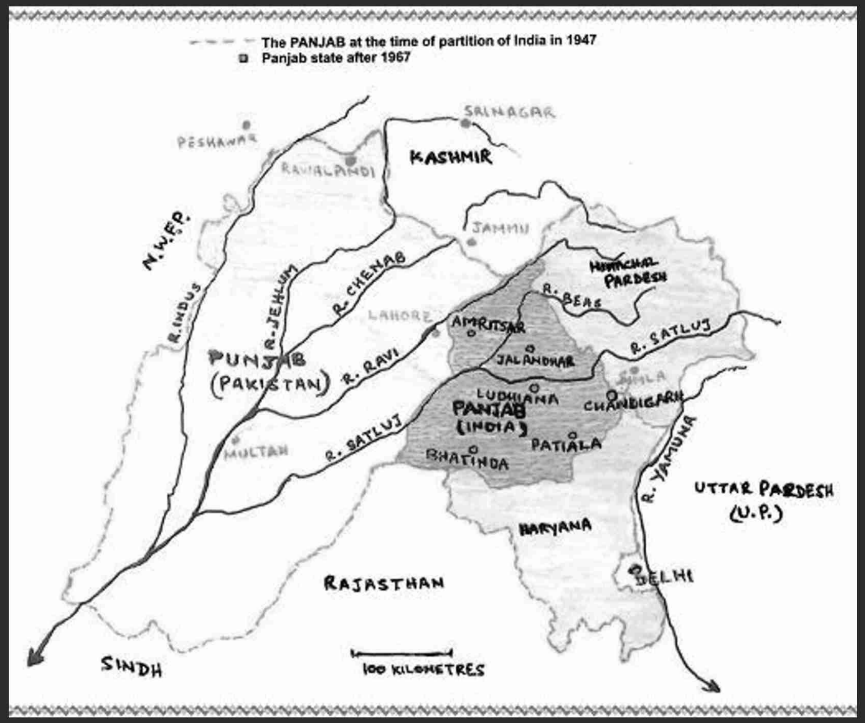
Characteristics of Claims

- 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





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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

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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).

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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.

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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

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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.

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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

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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.

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Akali Dal (Amritsar) website

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What is the extent of violence in Punjab today?

(b)(6)

- 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.

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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.

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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

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Internal Relocation and State Protection?

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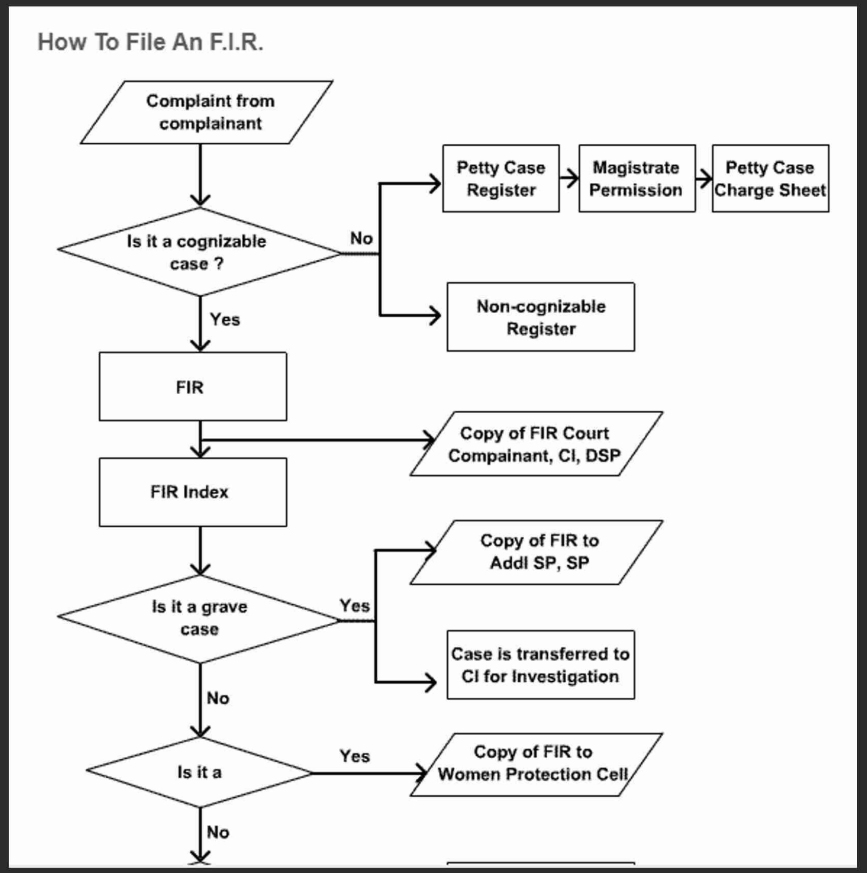
State Protection

- 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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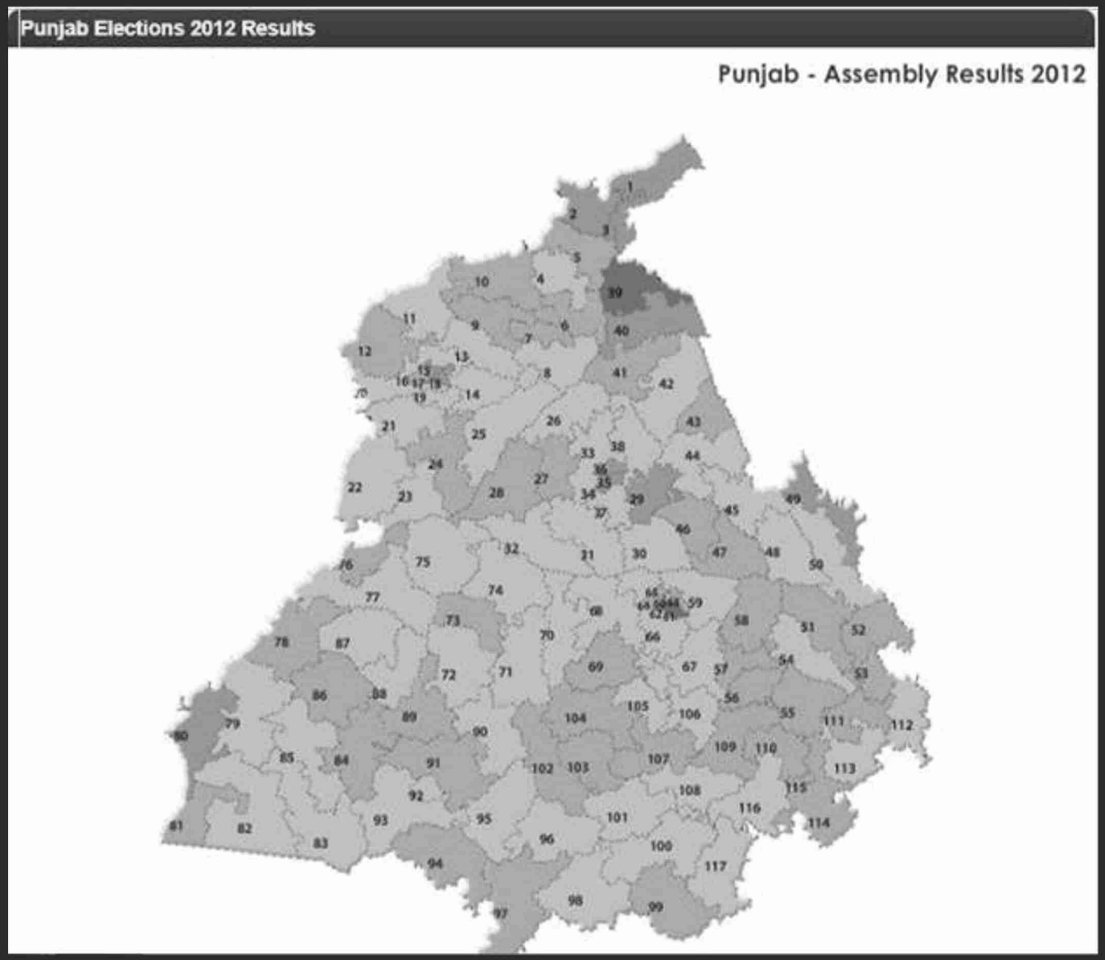
Internal Relocation: Within a State



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Internal Relocation: Countrywide

Country/State	Current Governing Party	Previous Governing Party	Most Recent Election	Next Election (Expected)
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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

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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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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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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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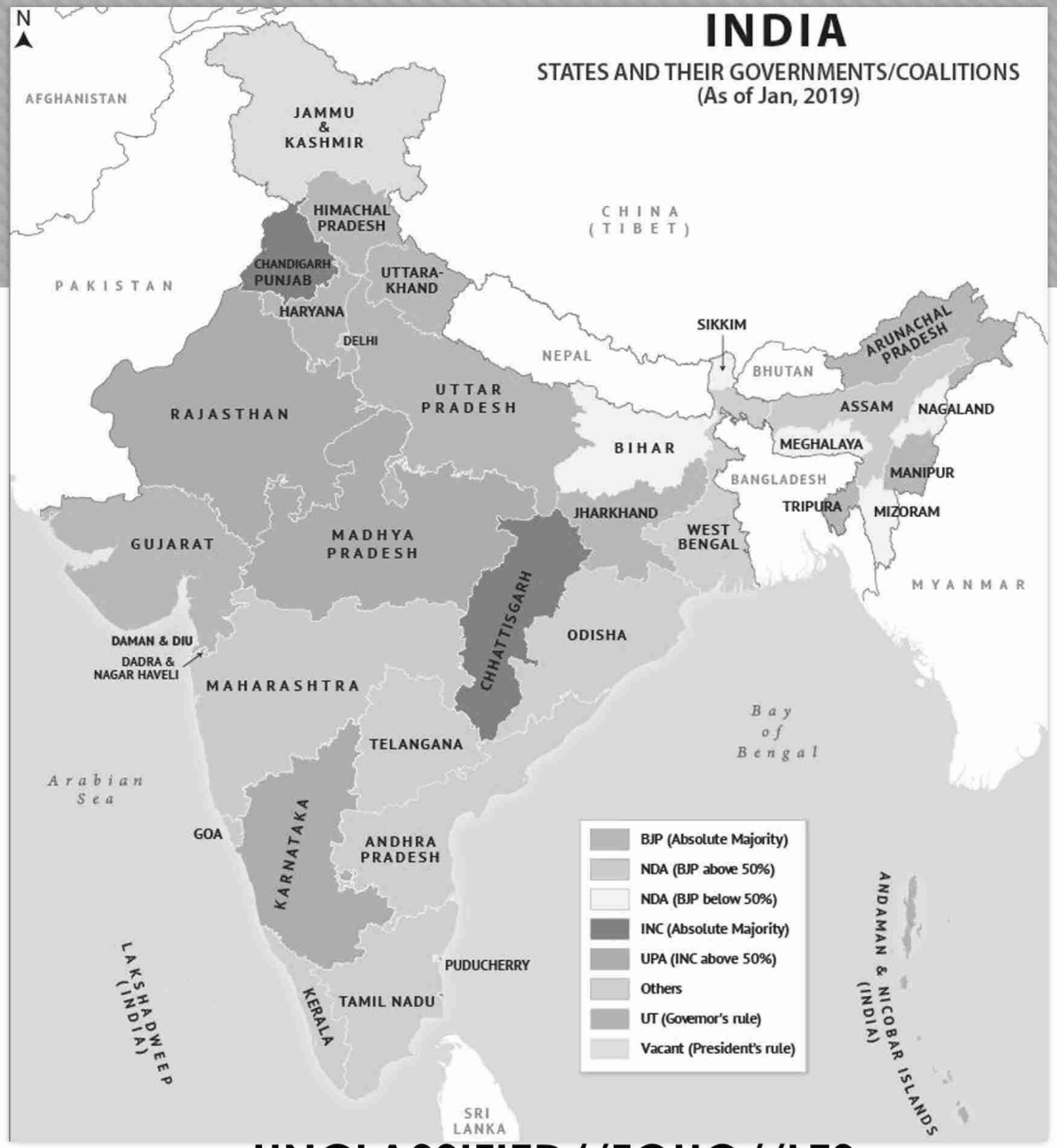

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Aadhaar card



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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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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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Latin America

U.S. Citizenship and Immigration Services

RAIO Research Unit

June 2019

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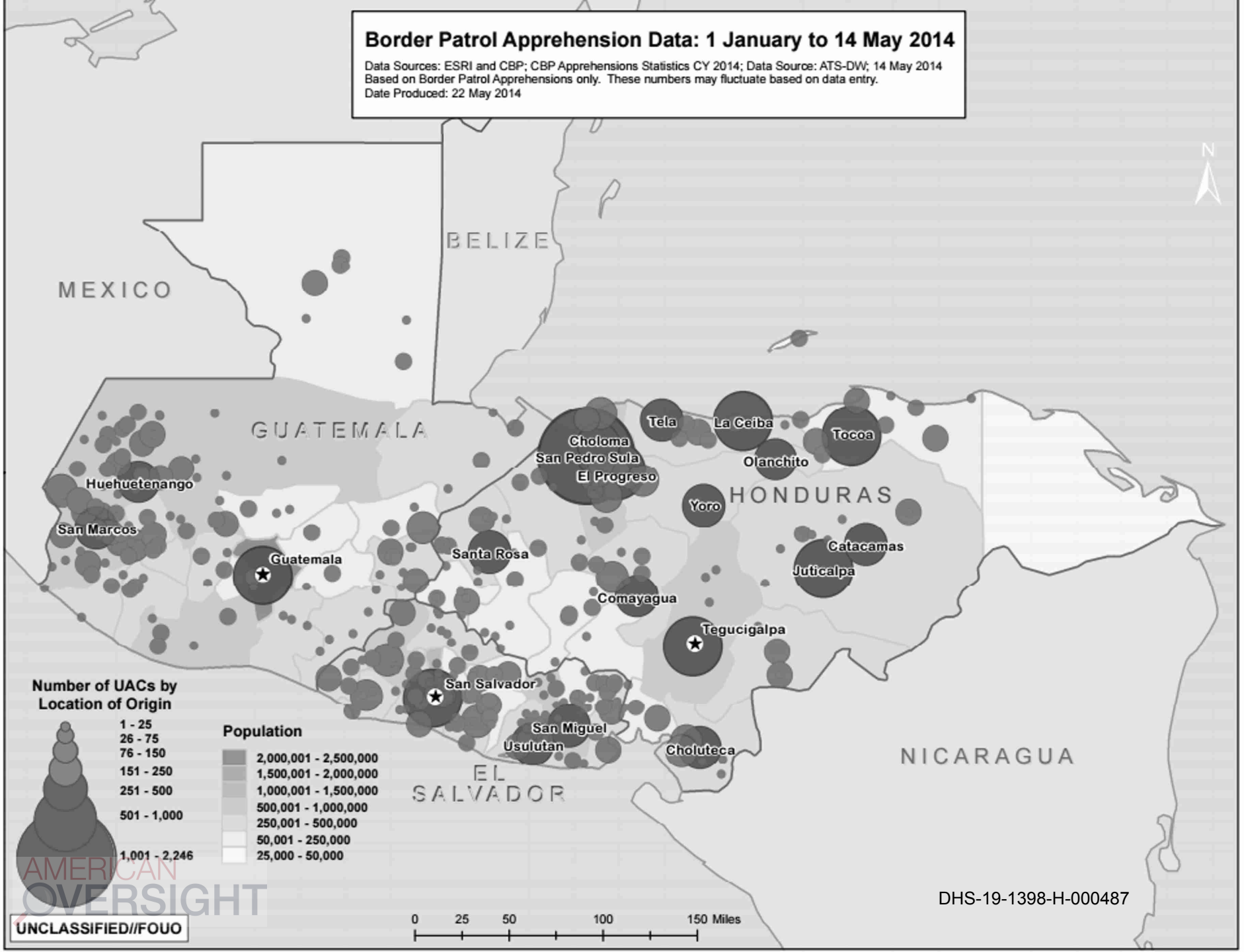
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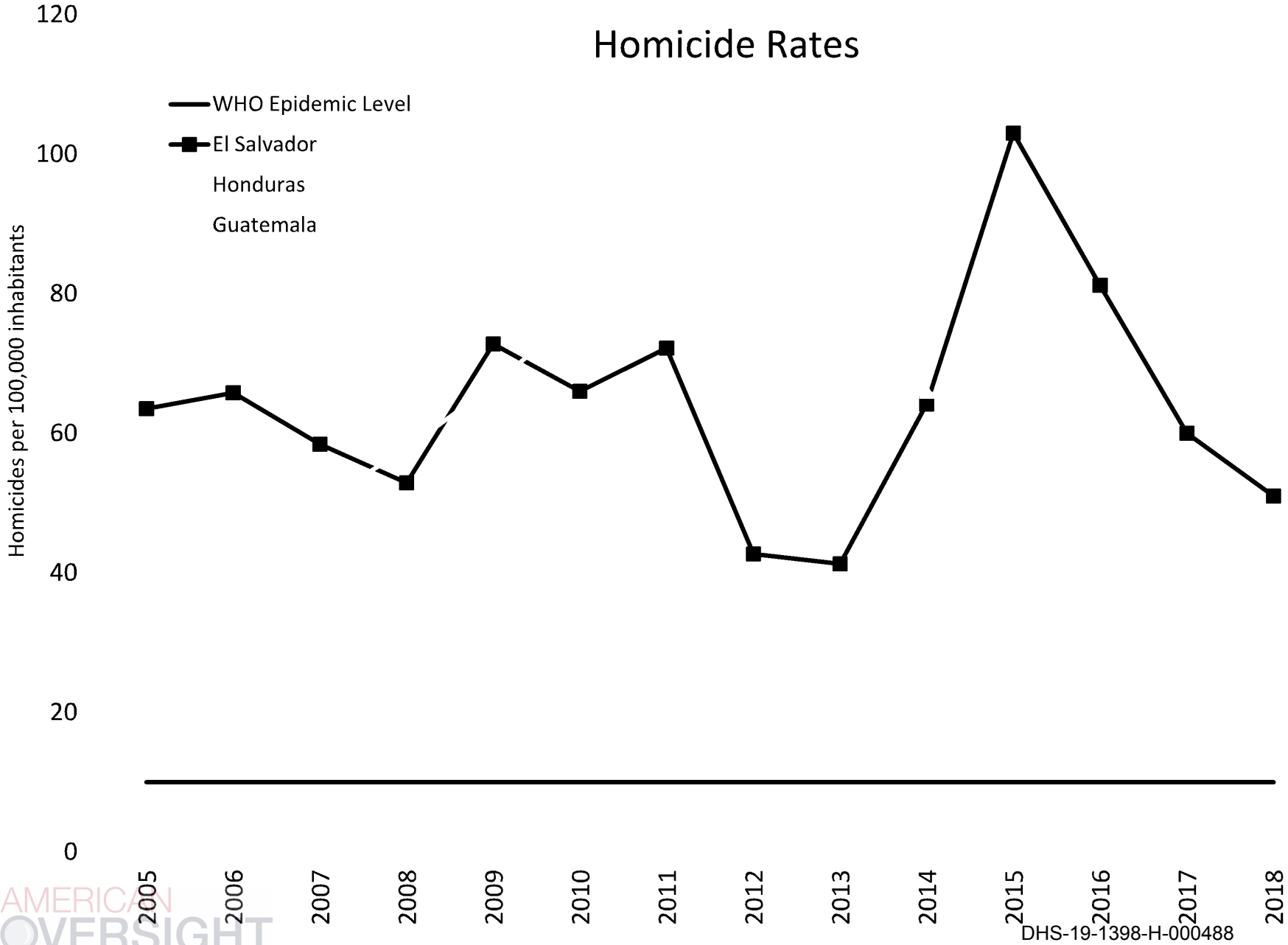

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El Salvador



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Gangs



Barrio 18
Revolucionarios, Sureños



Mara Salvatrucha
(MS-13)

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

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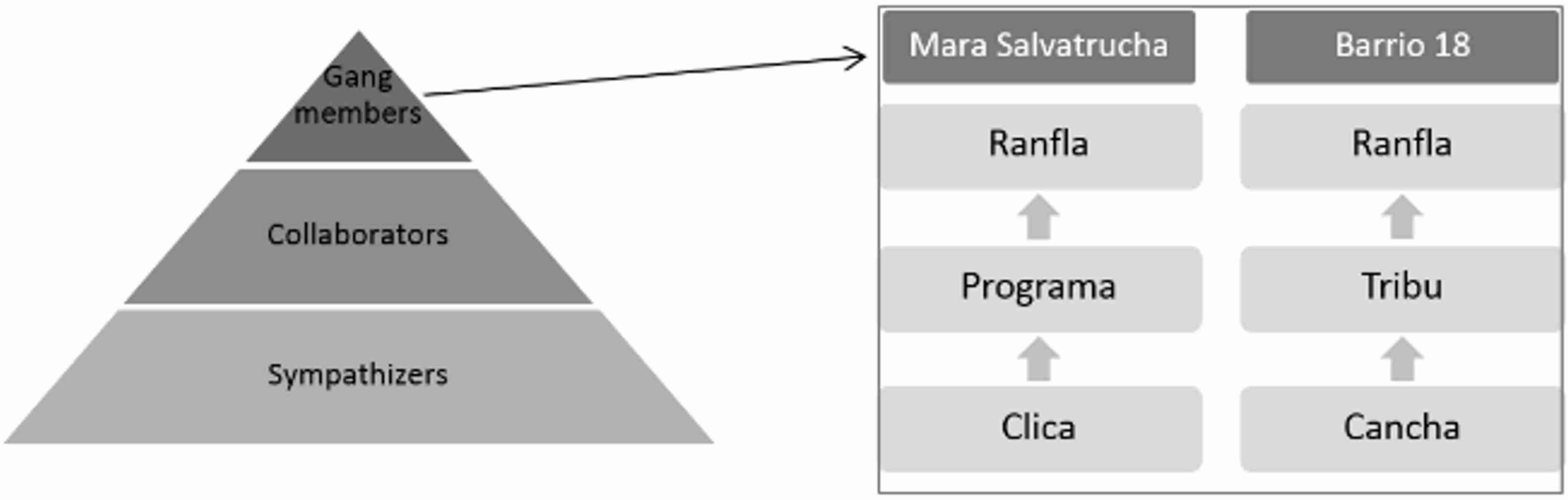
Gangs: Structure

Diagram: Gangs' structure[73]



Support structure

Internal structure

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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 & dependence on extortion may vary
- Geography
  - National influence
  - Likely have a national presence
  - Exercise de facto control in certain areas

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Gangs: Distinctive Traits

- Traditionally = "identified themselves through gang-related tattoos and style of dress and appearance"

- *Mano dura*
  - Certain appearances & behaviors serve as evidence of gang membership and lead to arrest
  - Tattoos, apparel, mode of dress, hair cut style, hand signals, physical appearance, etc.

- Today = "No distinctive trait to indicate who is a gang member"
  - Decreasing use of tattoos to avoid identification
  - Dressing more discretely

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Gangs: Distinctive Traits

- Tattoos = could indicate gang membership or affiliation
  - Traditional symbol of identity & group membership
  - Ritualized for gang members
  - No longer tattooing & hiding/removing existing tattoos
- Tattoos = social stigmatization & discrimination
  - Tattoos are linked to criminality & gangs in El Salvador
  - Employment discrimination, arrests, potential attacks from rivals, etc.
- Communication
  - Distinctive vocabulary, hand & body signs, and written codes
  - Hand signals no longer widely used in public
- Numbers: 13 & 18

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Gangs: Distinctive Traits

- Certain brands or styles reportedly restricted to gang members
  - Shoes, dress/clothing, haircut/color
  - Sign of status
  - Potential indication of membership or affiliation

- Awareness
  - Most people likely know certain brands and styles are used specifically by gang members
  - Not all youth may be aware of the link or danger
  - Popular brands & lack of other options

- Possession of a distinctive trait could lead to harm
  - Actual or perceived gang membership or affiliation
  - Targeted by gangs or police

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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

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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

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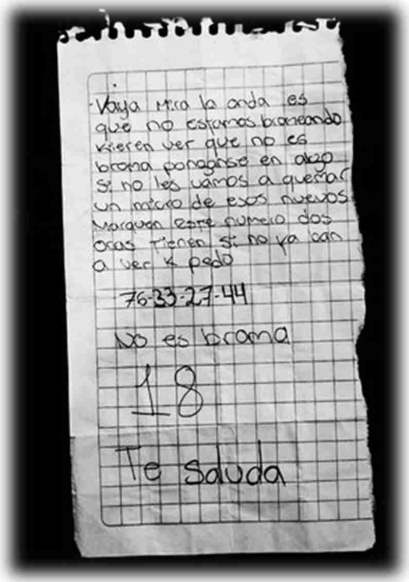
Extortion (*La Renta*)

- 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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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

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Territorial & 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

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Children

- Violence
  - Targeted by gangs at home and in school
  - Youth homicide rate = among highest in the world
- Domestic & 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

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Women/Girls

- Violence against women
  - Patriarchal attitudes & *machista* culture
  - 67% of women have suffered some form of violence
- Femicide = one of the highest rates in the world
  - Over 3,500 killed (2010-2017)
  - One femicide every 24 hours (2018)
- Gangs - physical & 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*

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Women/Girls

- Majority of violent acts committed by community & family members
- Domestic violence
  - Nearly 48% of women have suffered some form of violence in the home
- Sexual violence
  - Nearly 70% of perpetrators know the victim
  - Girls & adolescents most impacted
- Underreporting & lack of state protection

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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

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



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

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

AMERICAN OVERSIGHT

Garifuna

- Caribbean coast
- Political & socio-economic marginalization
- Racial discrimination - hard to find jobs
- Migration
  - Most have family in U.S. (est. 100,000)
  - Intense in 2013/2014 = 60 per day

AMERICAN OVERSIGHT

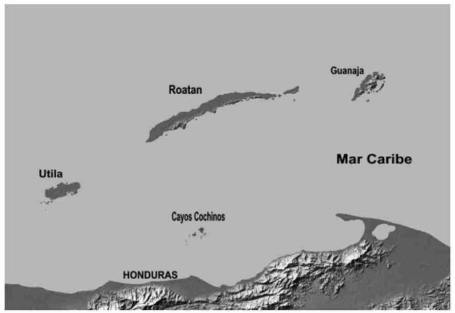
Garifuna

- 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

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%)
- 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”





“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

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

AMERICAN OVERSIGHT

Guatemala



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 the state's social & 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 & 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

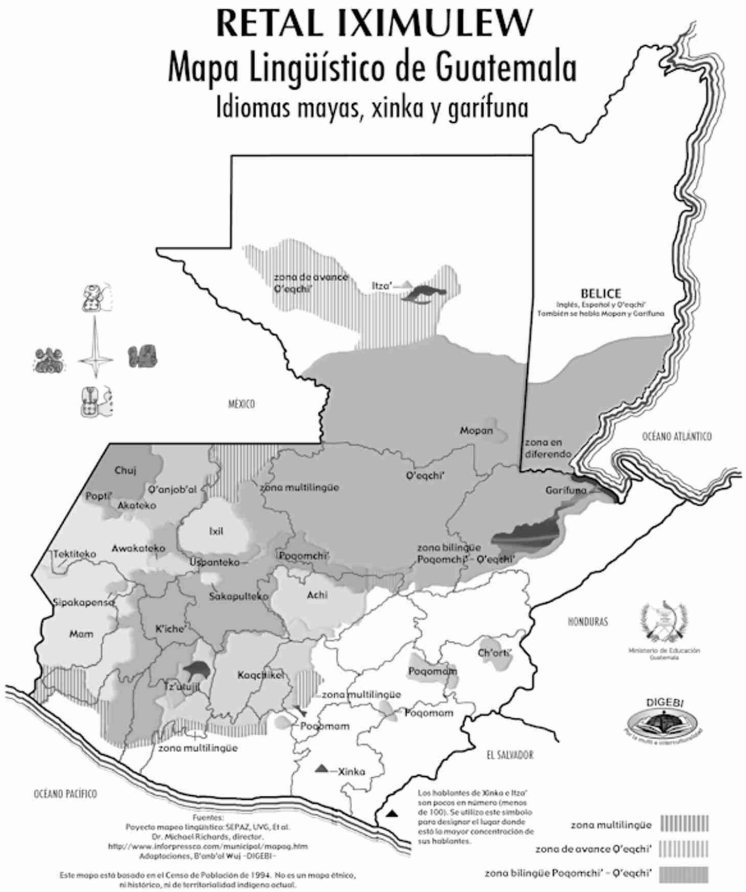
LGBTI

- 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
- Not homogenous
  - Maya (Western Highlands)
    - 21 different language groups
    - Intra-indigenous conflict
  - Xinca (southeast)
  - Garifuna (Caribbean)



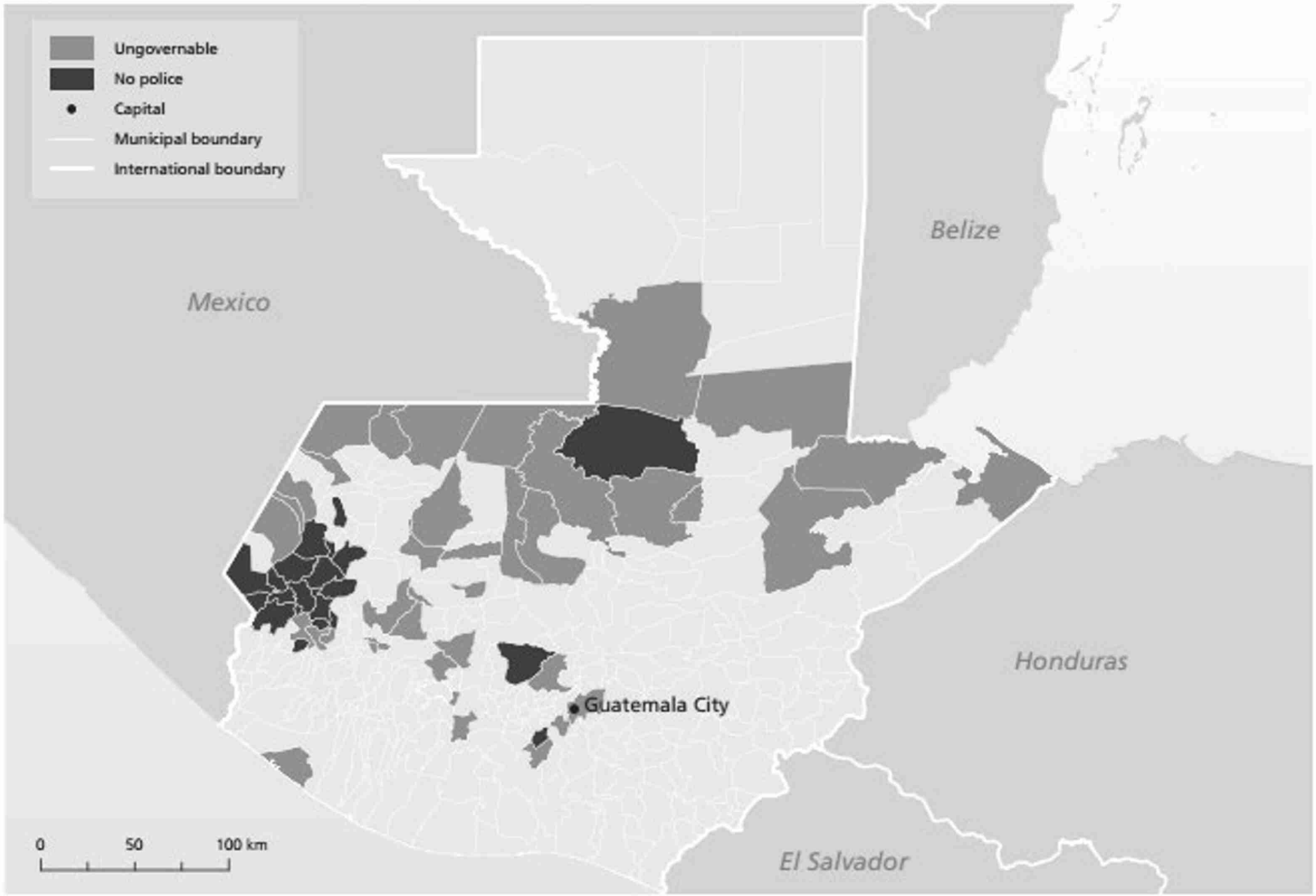
AMERICAN OVERSIGHT

Indigenous Groups

- Historic & structural exclusion
  - land ownership, access to services, labor conditions, formal economy, justice, representation in media, politics, etc.
- Systematic discrimination & racism
  - Normalized - “verge on segregation”
- Social conflict
  - Extractive industry & development projects
  - Activists & 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)

- 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 & present abuses
- March 2018: stopped performing public security functions

AMERICAN OVERSIGHT

Non-State Groups

- Local Security Boards (*Juntas Locales de Seguridad*) & Citizen Security Committees (*Comités de Seguridad Ciudadana*)
  - Local groups focused on community policing
  - Over 1,000 groups - 1/3 unregistered
  - Substantial degree of autonomy
  - Extrajudicial executions, extortion, kidnapping, curfews, illegal arrests, vigilante justice

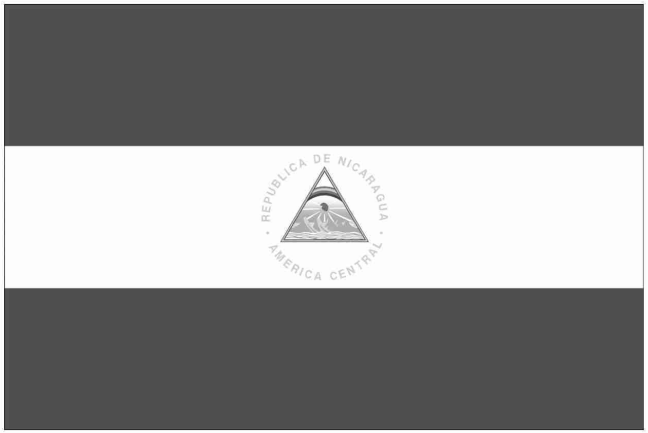
AMERICAN OVERSIGHT

Non-State Groups

- Vigilantism
  - Significant increase since 2004
  - Rural & indigenous communities with high levels of extortion, lack of confidence in state institutions, suspicion of outsiders, etc.
  - 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

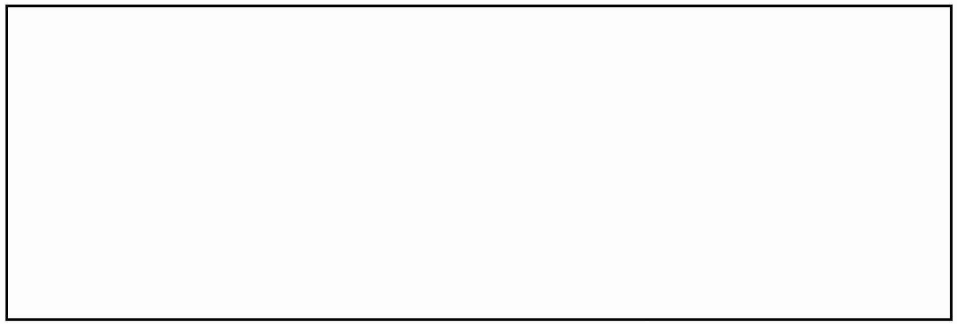


AMERICAN OVERSIGHT

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
  - At least 325 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 & 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



AMERICAN OVERSIGHT

DHS-19-1398-H-000552

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)









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

- On and off negotiations between the government & the opposition (since February)
  - Government agreed to release all political prisoners by June 18
  - Opposition claims political prisoners remain (as of June 10)
- Repression of a protest & detention of protesters (March 16)
  - First major demonstration since mid-September
- Amnesty law (June)
  - Criticized by the opposition & local and international human rights organizations

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



AMERICAN OVERSIGHT

COI Challenges

- Objective & non-biased COI is limited
  - Cuban state run media
  - Exile community
  - Dissident groups
  - Independent Cuban media & blogs

- No independent human rights monitoring

- Cuba: Travel Regulations and Civil and Political Rights, COI Compilation (ACCORD)

AMERICAN OVERSIGHT

COI Challenges

- Based on open source COI, this presentation attempts to provide a framework for how the Cuban government has historically engaged in repression & targeted government opponents

- Limitations
  - To what extent are tools of repression applied against the population at large?
    - High-profile dissidents vs. average Cuban citizens
  - Difficulty of using open source COI to independently verify claims
  - Individuals who have spent time on the ground, including U.S. government personnel, may at times have better COI than what is publically available

AMERICAN OVERSIGHT

Cuba: State Control

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



- *"Within the Revolution, everything. Against the Revolution, nothing."* - Fidel Castro (1961)

AMERICAN OVERSIGHT

State Repression: Political Dissent

- Dissent = political opposition
  - Any activity that the state deems contrary to its own political agenda
  - Viewed as "counter-revolutionary"
  - Individuals labeled as dissidents

- *Gusano* ("worm")
  - Derogatory term used to describe individuals perceived to be:
    - in opposition to the government
    - critical of revolutionary ideology
    - spies of the United States
  - Historically used to refer to Cuban exiles

AMERICAN OVERSIGHT

State Repression: Legal Foundation

- Highly restrictive, vague & broadly defined laws
  - Almost any act of dissent can be deemed criminal in some way
  - *"Virtually all activities are presumed illegal unless the law says otherwise"*

Dangerousness	Aggression
Contempt	Defamation
Insubordination	Enemy propaganda
Collaboration with the U.S.	Failing to pay fines
Public disorder	Lack of respect
Hijacking	Contempt of authority
Terrorism	Acting against 'the independence or the territorial integrity of the state'
Sabotage	
Espionage	

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 detentions & arrests
    - Harassment & surveillance
    - "Dangerousness"
  - Limited reforms



AMERICAN OVERSIGHT

State Control Mechanisms

- Ministry of the Interior
  - General Directorate for State Security
    - aka the "political police"
    - Units responsible for 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)

- Have the most direct contact with the population
- *Jefe de sector* = neighborhood police chief
  - Prevent crime in area of control (4 sq. km)
  - Investigate crime & detain suspects
  - List of "anti-social" individuals
  - Issue warnings & fines
  - Interview citizens
  - Oversee CDRs



- No reliable crime statistics, but violent crime is reportedly not common

AMERICAN OVERSIGHT

Comités de Defensa de la Revolución (CDR)

- Every block in every neighborhood = 8.3 million members
- Monitor "counter-revolutionary" activity & 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 & control reportedly on the decline



AMERICAN OVERSIGHT

State Control Mechanisms

- *Brigadas de Respuesta Rápida* (BRR)
  - 1991: Pan-American Games
  - Civilians/informers/Communist Party sympathizers
  - Counteract demonstrations by government critics in front of the media
- *Expedientes escolares y laborales*
  - Academic & labor files maintained by the government
  - Record actions & statements regarding loyalty
  - Record must be acceptable before advancing to a new school or position
- Migration authorities & housing officials

AMERICAN OVERSIGHT

Repression

- Arbitrary detentions or arrests
  - Often used to prevent participation in marches or meetings to discuss politics
  - Arrest orders - rarely presented to justify detentions
  - Detainees are often beaten, threatened, and held incommunicado for hours or days
  - Repeated detentions or arrests = can result in stigma and loss of employment

AMERICAN OVERSIGHT

Repression

- Politically motivated trials & prosecutions
  - Due process violations
    - Summary trials, falsified evidence, closed to the public, etc.
  - Lack of judicial independence & impartiality

- Imprisonment
  - Excessive imprisonment for minor infractions
  - Forced interrogations
  - Inhumane conditions - leads to hunger strikes

AMERICAN OVERSIGHT

Repression

- Physical assault
  - Violent beatings & excessive use of force
  - Government officials (during detentions)
  - Citizens (during acts of repudiation)

- *Actos de repudio* (acts of repudiation)
  - Public protest/shaming of dissidents & other individuals
  - Designed to humiliate, harass & intimidate, but can become violent
  - Allegedly dissatisfied citizens, but likely organized by the government

AMERICAN OVERSIGHT

Repression

- Invasive surveillance
  - Constant & multi-faceted
    - tap phones; hack email; bugs; clandestine searches; informants; film, observe, and photograph meetings; track movements
  - Government officials & civilians
    - Security officials & CDRs
- Seizure of property
  - Journalists, dissidents, etc.



DHS-19-1398-H-000582

AMERICAN OVERSIGHT

Repression

- Harassment & discrimination
  - Reportedly increasing in recent years
  - Designed to wear out dissidents
- Threats, warnings, intimidation, blackmail, etc.
  - Implicit & explicit
  - Official warning - dangerousness and dissidents
- Smear campaigns & defamation
- Fines

AMERICAN OVERSIGHT

Repression

- Limited access to information & restrictions on freedom of expression
  - State owns virtually all traditional media
  - Independent press is illegal & its publications are deemed enemy propaganda
  - Internet
    - Limited access, high costs, slow speeds, blocking of sites, surveillance, etc.
    - Access increasing in recent years
  - Blocking & censorship of cell and SMS service

AMERICAN OVERSIGHT

Repression

- Restrictions on freedom of association
  - Effective ban on the registration of independent organizations
    - Human rights groups, trade unions, media outlets, etc.

- Travel & mobility restrictions
  - Prevent individuals from traveling abroad
  - Decree 217 (1997): restricts internal movement of citizens
  - Prevent individuals from leaving homes or streets during events

AMERICAN OVERSIGHT

Repression

- Denial or loss of educational opportunities
  - Political clearance needed for university admission
  - Students can be expelled from school
  - Professors may be fired
- Reprisals against family members
  - Government tries to isolate family of dissidents from their neighbors
  - Attacks, threats, harassment, loss of jobs, etc.

AMERICAN OVERSIGHT

Repression: Employment

- State retains control over all forms of employment
  - Public/state sector = 72% of labor force
  - Non-state & self-employment
- Control of employment used to silence dissent & criticism
  - Political activism, criticism/disapproval, etc.
- Underground economy/black market
  - Nearly all Cubans participate
  - Mostly overlooked, although periodic crackdowns do occur

AMERICAN OVERSIGHT

Repression: State Employment

- Discrimination in access to jobs due to political views
  - Political clearance needed to obtain public jobs
    - Check with state security, intelligence, neighbors, etc.
    - *"You aren't trustworthy"*
  - Criminal record = almost impossible to work for the state

- Labor files (*expedientes laborales*)
  - Government hold files on individuals from university through their entire working life in the state sector
  - Reportedly contain information on political views

AMERICAN OVERSIGHT

Repression: State Employment

- Pressure to promote state ideology & participate in pro-government activities
  - Attend/participate in marches, meetings of the Communist Party or official trade union, acts of repudiation, etc.
  - Refusal = reportedly noted in files, job loss/denial, etc.
- Discriminatory & politically motivated dismissals
  - Fired, demoted, or censured for expressing dissenting opinions or affiliating with independent groups
  - Harassed until only option is to leave job
- Dissidents = nearly impossible to find work

AMERICAN OVERSIGHT

Self-Employment

- History
  - Started in the 1970s, but emphasized or deemphasized over time based on economic conditions
  - Expansion in 2009-2010

- *Cuentapropistas* = self-employed workers
  - Nearly 600,000 (13% of the labor force)

- Mostly limited to semi-skilled or unskilled work
  - 123 categories of jobs
  - Virtually impossible for university graduates or professionals to work in their fields

AMERICAN OVERSIGHT

Self-Employment

- Sector is highly regulated
  - Must apply for a license from the state
  - Pay monthly taxes
  - Oversight & performance requirements

- Potential violations, penalties & fines
  - Inspections
  - People called in to discuss irregularities
  - Penalties for infractions
    - Preventative notifications, fines, suspensions of authorization, decommissioning or definitive canceling of authorization, etc.

AMERICAN OVERSIGHT

Self-Employment

- Many purchase goods & supplies on the black market
  - Mostly stolen from state-owned businesses & resold
  - Could be fined or lose license
- Sanctions imposed by inspectors & police
  - Could be charged with criminal offenses
- Allegations of political discrimination
  - Regulations arbitrarily & disproportionately applied against anyone critical of the government
  - Further harassment of former state employees who were fired from their jobs
  - Denial of licenses to dissidents

AMERICAN OVERSIGHT

"Dangerousness"

- *Estado peligroso* or *peligrosidad*

- Provisions in the penal code with a range of sanctions based on/for:
  - The proclivity of an individual to commit a crime
  - The perceived likelihood of potential future actions that could be "anti-social"
  - Individuals who have relations with people who:
    - are considered "potentially dangerous for society"
    - "pose a threat to the social, economic or political order of the socialist state"

AMERICAN OVERSIGHT

"Dangerousness"

- Imprecise & subjective
  - Broad & vague terms = could cover almost any activity
  - Allows for arbitrary application by authorities
- Proclivity to commit a crime
  - No actual criminal act need to have occurred
  - Suspicion that an individual might commit an offense in the future
- Associating with a "dangerous person"

AMERICAN OVERSIGHT

"Dangerousness"

- Mostly used as a tool to control anti-social behaviors
  - Substance abuse
  - Public drunkenness
  - Prostitution
  - Unemployed & unable to find work
  - Self-employed without authorization
  - Young people who refused to report to work centers
  - Repeat offenders of laws restricting change of domicile
  - Individuals who attempted to leave the country

AMERICAN OVERSIGHT

"Dangerousness"

- Used against perceived political opponents or individuals who do not cooperate with the state
  - Participate in protests or marches
  - Hand out copies of the Universal Declaration of Human Rights
  - Write critical news articles
  - Try to organize independent unions
  - Fail to attend pro-government rallies
  - Fail to belong to official party organizations

AMERICAN OVERSIGHT

"Dangerousness"

- Punishment
  - Official warnings
  - "Therapy"
  - Police surveillance
  - "Reeducation"
    - Internment in a specialized work or study institution for 1 to 4 years
    - Internment usually changed to imprisonment
- Dissidents
  - Cannot get jobs because they are considered dangerous
  - Considered dangerous because they do not have jobs

AMERICAN OVERSIGHT

Official Organizations

- *Partido Comunista de Cuba* (PCC)
  - Only legal political party
  - Invitation only
- *Unión de Jóvenes Comunistas* (UJC)
  - "Voluntary & selective" (ages 16-30)
- *Confederación de Trabajadores de Cuba* (CTC)
  - Worker's union
- *Federación de Mujeres Cubanas* (FMC)









AMERICAN OVERSIGHT

Dissident Groups

- Not homogenous
- Ideology
  - Democratic change
  - Apolitical
    - Practice religion
    - Organize a union
- Small & isolated
  - Efficiency of the 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: Perceptions

- Cuban government = agents of the U.S. government
- Cuban citizens = general skepticism
  - Not well-known in Cuba
    - Successfully isolated from the population by the government
  - Not a lot of sympathy
  - Question backing & 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 & even anger

AMERICAN OVERSIGHT

Public Dissent

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

AMERICAN OVERSIGHT

Travel & Migration

- Migratory & travel restrictions since the 1960s
  - Exit permit & letter of invitation
    - Exit permit = historically denied to government critics & family members
- Defectors/illegal migrants
  - Considered counter-revolutionaries
  - Lost rights & properties
  - Barred to return to Cuba
    - Depended on officials in power
    - 5, 8, 10 years or life
  - Limitations on migration of family members for reunification

AMERICAN OVERSIGHT

2013 Migration Reforms

- Eliminate the exit permit
  - Travel to & work in third countries
- Allow temporary re-entry of migrants
  - Rafters, doctors, athletes, etc. who meet certain criteria
  - Others may still be barred
- End automatic loss of property
- If wish to return, can reapply for residency
- Allowable time overseas extended from 11 months to 2 years

AMERICAN OVERSIGHT

Current Travel Restrictions

- Most Cubans only need a passport & visa (if required) to travel internationally
- Some individuals still need permission to travel
  - Highly specialized medical personnel
  - Military or security personnel
  - Many government officials
  - Some human rights activists or former political prisoners
- Government has broad discretionary powers to restrict travel
  - On the grounds of "defense and national security" or "other reasons of public interest"
  - Have been used against those who express dissent

AMERICAN OVERSIGHT

Current Travel Restrictions

- Enforcement
  - Denial or confiscation of passports
  - Outbound migratory inspections
  - Arrests & detentions to prevent dissidents from leaving the country
    - Detained or prevented from going to the airport (miss flights)
- Dissidents
  - Many prominent dissidents have traveled abroad & returned
  - Some dissidents out on parole or facing court action have not been able to travel
  - Human rights activists have been denied permission to participate in workshops, events, or training programs

AMERICAN OVERSIGHT

Emigration & Attempted Emigration

- Still viewed as an expression of discontent with the political/economic system?
  - "Deserters," "traitors," "counter-revolutionaries"
  - Allegations of stigmatization & discrimination, detentions, exclusion from state employment, reprisals against family members
- Individuals seeking to migrate legally
  - Allegations of police interrogation, fines, harassment, intimidation & dismissal from jobs
  - Government employees - sometimes lost positions when plans became known

AMERICAN OVERSIGHT

Illegal Exit

- Rafters (*balseros*)
  - Traditional method of irregular migration
    - Across the Florida Straits to the U.S., usually with homemade vessels
  - Declined in recent years
    - 2013 Migration Reforms
    - End of "wet foot, dry foot" policy (Jan. 2017)

- 1994-1995 U.S-Cuba Migration Accords
  - *"agreed not to prosecute or retaliate against migrants returned from international or U.S. waters, or from the Guantanamo U.S. Naval Station, after attempting to emigrate illegally if they had not committed a separate criminal offense."*

AMERICAN OVERSIGHT

Illegal Exit

- Legal repercussions
  - First-time rafters = up to 3 years imprisonment or a fine of 500 CUP ($20)
  - Organizes, promotes, or incites an illegal exit = up to 5 years imprisonment

- Discretionary application of laws
  - Most rafters - allegedly fined and/or briefly detained
  - Punishment could be more severe for military or police defectors, or those traveling with children
  - Allegations of stigmatization, discrimination, denial of access to state jobs, “dangerousness,” etc.

AMERICAN OVERSIGHT

Emigrants & 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
    - Good citizens = very little or nothing will be done
    - Wanted for a felony = will be arrested

AMERICAN OVERSIGHT

Emigrants & Returnees

- Family members of migrants
  - Limited information
  - Little repercussions, unless other issues involved
    - Relatives were high-ranking officials or broke the law
    - Some family members of former government officials allegedly lost public benefits or were denied passports
- Deserters
  - Limited information
  - Could face consequences if they deserted while on an official mission
    - Ex. doctors, athletes, military

AMERICAN OVERSIGHT

Emigrants & Returnees

- Cuban emigrants
  - Lose residency rights after 24 consecutive months outside of Cuba
  - Virtually all are eligible & can apply for repatriation
    - Unless committed "hostile acts against the state"
  - No longer stigmatized or ideologically suspicious
    - Unless they are anti-government activists

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

AMERICAN OVERSIGHT

Emigrants & Returnees

- Rights of repatriated Cubans
  - Same constitutional, civil & 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 mass phenomenon, but also not a rare occurrence

AMERICAN OVERSIGHT

Playing Loud Music

- *"Music of all types — salsa, reggaeton, pop — blares at top volume at all hours of the day."*

  -Associated Press, 2016

- Nine days of national mourning for Fidel Castro
  - Nov.-Dec. 2016
  - Ban on playing live or recorded music
    - Havana - "notable lack of amplified music"
  - Allegations from dissidents
    - Warnings & threats from security forces, including to jail individuals playing or listening to music in public or at home

AMERICAN OVERSIGHT

Pressure to Vote

- While not obligatory, Cubans have allegedly been pressured to vote by state & party officials & citizens

- Alleged tactics
  - Get out the vote campaign
  - Excess number of polling stations
  - Keep track of who has voted
  - Home visits - remind or ask why you have not yet voted
  - Take ballots to your house

- Refusal to vote - viewed as a challenge to the political/ economic system?

AMERICAN OVERSIGHT

Referendum on New Constitution

- Draft approved in July 2018
- Three-month public consultation process
  - Circulated throughout the country for a public comment period
  - 112,000 public meetings at workplaces, schools & community centers
    - Over 8 million people reportedly participated
  - Hundreds of thousands of suggestions for changes
    - 66% of speakers addressed same-sex marriage (most opposed)
    - 179,000 people signed a petition against same-sex marriage
- Final version approved in December 2018

AMERICAN OVERSIGHT

Referendum on New Constitution

- *"modest economic and social changes while maintaining the one-party socialist system"*

- What's in it?
  - Constitución de la República de Cuba
  - Cuba's New Constitution, Explained, WOLA, Feb. 26, 2019
  - Cuba approves new constitution amid unprecedented opposition. What changes?, Miami Herald, Feb. 25, 2019.
  - Explainer: What is old and new in Cuba's proposed constitution, Reuters, Feb. 21, 2019

AMERICAN OVERSIGHT

Referendum on New Constitution

- Government = vote "Yes"
  - Campaign for approval in state-run media, public spaces & social media
  - Advocacy by celebrities & politicians
  - *#YoVotoSí & #CubaVotaSí*

- Frame "Yes" as a matter of patriotism
  - At times, accusations that those who vote "No" were siding with Cuba's "traditional enemies"
  - *"I will vote 'yes' because there are two groups, the 'yes' and the 'no'…The ones calling us to vote 'no' are the traitorous enemies of Cuba."* – Former Cuban spy, in a video posted by the government on social media

AMERICAN OVERSIGHT

Referendum on New Constitution

- Opponents = vote "No" or boycott
  - Dissidents & exiles
    - Process is fraudulent & entrenches communism
  - Evangelicals
    - Concerns about potential for same-sex marriage in the future
    - Some pastors promoted "No" from the pulpit
  - Catholic Church
    - Voiced criticism of certain elements
- Campaign was stifled or censured by the state
  - Few public displays supporting "No"
    - T-Shirts, Twitter (*#YoVotoNo* & *#YoNoVoto*), protests

AMERICAN OVERSIGHT

Referendum on New Constitution

- Results of referendum (Feb. 2019)
  - **Participation**: 84.4% of eligible voters
  - **Yes**: 86.85% (6.82 million)
  - **No**: 9% (706,000)
  - **Spoiled or Blank**: 4.5% (325,000)

- Over 2.1 million people voted "No" or didn't vote
  - *"'"No" votes, abstentions, or null ballots should not be equated with support for the Cuban opposition."*

AMERICAN OVERSIGHT

Allegations of Government Tactics

- Crackdown on Cubans working on "No" campaign
  - Dissidents prevented from campaigning or protesting
  - Harassment, detention & beatings by state security
  - Seized computers, USB drives & work materials from homes
  - Surveillance by the military
- Some churches pressured to instruct members to vote "Yes"
  - Pastor threatened - would be treated as a "counter-revolutionary"
- Detention of activists who tried to observe polls

AMERICAN OVERSIGHT

Medical Professionals

- International missions
  - Primary source of state income
  - Poor living & working conditions
- Defections
  - Low pay & lack of professional development
  - Opportunities to work in third countries
  - Cuban Medical Professionals Parole Program (ended in Jan. 2017)
  - May face issues if they deserted from an official mission
- State policies
  - Severe travel & migration restrictions to prevent "brain drain"
  - Sep. 2015 - incentives to return (no punishment, guaranteed job, etc.)
  - Dec. 2015 - re-imposed exit permit for specialists

AMERICAN OVERSIGHT

Contact Info

RAIOResearch@uscis.dhs.gov

U.S. Citizenship and Immigration Services

CAN OVERSIGHT

Country of Origin Information (COI) Research



Research Unit (RU)

Refugee, Asylum and International Operations

June 2019

U.S. Citizenship and Immigration Services

DHS-19-1398-H-000623

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.

AMERICAN OVERSIGHT

The Genesis of the Research Unit (RU)

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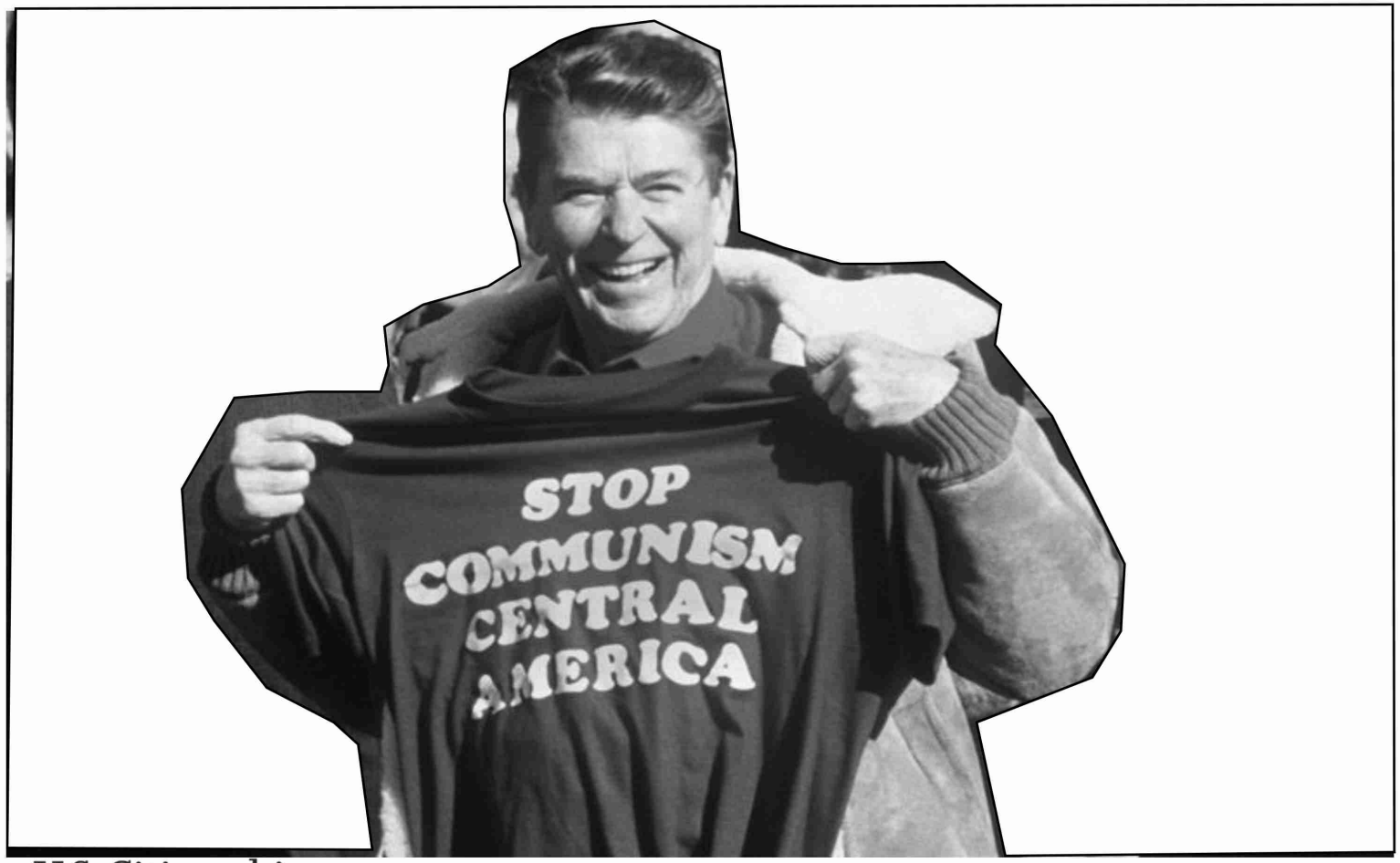


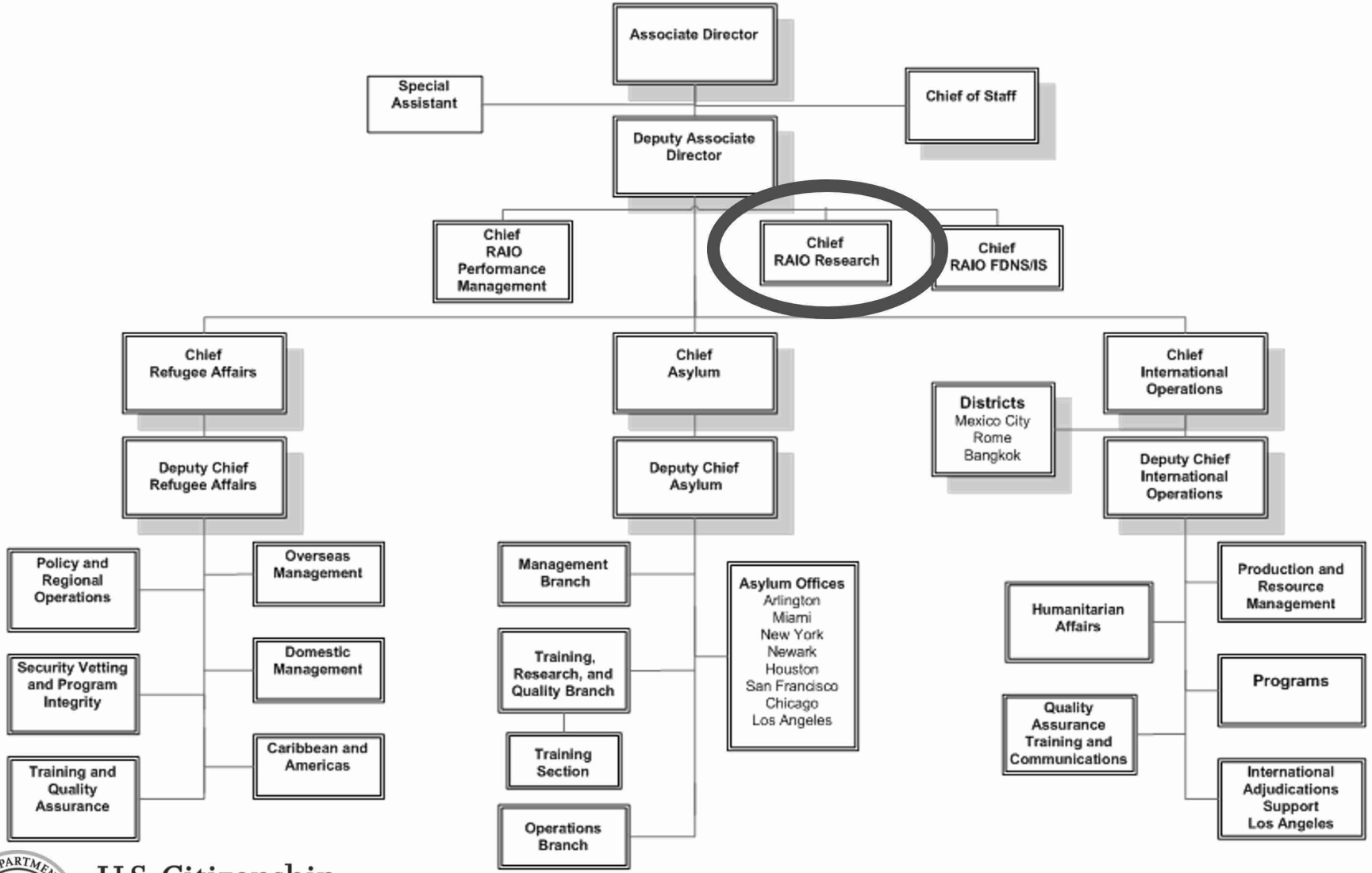
U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

The RU was Established as an Independent Entity for COI

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

RAIO and RU



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

RU's Vision and Mission

Vision

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

Mission

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

AMERICAN OVERSIGHT

Sources: Suggested Starting Point

- Research Unit ECN
- Refworld (UNHCR)
- ecoi.net (European Country of Origin Information Network)
- (b)(7)(c) (security-related)
- Google

U.S. Citizenship and Immigration Services

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Reading Suggestions (LAC)

- InSight Crime
- The Guardian
- The New York Times
- The Washington Post
- Associated Press
- The New Humanitarian

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Reading Suggestions (LAC)

- Miami Herald (Cuba, Haiti, Venezuela, Colombia)
- Los Angeles Times (Mexico)
- Google Alerts (specific countries/topics)
- LANIC
  - Lists of newspapers and news outlets by country (no longer updated)
- NACLA

Reading Suggestions (LAC)

- RAIO Research Unit ECN
  - News Summary Bulletin (monthly)
  - Query Reponses
  - Country pages (links on home page)
- Immigration and Refugee Board of Canada (IRB)
  - National Documentation Packages (updated periodically)
  - Responses to Information Requests
- LatinNews
  - Weekly, monthly, and issue specific reports

The Research Unit Can Help You With:

- General background information about a country conditions issue
- Information to help you prepare to interview a specific case
- Information to help you reach a decision on a specific claim
- Sources of info that you could cite in support of your decision

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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:

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U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Research Unit Country Pages



RAIO Research Unit

All RU Products

RU Products include all relevant materials created by the Research Unit since its inception, including query responses, training materials, TPS reports, etc

Our team is available to assist you; please send your questions to: Raioresearch@uscis.dhs.gov

Please help us serve you better by completing the Research Unit Feedback Survey.

Africa

- Burundi
- 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

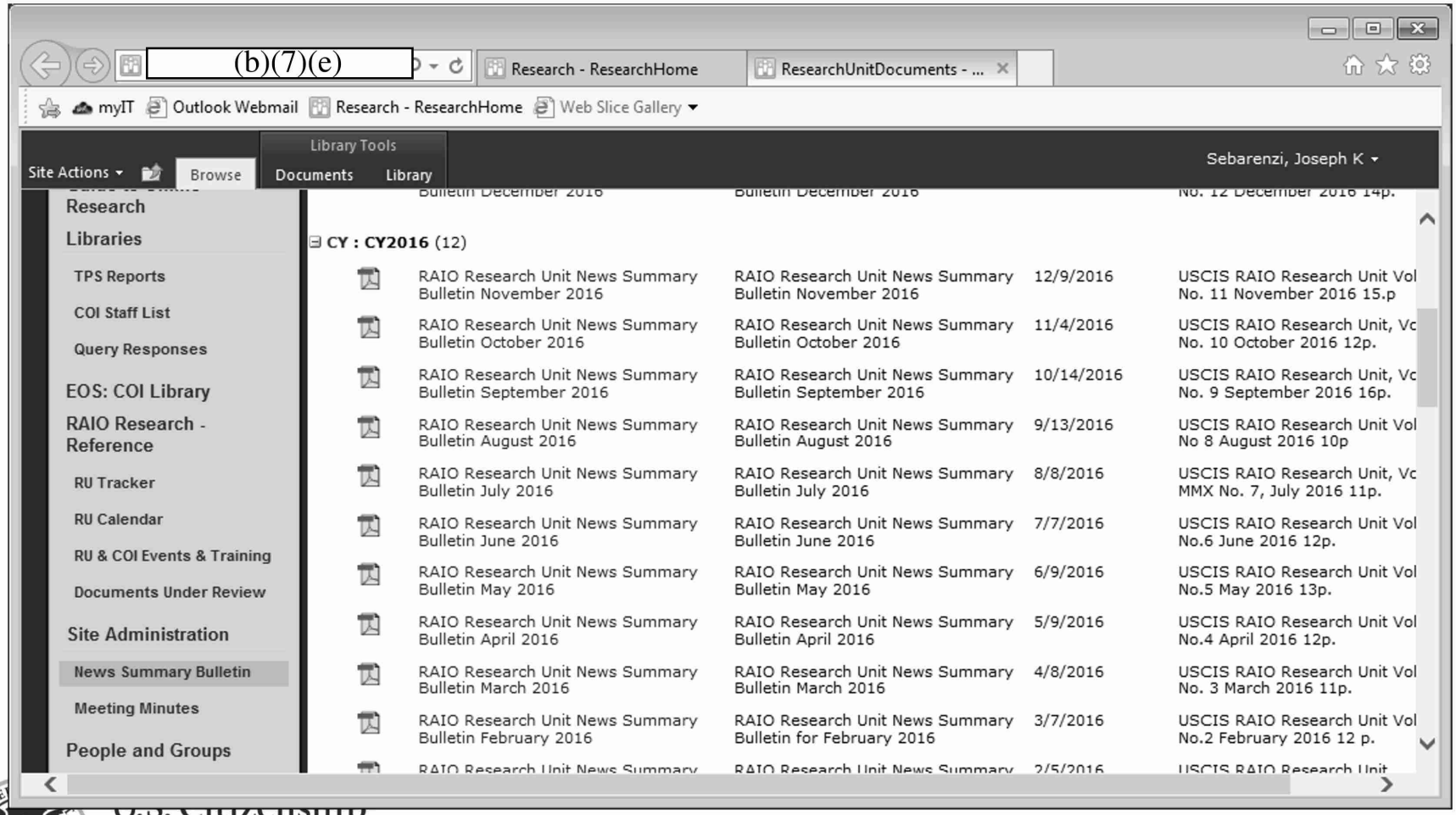
Query Responses



U.S. Citizenship and Immigration Services

HOMELAND SECURITY 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

HIGHLIGHTS

A COMPILATION OF ARTICLES ON HUMAN RIGHTS AND SOCIOPOLITICAL DEVELOPMENTS

RESEARCH UNIT PRODUCTS

Visit the RAIO Library for articles noted here and other resources. The RAIO Library is a centralized historical database with over 70,000 titles, including documents no longer available on the internet. Maintained and updated by RAIO staff, the Library has proven to be a valuable research tool featuring an easy-to-use, one-stop search engine.

NAVIGATION

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

contact us at:
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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.

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U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Contact Info

RAIOResearch@uscis.dhs.gov

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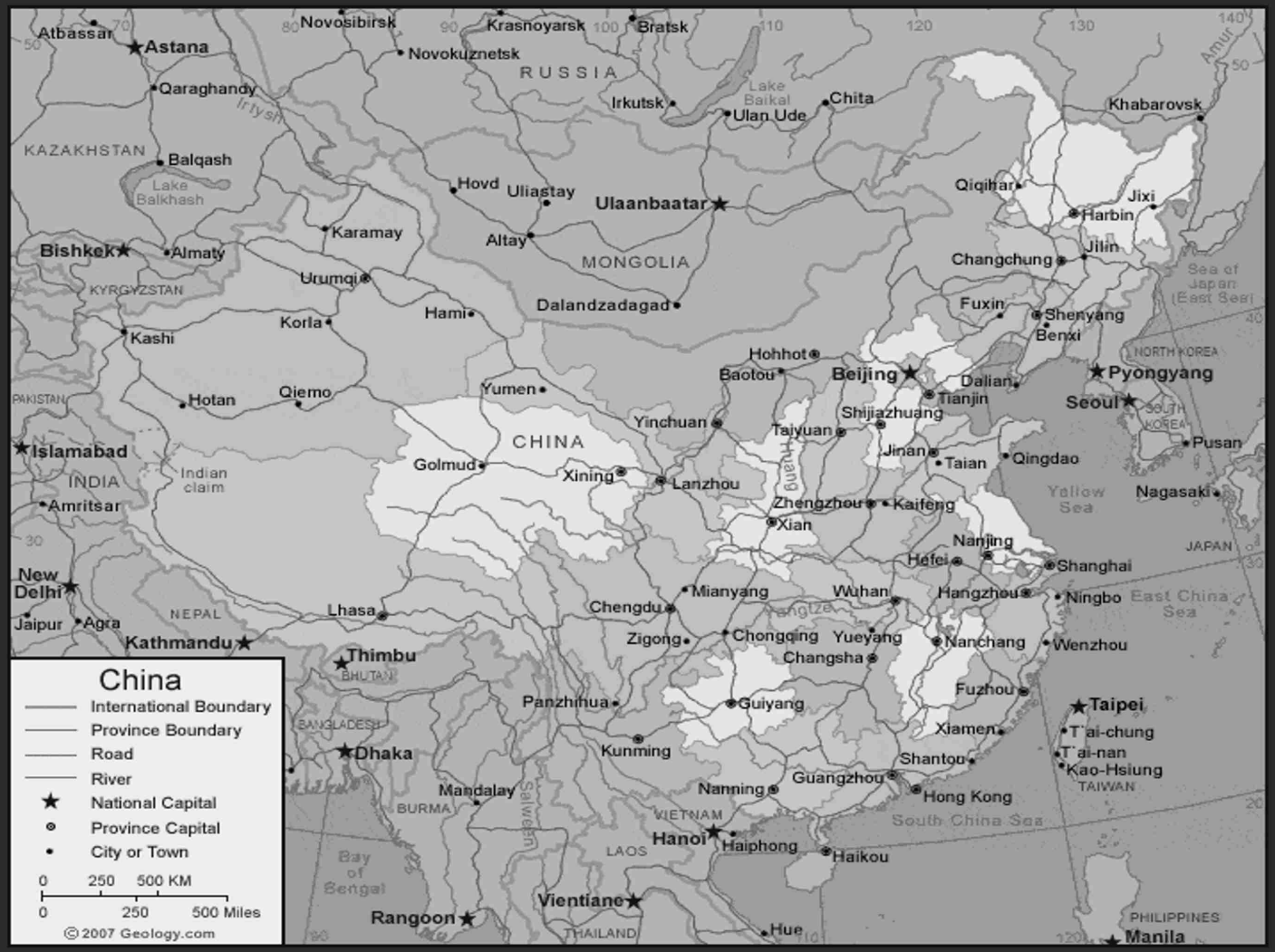
AMERICAN OVERSIGHT

China: COI for APS Officers



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Greater Fuzhou City



U.S. Citizenship and Immigration Services

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Unregistered "House" Churches

- Why should a church register?
  - Regulation on Religious Affairs requires it
- With whom does a church register?
  - State Administration for Religious Affairs (SARA)
  - Religious Affairs Bureau (RAB) -- locally
- Why is "House" in quotation marks?
  - Unregistered Christians don't only meet in houses.

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AMERICAN OVERSIGHT

What religions are recognized?

- Buddhism
- Catholicism
- Islam
- Taoism
- Protestantism

AMERICAN OVERSIGHT

What religious groups are not recognized?

- "Evil Cults" (examples)
  - Falun Gong
  - Eastern Lightning, a/k/a Church of the Almighty God
  - Shouters

AMERICAN OVERSIGHT

Registered Churches: Patriotic Religious Associations

- Catholic Patriotic Association
  - 5.7 million worshipers at CPA churches
  - 3.3 million worshippers at unregistered Catholic churches

    ("underground churches"?)
- Three-Self Patriotic Movement (Protestant)
  - 23 million worshippers at TSPM churches
  - 35 million worshippers at unregistered Protestant churches

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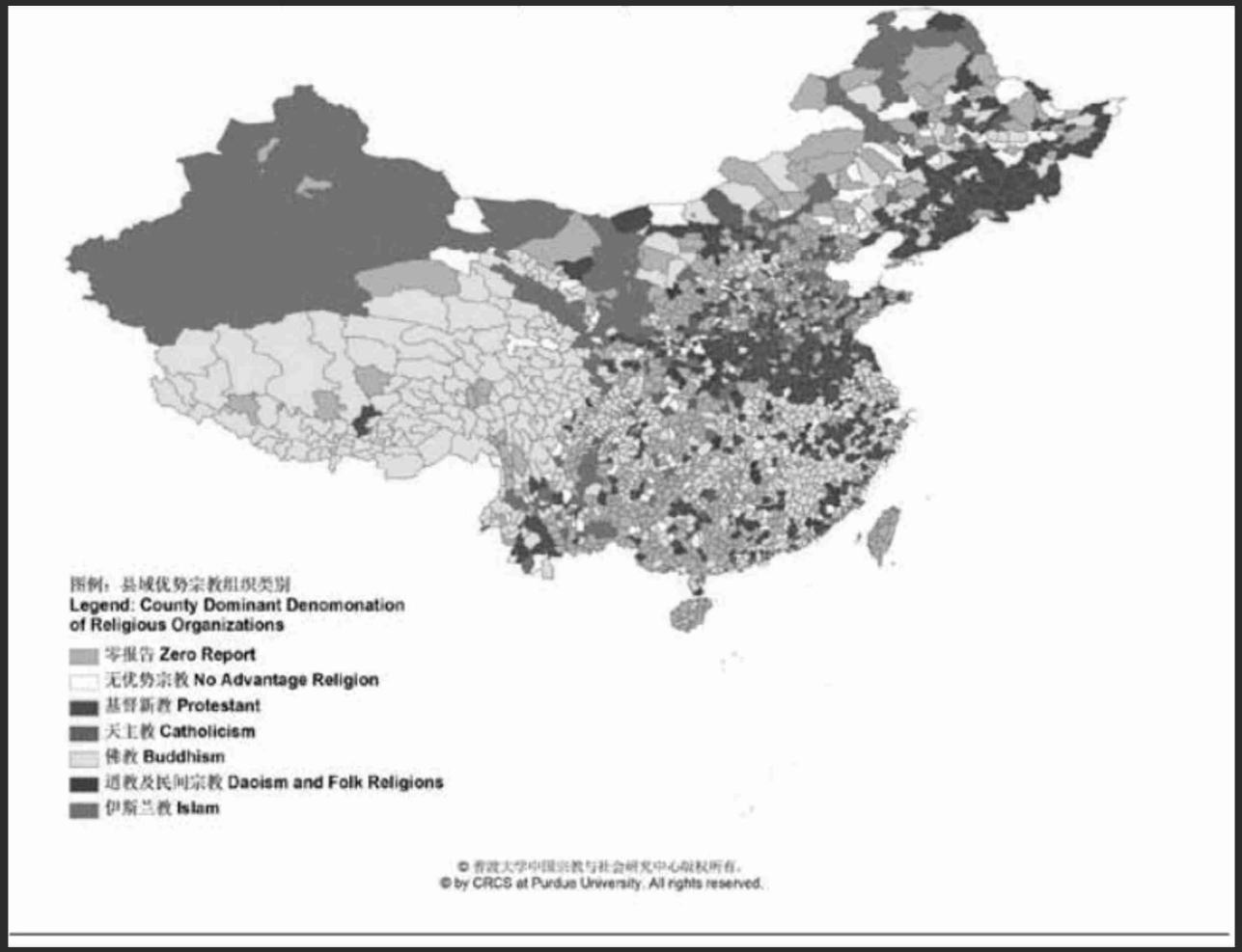
Where are China's registered Christian churches?



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Are all those who worship in unregistered churches targeted?

(b)(6)

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Are only worshippers in unregistered Churches targeted?



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How many worshippers in unregistered churches have suffered abuses?

- 'Sinicization' of Christianity
- Temporary detentions (many case)
- Long-term imprisonment (few cases)
- Are detainees charged with crimes?

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

How many worshippers in unregistered churches have been detained?

- 2012: 1441 detentions
- 2013: 1470 detentions
- 2014: 2994 detentions
- 2015: 3178 detentions
- 2016: 3526 detentions
- 2017: 3700 detentions

(b)(6)

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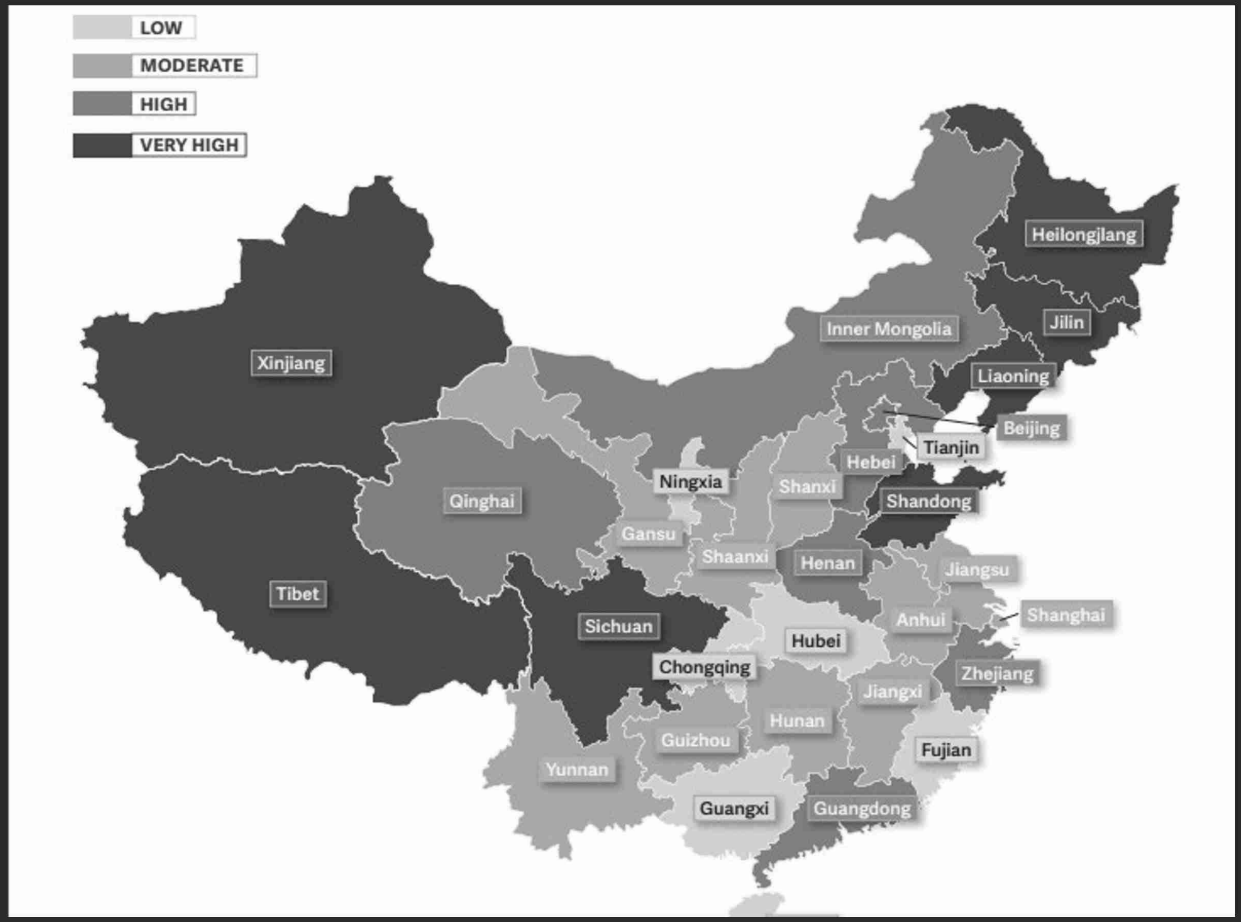
AMERICAN OVERSIGHT

(b)(7)(e)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

Where is religious persecution most intense?



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Where is NIV fraud most prevalent?



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Conclusion

(b)(6)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

Recommended Readings

- *The Battle for China's Spirit*, Freedom House, Feb. 2017.
- *Annual Report – 2018: Freedom of Religion*, Congressional-Executive Commission on China, 2018.
- *China: An Emerging Destination for Economic Migration*, Migration Policy Institute, May 31, 2011.
- *Migration within China and from China to the USA: The effects of migration networks, selectivity, and the rural political economy in Fujian Province*, Population Studies, 67(2): 209–223 (2013).
- *Bibliography on Christianity in China*, RAIO Research Unit, Oct. 2016.
- *China's Great Migration: Why Leave Changle?*, Slate, Apr. 11, 2008.

AMERICAN OVERSIGHT

India: COI for APS Officers



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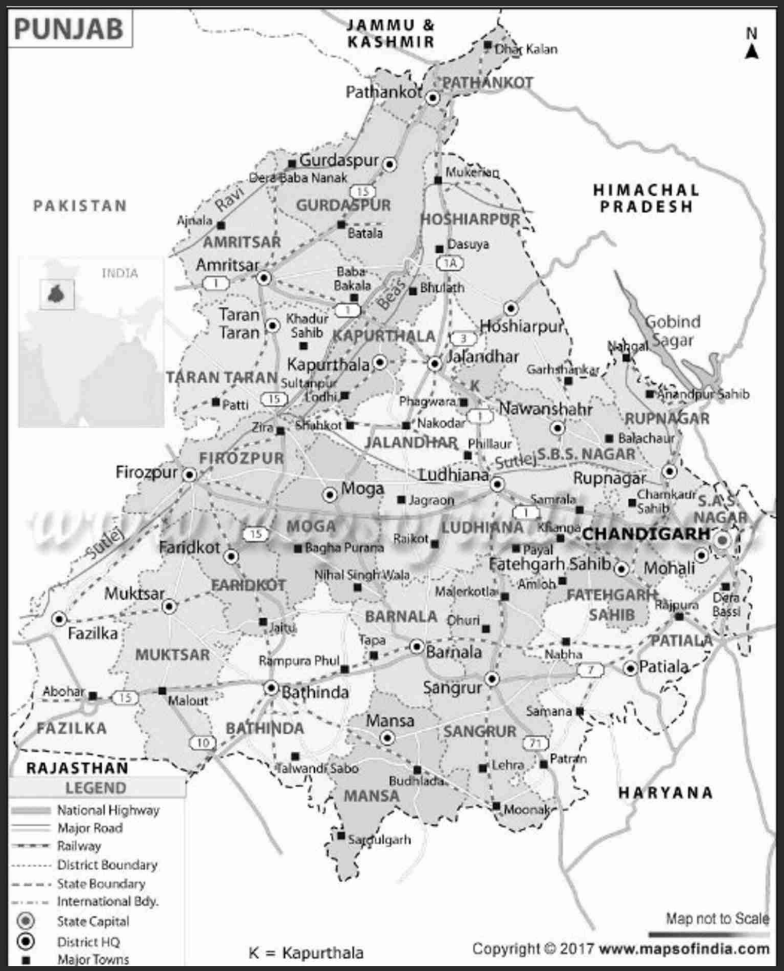
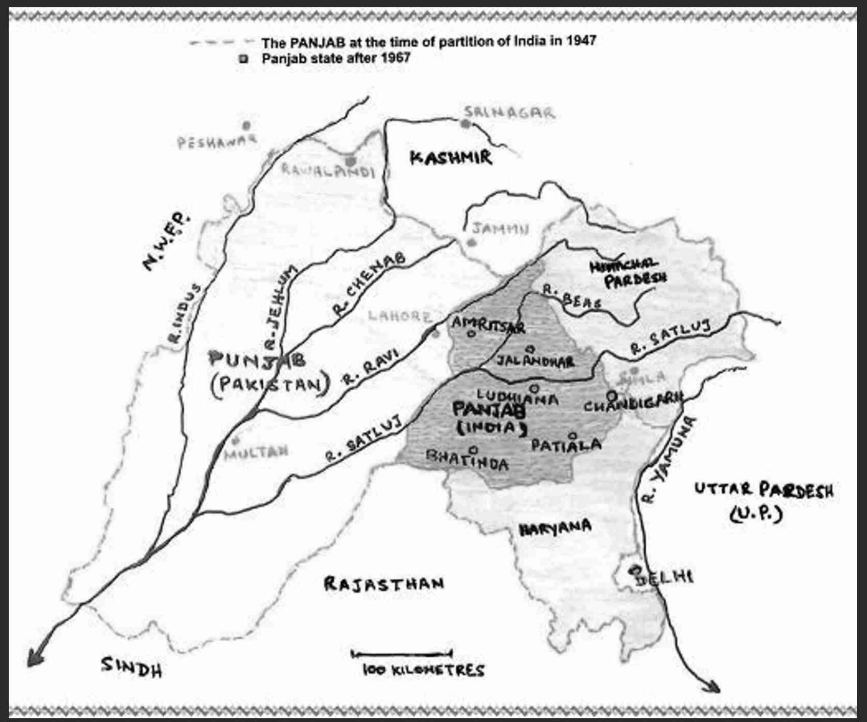
AMERICAN OVERSIGHT

Punjab





U.S. Citizenship and Immigration Services

Indian National Congress

(b)(6)

- India's longest-standing national political party.
- In Punjab, last appointed the Chief Minister in 2002-2007.
- Won in Punjab in 2017. Congress Chief Minister swearing in March 16th.
- Governed India during the Sikh separatist movement (1980-early 1990s).

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

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

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

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.

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

Indian National Lok Dal

(b)(6)

- Main opposition party in the state of Haryana, Punjab region.
- Most supporters come from the *jat* (peasant) caste.
- Split in two last November [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)
- More inclusive elections for the Sikh religious assembly (SGPC)
- Accountability for abuses against Sikhs during the separatist insurgency period (1980-early 1990s).

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Akali Dal (Amritsar) website

(b)(6)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

What is the extent of violence in Punjab today?

(b)(6)

- 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.

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

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
  - Sometimes detain perceived ‘radicals’ during sensitive events.

Conclusion

(b)(6)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

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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Scenario #1

- (b)(6)

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Scenario # 1 Answer

- (b)(6)

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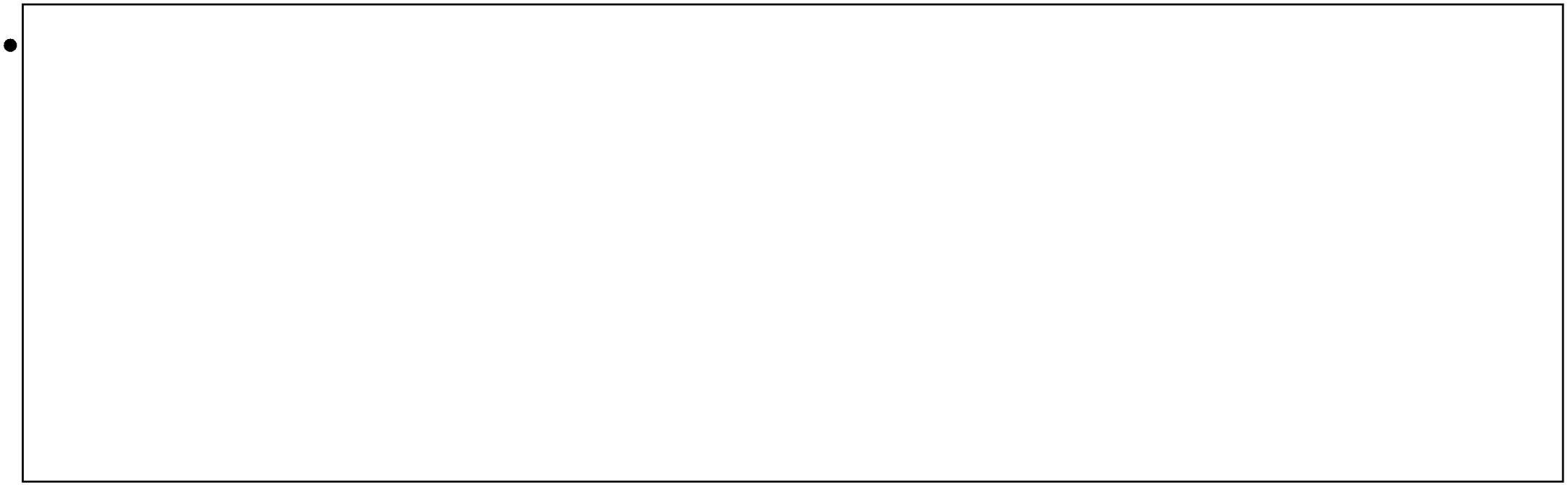
Scenario # 2

(b)(6)

- 

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Scenario # 2 Answer

(b)(6)

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-

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Scenario # 2 Answer Cont

(b)(6)

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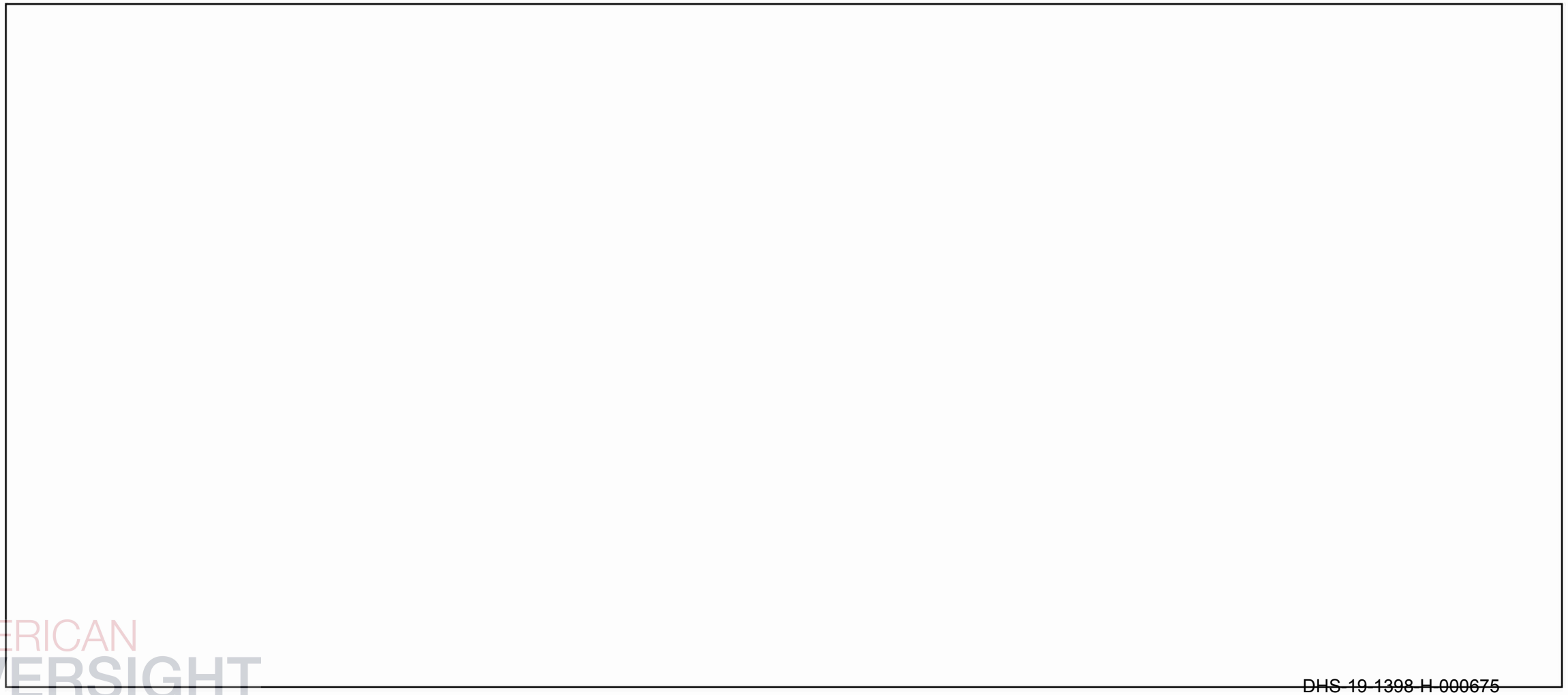
Scenario #2 Answer Cont.

(b)(6)



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Scenario #2 Answer Cont.

(b)(6)

-
-

AMERICAN OVERSIGHT

India: COI for APS Officers



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AMERICAN OVERSIGHT

Characteristics of Claims

(b)(7)(e)

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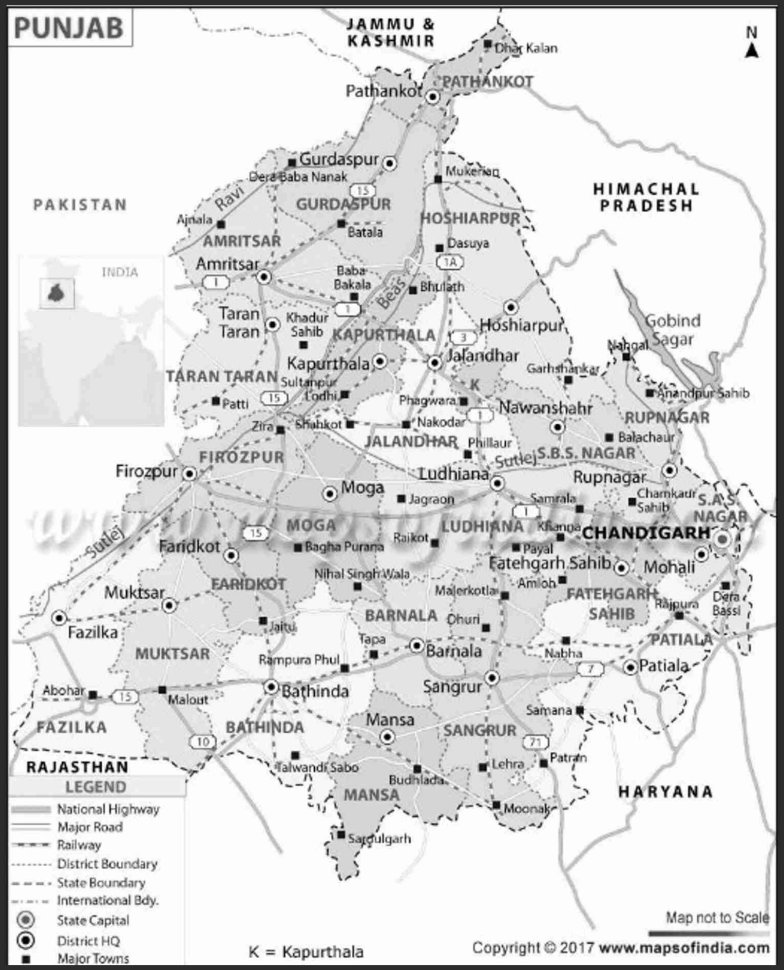
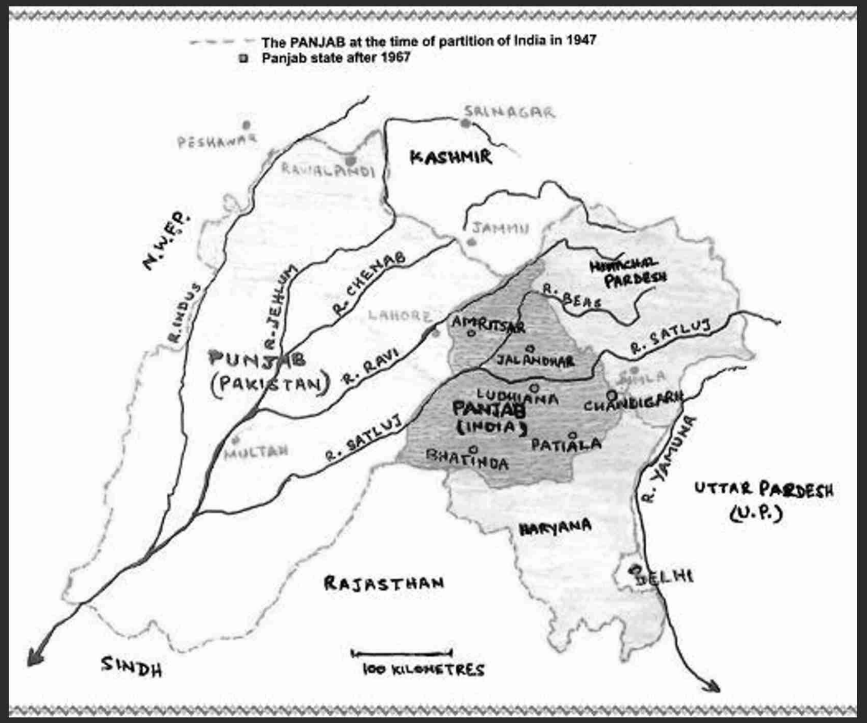
Punjab





U.S. Citizenship and Immigration Services
AMERICAN OVERSIGHT

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

U.S. Citizenship and Immigration Services
AMERICAN OVERSIGHT

Indian National Congress

(b)(6)

- India's longest-standing national political party.
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AMERICAN OVERSIGHT

Shiromani Akali Dal (Badal)

(b)(6)

- By far the leading Akali Dal faction
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AMERICAN OVERSIGHT

Bharatiya Janata Party

(b)(6)

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- 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

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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.

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Akali Dal (Amritsar) website

(b)(6)

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What is the extent of violence in Punjab today?

(b)(6)

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

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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.

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DHS-19-1398-H-000689

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-H-000690

Internal Relocation and State Protection?

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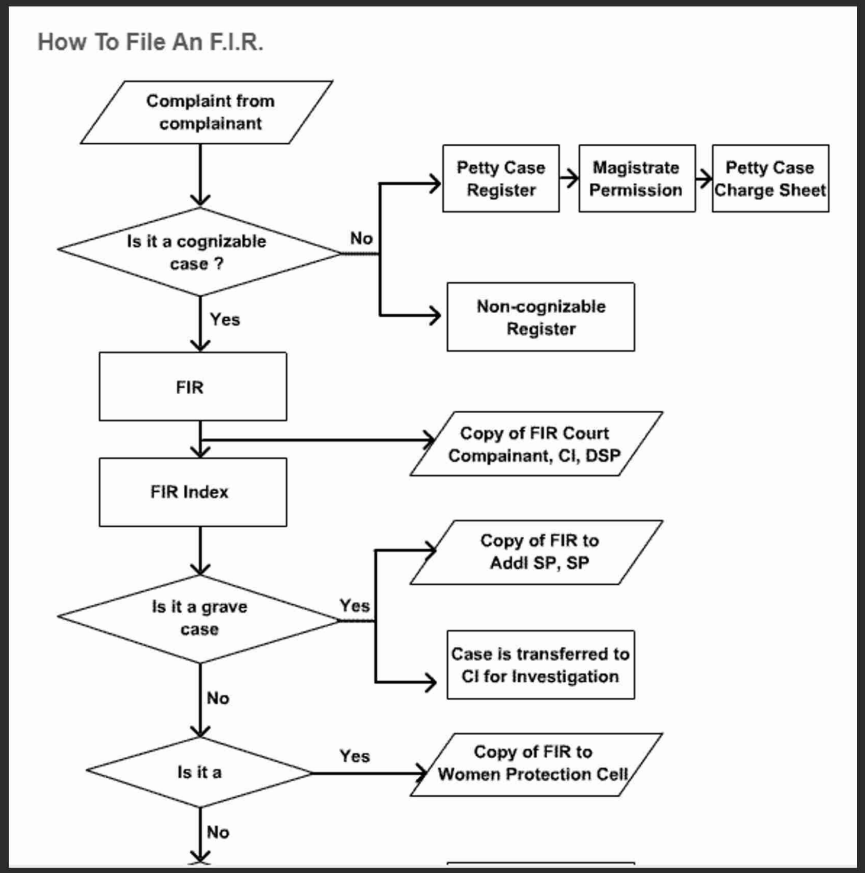
AMERICAN OVERSIGHT

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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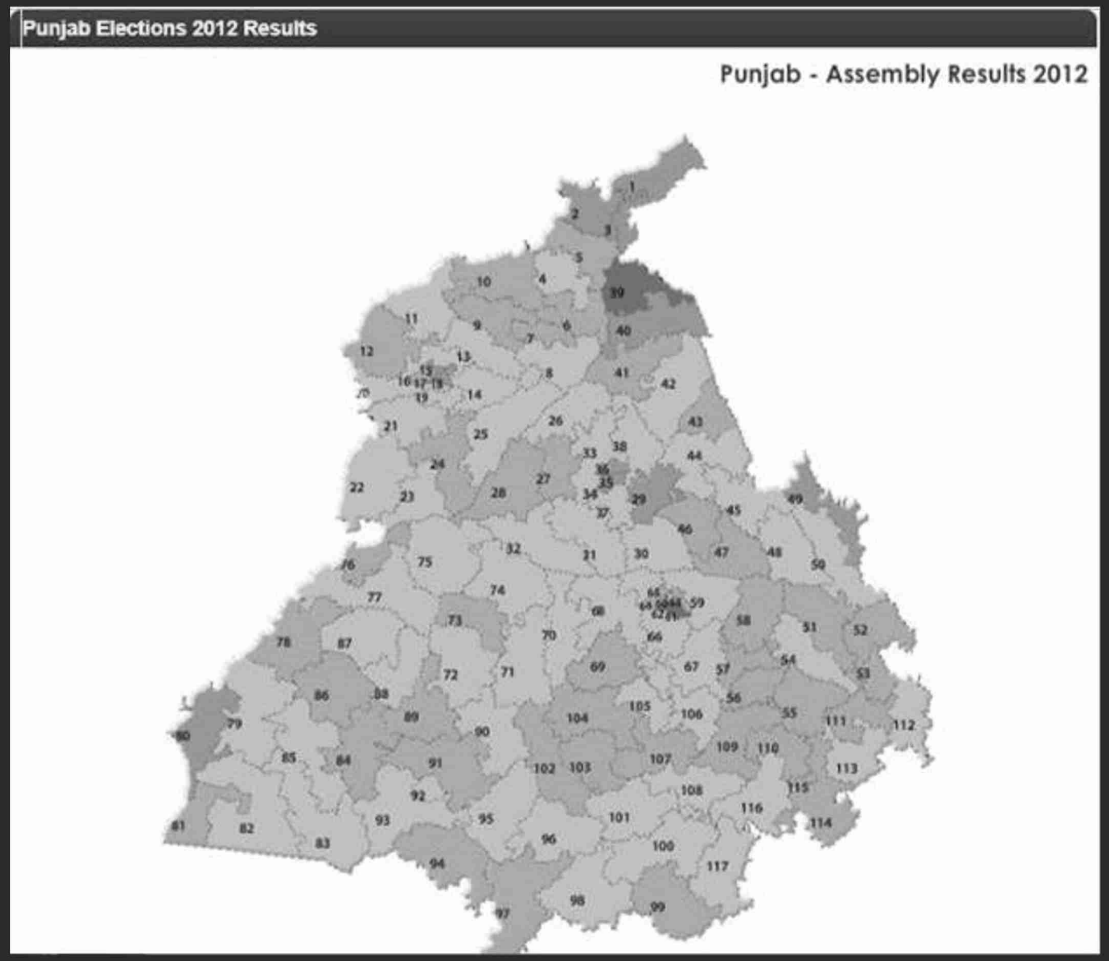
Internal Relocation: Within a State



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AMERICAN OVERSIGHT

DHS-19-1398-H-000693

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
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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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DHS-19-1398-H-000695

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-H-000696

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

(b)(7)(c)

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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.
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- *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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U.S. Citizenship and Immigration Services

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
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U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

Indian APSO Claims

Eliciting Testimony

AMERICAN OVERSIGHT

UNCLASSIFIED//FOUO//LES

Roadmap

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

Credibility vs. Lack of Specific Facts

(b)(7)(e)

AMERICAN OVERSIGHT

Persecutor identity: Specific Facts

(b)(7)(e)

AMERICAN OVERSIGHT

Persecutor identity: Specific Facts

(b)(7)(e)

AMERICAN OVERSIGHT

Possession of protected characteristic

(b)(7)(e)

AMERICAN OVERSIGHT

Possession of protected characteristic

(b)(7)(e)

AMERICAN OVERSIGHT

Possession: Posters

(b)(7)(e)

AMERICAN OVERSIGHT

Possession: Foundation-laying

(b)(7)(e)

AMERICAN OVERSIGHT

Possession: Moving off script

(b)(7)(e)

AMERICAN OVERSIGHT

Possession: Lack of detail

(b)(7)(e)

AMERICAN OVERSIGHT

Possession: Lack of detail

(b)(7)(e)

AMERICAN OVERSIGHT

Severity of Harm

(b)(7)(e)

AMERICAN OVERSIGHT

State action

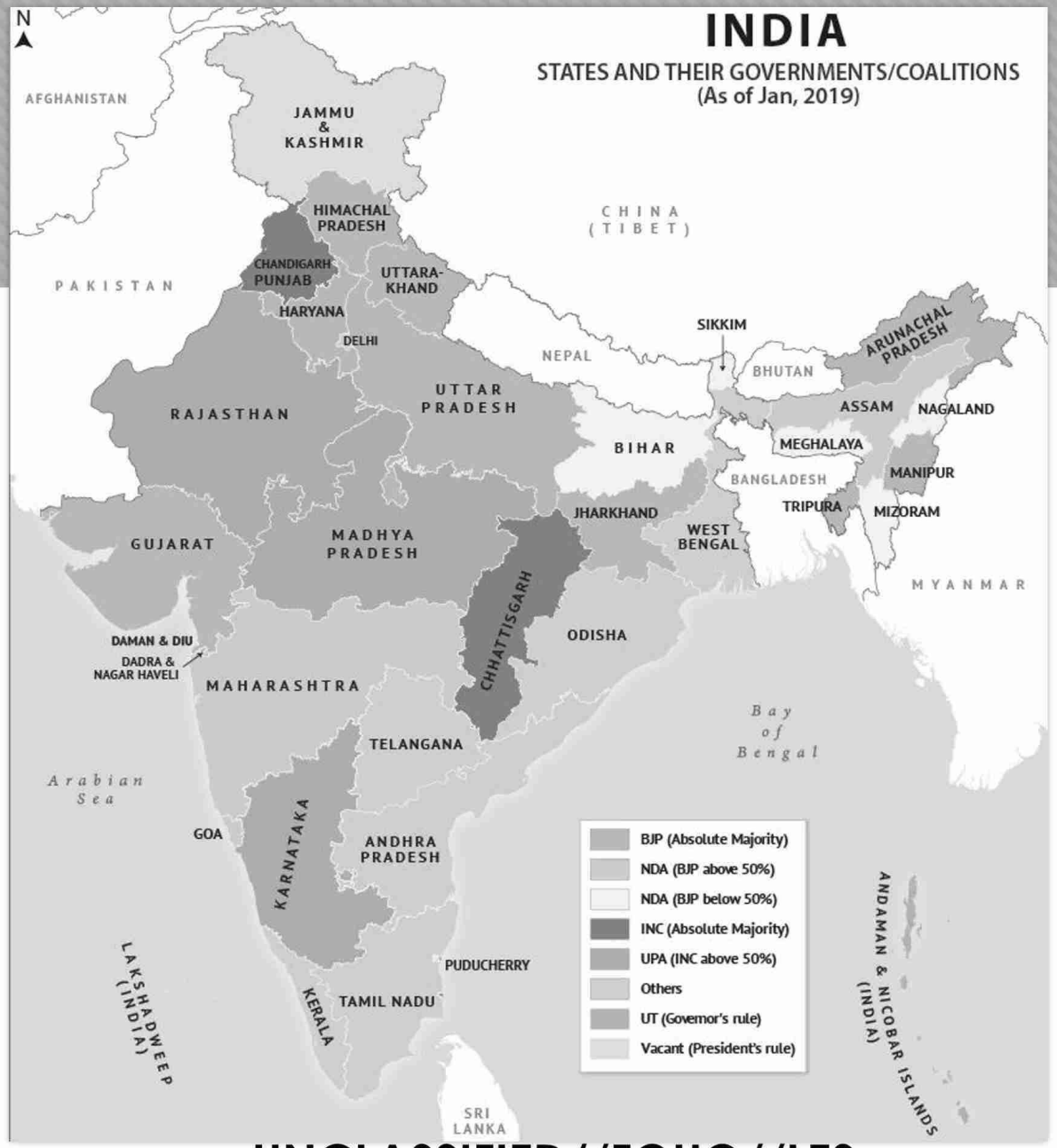
(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

UNCLASSIFIED//FOUO//LES

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Aadhaar card



AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Avoid persecution

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Reasonableness

(b)(7)(e)

AMERICAN OVERSIGHT

Internal relocation: Reasonableness

(b)(7)(e)

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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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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.
- 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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Disclaimer

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DHS-19-1398-H-000743

Shirk, Georgette L

From: Perkowski, Thomas B
Sent: Friday, July 12, 2019 12:29 PM
To: Gordon, Jonathan; O'Malley, Robert L
Subject: Sample Scenarios for COI Research Session

I drafted this very quickly, so please feel free to edit the prompts as you see fit.

El Salvador

[redacted]

Cuba (b)(6)

[redacted]

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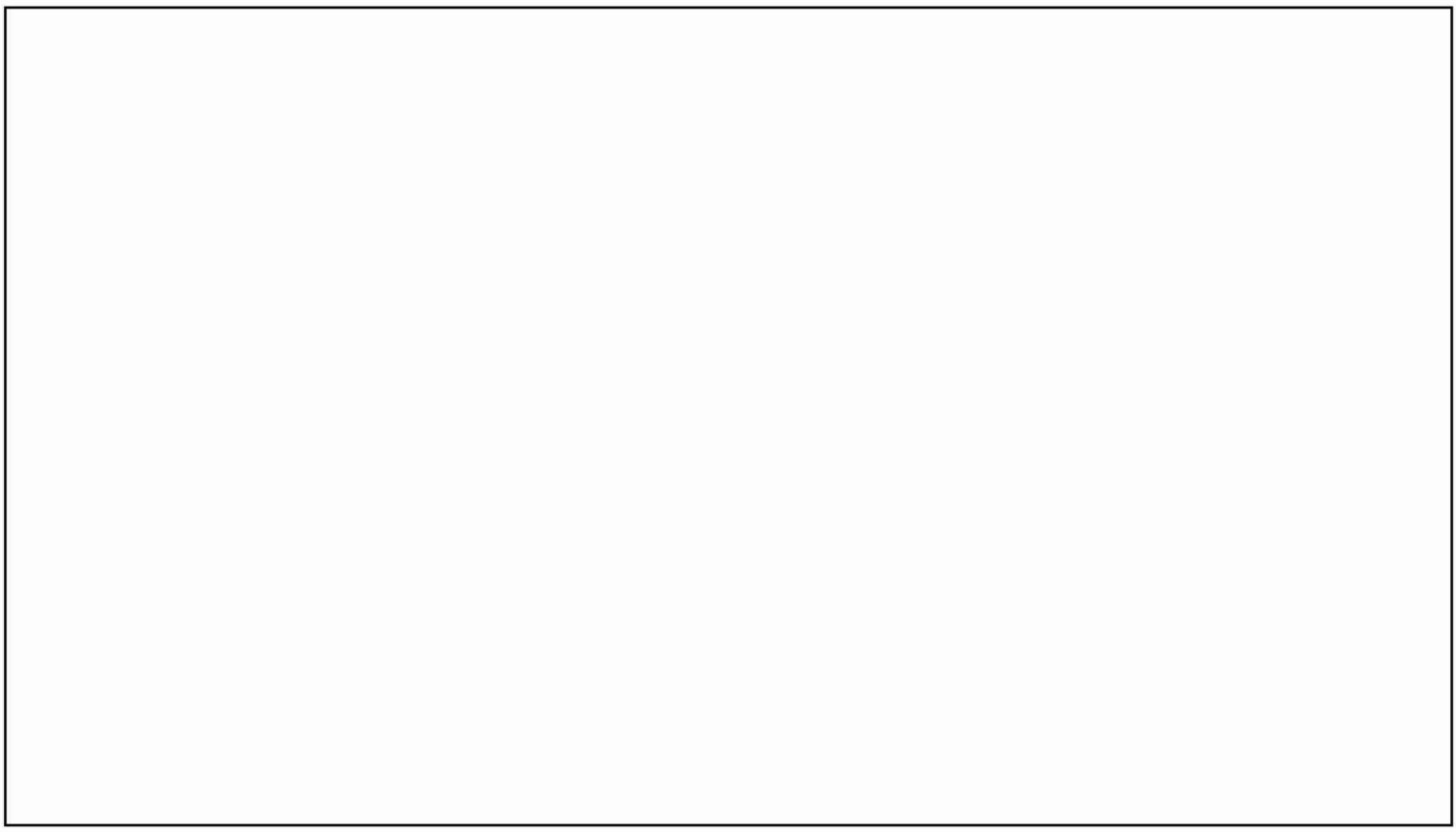

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El Salvador: *Mao Mao* Gang

May 12, 2017

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DHS-19-1398-H-000746

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DHS-19-1398-H-000747

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DHS-19-1398-H-000750



Fraud In the Asylum Context
Fraud Detection & Nat'l. Security Division

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Performance Objectives

- To provide a general understanding of fraud in the Asylum process and USCIS' approach to Fraud deterrence.
- To familiarize asylum officers with their roles and responsibilities in the Fraud identification process.
- To provide asylum officers with information regarding Fraud prevention resources.
- To familiarize adjudicators with the Fraud Life Cycle, Terminations/PAER process, and Post Conviction Clean Up Response Framework.

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GAO Report & Asylum Fraud



GAO Report 16-50

- In December of 2015, the GAO issued a report on *Asylum: Additional Actions Needed to Assess and Address Fraud Risks*
- The GAO made 10 recommendations to address fraud in the asylum context on which the Asylum Division agreed to take action.

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FRAUD IN Asylum



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Fraud Defined

- Fraud within the immigration context is defined as the willful misrepresentation of the truth, or the concealment of a material fact in order to obtain a benefit for which one would otherwise not be qualified.

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Fraud Defined Con't.

Fraud within the Asylum context consists of a variety of methods which may be employed by various actors. Generally fraud associated with an I-589 filing may exist in one of the following categories:

- ✓ Fabricated testimony
- ✓ False documents
- ✓ Fraud schemes

The above methods may involve (one or a combination of all) the Applicant, Interpreter, Attorney, Notary Preparer, Translator or any individual assisting or seeking to defraud USCIS to gain asylum. ** keep in mind the Applicant may not have knowledge or intent concerning the fraud.

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Identified Fraud Types

- Immigration Service Provider Fraud
  - Identical or Nearly Identical Language
- Relationship Fraud
- Jurisdiction Fraud
- Document Fraud
- Fraud Intended to Conceal National Security Concerns
- Fraud Intended to Conceal Public Safety Concerns
  - Gang Affiliations
- Identity Fraud
- Visa Fraud

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Immigration Service Provider Fraud What to Look For

- ❑ Submission of Fabricated or embellished claim
- ❑ Submission of boilerplate I-589s
- ❑ Coaching Applicant on claim before interview
- ❑ Undue interference during the interview
- ❑ May include consumer fraud

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Immigration Service Provider Fraud

SECTIONS SEARCH **The San Diego Union-Tribune**

FRIDAY FEB. 24, 2017 US POLITICS LATEST MOST POPULAR TODAY'S PAPER JOBS HOMES CARS CONTACT US 51°

Concord woman gets prison time for false asylum applications

By Associated Press

JULY 14, 2015, 5:46 AM

SAN FRANCISCO (AP) — Federal officials say a Concord woman who submitted fraudulent asylum applications has been sentenced to six months in prison.

The Oakland Tribune reports (http://bayareane.ws/1IXDmA6) 30-year-old Buyantod Thomas was sentenced Thursday. She will

SECTIONS SEARCH **Chicago Tribune**

FRIDAY FEB. 24, 2017 SPORTS BREAKING TRENDING REDEYE OPINION SUBURBS ENTERTAINMENT ADVERTISING 39°

Local immigration lawyer convicted of fraud in winning asylum for Iraqis



http://www.chicagotribune.com/news/local/breaking/#nt=tertiarynavbar

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Jury Convicts North Suburban Lawyer of Immigration Fraud for Falsifying Clients' Applications for U.S. Asylum



Source CHICAGO Tribune May 9, 2016— A federal jury today convicted a north suburban attorney of submitting false information to immigration authorities to help his clients seek asylum in the United States.

ROBERT DEKELAITA accepted fees from foreign nationals in exchange for submitting the false documents to the U.S. Department of Homeland Security's Citizenship and Immigration Services. DeKelaita's fraudulent statements often falsely portrayed his clients as victims of persecution by religious extremists in the Middle East.

DeKelaita is a licensed attorney whose Morton Grove firm, R.W. DeKelaita & Associates LLC, specializes in immigration law. Evidence at trial revealed that from approximately 2000 to 2011, DeKelaita prepared and submitted asylum applications that contained material lies, including tales of rape, murder, torture, kidnappings, bombings and other forms of religious oppression in the Middle East. As a result, several of DeKelaita's clients were granted asylum and eventually permanent residency and citizenship status. Two interpreters who provided Arabic and Assyrian translations for DeKelaita's clients were also charged in the scheme.

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June 26, 2009

Lawyers Convicted in Immigration Asylum Fraud

By Jason Meisner Source AmericanThinker.com

Three lawyers and two interpreters were convicted of immigration fraud by filing hundreds of false asylum claims from 2000 to 2004.

A federal jury convicted the five on Thursday in the US Court in Sacramento, CA. The scheme involved forged documents and false testimony:

The applications were often supported by fraudulent doctor's letters, medical certificates and affidavits. As a result, scores of their clients fraudulently obtained lawful status as U.S. asylees. They also coached their clients to memorize the false stories for interviews with Asylum Officers and hearings before the immigration court.

Their clients came from obscure towns and villages on the other side of the world, and some of them testified for the government. “Who's going to believe them over lawyers who are upstanding members of the community”? That's what the defendants are counting on now.

"What they didn't anticipate was an alert (San Francisco) asylum officer with lots of knowledge of Romania and a dedicated investigator with years of immigration experience."

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PROVIDENCE, R.I. (AP) — Authorities say a Wakefield man has been indicted on 26 counts in connection with an immigration fraud scheme.

United States Attorney Peter Neronha says 34-year-old Nimon Naphaeng is charged with seven counts of mail fraud, eight counts of visa fraud, 10 counts of aggravated identity theft and one count of international money laundering.

Authorities say Naphaeng, a Thailand native, offered to help Thai nationals obtain work permits and government benefits and then used their personal information to file asylum applications without their consent.

It's alleged that Naphaeng was filing asylum claims from January 2014 through December in order to secure work permits.

The government is seeking $279,550 that Naphaeng allegedly received through the scheme.

Naphaeng is being held in federal custody.

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Relationship Fraud What to Look For

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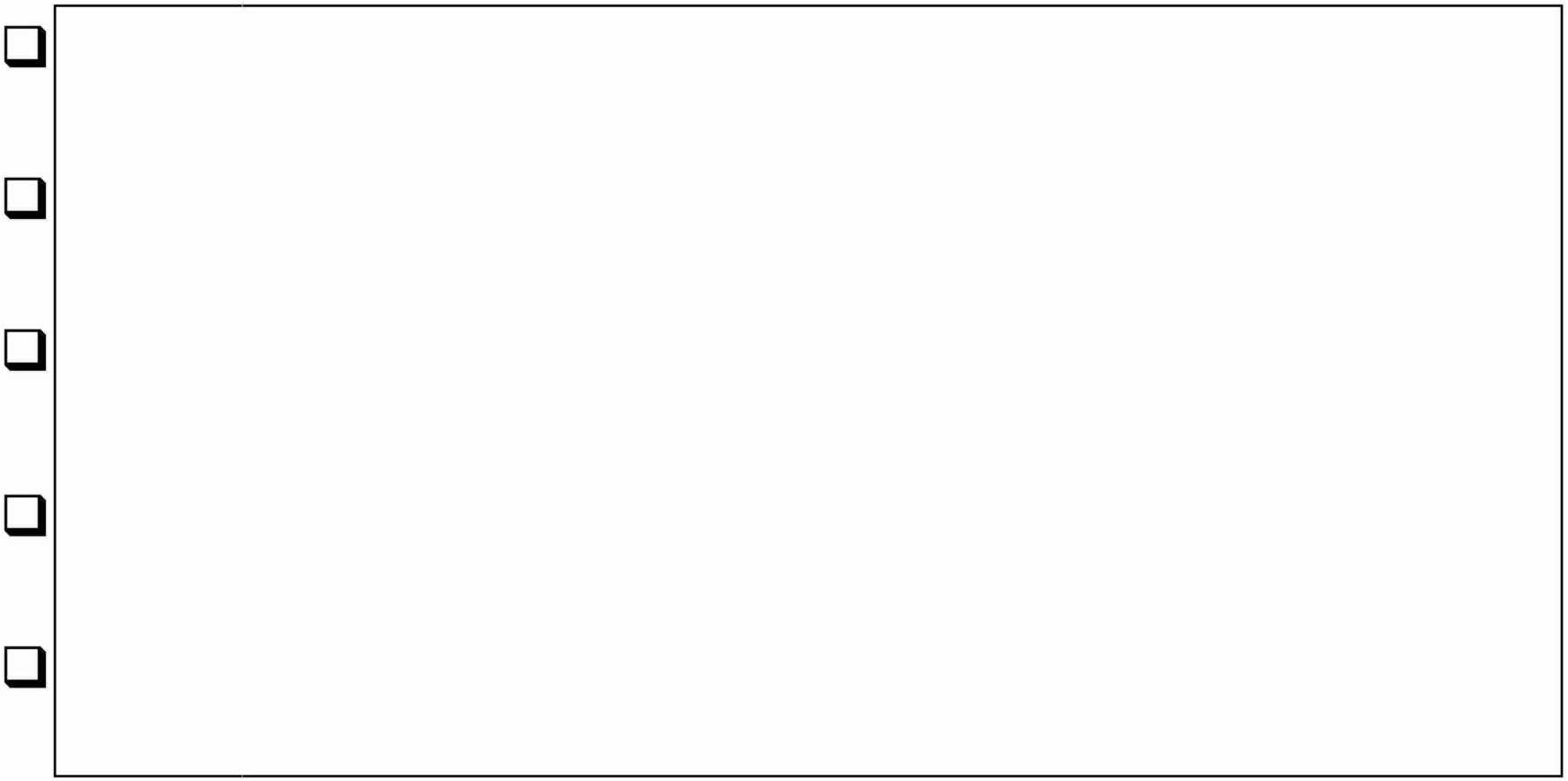

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Jurisdiction Fraud
What to Look For



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HSI-FDL Basic Document Examination Guidance

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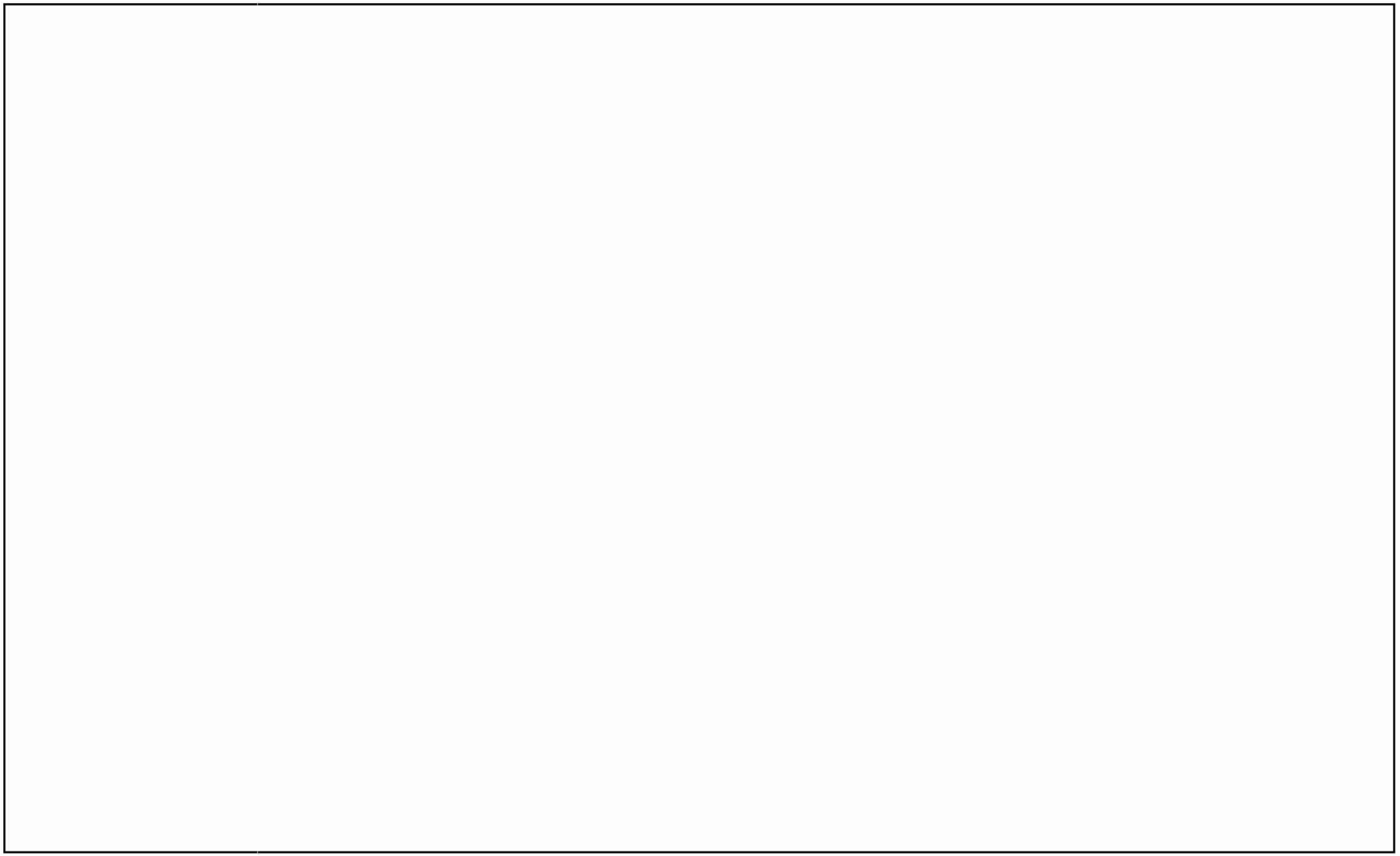
Fraudulent Documents



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Fraudulent document suspected

AOs: (b)(7)(e)

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Document resources

Contact Your local FDNS Unit for access to HSI-Forensic Lab resources

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FRAUD IN THE ASYLUM PROCESS
(pre or post interview)

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The process of Fraud in Asylum

- **May not include any one specific model**
- **However, there are commonalities which may be present in each case**
- **Fraud can occur at any of the following stages:**



Pre-Interview

During Interview

Post-Interview

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The process of Fraud in Asylum- Pre-Interview

"Typical" Fraud Scheme roadmap -Pre-Interview-

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Credit: google images

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The process of Fraud in Asylum- The Interview stage

"Typical" fraud processes -During Interview-

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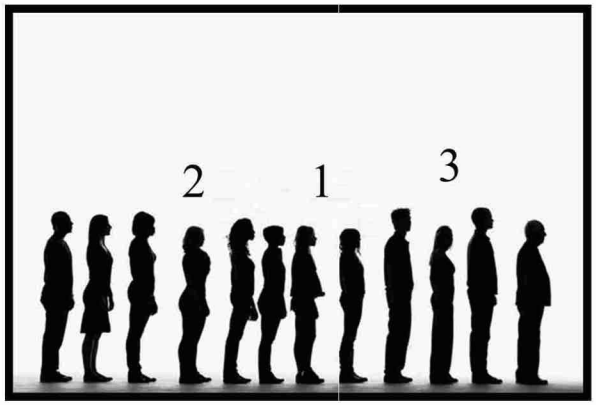

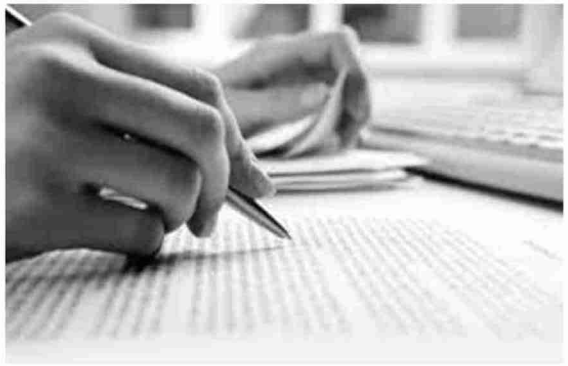



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The Process of Fraud in Asylum- Post Interview

-Post-Interview-

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Credit Google Images

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Addressing FRAUD-
Roles and Responsibilities

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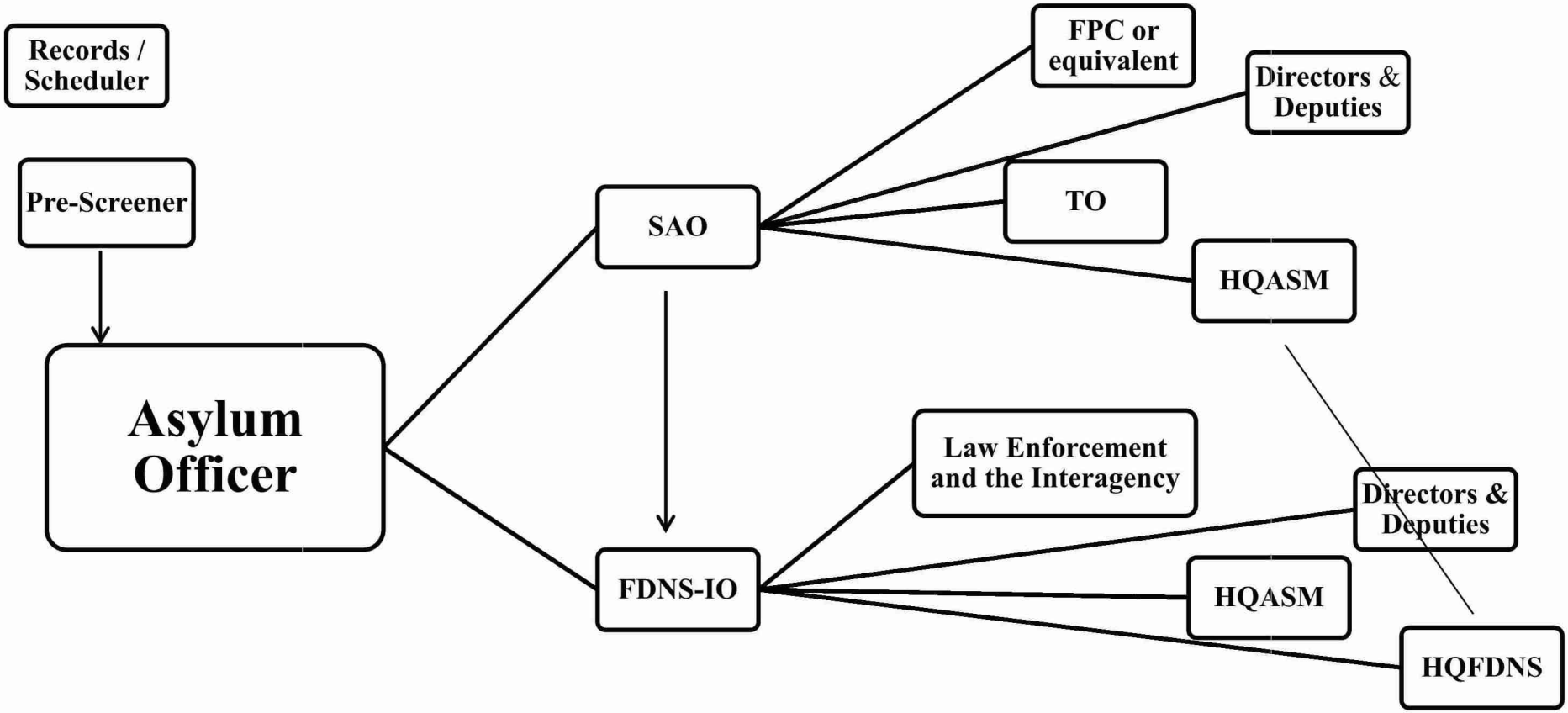
Fraud is Everyone's Responsibility



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Adjudicator Roles & Responsibilities

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FDNS Roles & Responsibilities

FDNS Purpose: To Detect, Deter, and combat Immigration Fraud

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Conducting The Interview when Fraud is Identified

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Eliciting Testimony

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Eliciting Testimony cont.

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Challenging Fraud

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Challenging Fraud

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Documenting the Record

DOCUMENTING THE RECORD

- The interview notes serve as a record that allows a reviewer to reconstruct what transpired during the interview
- Notes must be clear and legible
- Notes must include all information elicited during the interview regarding the interviewee's eligibility for a benefit, petition, or request
- Notes must accurately reflect the questions asked and the applicant's response
- Notes must support the decision made by the AO
- Notes must not include the officer's opinions, suppositions, or personal inferences
- Notes must indicate instances when the officer confronts an applicant with adverse information and the applicant's response

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AO Action plan-Steps to combat Fraud

→Obtain as much information as possible prior to and during the interview

→Clarify vague or non-responsive answers. Take detailed and clear notes. Sworn testimony if necessary

→Thoroughly review all documents presented in support of claim

→Build a strong record by annotating the I-589 and taking detailed notes

→Compare all testimony oral and written for consistency and evaluate country conditions-confront Applicant with inconsistent statements or not credible answers.

→Always remember these are non-adversarial interviews. We are not law enforcement officers and these are not criminal proceedings

→Request assistance from your FDNS-IOs.

- AOs can request assistance with additional security checks.
- FDNS may ask you to complete a Fraud Referral Sheet (FRS) for in depth case analysis.

- **Talk to your SAO. The SAO will help you determine the appropriate action.**

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Referrals to FDNS

The AO must refer cases to FDNS that fall within the categories below:

FDNS Referrals are required for:

1.
2.
3.
4.
5.

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Referrals to FDNS Continued

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1.
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Referring suspect Fraud cases to FDNS

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How do I tell FDNS that I think I found fraud?

- FILL OUT A FRAUD REFERRAL SHEET!
- What do I include in a fraud referral sheet? (b)(7)(e)
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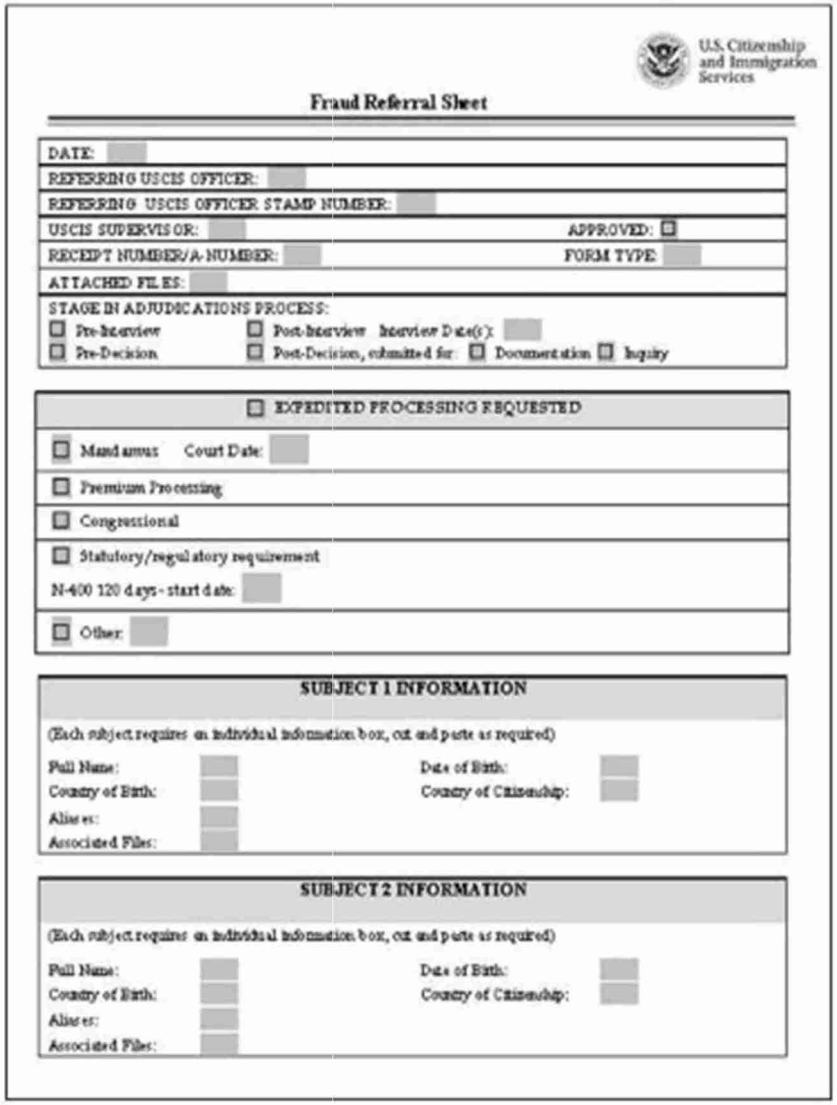
The Fraud Referral Sheet



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Fraud Referral Sheet

DATE:
REFERRING USCIS OFFICER:
REFERRING USCIS OFFICER STAMP NUMBER:
USCIS SUPERVISOR: APPROVED: ☐
RECEIPT NUMBER/A-NUMBER: FORM TYPE:
ATTACHED FILES:
STAGE IN ADJUDICATIONS PROCESS:
☐ Pre-Interview ☐ Post-Interview Interview Date(s):
☐ Pre-Decision ☐ Post-Decision, submitted for: ☐ Documentation ☐ Inquiry

☐ EXPEDITED PROCESSING REQUESTED

☐ Mandamus Court Date:
☐ Premium Processing
☐ Congressional
☐ Statutory/regulatory requirement
N-400 120 days - start date:
☐ Other:

SUBJECT 1 INFORMATION

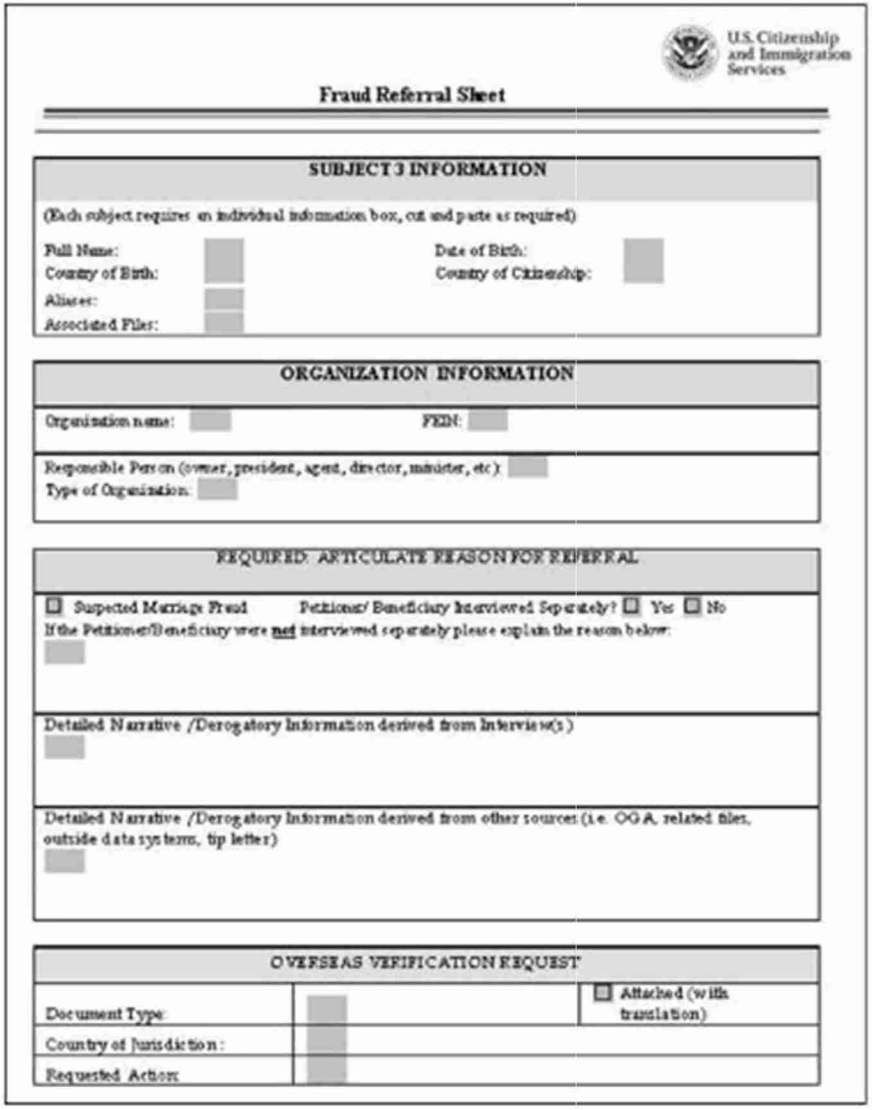
(Each subject requires an individual information box, cut and paste as required)

Full Name: Date of Birth:
Country of Birth: Country of Citizenship:
Aliases:
Associated Files:

SUBJECT 2 INFORMATION

(Each subject requires an individual information box, cut and paste as required)

Full Name: Date of Birth:
Country of Birth: Country of Citizenship:
Aliases:
Associated Files:



U.S. Citizenship and Immigration Services

Fraud Referral Sheet

SUBJECT 3 INFORMATION

(Each subject requires an individual information box, cut and paste as required)

Full Name: Date of Birth:
Country of Birth: Country of Citizenship:
Aliases:
Associated Files:

ORGANIZATION INFORMATION

Organization name: FEIN:
Responsible Person (owner, president, agent, director, minister, etc):
Type of Organization:

REQUIRED: ARTICULATE REASON FOR REFERRAL

☐ Suspected Marriage Fraud Petitioner/ Beneficiary Interviewed Separately? ☐ Yes ☐ No
If the Petitioner/Beneficiary were not interviewed separately please explain the reason below:

Detailed Narrative /Derogatory Information derived from Interview(s)

Detailed Narrative /Derogatory Information derived from other sources (i.e. OGA, related files, outside data systems, tip letter)

OVERSEAS VERIFICATION REQUEST

Document Type:		☐ Attached (with translation)
Country of Jurisdiction:		
Requested Action:		

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When Fraud is Established- A Look at the Terminations Process

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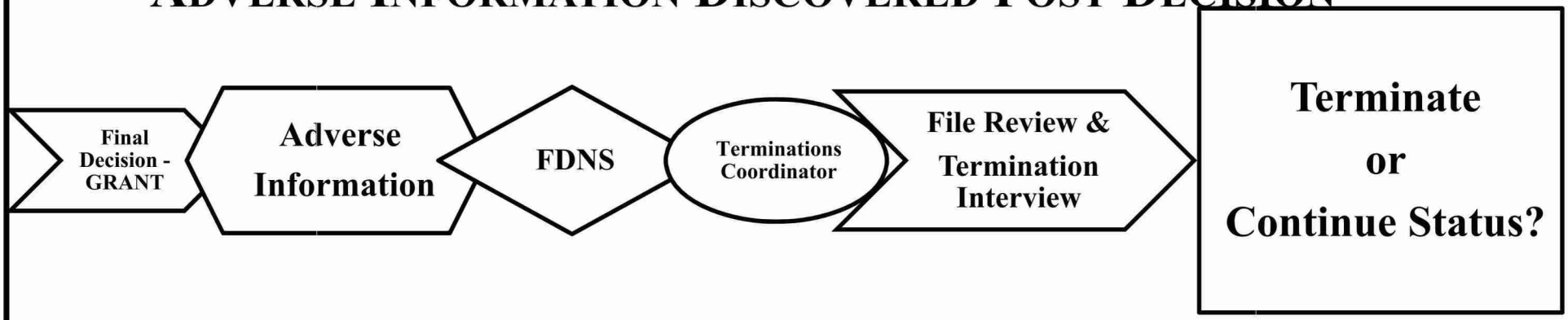
Fraud Life Cycle

Pending Case with Fraud Indicators



Adverse Information Discovered Post-Decision



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Terminations Process

TERMINATIONS

- Asylum Terminations Officer reviews evidence and determines if sufficient to proceed
- Prima Facie evidence supporting termination ground is needed for issuance of Notice of Intent to Terminate Asylum Status (NOIT)
- Preponderance of the evidence is needed to terminate asylum status For termination, the burden of proof is on the government, not the asylee
- Asylum Office issues NOIT, stating ground(s) for termination with a brief summary of the evidence

ROLE OF THE FDNS IO

- FDNS IO conducts a "work-up" on each asylum case to gather all possible evidence-Completes updated checks for the *Termination* and *PAER Checklist*
- Completes an FDNS *Statement of Findings* (SOF)

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Post Conviction Clean Up Response Framework

IDENTIFICATION

-
-

PRIORITIZATION

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RESOLUTION

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Fraud-AO Resources

- **FRAUD LESSON PLAN**
- **HTTP://WWW.EDISONTD.NET/**
- **CCD COUNTRY FRAUD SUMMARIES**
- **YOUR LOCAL FDNS TEAM!**

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Fraud Referral Sheet-Practical Exercise

- Completion of the FDNS FRAUD REFERRAL SHEET and mock A File Review for Fraud Indicators

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Open Forum – Q&As

Questions/Comments?

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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

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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.

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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

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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

Do I need to make an EPS referral if my applicant is in the RF process because he was convicted of an aggravated felony?

- In the RF context, if the referral is based on criminality, FDNS **ONLY** wants to see adverse info memos for:
  - Offenses ICE is **NOT** aware (ie, offenses not on RAP sheet or documented in EARM)
  - **ALL** gang-related referrals regardless of whether or not ICE is aware

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What FDNS does with EPS referrals?

- 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 (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

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NS Grounds

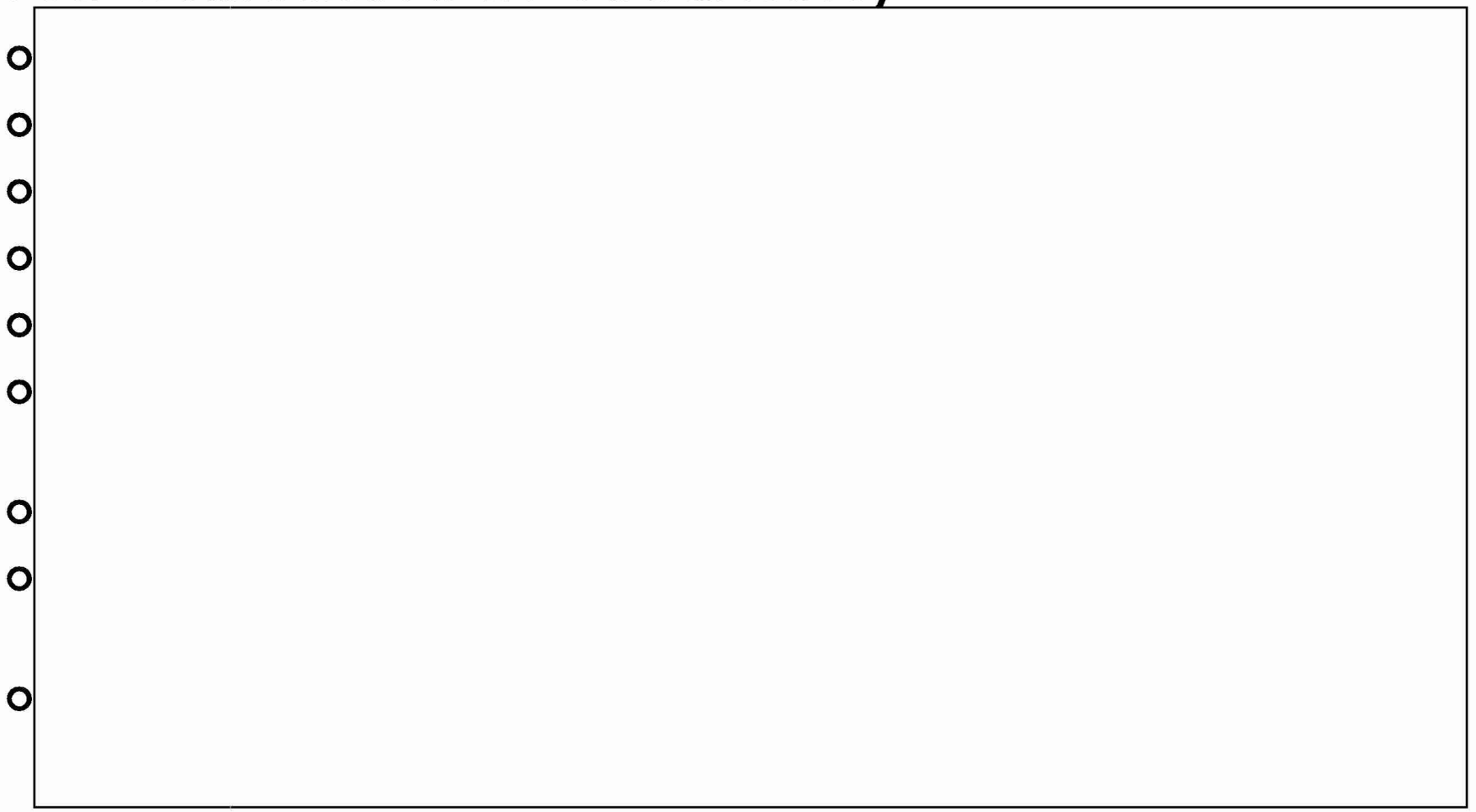
212(a)(3)(A)	212(a)(3)(B)
(i)(I) Espionage or sabotage • Former intelligence officer, military or members of gov. can fall in this category.	(i)(I) Engaged in a terrorist activity • Providing material support (i)(II) engaged or likely to engaged in a terrorist activity after entry (i)(III) with intent 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.

AMERICAN OVERSIGHT

What to look for:

NS Indicators in Testimony

(b)(7)(e)



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What AOs should include in Adverse Info Memo

- Moving forward the AO **must articulate** the Fraud, EPS, or NS related ground for the FDNS referral.

NS Sample: (b)(7)(e) • EPS Sample:

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FRAUD DETECTION AND NATIONAL SECURITY IN THE APSO CONTEXT

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FDNS OVERVIEW

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.

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FDNS DUTY OFFICER ROLE

- 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

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WHO SHOULD ADJUDICATORS CONTACT FOR ASSISTANCE?

FDNS Immigration Officers	Asylum Supervisors/Training 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	• 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

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How to Request Assistance from FDNS

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

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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:

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

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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?

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

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**

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National Security Grounds

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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National Security Grounds

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

- Agents of foreign government
- Associates/family members of Known or Suspected Terrorists (KSTs)
- Connection to an unknown political or social organization
- Unaccounted for gaps of time
- Experience in intelligence work
- Specialized education, training, or employment (military, intelligence, government, scientist, etc.)
- Possession of a large amount of money (U.S. Trip Cost)
- Lack of military service in a country where service is compulsory
- Travel patterns, especially when frequent or through regions of terrorist activity

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What to Look For – System Checks

Indicators of Public Safety, Fraud, and National Security concerns can appear in the applicant's testimony or in system check results. Information in security checks may inform interview questions. **However, Asylum Officers must comply with all requirements for protecting disclosure of sensitive information.**

-
-
-
-

(b)(7)(e)

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STATISTICS

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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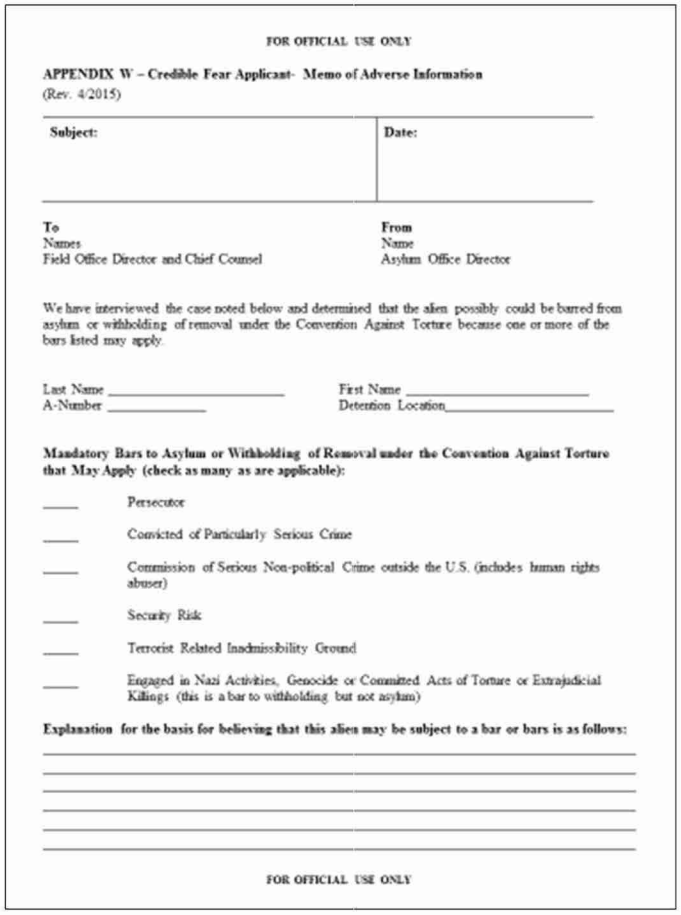
MEMO OF ADVERSE INFORMATION



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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:

- A detailed explanation for the basis for believing that the alien may be subject to a bar
- An explanation of how the possible bar was discovered (for example, through testimony or security check)

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What to Include in a Memo of Adverse Information

AO **must articulate** the Fraud, Egregious Public Safety, or National Security related ground for the FDNS referral.

NS Sample: (b)(7)(e)

• EPS Sample:

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About this presentation

- 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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Please contact the Asylum Training Branch (asylumtraining-coordinators@uscis.dhs.gov) for additional information.

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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

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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

SAPSOs/ TOs

- 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

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How to get assistance from FDNS

1. Talk to your SAPSO or the duty SAPSO
2. With a SAPSO approval, contact FDNS—
   - For **referrals**, complete an **adverse information memo** for review and submission by SAPSO to the FDNS inbox
   - For issues discovered…

Before the interview	email the FDNS IO
During the interview	lync or 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.

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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

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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: Drug offenses are often tied to cartel/gang affiliation.

  ** *Develop the record to ascertain whether there is a connection to an EPS ground.*
- Military training and/or service
  - *Caveat:* Develop the record to eliminate any possible human right violator or NS issues.

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FAQ Related to RF cases

Do I need to make an EPS referral if my applicant is in the RF process because he was convicted of an aggravated felony?

- In the RF context if the referral is based on criminality, FDNS **ONLY** wants to see adverse info memos where **ICE is NOT aware.**

  *** Offenses not among RAP sheet offenses

  *** FDNS wants to see all GANG referrals regardless of ICE is aware or not.

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What FDNS does with EPS referrals?

- 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 is also notified.
  2. Complete & upload an RTI (Referral to ICE) in DS.

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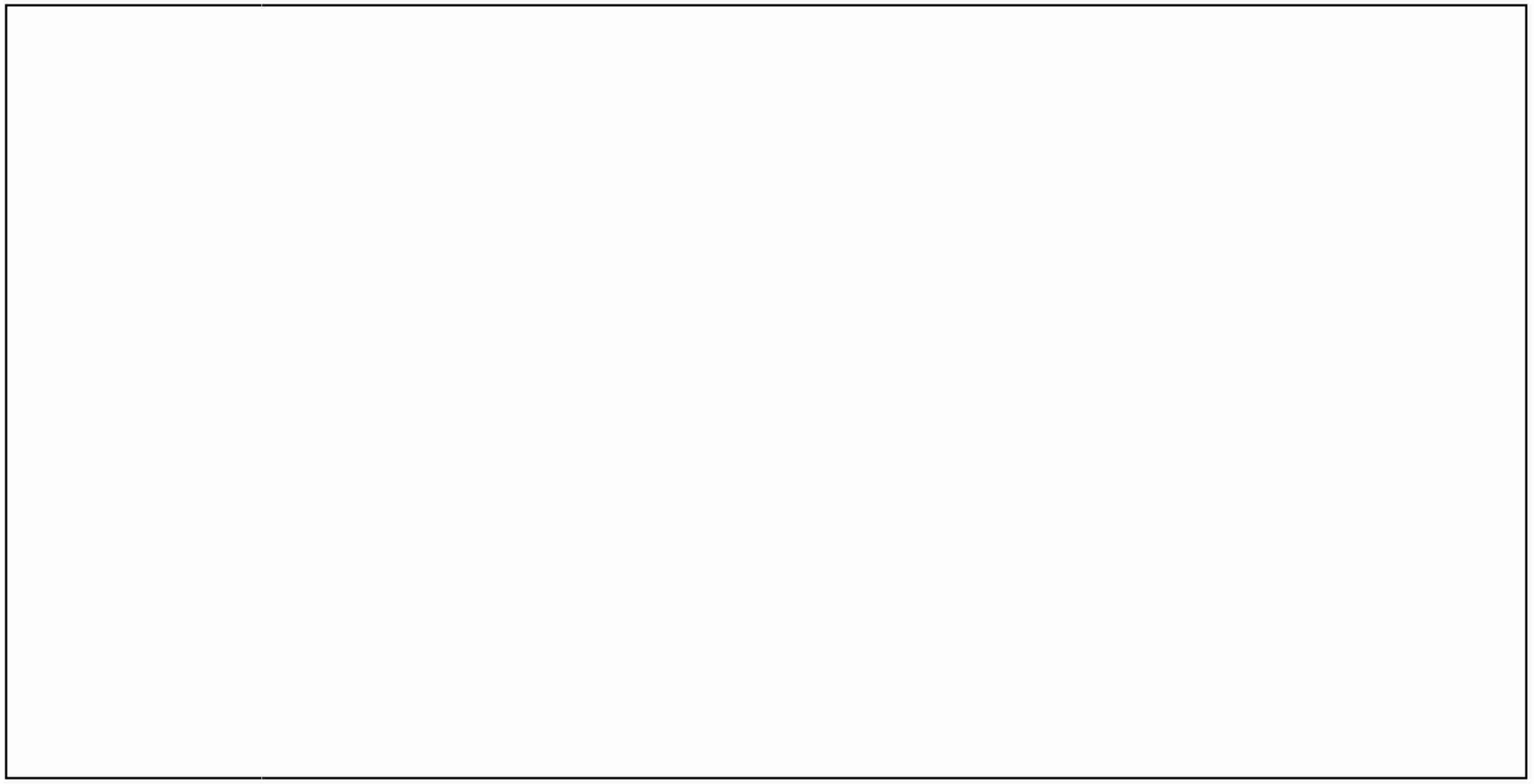
What to look for?: System Checks



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

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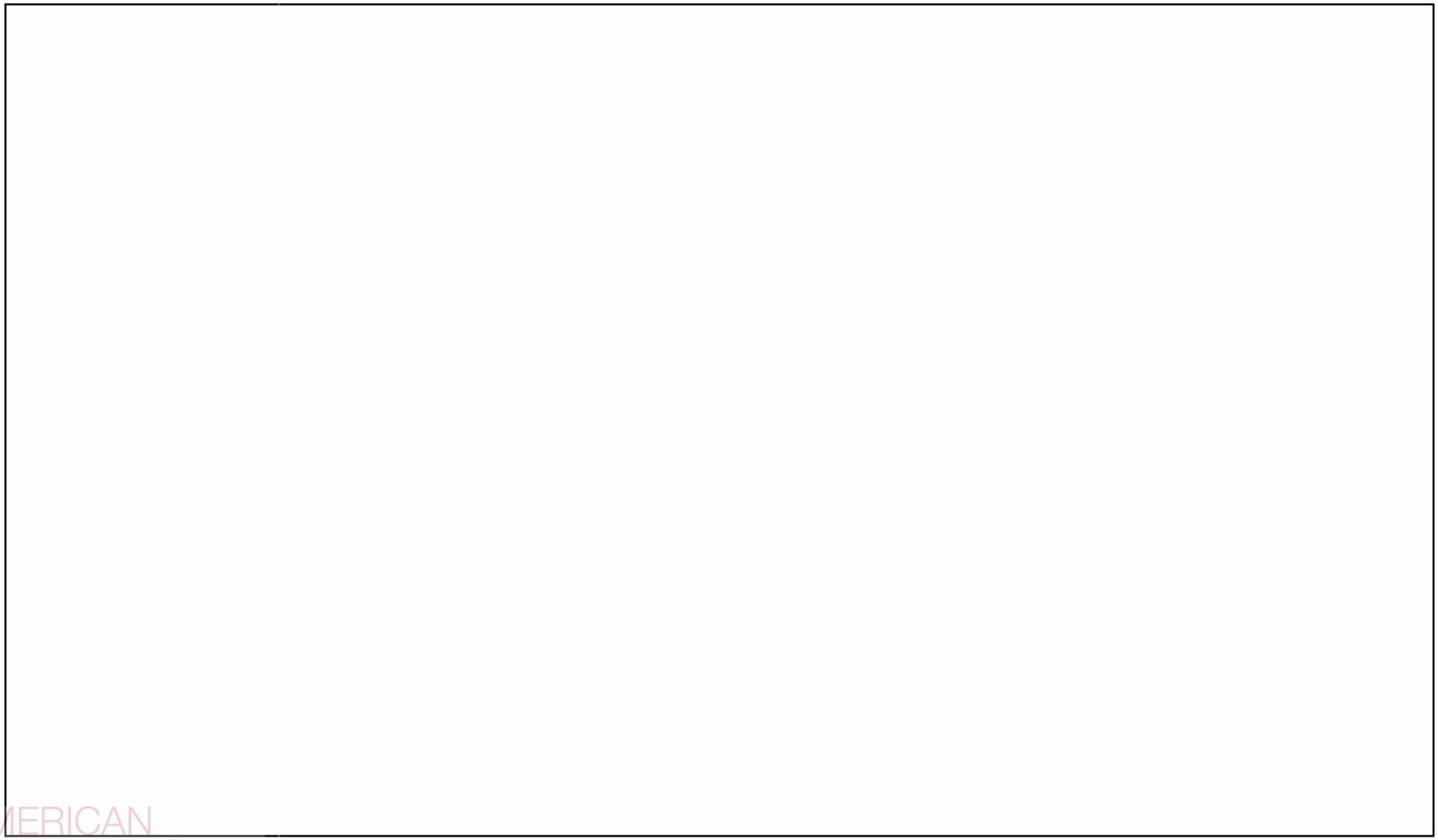
What to look for?: System Checks Cont

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



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National Security (NS) Concerns

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  1. an *individual* or *organization*
  2. has been determined to have an **articulable link** to *prior, current, or planned involvement* in, or *association with*, an activity, individual, or organization
  3. described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act (the Act).

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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.
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(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 System Checks



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

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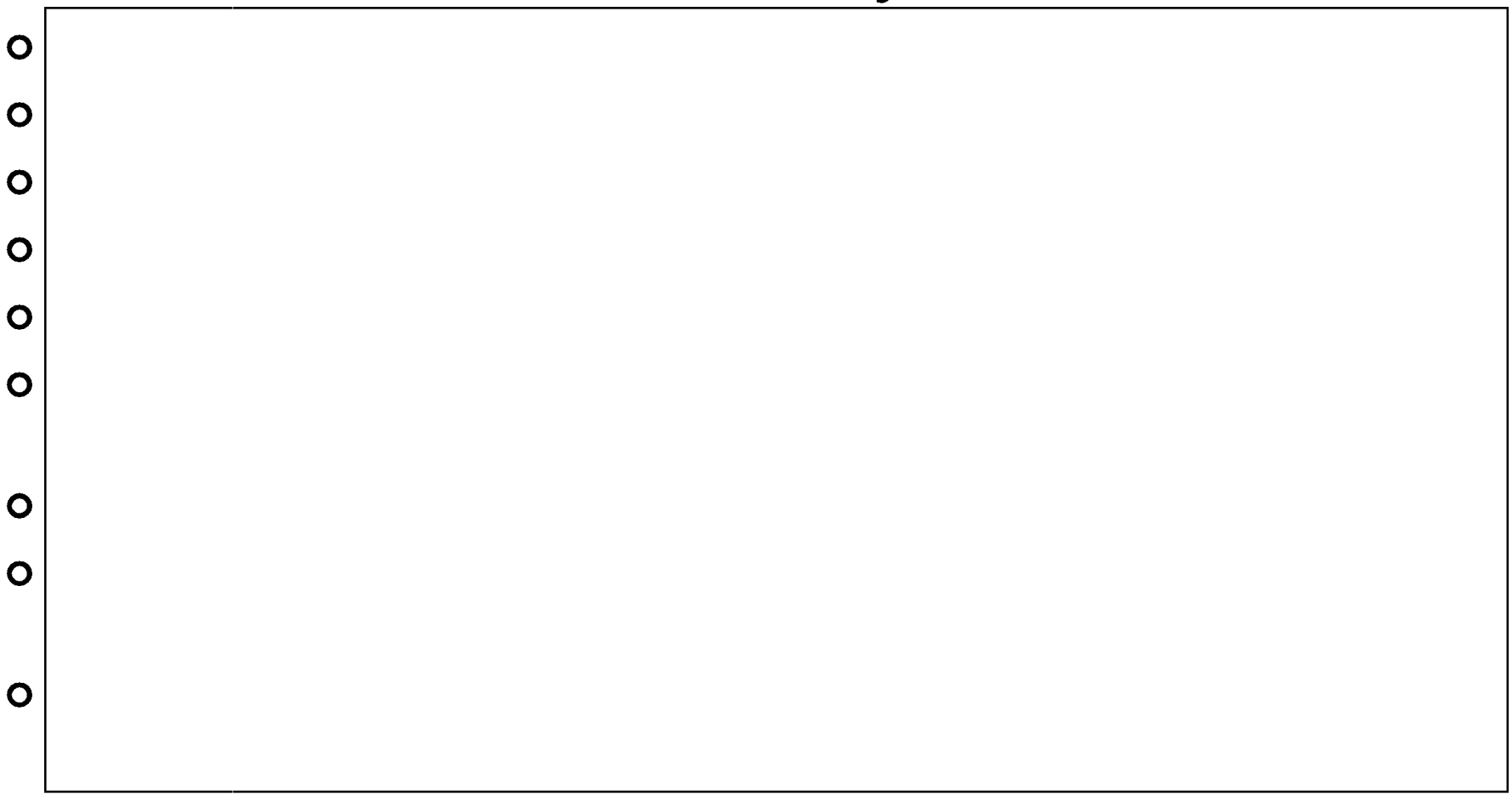
What to look for:

NS Indicators in Testimony



(b)(7)(e)

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What AOs should include in Adverse Info Memo

- Moving forward the AO **must articulate** the Fraud, EPS, or NS related ground for the FDNS referral.

NS Sample:

- EPS Sample:

(b)(7)(e)

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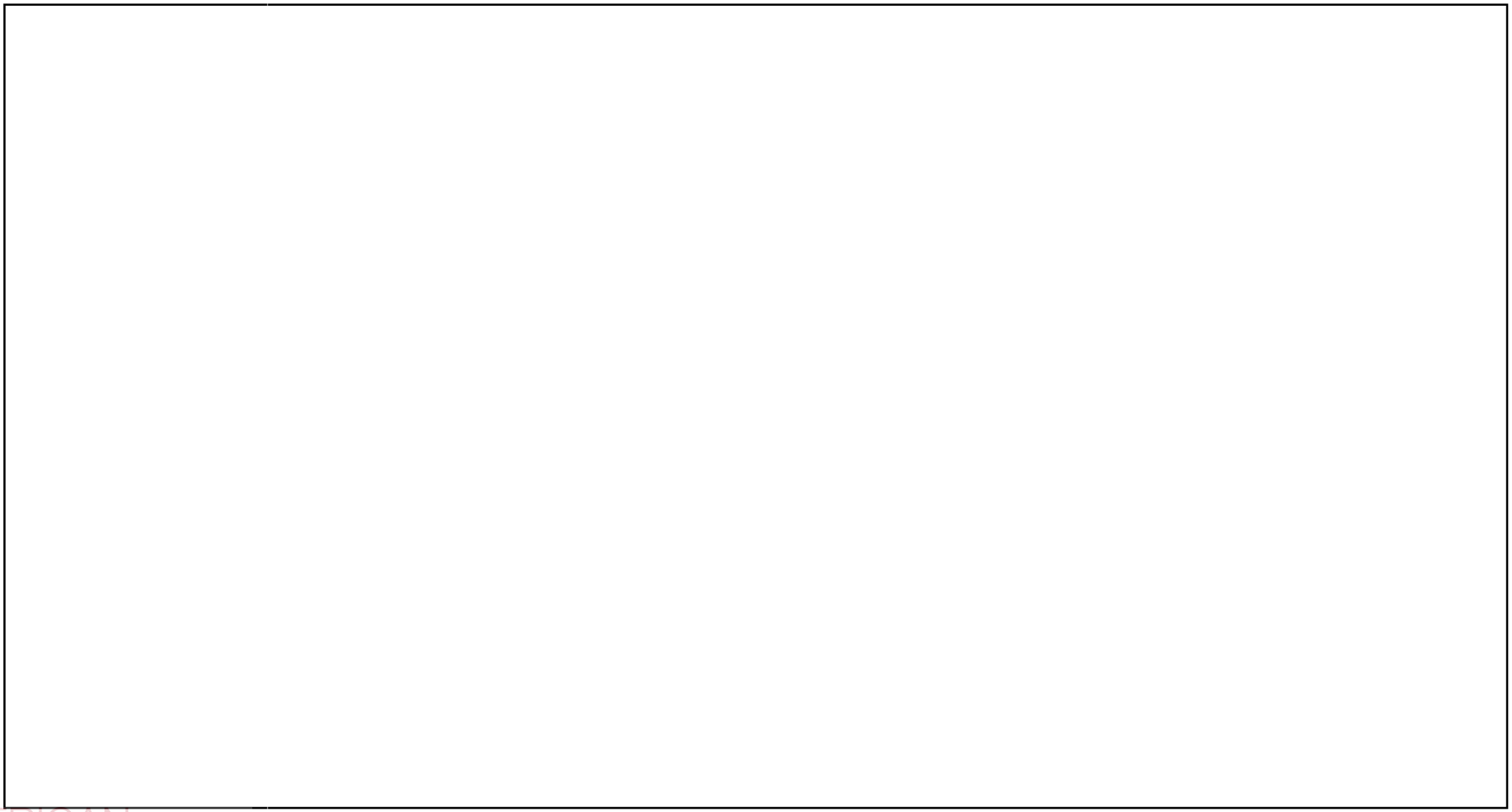
What should be included in referral Email to FDNS

(b)(7)(e)

- Referrals should be sent to FDNS mailbox.



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Introduction to FDNS

Regina Garza
Immigration Officer, RAIO FDNS

RAIO Combined Training
April 2019

Unclassified // ~~FOUO (For Official Use Only)~~

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Learning Objectives

- Provide adjudicators with a general understanding of the Fraud Detection and National Security (FDNS) Directorate

- Provide adjudicators with an overview of RAIO-FDNS officers' roles and responsibilities

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DHS-19-1398-H-000845

Introduction to FDNS

USCIS Mission Statement:

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

RAIO Mission Statement:

"With a highly dedicated and flexible workforce deployed worldwide, RAIO will excel in **advancing U.S. national security** and humanitarian interests by providing immigration benefits **with integrity and vigilance** and by leading effective responses to humanitarian and protection needs throughout the world."

FDNS Mission

FDNS will enhance the integrity of the legal immigration system by leading agency efforts to **identify threats to national security and public safety, detect and combat immigration benefit fraud**, and remove systematic and other vulnerabilities.

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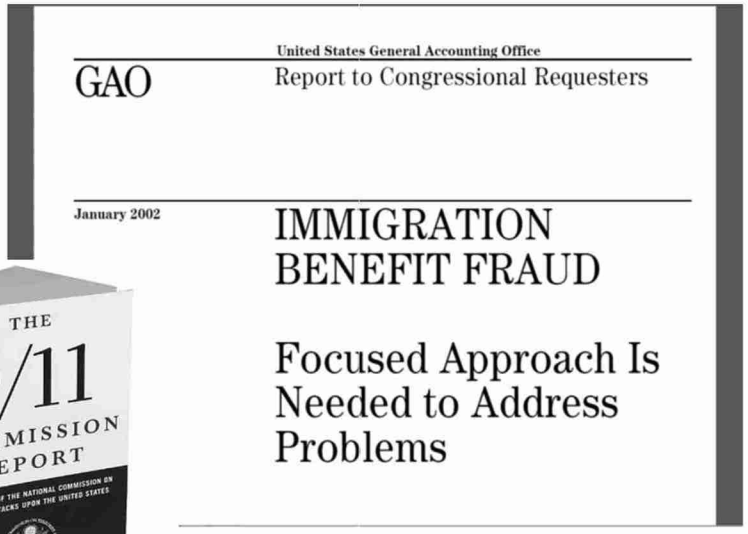
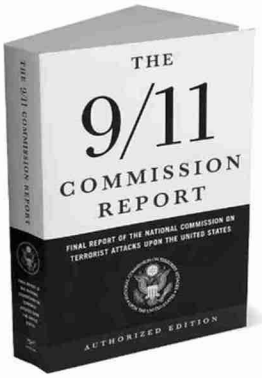
DHS-19-1398-H-000846

History of FDNS

- 2002: GAO report identified gaps in INS fraud detection capabilities



- 2004:
  - 9/11 Commission Report published
  - USCIS created FDNS



- 2010: FDNS was promoted to a Directorate in USCIS
- 2011: RAIO FDNS Branch created at the Directorate level

U.S. Citizenship and Immigration Services

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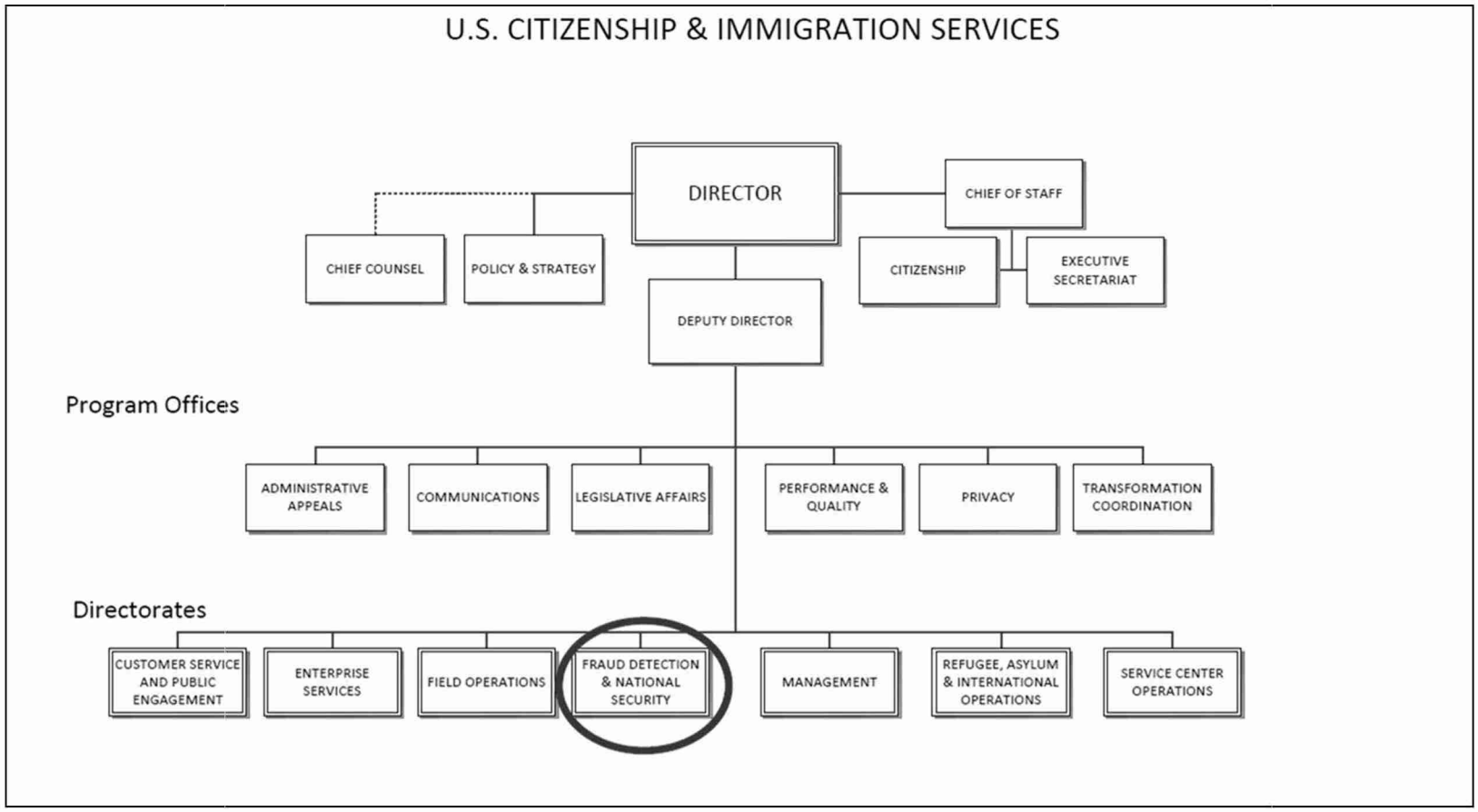
FDNS at USCIS



U.S. Citizenship and Immigration Services

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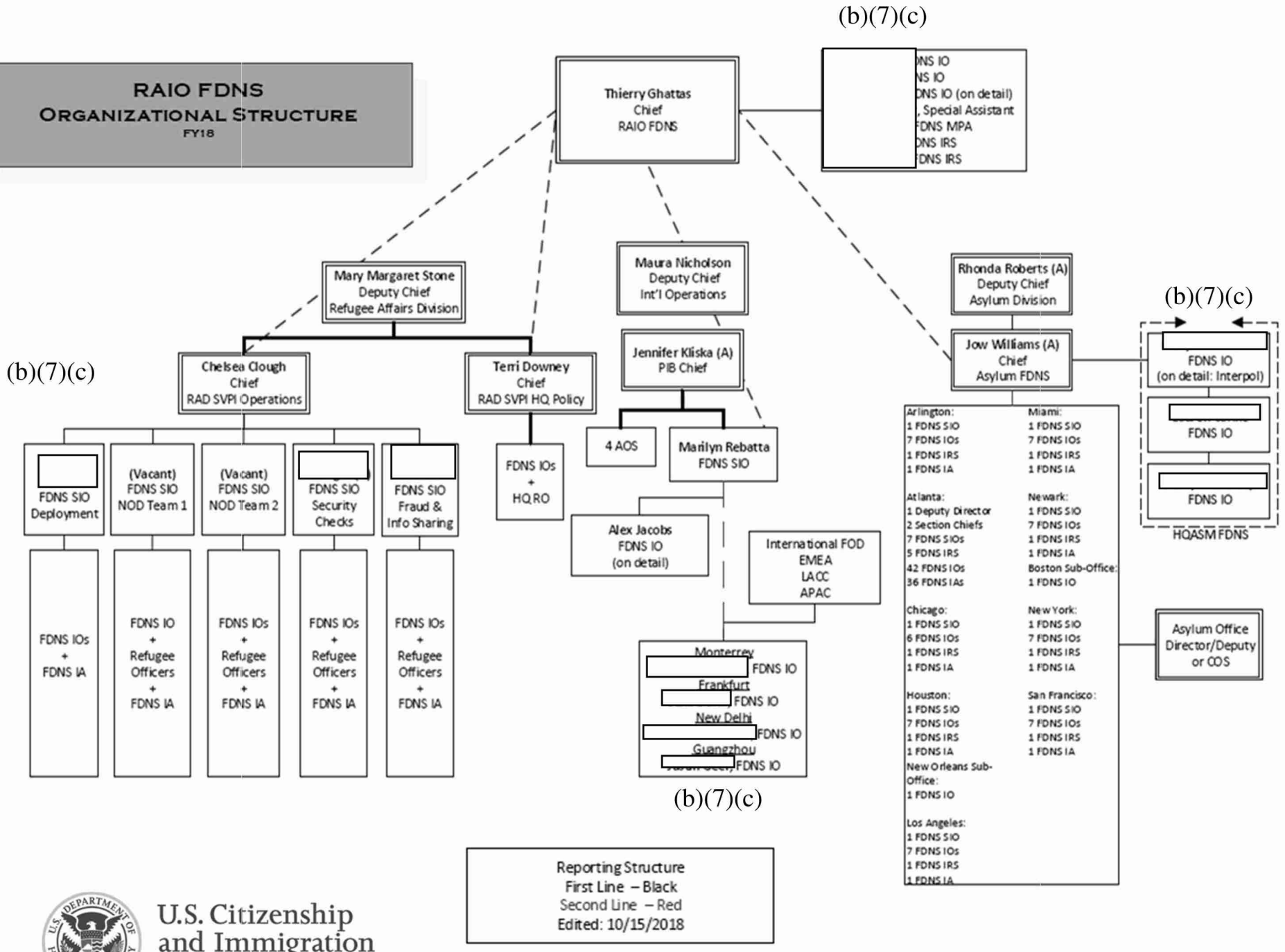
RAIO FDNS
Organizational Structure
FY18



U.S. Citizenship and Immigration Services

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FDNS at RAIO – How Does FDNS Support You?

Directorate-Wide

- Administratively investigate:
  - Fraud cases (attorney/preparer fraud, relationship fraud, document fraud, jurisdiction fraud)
  - issues related to Public Safety concerns (gangs, criminal history, INTERPOL).
- Resolve National Security (NS) issues arising out of applicant testimony and security checks.
- Liaison with law enforcement agencies including the FBI, Department of State Diplomatic Security Service, and local law enforcement agencies among others
- Conduct additional research and security checks.

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DHS-19-1398-H-000850

FDNS at RAIO – How Does FDNS Support You?

- Pre-screen applications identifying Fraud, National Security and Public Safety (FDNS) issues prior to interview

Division-Specific

Refugee Affairs Division:

- Coordinates and resolves issues related to Inter-Agency Checks and National Security Concerns

Asylum:

- Refer FDNS issues to law enforcement for criminal prosecution of fraud and Public Safety issues

International Operations:

- Conducts overseas investigations, including site visits
- Work closely with the State Department's Fraud Prevention Units (FPU)s
- Identify and deter fraud by providing oversight for DNA collection to confirm claimed relationships

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DHS-19-1398-H-000851

How does the RAIO FDNS Branch support you?

USCIS ECN > RAIO > FDNS
Fraud Detection National Security

(b)(7)(e)



RAIO's Mission: With a highly dedicated and flexible workforce deployed worldwide, RAIO advances U.S. humanitarian interests by providing immigration benefits with integrity and vigilance by leading effective responses to protection needs throughout the world.



AMERICAN OVERSIGHT

DHS-19-1398-H-000852

Training Disclaimer

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

It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in benefit applications before USCIS, in removal proceedings, in litigation with the United States, or in any other form or manner.

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

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DHS-19-1398-H-000853



U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

DHS-19-1398-H-000854



Fraud in RAIO Adjudications

Regina Garza
Immigration Officer, RAIO FDNS

RAIO Combined Training
April 2019

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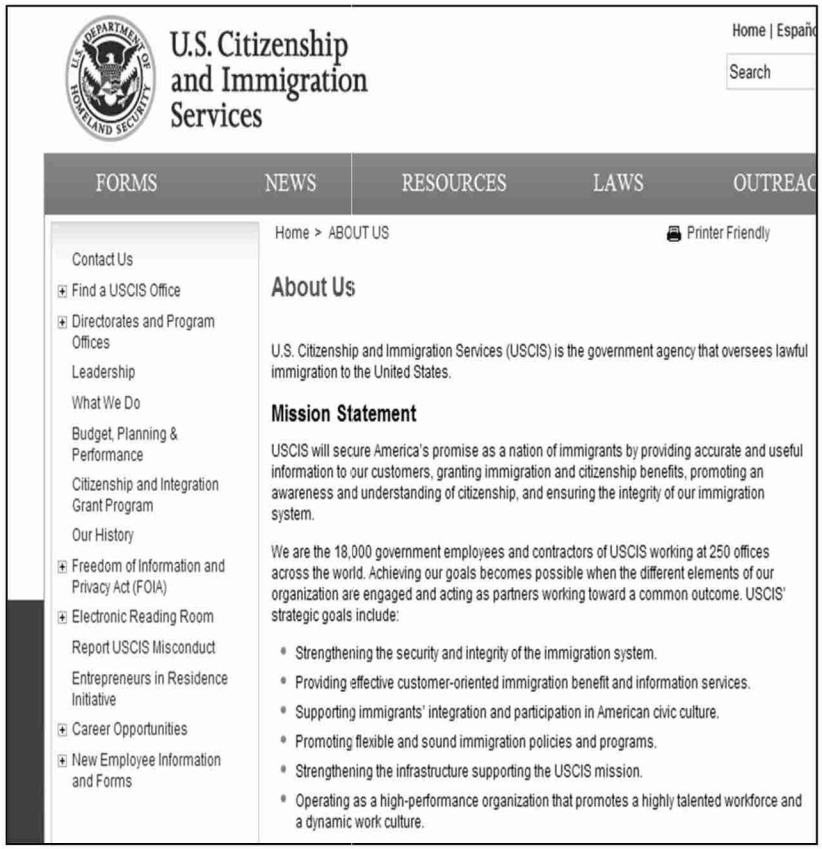
Learning Objectives

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

AMERICAN OVERSIGHT

DHS-19-1398-H-000856

Fraud Prevention at USCIS



USCIS Mission Statement:

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

U.S. Citizenship and Immigration Services

AMERICAN OVERSIGHT

Fraud Prevention at USCIS

SOURCE OF AUTHORITY

INA § 212(a)(6)(C)(i)

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

INA § 274C

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

AMERICAN OVERSIGHT

DHS-19-1398-H-000858

Willful Misrepresentation of a Material Fact

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

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

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

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

AMERICAN OVERSIGHT

DHS-19-1398-H-000859

"Fraud" defined

The misrepresentation or concealment must be made:

1. without belief in its truth (knowingly) and
2. in order to procure an immigration-related benefit for which the alien is or was not otherwise qualified.

To sustain a charge of fraud, the statement or act must also have the following two elements:

- an ***intent*** to deceive a government official, and
- a government official must have ***believed and acted upon*** the false representation.

Matter of G-G-, 7 I&N Dec. 161 (BIA 1956)

AMERICAN OVERSIGHT

DHS-19-1398-H-000860

Inconsistencies in the Record

- Potential fraud indicators may be based on inconsistencies in the record or responses during interview
  - Consistent written and oral testimony?
  - Consistent with known country conditions?
  - Consistent with other immigration benefit history?

- A Petitioner or applicant must resolve any inconsistencies in the record that are material to eligibility for the requested benefit with independent objective evidence.

  -*Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)

- It is possible for a record to have an inconsistency that is not material to the requested benefit.

AMERICAN OVERSIGHT

DHS-19-1398-H-000861

Potential Perpetrators of Fraud

Direct Recipients of Benefit

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

Immigration Service Provider (ISP)

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

AMERICAN OVERSIGHT

DHS-19-1398-H-000862

Potential Types of Fraud in RAIO Adjudications

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AMERICAN OVERSIGHT

DHS-19-1398-H-000863

Access Fraud

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

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Document Fraud

1.

2.

3.

(b)(7)(e)

All three types of Document Fraud can be present in identity fraud, persecution claim fraud, boilerplate fraud, visa fraud and others

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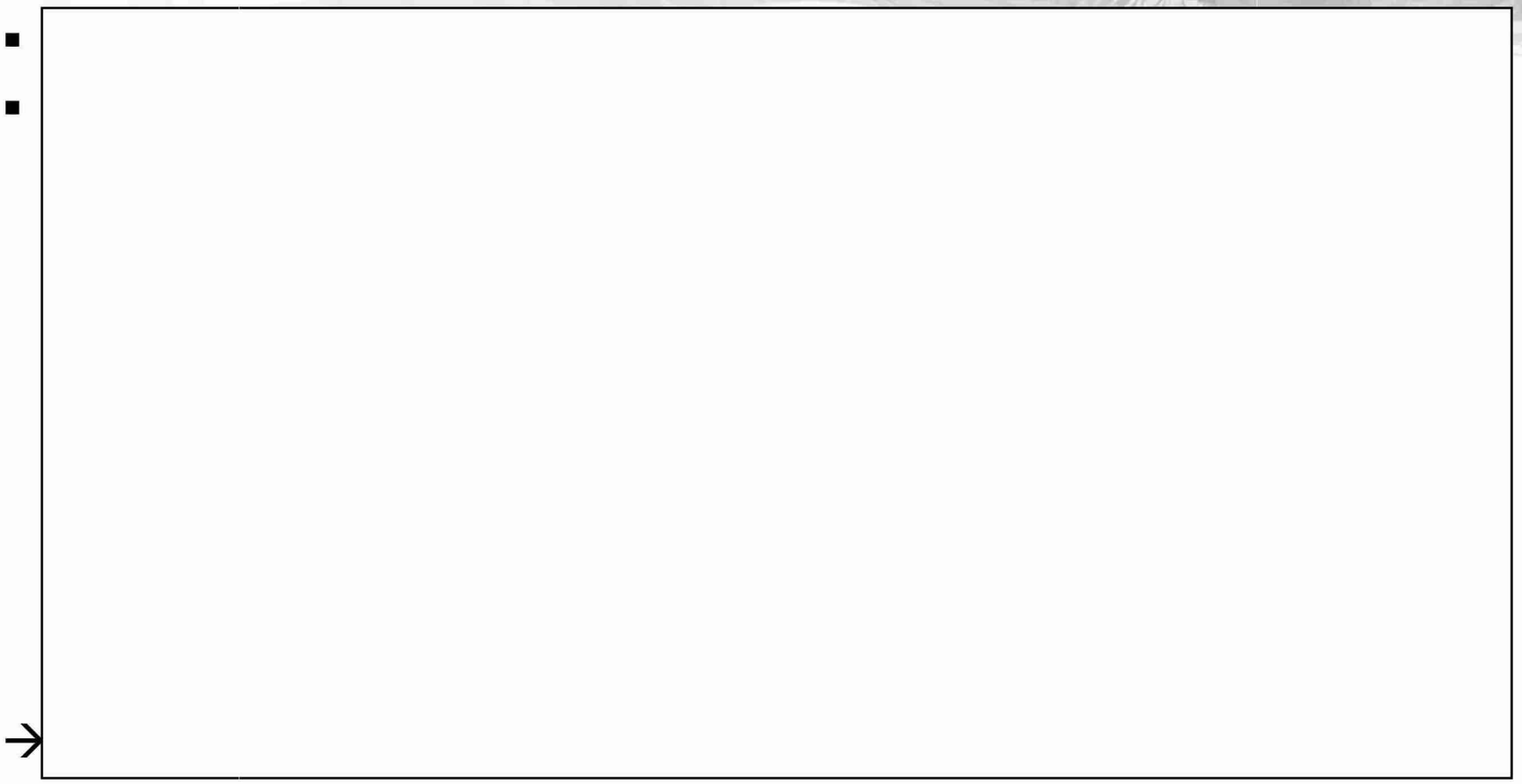
Document & Relationship Fraud

-
-



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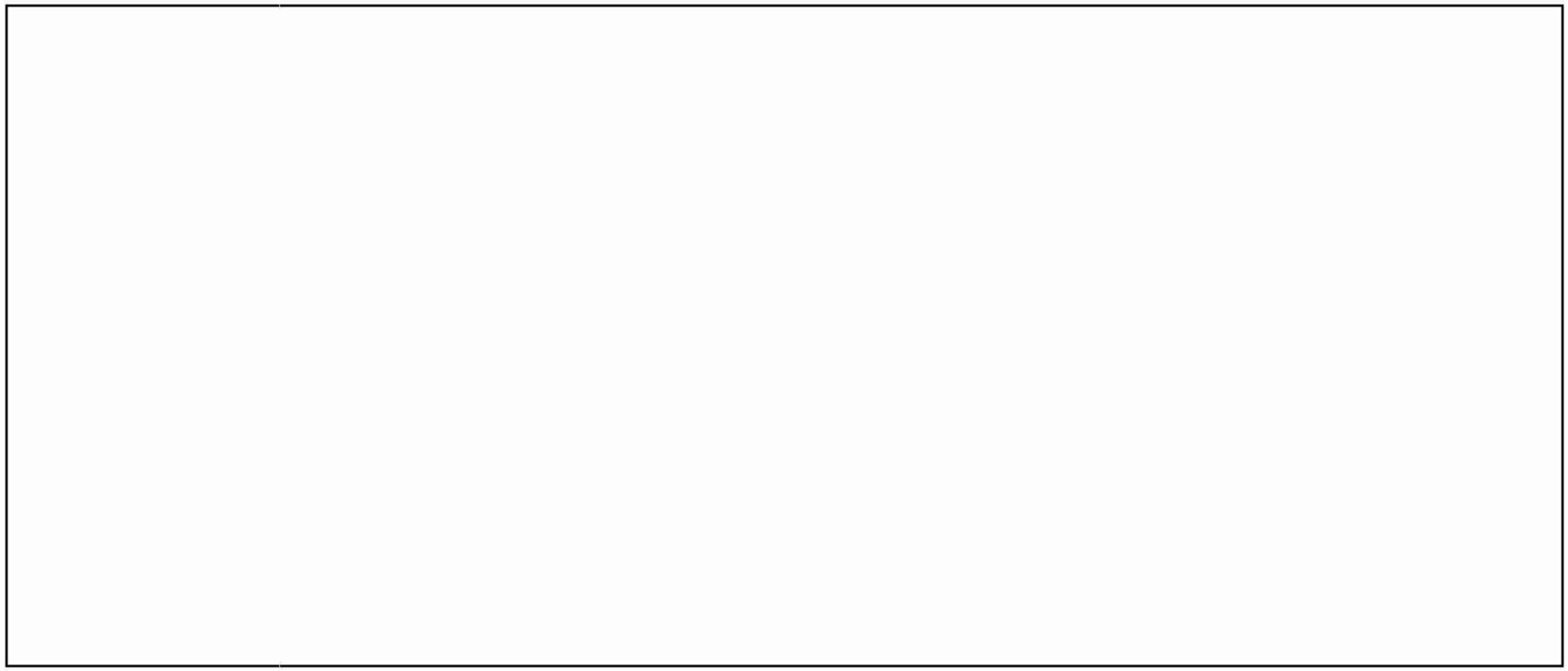
Double Dippers: Multiple Claims & Identities



(b)(7)(e)

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Boilerplate Claims

Common language (similar or the same events **or** phrases) used in the claims/applications of two or more unrelated applicants

Compare with:

- In Refugee Processing, it is the *lack* of similarities in events attested to by family members which could pose a potential red flag.

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DHS-19-1398-H-000868

Atty / Preparer / Interpreter Fraud

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(b)(7)(e)

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Visa Fraud

(b)(7)(e)

U.S. Citizenship and Immigration Services

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What are Fraud Indicators?

Potential fraud indicators will vary from case to case:

- Some indicators are direct and specific signs of fraud
- Some indicators are circumstantial facts that 'just don't add up' and require additional examination to evaluate fraud
- Evidence of these indicators alone is not proof of fraud although may give rise to additional lines of questioning to evaluate credibility

Is it MATERIAL?

AMERICAN OVERSIGHT

DHS-19-1398-H-000871

Where are Potential Fraud Indicators Found?

Potential fraud indicators may be found:

- [redacted]

(b)(7)(e)

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Adjudicator's Role

Ask Open Ended Questions

Take Detailed Notes

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

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DHS-19-1398-H-000873

Case Exercise

Every person has ONE piece of an asylum file. Please review your document to evaluate:

1. General summary of the document.
2. Whether there are any indicators of fraud.
   - Knowing misrepresentation
   - Material fact

AMERICAN OVERSIGHT

DHS-19-1398-H-000874

FCC Information Sharing: Biometrics

From: [redacted] (b)(7)(c)
Sent: Tuesday, January 15, 2013 2:15 PM
To: [redacted] (b)(7)(c)
Cc: [redacted]
Subject: UK biometrics match with ZAR applicant [redacted] (b)(7)(c) (b)(7)(e)

[redacted]

Thank you,

[redacted] (b)(7)(c)
USCIS/RAIO/Asylum Operations
Tele: [redacted]

FOR OFFICIAL USE ONLY
LAW ENFORCEMENT SENSITIVE

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FCC Biometric Result



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

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DHS-19-1398-H-000876

Biometric Result: What we Learned

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

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FCC: Request for more information

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

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HSI Investigation: "How did you find me?"

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

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

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PII Recap

- Need to know threshold
- No systems checks

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DHS-19-1398-H-000881



Fraud Referral Process

U.S. Citizenship and Immigration Services

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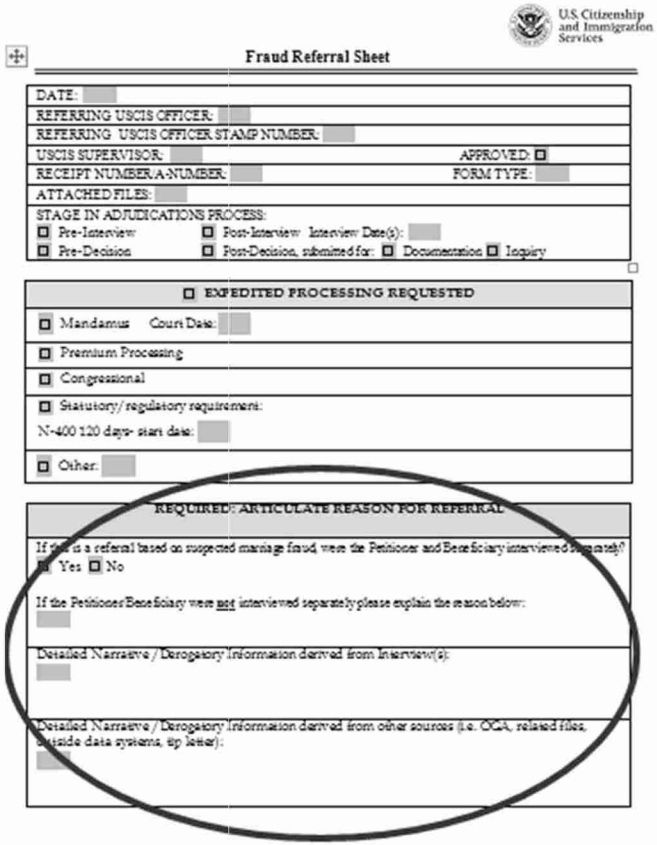
What is a Fraud Referral Sheet?



U.S. Citizenship and Immigration Services

Fraud Referral Sheet

DATE:
REFERRING USCIS OFFICER:
REFERRING USCIS OFFICER STAMP NUMBER:
USCIS SUPERVISOR: APPROVED: ☐
RECEIPT NUMBER/A-NUMBER: FORM TYPE:
ATTACHED FILES:
STAGE IN ADJUDICATIONS PROCESS:
☐ Pre-Interview ☐ Post-Interview Interview Date(s):
☐ Pre-Decision ☐ Post-Decision, submitted for: ☐ Documentation ☐ Inquiry

☐ EXPEDITED PROCESSING REQUESTED

☐ Mandamus Court Date:
☐ Premium Processing
☐ Congressional
☐ Statutory/regulatory requirements:
N-400 120 days- start date:
☐ Other:

REQUIRED: ARTICULATE REASON FOR REFERRAL

If this is a referral based on suspected marriage fraud, were the Petitioner and Beneficiary interviewed separately?
☐ Yes ☐ No

If the Petitioner/Beneficiary were not interviewed separately please explain the reason below:

Detailed Narrative / Derogatory Information derived from Interview(s):

Detailed Narrative / Derogatory Information derived from other sources (i.e. OGA, related files, outside data systems, tip letter):

- **Fraud Referral Sheet** is a document for adjudicator to articulate and document relevant information needed to initiate a fraud investigation request
- Provide **brief, but detailed summary** of fraud concern
- Identify specific info for further FDNS research
  - Answer WHO is involved in fraud, WHY issue is material, WHAT made you suspect fraud
- Offer reason/timetable for expedited processing requests

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When Should I Submit FRS?

- FRS can be submitted at any stage of the adjudicative process when fraud is suspected/ discovered

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DHS-19-1398-H-000884

Administrative Investigation

In response to the Fraud Referral, the FDNS Officer will conduct an administrative investigation.

- **Principal objective:** Produce additional information to aid in an eligibility determination for an adjudication.
- Administrative process may include:
  - ✓ Forensic laboratory examination
  - ✓ Overseas Verification
  - ✓ Referral to Disciplinary Counsel
- Administrative investigation may also lead to a criminal investigation by a law enforcement partner
- FDNS Officers will return a Statement of Findings (SOF) for use by the adjudicating officer.

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Overseas Verification

How are Overseas Verifications useful?

- Can produce otherwise unavailable evidence that
  - for an adjudicator – assists in determining the bona fides of an application or petition for immigration benefits
  - for FDNS Immigration Officer (IO) - may be of importance in developing a lead or case

Who conducts overseas verifications?

- FDNS Immigration Officers posted overseas
- USCIS Immigration Services Officers posted overseas
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- Department of State Consular Officers
- Department of State LES

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Questions?

Feedback Reminder:

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

Thank you!
Chief, RAIO FDNS

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DHS-19-1398-H-000887

About this Presentation

- Author: RAIO FDNS
- Date of last revision and clearance by OCC: April 30, 2018. This presentation is current only as of the date of last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
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Fraud in RAIO Adjudications

Regina Garza
Immigration Officer, RAIO FDNS

RAIO Combined Training
April 2019

Unclassified // ~~FOUO (For Official Use Only)~~

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Learning Objectives

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

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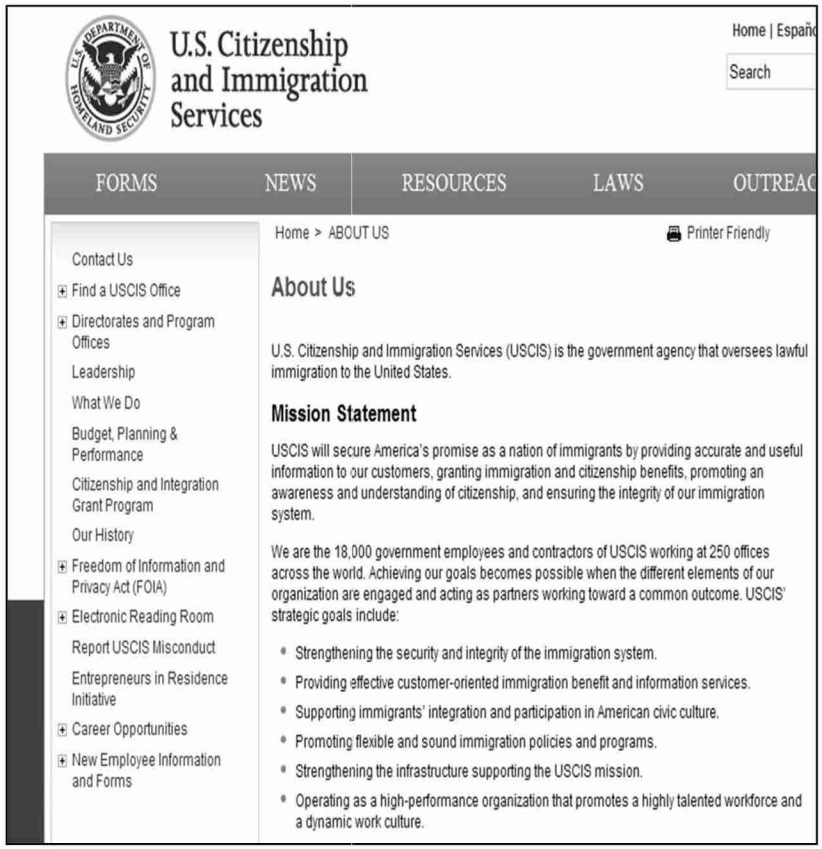
Fraud Prevention at USCIS



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U.S. Citizenship and Immigration Services

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Fraud Prevention at USCIS

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Willful Misrepresentation of a Material Fact

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Matter of G-G-, 7 I&N Dec. 161 (BIA 1956)

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DHS-19-1398-H-000897

Inconsistencies in the Record

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  - Consistent written and oral testimony?
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- It is possible for a record to have an inconsistency that is not material to the requested benefit.

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Potential Perpetrators of Fraud

Direct Recipients of Benefit

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

Immigration Service Provider (ISP)

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

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Potential Types of Fraud in RAIO Adjudications

- [redacted]

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U.S. Citizenship and Immigration Services

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Access Fraud

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

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Document Fraud

(b)(7)(e)

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Document & Relationship Fraud

(b)(7)(e)

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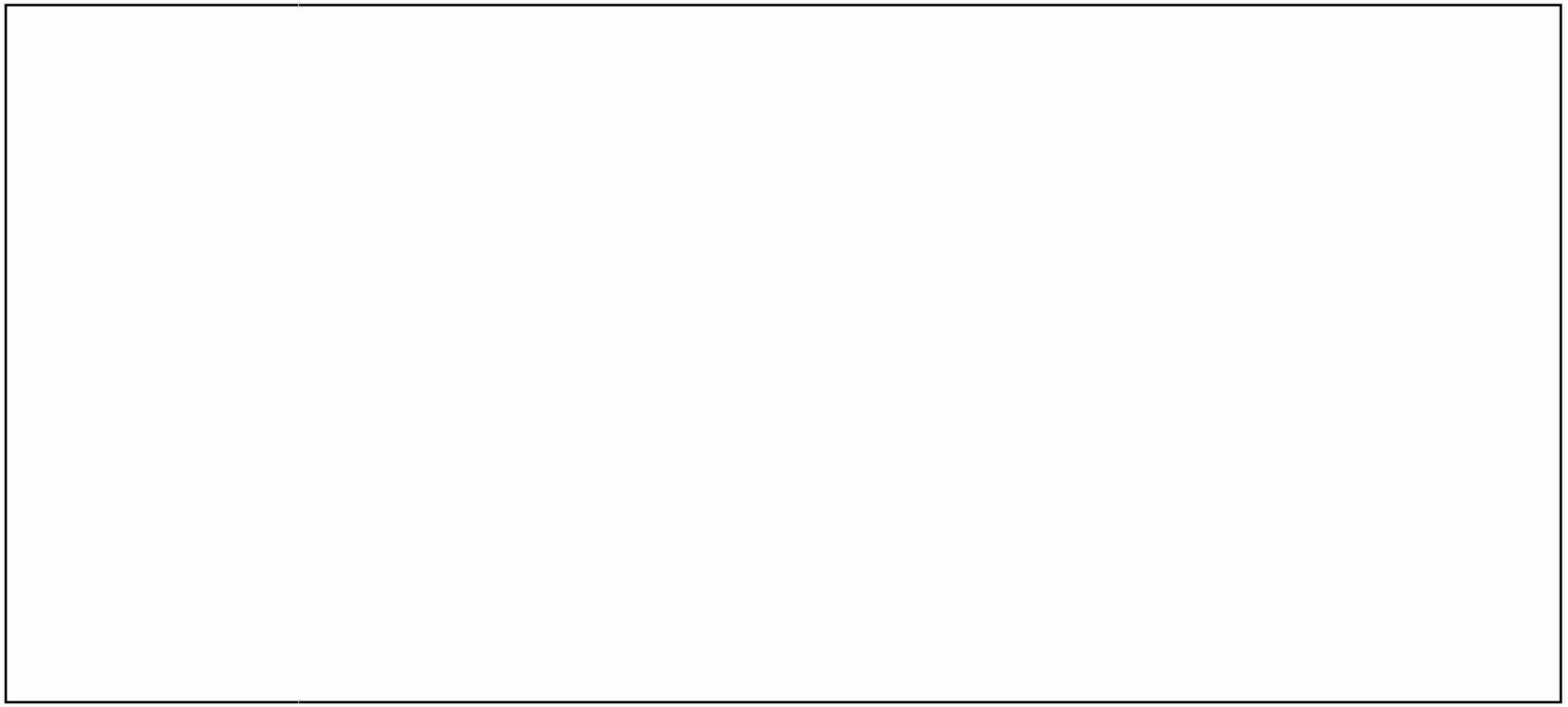
Double Dippers: Multiple Claims & Identities



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Boilerplate Claims

Common language (similar or the same events **or** phrases) used in the claims/applications of two or more unrelated applicants

Compare with:

- In Refugee Processing, it is the *lack* of similarities in events attested to by family members which could pose a potential red flag.

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Atty / Preparer / Interpreter Fraud

- [redacted]

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Visa Fraud

May involve:

1.
2.

(b)(7)(e)

How to spot:

-
-

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What are Fraud Indicators?

Potential fraud indicators will vary from case to case:

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Is it MATERIAL?

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Where are Potential Fraud Indicators Found?

Potential fraud indicators may be found:

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U.S. Citizenship and Immigration Services

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Adjudicator's Role

Ask Open Ended Questions

Take Detailed Notes

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- Ask about the filing history of the application – receive any assistance? Pay any fees?

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Case Exercise

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DHS-19-1398-H-000911



Fraud Referral Process

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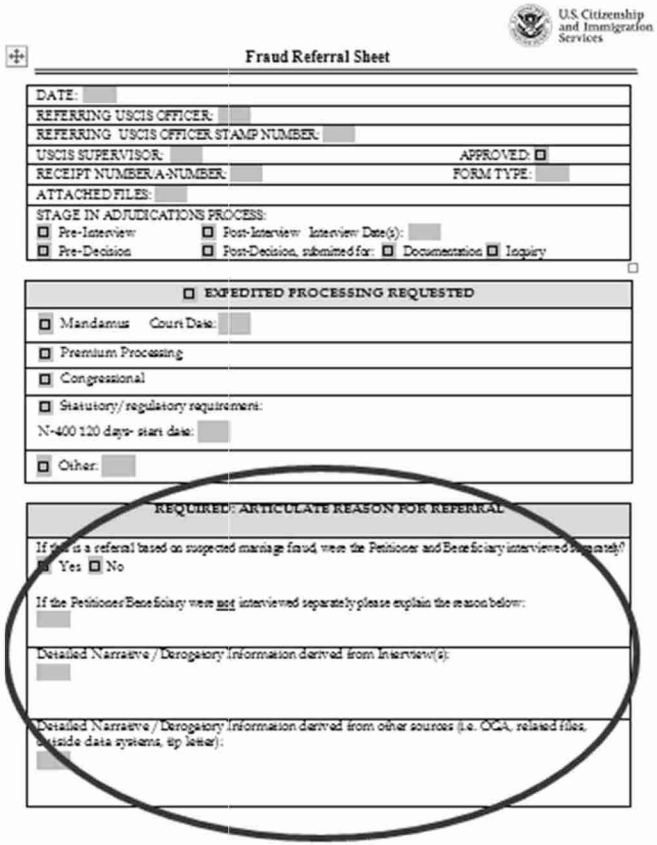
What is a Fraud Referral Sheet?



U.S. Citizenship and Immigration Services

Fraud Referral Sheet

DATE:
REFERRING USCIS OFFICER:
REFERRING USCIS OFFICER STAMP NUMBER:
USCIS SUPERVISOR: APPROVED: ☐
RECEIPT NUMBER/A-NUMBER: FORM TYPE:
ATTACHED FILES:
STAGE IN ADJUDICATIONS PROCESS:
☐ Pre-Interview ☐ Post-Interview Interview Date(s):
☐ Pre-Decision ☐ Post-Decision, submitted for: ☐ Documentation ☐ Inquiry

☐ EXPEDITED PROCESSING REQUESTED

☐ Mandamus Court Date:
☐ Premium Processing
☐ Congressional
☐ Statutory/regulatory requirements:
N-400 120 days- start date:
☐ Other:

REQUIRED: ARTICULATE REASON FOR REFERRAL

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☐ Yes ☐ No

If the Petitioner/Beneficiary were not interviewed separately please explain the reason below:

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U.S. Citizenship and Immigration Services

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When Should I Submit FRS?

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In response to the Fraud Referral, the FDNS will conduct an administrative investigation.

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  - ✓ Overseas Verification
  - ✓ Referral to Disciplinary Counsel
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Overseas Verification

How are Overseas Verifications useful?

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  - for FDNS Immigration Officer (IO) - may be of importance in developing a lead or case

Who conducts overseas verifications?

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- USCIS Locally Employed Staff (LES)
- Department of State Consular Officers
- Department of State LES

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Questions?

Feedback Reminder:

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

Thank you!
RAIO FDNS

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DHS-19-1398-H-000920



U.S. Citizenship and Immigration Services

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DHS-19-1398-H-000921

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.

AMERICAN OVERSIGHT

FDNS Contact by Facility

Detention Facility	FDNS Office	Office Email
Adelanto	ZLA FDNS	
Eloy/ Florence	ZAR FDNS	
El Paso	ZAR FDNS	
San Diego	ZAR FDNS	
Cibola	ZAR FDNS	
Karnes	ZHN FDNS	

(b)(7)(c)

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

FRAUD DETECTION AND NATIONAL SECURITY IN THE APSO CONTEXT

AMERICAN OVERSIGHT

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USCIS: Fraud Detection & National Security

U.S. Citizenship and Immigration Services

FDNS was created in 2004, with the mission to strengthen USCIS' efforts *to protect national security and the integrity of the immigration system* by:

- Identifying threats to national security and public safety posed by individuals seeking an immigration benefit,
- Detecting and deterring immigration benefit fraud,
- Identifying and removing systematic vulnerabilities in the system, and
- Acting as primary conduit of information sharing and collaboration with other government agencies.

**We are not adjudicators. We are not law enforcement.

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U.S. Citizenship and Immigration Services

1. FDNS and Asylum Overview
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AMERICAN OVERSIGHT

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US Citizenship and Immigration Services

U.S. Citizenship and Immigration Services

7 Directorates:

- Management
- External Affairs
- Immigration Records & Identity Services
- Service Center Operations
- Field Operations
- Refugee, Asylum, and International Operations (RAIO)
- Fraud Detection and National Security (FDNS)

AMERICAN OVERSIGHT

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USCIS Adjudications Directorates

U.S. Citizenship and Immigration Services

Service Center Operations

- Adjudicate applications and petitions for those seeking immigration benefits that do not require in-person processing or interviews
  - Employment Authorization applications, Removal of Conditions for marriage petitions

Field Operations

- Adjudicate applications and petitions for those seeking immigration benefits that require face-to-face interviews
  - Permanent Residency, Naturalization

Refugee, Asylum, and International Operations (RAIO)

- Adjudicate applications and petitions that provide protection, humanitarian, and other immigration benefits and services
  - Asylum, Refugee, Follow to Join, Humanitarian Parole

AMERICAN OVERSIGHT

UNCLASSIFIED / FOR OFFICIAL USE ONLY/ LAW ENFORCEMENT SENSITIVE

Confidentiality

U.S. Citizenship and Immigration Services

Federal Regulations at 8 CFR 208.6: *Generally prohibits disclosure to third parties of information contained in or pertaining to asylum applications except under certain limited circumstances*

Confidentiality is breached when info contained in or pertaining to an asylum application is disclosed to a third party in violation of the regulations, and the unauthorized disclosure is of a nature that allows the third party to link the identity of the applicant to:

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

When can we share asylum information?

- Applicant's written consent
- Elements of the United States Intelligence Community outside the Department in furtherance of those element's authorized intelligence or counterterrorism functions
- Any U.S. government investigation concerning a criminal or civil matter
- Any federal, state or local court in U.S. considering any legal action

AMERICAN OVERSIGHT

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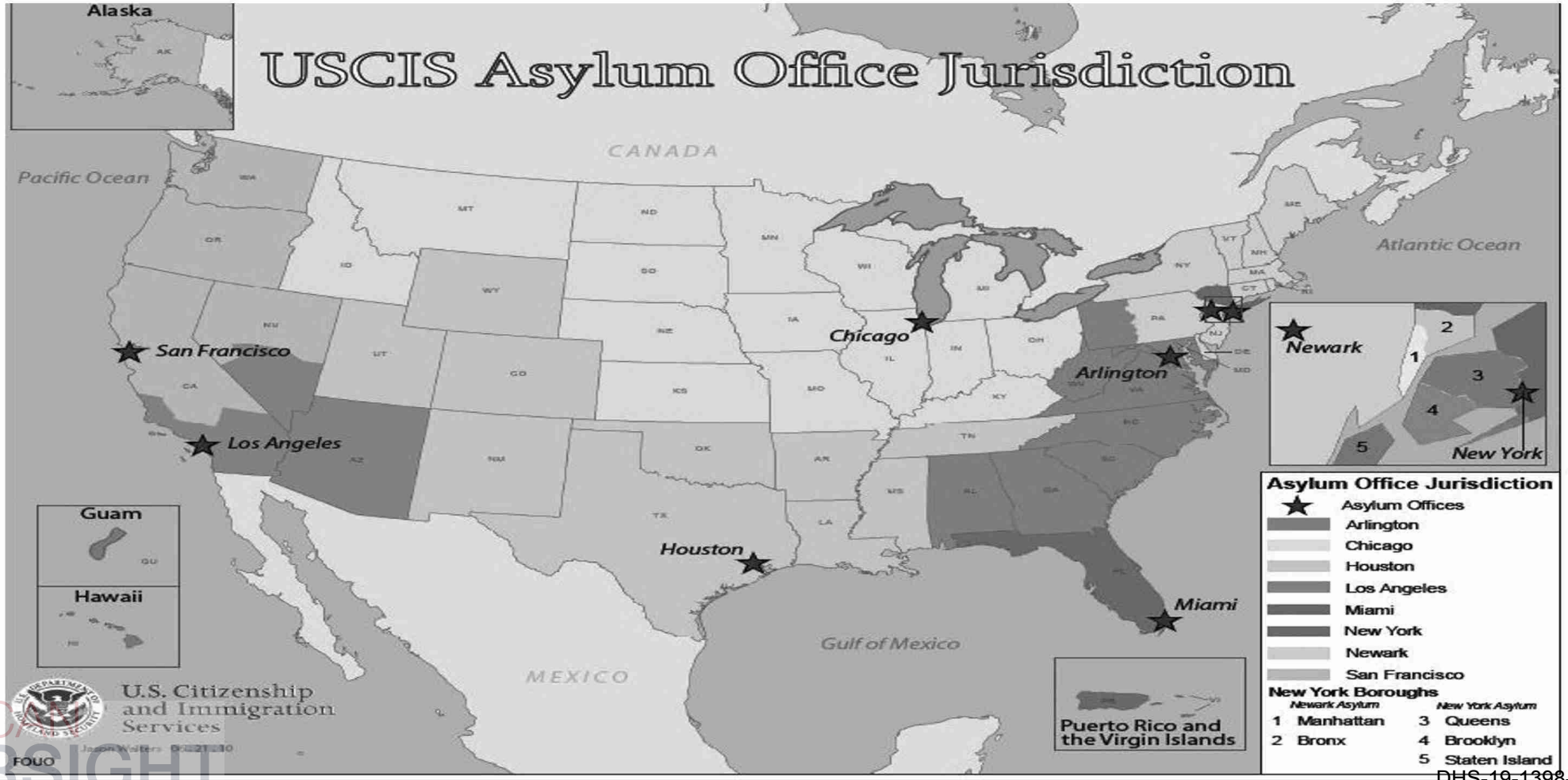
Arlington Asylum (ZAR)

8 Asylum Offices + 2 Sub-offices



AMERICA OVERSIGHT

FDNS in the Asylum Division

U.S. Citizenship and Immigration Services

- Prescreen cases set for interview (affirmative and APSO)
- Work individual national security and public safety cases
- Work individual fraud referrals from AOs
- Investigate tips reported to DHS
- Conduct administrative investigations
- Investigate large-scale fraud schemes
- Collaborate with external partners
- Deconflict hit records to ensure adjudicative activities do not compromise or impede ongoing investigations
- Assist with termination of asylum status
- Provide monthly trainings to the Asylum Corps

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ZAR FDNS

FDNS Staff: 10 IOs, SIO, IRS, Immigration Analyst, Contractor

U.S. Citizenship and Immigration Services

Affirmative

- **National Security:** ~100 open NS cases, mix of pending asylum and asylum termination
- **Egregious Public Safety:** gang members, INTERPOL, HR violators, human trafficking, alien smuggling
- **Fraud:** several large-scale asylum fraud cases at various stages, including two accepted for criminal prosecution. Nationalities include Nigerians, Cameroonians, Mauritanians, Bangladeshis, and Romanians
- **Prescreening:** goal of 100%

APSO

- **NS/EPS/Fraud:** 70-90 FDNS referrals per month from ZAC, spanning 37 detention facilities
- **On-site Support:** monthly TDYs to detention facilities, assisting HSI with investigations
- **Fraud:** active investigations into Indian and Chinese asylum fraud
- **Prescreening:** for targeted cases

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FDNS in APSO

U.S. Citizenship and Immigration Services

Current Actions

- Build relationships w/ ICE and CBP to acquire case intel sooner
- Assist HSI and CBP with ongoing investigations
- Provide information to ICE partners regarding NS, EPS and fraud concerns
- Conduct collateral interviews to asylum APSO interviews to collect targeted information
- Track cases through immigration court
- Increase collaboration with ICE OPLA

Challenges

- Information gaps
- Time constraints

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U.S. Citizenship and Immigration Services

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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

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Public Safety Cases – FDNS Actions

U.S. Citizenship and Immigration Services

- EPS POC
- If concern identified prior to interview, relay information to Adjudications and assist the Asylum Officer with interview preparation
- If concern identified during or after interview, can request re-interview to elicit further testimony
- Create a Referral to ICE (RTI)
- Will relay pertinent info to ICE ERO and ICE OPLA

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National Security (NS) 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

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Area of National Security Concern Include:	Section of the INA
Espionage	§212(a)(3)(A), and §237(a)(4)(A)
Sabotage	
Exporting sensitive goods, technology, or information, or any other kind of criminal behavior that endangers the National Security of the U.S.	
Overthrowing the U.S. government by force or violence	
Hijacking or sabotaging transportation	§212(a)(3)(B), and §237(a)(4)(B)
Hostage-taking	
Attack or assassination of any government official (U.S. or any other government)	
Using biological, chemical, or nuclear weapons	
Using other weapons to harm people or cause damage (other than for personal monetary gain)	
Persons or groups the Secretaries of State and/or Homeland Security have found to be engaged in terrorist activity or associated with a terrorist organization.	§212(a)(3)(B), (a)(3)(F), and §237(a)(4)(B)

AMERICAN OVERSIGHT

What to Look For: NS Indicators in Testimony

U.S. Citizenship and Immigration Services

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Sources of NS Concerns

U.S. Citizenship and Immigration Services

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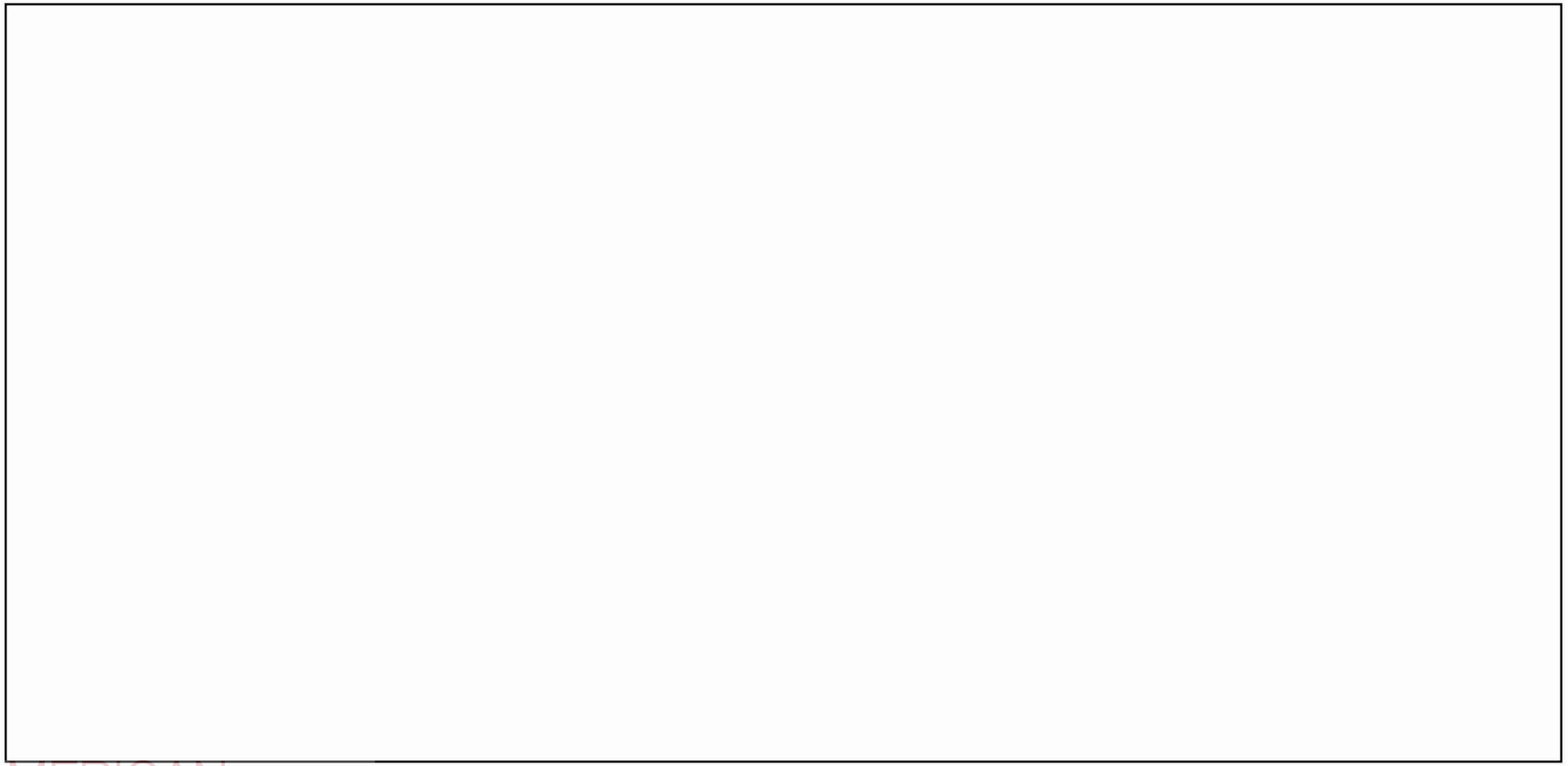

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Asylum Security Checks

U.S. Citizenship and Immigration Services

(b)(7)(e)

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NS Concerns - FDNS Actions

U.S. Citizenship and Immigration Services

(b)(7)(e)

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Example: SIAs from Yemen and Somalia

(b)(7)(e)

U.S. Citizenship and Immigration Services

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U.S. Citizenship and Immigration Services

1. • FDNS and Asylum Overview
2. • Egregious Public Safety (EPS) in APSO
3. • National Security (NS) in APSO
4. • **Fraud in APSO**

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Indian Nationals (also PK, AF, BG, NP, SY)

U.S. Citizenship and Immigration Services

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

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Chinese Nationals

U.S. Citizenship and Immigration Services

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

AMERICAN OVERSIGHT

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Chinese Nationals

U.S. Citizenship and Immigration Services

(b)(7)(e)

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1_Interview Answers

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

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Northern Triangle and Mexico

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

U.S. Citizenship and Immigration Services

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Operation Closed Gates

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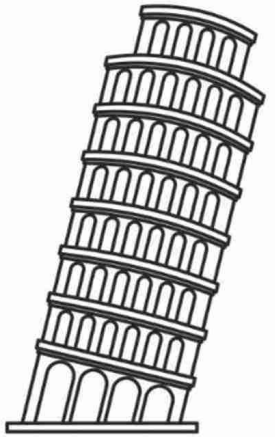
U.S. Citizenship and Immigration Services



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Romanians

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

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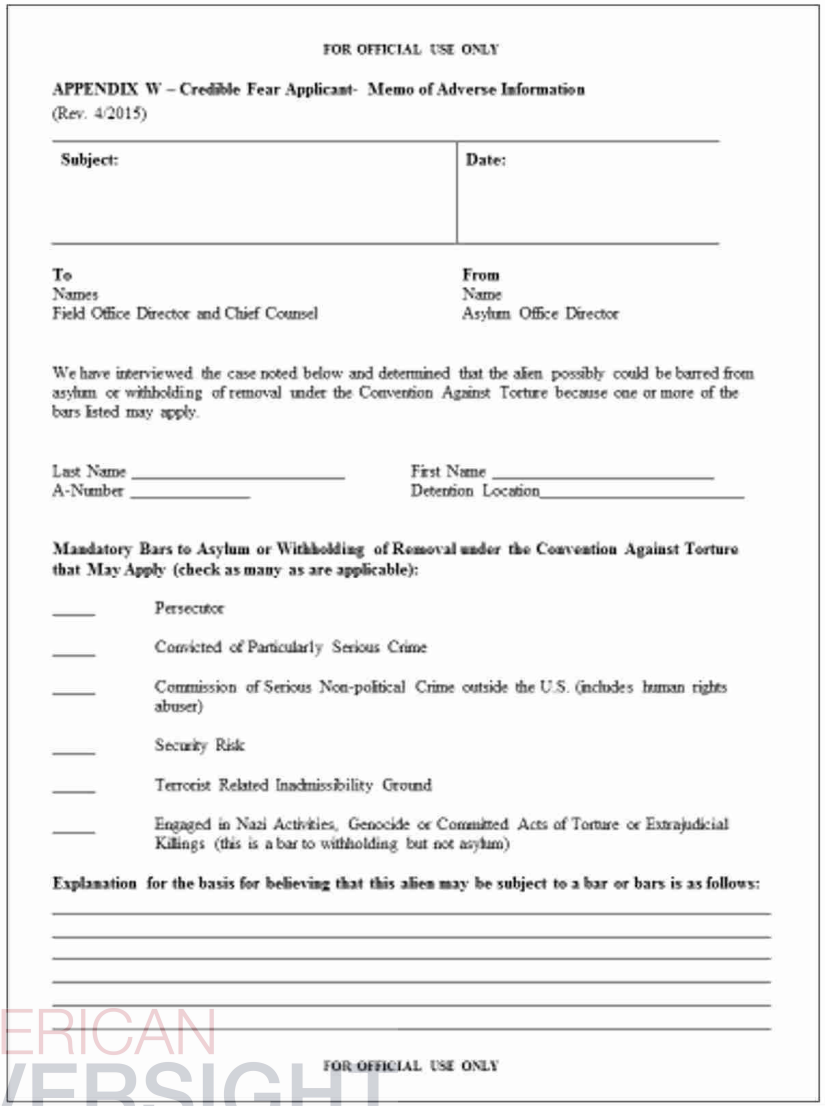
MEMO OF ADVERSE INFORMATION



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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:

- A detailed explanation for the basis for believing that the alien may be subject to a bar
- An explanation of how the possible bar was discovered (for example, through testimony or security check)

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What to Include in a Memo of Adverse Information

U.S. Citizenship and Immigration Services

AO **must articulate** the Fraud, Egregious Public Safety, or National Security related ground for the FDNS referral.

NS Sample: (b)(7)(e)

- EPS Sample:

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U.S. Citizenship and Immigration Services

FDNS – ZAR

[redacted]

Immigration Officer [redacted]

[redacted] (b)(7)(c)

Supervisory Immigration Officer [redacted]

[redacted]

AMERICAN OVERSIGHT

U.S. Citizenship and Immigration Services

FRAUD DETECTION AND NATIONAL SECURITY IN THE APSO CONTEXT

AMERICAN OVERSIGHT

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USCIS: Fraud Detection & National Security

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U.S. Citizenship and Immigration Services

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AMERICAN OVERSIGHT

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US Citizenship and Immigration Services

U.S. Citizenship and Immigration Services

7 Directorates:

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- Refugee, Asylum, and International Operations (RAIO)
- Fraud Detection and National Security (FDNS)

AMERICAN OVERSIGHT

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U.S. Citizenship and Immigration Services

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AMERICAN OVERSIGHT

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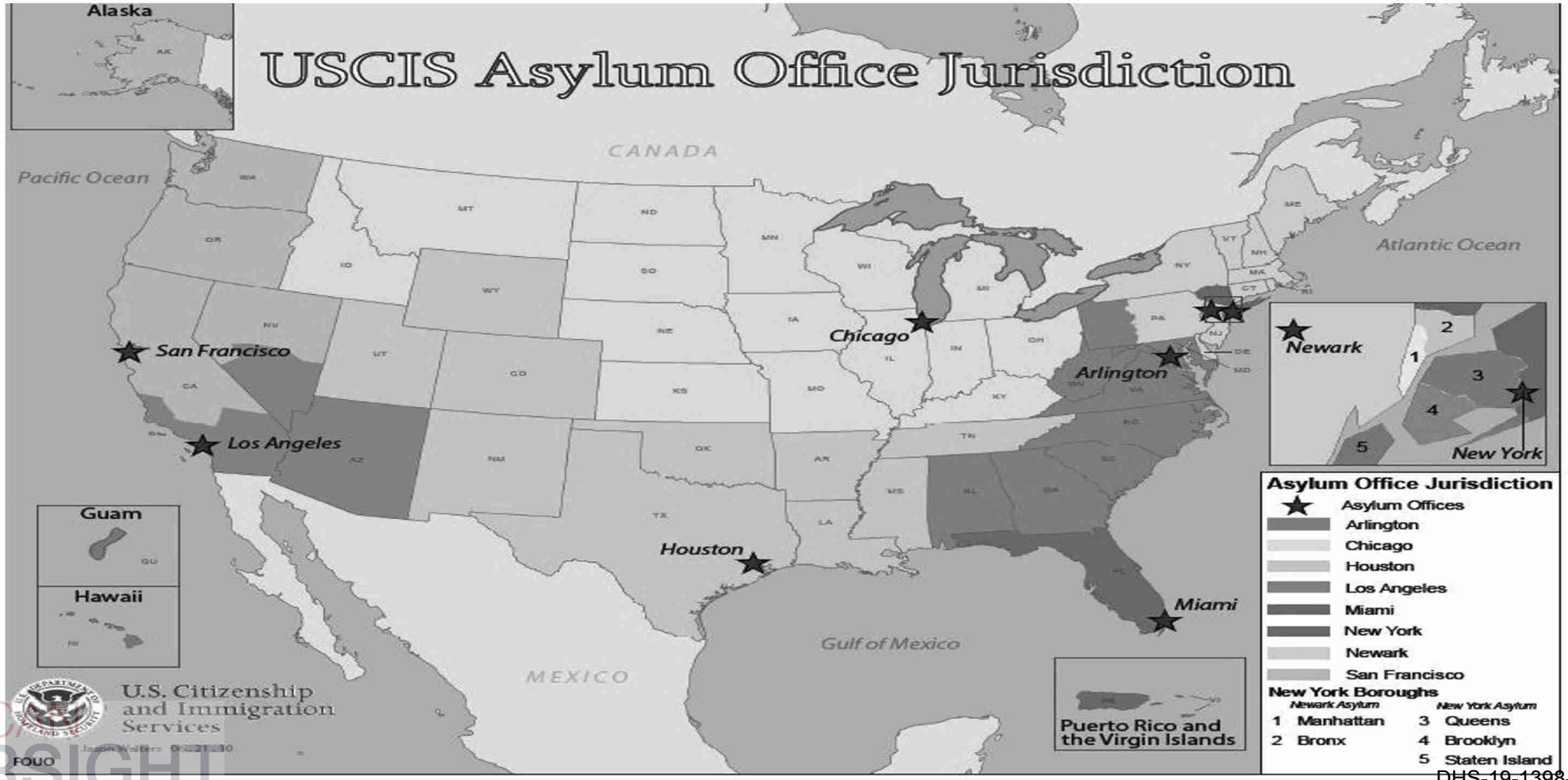
Arlington Asylum (ZAR)

U.S. Citizenship and Immigration Services

8 Asylum Offices + 2 Sub-offices



AMERICA OVERSIGHT

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FDNS in the Asylum Division

U.S. Citizenship and Immigration Services

- Prescreen cases set for interview (affirmative and APSO)
- Work individual national security and public safety cases
- Work individual fraud referrals from AOs
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- Assist with termination of asylum status
- Provide monthly trainings to the Asylum Corps

AMERICAN OVERSIGHT

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ZAR FDNS

U.S. Citizenship and Immigration Services

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FDNS in APSO

U.S. Citizenship and Immigration Services

Current Actions

- Build relationships w/ ICE and CBP to acquire case intel sooner
- Assist HSI and CBP with ongoing investigations
- Provide information to ICE partners regarding NS, EPS and fraud concerns
- Conduct collateral interviews to asylum APSO interviews to collect targeted information
- Track cases through immigration court
- Increase collaboration with ICE OPLA

Challenges

- Information gaps
- Time constraints

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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

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Public Safety Cases – FDNS Actions

U.S. Citizenship and Immigration Services

- EPS POC
- If concern identified prior to interview, relay information to Adjudications and assist the Asylum Officer with interview preparation
- If concern identified during or after interview, can request re-interview to elicit further testimony
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National Security (NS) 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

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Area of National Security Concern Include:	Section of the INA
Espionage	§212(a)(3)(A), and §237(a)(4)(A)
Sabotage	
Exporting sensitive goods, technology, or information, or any other kind of criminal behavior that endangers the National Security of the U.S.	
Overthrowing the U.S. government by force or violence	
Hijacking or sabotaging transportation	§212(a)(3)(B), and §237(a)(4)(B)
Hostage-taking	
Attack or assassination of any government official (U.S. or any other government)	
Using biological, chemical, or nuclear weapons	
Using other weapons to harm people or cause damage (other than for personal monetary gain)	
Persons or groups the Secretaries of State and/or Homeland Security have found to be engaged in terrorist activity or associated with a terrorist organization.	§212(a)(3)(B), (a)(3)(F), and §237(a)(4)(B)

AMERICAN OVERSIGHT

What to Look For: NS Indicators in Testimony

(b)(7)(e)

U.S. Citizenship and Immigration Services

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Sources of NS Concerns

U.S. Citizenship and Immigration Services

In Asylum, NS Concerns most commonly come to our attention through (*this is a non-exhaustive list*):

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(b)(7)(e)

AMERICAN OVERSIGHT

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Asylum Security Checks

U.S. Citizenship and Immigration Services

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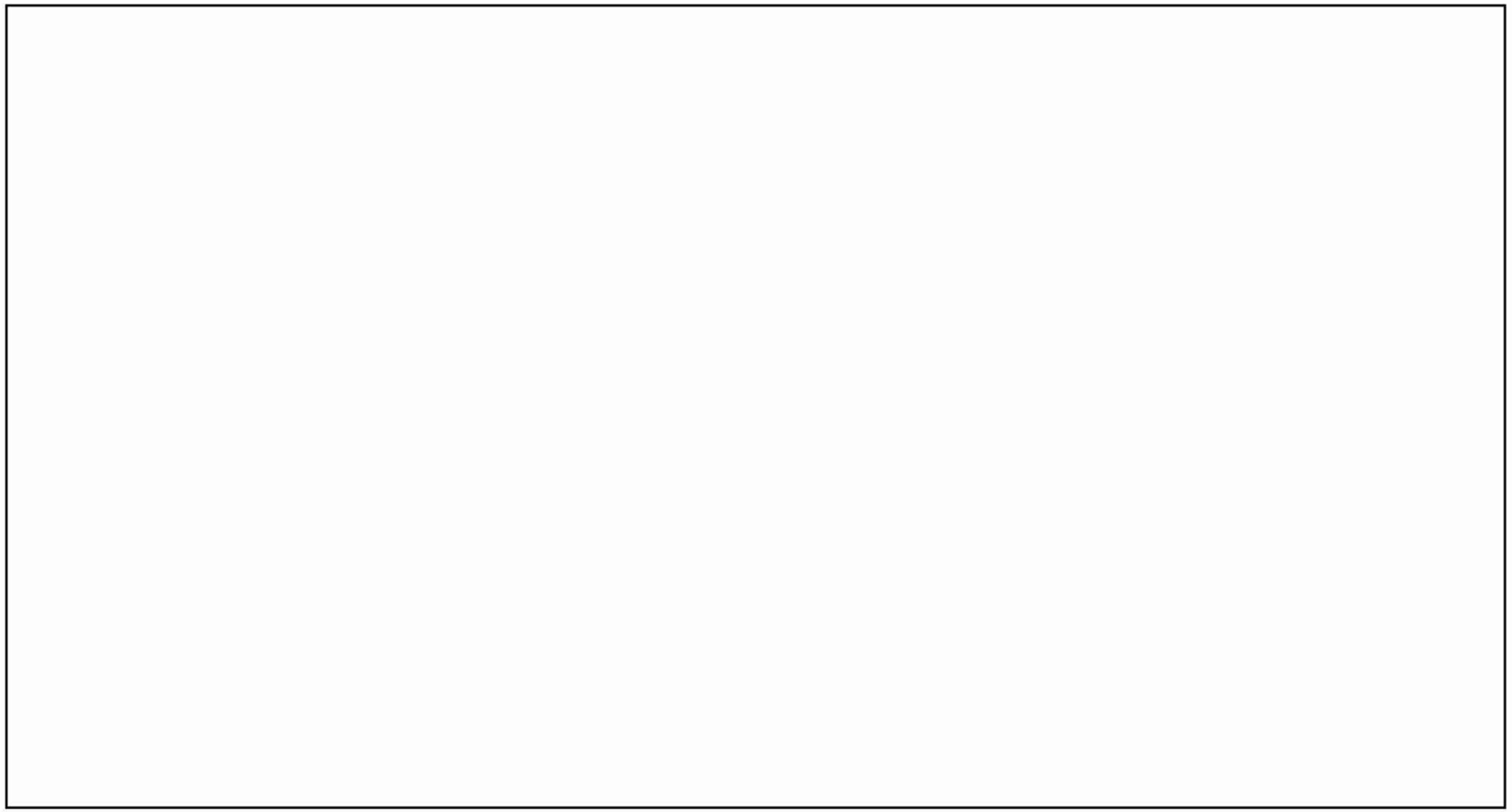

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NS Concerns - FDNS Actions

U.S. Citizenship and Immigration Services

- Concerns present prior to interview:
  - Deconflict, draft pre-screening memo, request assignment to experienced asylum officer
- Concerns identified during or post interview:
  - Run comprehensive security checks and file review, notify LEA partners
  - Can schedule re-interview to elicit additional testimony
  - Flag in FDNS database and for ICE OPLA in Planet

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Example: SIAs from Yemen and Somalia

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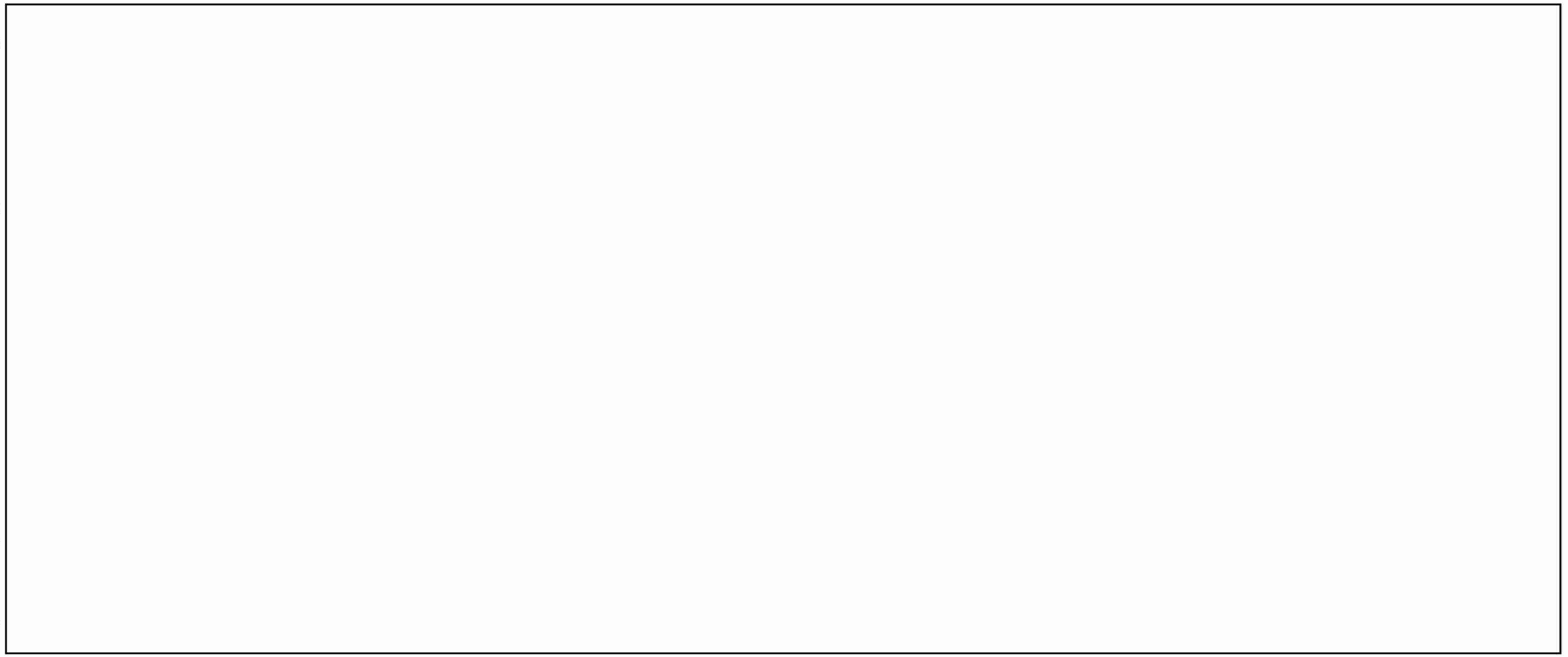

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U.S. Citizenship and Immigration Services

1. • FDNS and Asylum Overview
2. • Egregious Public Safety (EPS) in APSO
3. • National Security (NS) in APSO
4. • **Fraud in APSO**

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Indian Nationals (also PK, AF, BG, NP, SY)

U.S. Citizenship and Immigration Services

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

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Chinese Nationals

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

U.S. Citizenship and Immigration Services

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Chinese Nationals

U.S. Citizenship and Immigration Services

(b)(7)(e)

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1_Interview Answers

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

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Northern Triangle and Mexico

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

U.S. Citizenship and Immigration Services

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Operation Closed Gates

U.S. Citizenship and Immigration Services

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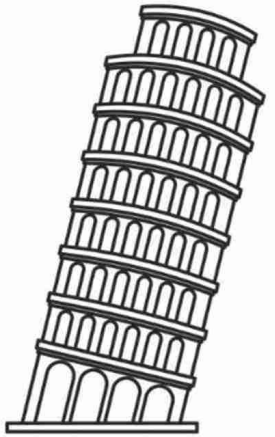

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