

Road Map

- Results from positive Third Country Transit (TCT) Interim Final Rule (IFR) review and trends
- Possession of Protected Characteristic
- Eliciting Testimony for Escape from detention/Cameroon
- Eliciting testimony for Checkpoints
- Interview strategies and how much is enough



Eliciting Testimony for Cameroon Cases

- In February 2020, Asylum QA conducted a review of Cameroonian cases
- QA identified trends (b)(7)(e)
 - Possession of a protected characteristic
 - Escape from detention
 - Escape from the country

This training will focus on strategy on eliciting testimony in these areas



Possession of a Protected Characteristic

- Many Cameroonian cases are political opinion and imputed political opinion cases
- Applicants claim that:
 - they are members of the Southern Cameroons National Council (SCNC) or other related group/they are organizers of a rally/protest
 - they attended a rally/protest
 - they are accused of being a separatist (imputed political opinion)
- **Remember that where such cases are TCT-barred, the applicant is screened under the reasonable possibility standard**



Political Opinion - Example #1



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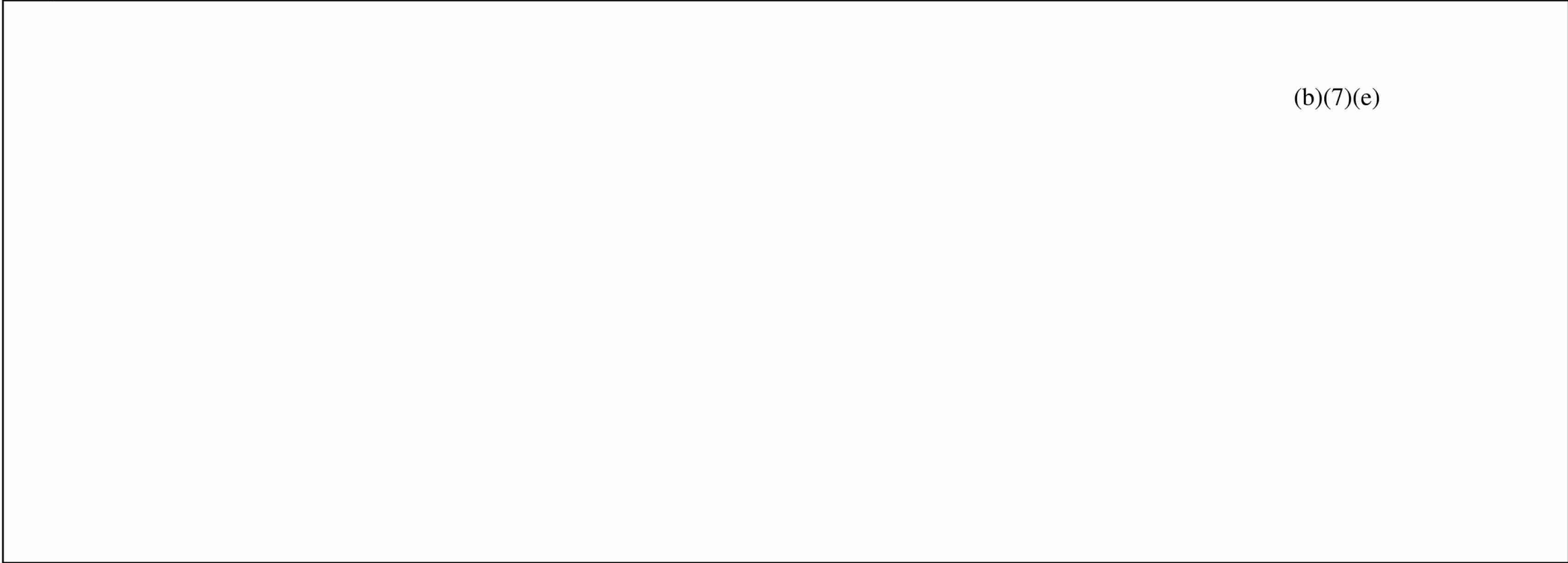
Foundational Questions

- Many follow-up questions can also be used as foundational questions to help determine whether an applicant is credible and can meet their burden to establish possession or imputation of a protected characteristic.
- Note that these questions ask for **concrete** and **specific** information.
 - Did you have other roles in the SCNC?
 - How often did you pass out flyers in your neighborhood?
 - Did you pass out flyers anywhere else?
 - What was the purpose of passing out flyers?
 - Did you have a schedule?

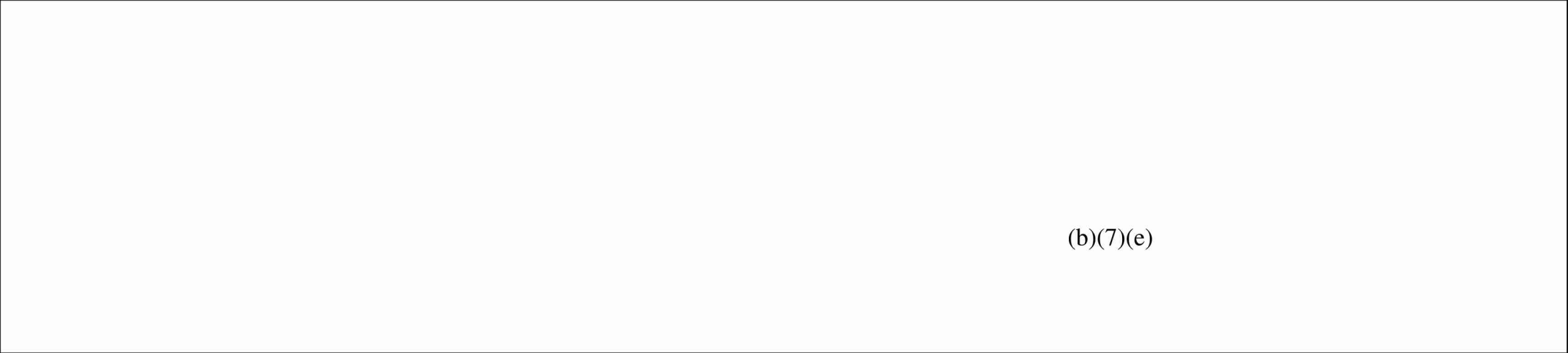


Sample Questions

- These questions are follow-up questions. Note that these questions require the applicant to **explain**.



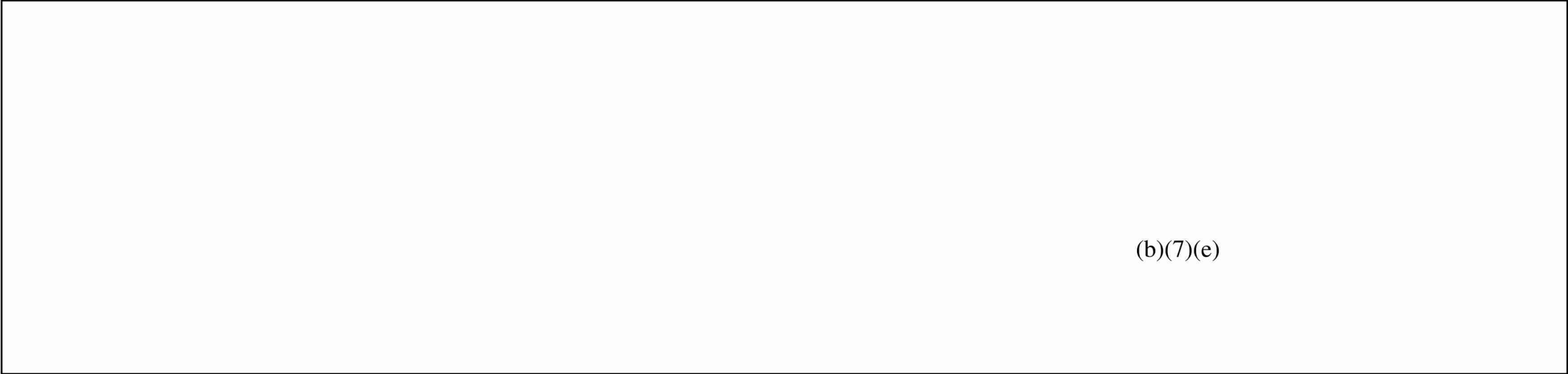
Political Opinion – Example #2



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Imputed Political Opinion – Example #3

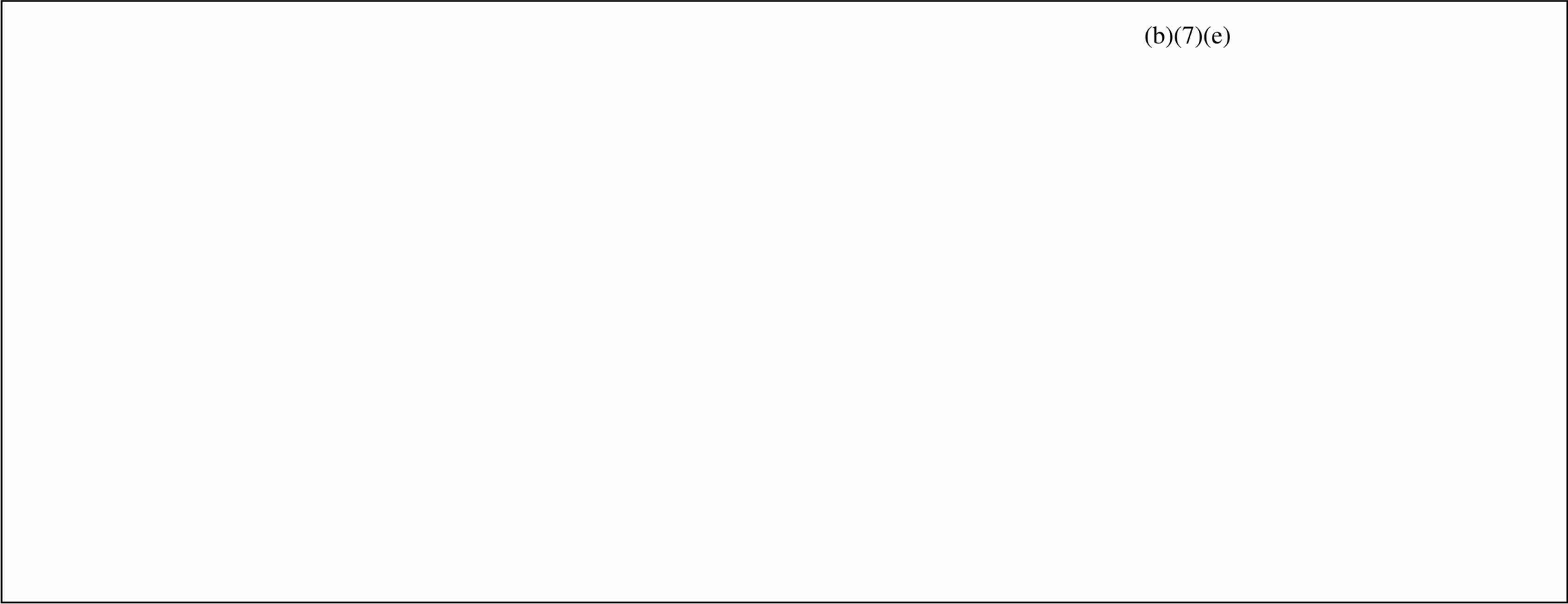


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Escape from Detention: Common Patterns



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Level of Detail Elicited in Harm vs. Escape

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Escape from Detention: Insufficient Elicitation

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Escape from Detention: Insufficient Elicitation

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Escape from Detention: Additional Elicitation

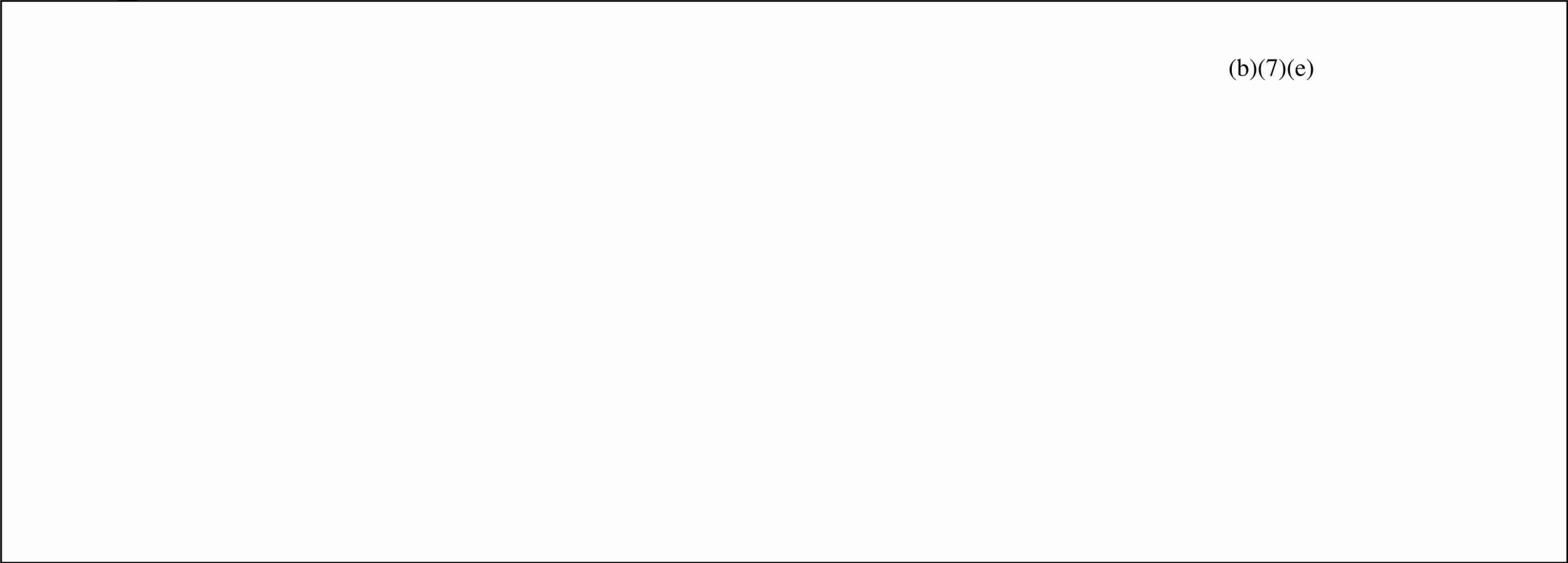
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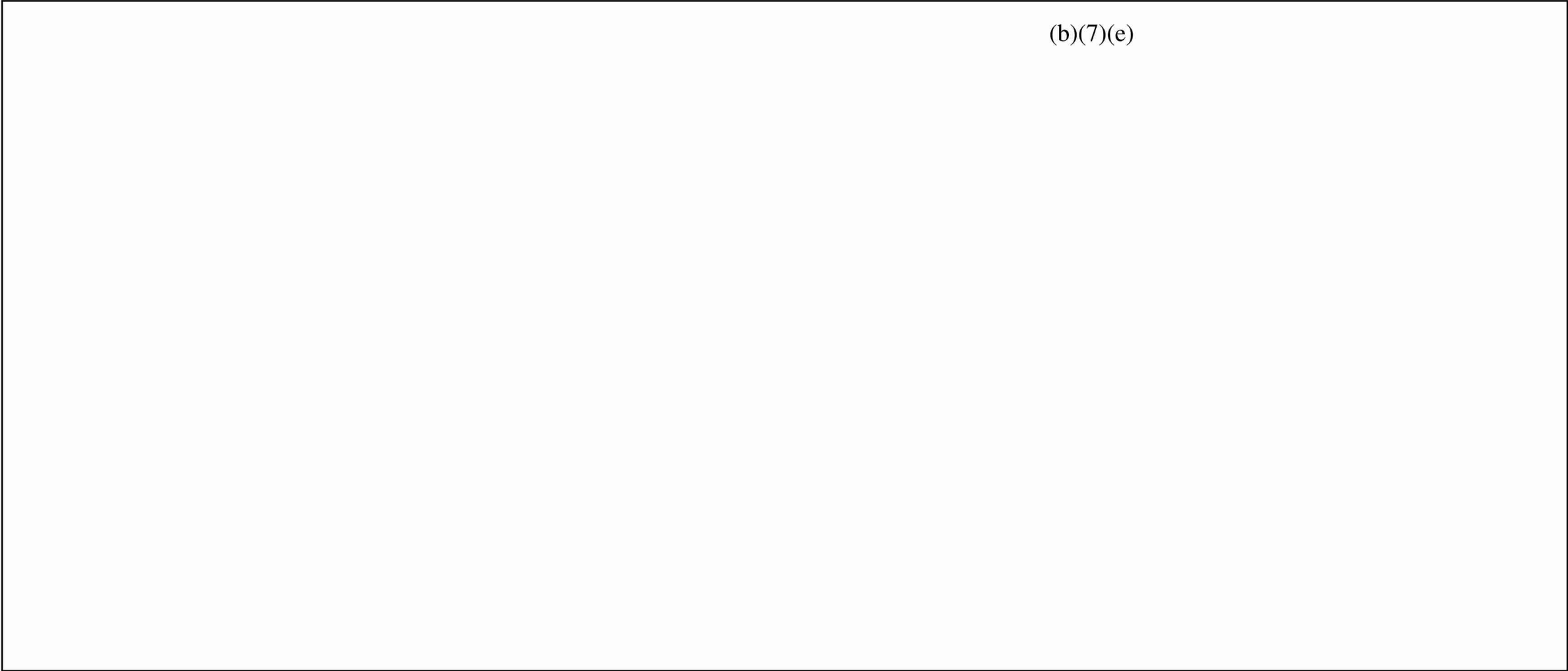
Hiding in the Bush: Insufficient Elicitation



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Hiding in the Bush: Insufficient Elicitation



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Hiding in the Bush: Additional Elicitation

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Eliciting Testimony - Checkpoints

- We know from COI that there are many checkpoints throughout the Anglophone area of Cameroon.
- Testimony regarding if and where applicants pass through checkpoints should be elicited.
- COI shows that checkpoints do not exist in the bush, which is why many applicants go there to be safe
- Generally, checkpoints are jointly manned by police officers, gendarmes, and military personnel; only police officers check ID, gendarmes ask questions, and military personnel stand by ready to intervene in case of a violent incident.



Eliciting Testimony - Checkpoints

- Depending on where the applicant is traveling, they may pass through many checkpoints which raises questions regarding government's knowledge of prior arrests or inclination to arrest the applicant
- You can elicit specific testimony about where the applicant was coming from and what towns he/she traveled through.
 - Did you go through checkpoints?
 - If so, how many? Where?
 - Who was manning the check point?
 - What happened?
 - Did they ask you anything?
 - Did they mention anything about an arrest/political activism, etc.?



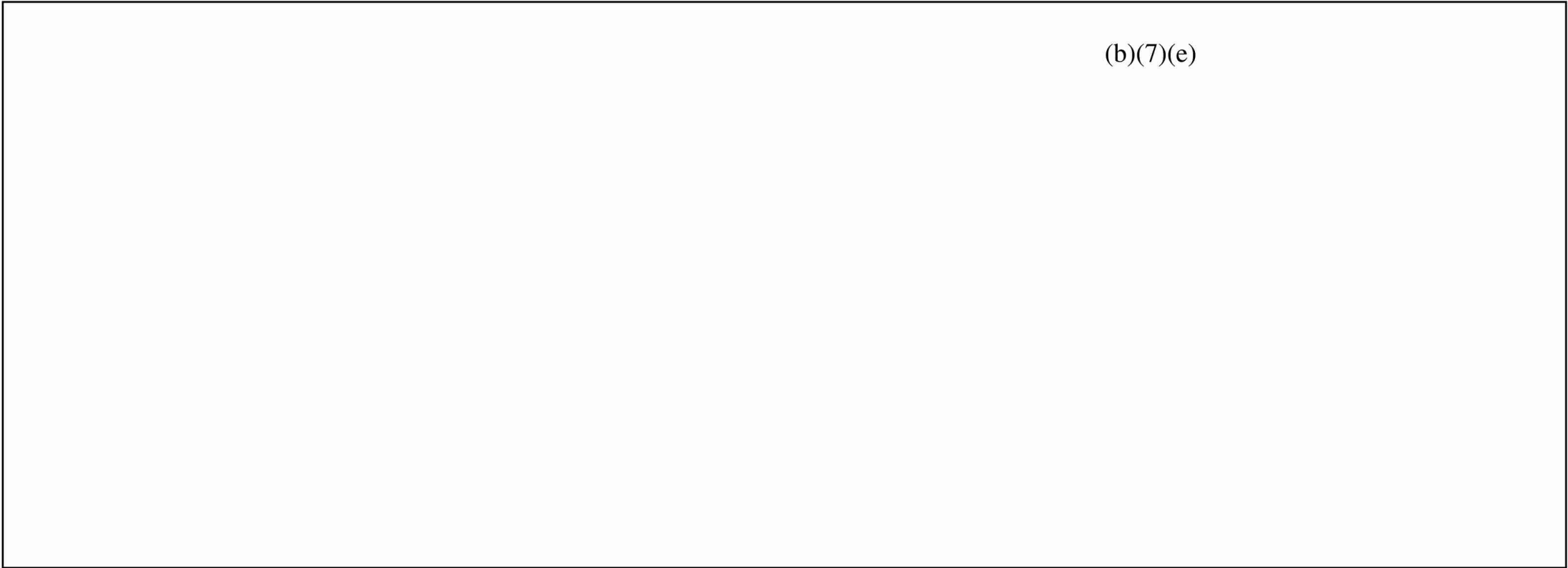
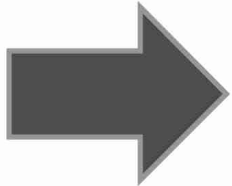
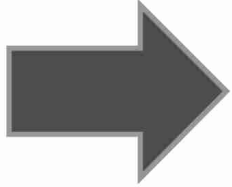
Interviewing Strategies: Eliciting Detail

- **Missed Opportunities:**
 - Not eliciting complete dialogue
 - Not eliciting verifiable details
- **What Detail is Sufficient?**
 - Totality of the Circumstances: Going off script
 - Detailed testimony example



Eliciting Detail: Missed Opportunities - Nexus

- Not eliciting complete dialogue



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Eliciting Detail: Missed Opportunities - Nexus

- **Determining nexus by eliciting dialogue**
 - Gives the applicant the opportunity to provide detailed testimony
 - Develops the record with direct evidence of nexus. The applicant's opinion about nexus is not always enough.
 - Applicant may be hesitant to presume the persecutor's motivation
 - Clarifies expectations for the applicant
 - AO takes control of the interview



Eliciting Detail: Missed Opportunities

– Not eliciting verifiable details – Example 1

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- Eliciting Unverifiable Details



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Eliciting Detail: Missed Opportunities

– Not eliciting verifiable details – Example 2

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Controlling the Interview

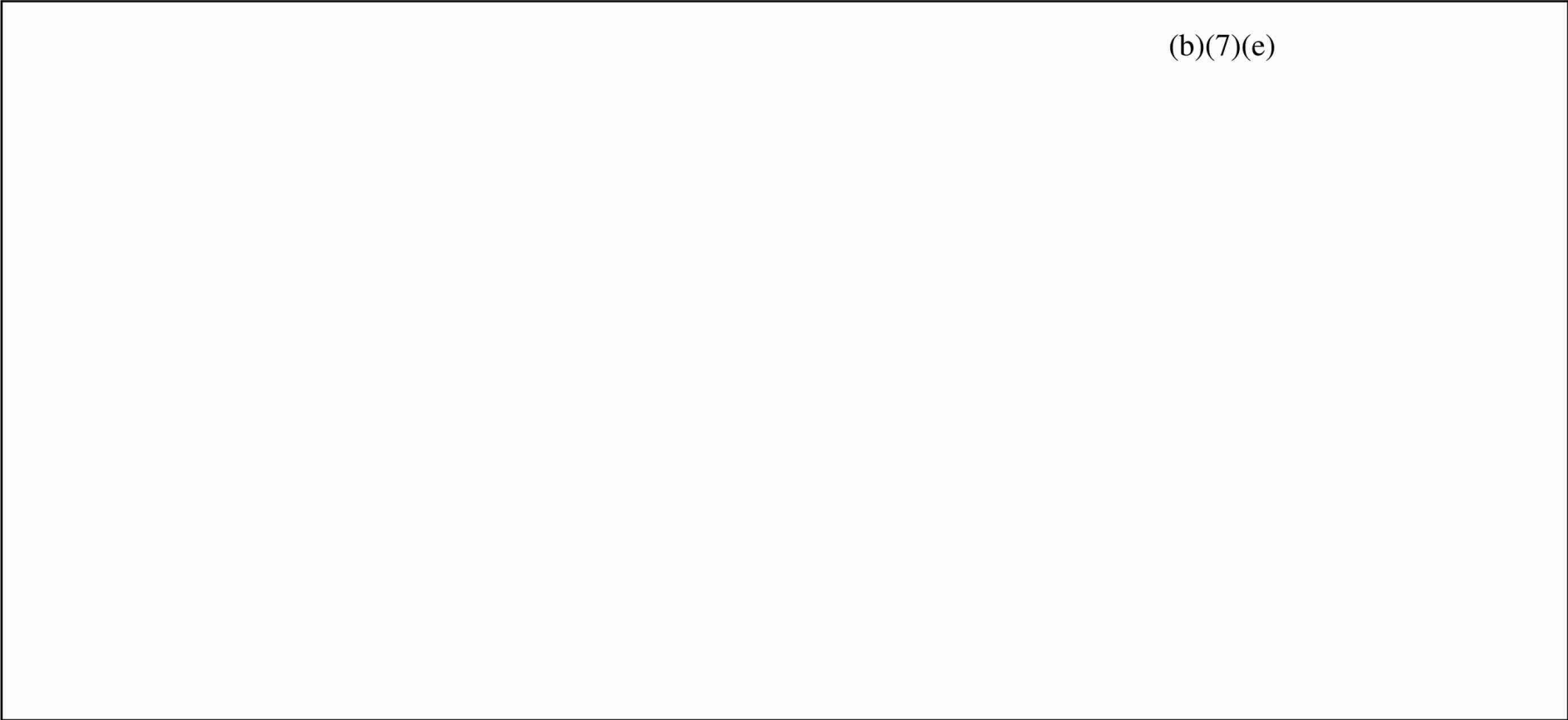
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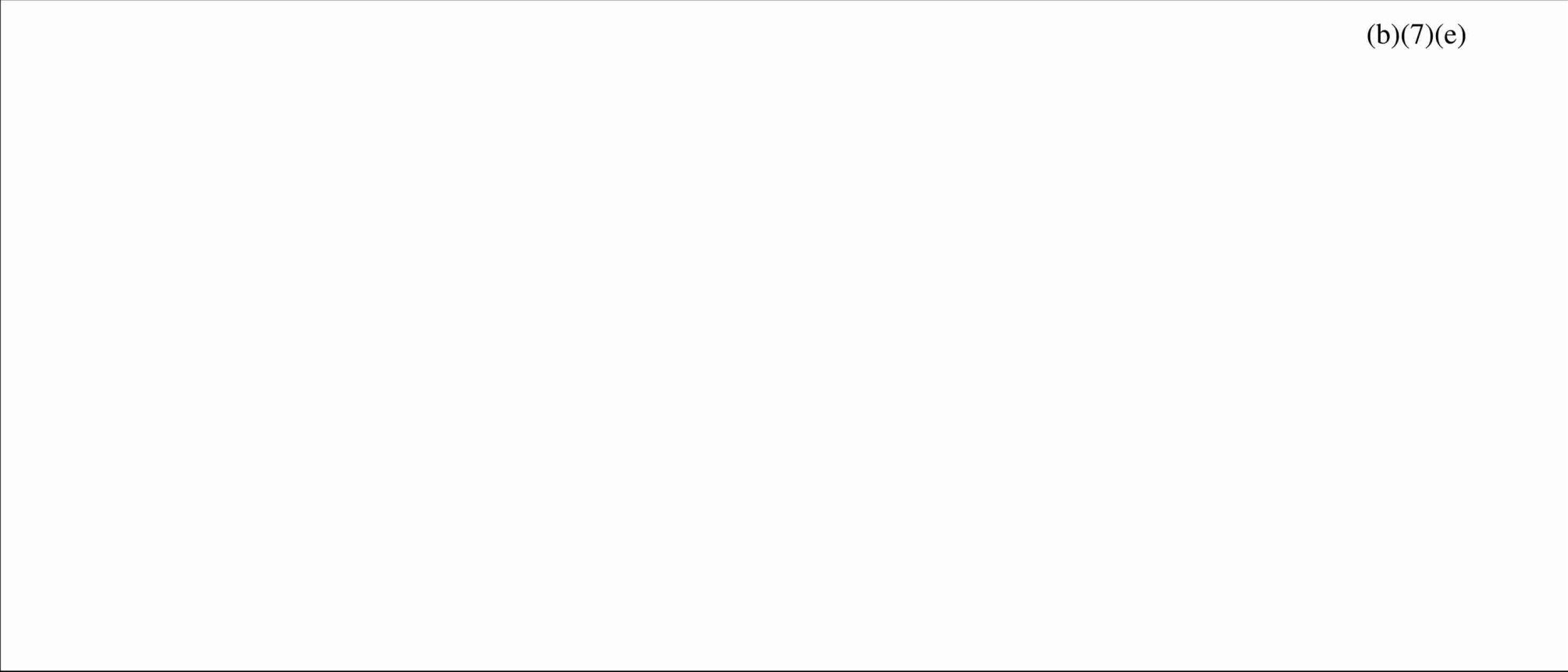
Eliciting Detail: What Detail is Sufficient

- Totality of the Circumstances: Going Off Script



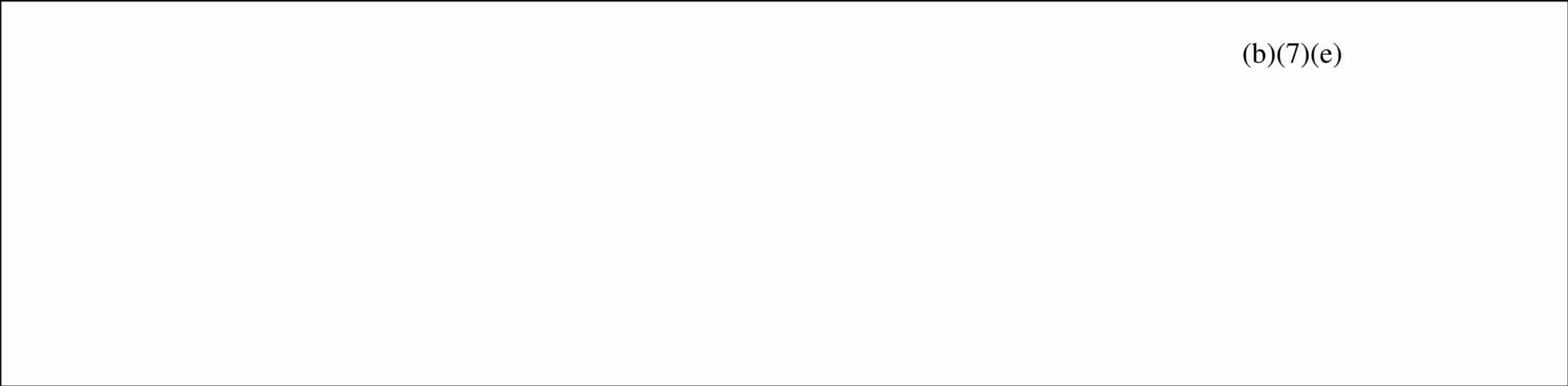
Eliciting Detail: What Detail is Sufficient

- Detailed Testimony Example



Eliciting Detail: What Detail is Sufficient

- Detailed Testimony Example



State Action: Case Law

O-F-A-S- instructs that CAT protection includes “torturous conduct committed by a public official who is acting ‘in an **official capacity,**’ that is ‘**under color of law**’”

- But NOT conduct by
 - a “rogue official”
 - an individual who impersonates a public official



Internal relocation: CAT



- CAT regulations state that IR is relevant evidence that should be considered when assessing the likelihood of torture.
- 8 CFR 208.16(c)(3): In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:
 - (ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured
- This is distinct from persecution regulations that address IR in the context of WFF of persecution.

Internal relocation: CAT



- Another difference between IR in the CAT and persecution contexts is that the persecution regulations provide specific factors to consider when evaluating the reasonableness of IR in the persecution context, but the CAT regulations do not articulate any specific factors to consider (“all relevant evidence”).
- Rather, in evaluating a CAT claim, officers must develop the record and assess whether, in the totality of the circumstances, there is a reasonable possibility that the applicant would be tortured in the country of removal.

IR: No Presumption in CAT



- One key difference between IR in the CAT and persecution context is that a **rebuttable presumption** that IR is unreasonable **only exists in the persecution context**.
- 8 CFR 208.16(b)(3)(i-ii): Reasonableness of internal relocation [in the persecution context]:
 - i. In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.
 - ii. In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.
- There is **NO presumption** that IR is unreasonable in the CAT context.

Internal relocation: lines of inquiry



What lines of inquiry will inform whether an applicant could move to a location where s/he is not likely to be tortured:

- Is there evidence that the applicant could relocate?
 - **Consider the reasonableness factors articulated in persecution context**
- Is the feared actor motivated to seek them out elsewhere?
 - **Local or national police? Government soldiers?**
 - **Any past attempts to relocate? If so, any threats or harm in new location?**
 - **Any new or ongoing threats – is the feared actor looking for the applicant?**
- Is there evidence that feared actor would use gov't resources to find the applicant in a new location?
 - **Has the feared actor tracked the applicant in the past? Tracked similarly situated people who moved? How could the actor do so?**
 - **Could local police in new location protect the applicant?**



Internal relocation: checklist reminders

- If making a negative determination, only analyze the element that isn't satisfied. Don't analyze the elements that are satisfied.

- For example,

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- If making a CAT positive determination, state action and IR must be addressed in the analysis, and relevant COI must be cited to support the analysis.

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- Remember: no presumption that IR is unreasonable in CAT!

IR Negative Example



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CAT Positive Example



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Future consent/acquiescence

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Future consent/acquiescence



- AO's must follow-up on statements of belief regarding consent/acquiescence to see if applicant can provide specific facts.
- If applicant testifies about a similarly-situated individual who was harmed after reporting to police, explore the applicant's basis for believing that the police shared information with the non-state actor.
- AO's should consider public official response to incidents of past harm when evaluating if a public official would consent/acquiesce to *future* torture.

Future consent/acquiescence



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Positive consent/acquiescence



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Negative consent/acquiescence



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Likelihood of future torture



- Unlike in the persecution context, torture is a prospective inquiry and past torture does not give rise to a presumption of future torture.
- AO's must elicit specific facts about the likelihood of future torture, including in cases where the applicant has been tortured in the past.
- The written analysis should evaluate whether applicant established a reasonable possibility of *future* torture.
- Evidence that the applicant was tortured in the past SHOULD be considered when evaluating reasonable possibility of future torture.
- Evidence that a similarly-situated individual was tortured in the past may be probative when evaluating reasonable possibility of future torture.

Negative: likelihood



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Awareness



- A finding of acquiescence requires that prior to the activity the public official was
 - 1) “Aware” of torturous activity and
 - 2) “Breached” a legal duty to intervene
- “Awareness” can be established by evidence of
 - Actual knowledge or
 - Willful blindness (AKA constructive knowledge)
- AO’s tended to focus on eliciting testimony related to the possibility of a future breach, but evidence of prior awareness must also be elicited.

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Awareness

- Actual knowledge, or
- Willful blindness (AKA constructive knowledge)

“Although the public official must have ‘awareness’ of the torturous activity, he need not have actual knowledge of the specific incident of torture. . . . It is sufficient that the public official be aware that torture of the sort feared by the applicant occurs and remain willfully blind to it.” *Madrigal v. Holder*, 716 F.3d 499, 509 (9th Cir. 2013).

Awareness: reporting to police



- There is no requirement that the applicant report harm or threats to establish awareness. *Ornelas-Chavez v. Gonzales* (9th Cir. 2006)
- However, the applicant still must show a police officer (or other public official with a duty to intervene) is aware, or would become aware, prior to the applicant being harmed.
- Past reporting to same police may be sufficient, but consider:
 - Passage of time
 - Seriousness of what was reported vs. escalation of threats or harm
 - Whether police are aware threat continues (e.g. if already acted to thwart perpetrator)
 - What attempts police made to investigate/protect applicant in response to reporting

Awareness: constructive knowledge



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- Where applicants testify to corruption, explore whether a public official would have constructive knowledge of the applicant’s future *torture*.
- CF LP: “Evidence that private actors have general support in some sectors of the government, without more, is insufficient to establish that the officials would acquiesce to torture by the private actors.” (pg. 30).
- Applicant can show constructive knowledge via sufficient evidence of a close relationship between perpetrator and a corrupt official such that the official is aware of “torture of the sort feared by the applicant.”
 - “It is enough that public officials could have inferred the alleged torture was taking place” *Ornelas-Chavez*.
 - “Evidence that police officials were corrupt, and worked on behalf of criminals or gangsters, may establish that the government has acquiesced in criminal activities.” *Garcia-Milian v. Holder*, 755 F.3d 1026, 1035 (9th Cir. 2014)

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Corrupt officials and constructive knowledge



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Example 1: Corrupt officials/awareness



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Example 2: Corrupt officials/awareness



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Example 2: Corrupt officials/awareness



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Internal Relocation: CAT vs. Asylum



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	Asylum/ Withholding	Convention Against Torture
Develop the record about the possibility of avoiding future persecution/ torture by relocating internally	✓	✓
Internal relocation <u>presumed unreasonable</u> where applicant experienced past persecution/ torture	✓	X
Internal relocation <u>presumed unreasonable</u> where feared actor is gov't/ public official	✓	X

Internal Relocation Determination: Step 1. Developing the Record



Consider any evidence that other areas of the country are generally safe.

If yes: Same reasonableness factors used in the asylum context may inform this inquiry in the CAT context, including where applicable—

- Any ongoing civil strife such as a civil war occurring within the country;
- Administrative, economic, or judicial infrastructure that affects the ability to live in another location;
- Geographical limitations impacting access or survival in another location;
- Social and cultural constraints (age, gender, health, and social and familial ties) or possession of a characteristic that affects safety in another location; and
- Any other factors specific to the case that impact reasonableness of relocation.

Internal Relocation Determination: Step 1. Developing the Record (cont'd)



Also, consider —

- the intensity of the feared torturer's motivation to harm the applicant
- the feared torturer's ability to locate and pursue applicant anywhere in the country → generally greater when feared torturer is a public official

****Reminder:** There is NO presumption that internal relocation is unreasonable where the feared torturer is a public official or where applicant suffered past torture**

Internal Relocation Determination: Step 2. Analyzing the Impact



Consider any evidence related to **possibility of internal relocation** in conjunction with ALL other relevant evidence

Includes but not limited to:

- Evidence of past torture inflicted on the applicant;
- Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
- All other relevant information regarding country conditions

Internal Relocation Determination: Step 2. Analyzing the Impact



Consider any evidence related to **possibility of internal relocation** in conjunction with ALL other relevant evidence

Assess how this cumulative evidence affects the **likelihood of future torture** in the country of removal

Likelihood of Future Torture: Applicable Standards of Proof



Consider the evidence in determining:

CREDIBLE FEAR
(non-third country
transit cases)

whether there is a **significant possibility** that the applicant can establish in full hearing that s/he is more likely than not to be tortured in the totality of the circumstances.

CREDIBLE FEAR
(third country
transit cases)

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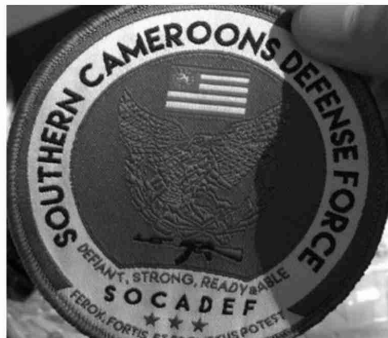
REASONABLE FEAR

whether the applicant establishes a **reasonable possibility** that that s/he is more likely than not to be tortured in the totality of the circumstances.

Rebel Groups and Militias



- Ambazonia Defense Forces (ADF) = main armed group
- Other armed groups:
 - ▣ Southern Cameroons Defence Forces (SOCADEF)
 - ▣ Southern Cameroons Defence Forces (SCDF)
- Self-defense militia: the Tigers, Vipers and Ambaland forces, etc.
- Rebels don't control any region



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The Ambazonia Defense Forces (ADF)



- ADF is the main secessionist armed group, founded in 9/2017
- ADF and other armed groups have significantly weakened, due to infiltration, infighting among rebels, etc.
- ADF Spokesperson Tapang Ivo Tanku under trial in CA

Targets of Rebels/Self-Defense Groups

- Security forces and government officials
- Civil servants (teachers etc.) who do not comply with strikes or who cooperate with government
- Businesses who do not comply with “ghost town” orders
- Boko Haram combatants and supporters

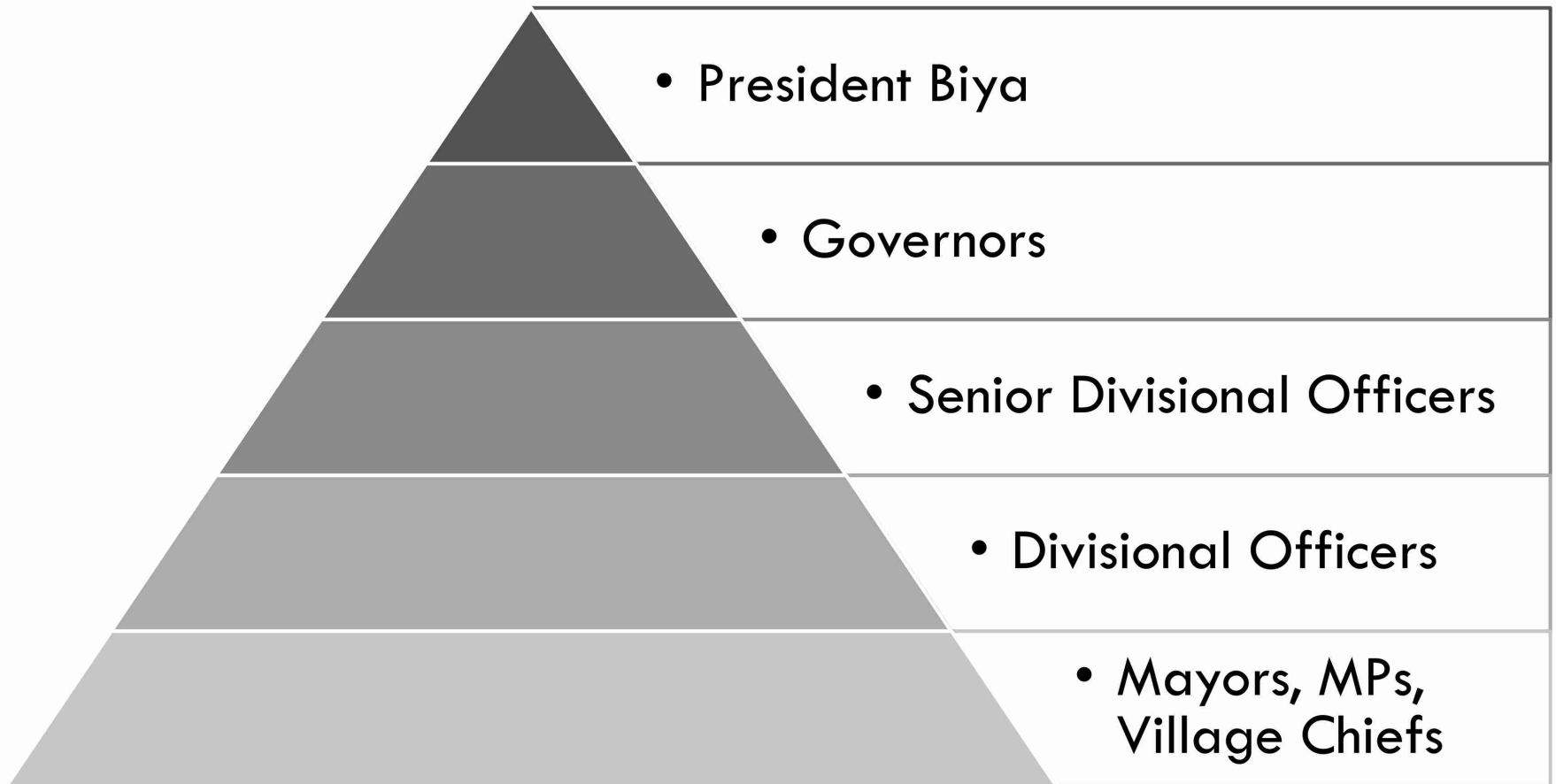


Who are the Security Forces?

- Cameroon Armed Forces (*Forces Armées Camerounaises, FAC*): Army, Navy, Air Force, Rapid Intervention Brigade (BIR), Fire Fighter Corps, and Gendarmerie
- BIR (created in 2001), gendarmerie, and police are the main actors in the fight against rebellions
- BIR initially aimed at fighting criminal gangs and, later, at fighting Boko Haram



Security – Chain of Command



Who are the targets of Security Forces

- Members of ADF and other armed groups/militias
- Prominent supporters or sympathizers of secessionist groups (e.g., SCNC community organizers)
- Members of non-violent parties: CRM, Interim Government of Ambazonia
- Human rights defenders

Cameroon Renaissance Movement (CRM)



- ❑ CRM Chairman Maurice Kamto self-declared president elect in October 2018 election
- ❑ Major Francophone opposition party
- ❑ CRM members were not persecuted prior to October 2018 election
- ❑ Maurice Kamto arrested Jan 29, 2019; released on Jan 26, 2020

Corruption within Security Forces

- Cameroon ranked 153 out of 180 countries surveyed (2019) for corruption.
- Corruption is systemic and bribery is commonplace in all sectors, including in the military
- Bribing prison guards is routine—used to be released or have a family member released from prison—except for those arrested on the order of political leaders: Governor, Senior Division Officer, or Division Officer

Francophone and Anglophone military leaders



- The military is overwhelmingly Francophone (about 90%)—one general out of about 30.
- Top military leaders in the English-speaking Cameroon are all Francophone
- The situation worsened due since the outbreak of violence in 2016
- No mistreatment reported against Anglophone members of the military

Checkpoints at the Border between the Anglophone and francophone regions

- Multiple roadblocks within the Anglophone region and at its border with Francophone area
- The national policy is to ease movements, to show that Cameroon is one and safe
- Checkpoints/roadblocks often serve as a venue for police, military forces, and gendarmes to extort bribes from travelers.

Targeted people flying out of Douala

- No-fly lists exist (re. Douala and Yaoundé airports) for high-profile opponents/activists
- The names of listed individuals are dispatched to all checkpoints and airports for arrest
- Listed individuals are generally high-profile individuals/activists/opponents
- Request for listing by political leaders: Governor, Senior Division Officer, or Division Officer
- The government does have a reliable computerized record system to monitor departures.

How to Obtain Travel Documents

- Anglophone people have access to passports, but generally have to pay bribe
- Passports no longer issued in Bamenda and Buea, but in Doula and Yaoundé, since 2016
- People who obtain passports and travel through the airport are generally not at risk of harm

Are Anglophone IDPs Welcomed in Douala and Yaoundé?



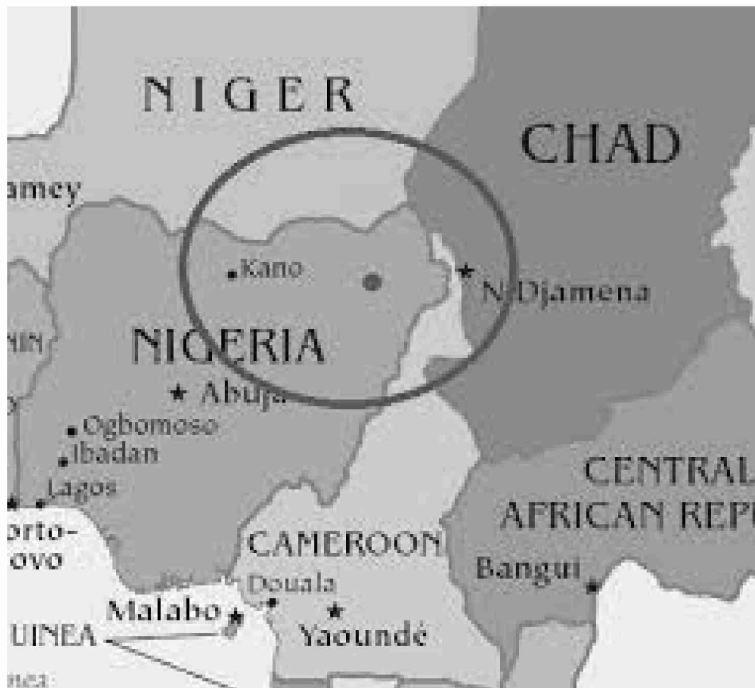
- IDPs are overall well received by the Francophone population
- IDPs have been targeted by security forces: arbitrary arrests in taxis, house searches without warrants

Types of Violations by Security Forces in Western Cameroon



- Attacks on villages, the burning and destruction of property, and the killings of civilians—the latest example of 21 killed in an attack on Ngarbuh Village in 02/2020
- Arrest of real or suspected rebels and activists
- But no ethnic group is particularly targeted

Boko Haram in far North Region



- The first attacks occurred in March 2014
- The conflict has caused at least 1,500 deaths, 155K IDPs, and at least 173K refugees
- Internal relocation to South possible re. BH

Internal Relocation

- ❑ Not available for prominent activists
- ❑ Non-prominent activists from the English-speaking Cameroon may be able to relocate to the French-Speaking Cameroon
- ❑ Boko Haram victims may be able to relocate to South
- ❑ Job opportunities, ethno-religious differences, and language divide are obstacles to internal relocation

Cameroon: What to Take Away

- ❑ Persecution of opponents/activists continues, and rebels/militia groups/BH continue to engage in violence
- ❑ Corruption is systemic and bribery is commonplace in all sectors, including in the military
- ❑ Well-known activists (not ordinary opponents) may be on no-fly list and may not fly out of Doula or Yaoundé
- ❑ IDPs are generally well-received in other parts of the country
- ❑ Relocation is not available for prominent activists

Recap from Prior Trainings

- ▶ While authority to return individuals to Mexico is based in INA § 235(b)(2)(C), there are no regulatory provisions providing implementation guidance
- ▶ Implementation guidance is based in DHS and USCIS memoranda
- ▶ Standard: More likely than not that applicant will be persecuted on account of a protected ground or tortured if returned to Mexico
- ▶ The location where the individual is detained is important because we are applying the law of the circuit court where the individual is detained.
- ▶ See prior MPP webinar for procedural guidance; this training is focused on eliciting testimony

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Likelihood of Harm: Intro

- ▶ The issue: Is there a clear probability that applicant will experience serious harm/severe pain or suffering if returned to Mexico?
 - ▶ Includes elements of inclination, capability, and harm – is the level of harm required to establish the claim likely to happen?
- ▶ A likelihood of lesser harm, such as robbery alone, is not sufficient if that harm does not amount to persecution or torture.
- ▶ Rebuttable presumption of future harm if past persecution is established, but there is no presumption based on past torture.
 - ▶ Must elicit testimony on whether there has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened.
 - ▶ Consider: original perpetrator's current motivation and ability, whether someone else would harm applicant on account of same nexus.

Clear probability: Examples from Case Law

- ▶ *Al Ramahi v. Holder*, 725 F.3d 1133 (9th Cir. 2013): Agency found sufficient likelihood of harm where wife's brothers stated they would kill the couple after discovering they had re-married in US. The brothers had imprisoned & beaten the wife in Jordan for being w/ HU but let her go b/c she agreed to divorce him.
- ▶ *Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004): Court found likelihood of harm where (1) Persecution & abuse of family in China was compelling evidence app would face similar mistreatment upon return; (2) authorities had ID'd him as Falun Gong practitioner & demonstrated continuing interest in him & his family; & (3) COI indicated he would be arrested, imprisoned, and abused based on his practice of FG & distribution of FG materials to family and friends in China.
- ▶ *Fedunyak v. Gonzales*, 477 F.3d 1126 (9th Cir. 2007): Agency found likelihood of harm for purposes of CAT where app was severely beaten once, then beaten and threatened again before leaving country. Mayor and police chief issued thinly veiled death threats, and police issued 3 subpoenas after app left.

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Likelihood of Harm: Some standard questions

- ▶ Do you have any reason to think [perpetrator] would target you again? If yes, what makes you think so?
- ▶ What do you think [perpetrator] would do to you if [perpetrator] saw you again? Why do you think that?
- ▶ What did [perpetrator] say or do that leads you to believe [perpetrator] will do that to you in the future?
- ▶ Do you know of anyone else who has been harmed by [perpetrator]?
- ▶ How would [perpetrator] be able to find you again?

- ▶ Wrap up: Did anyone (else) in Mexico say or do anything that leads you to believe they are likely to harm you in the future?

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Likelihood of Harm: Patterns in Unsupported Positives

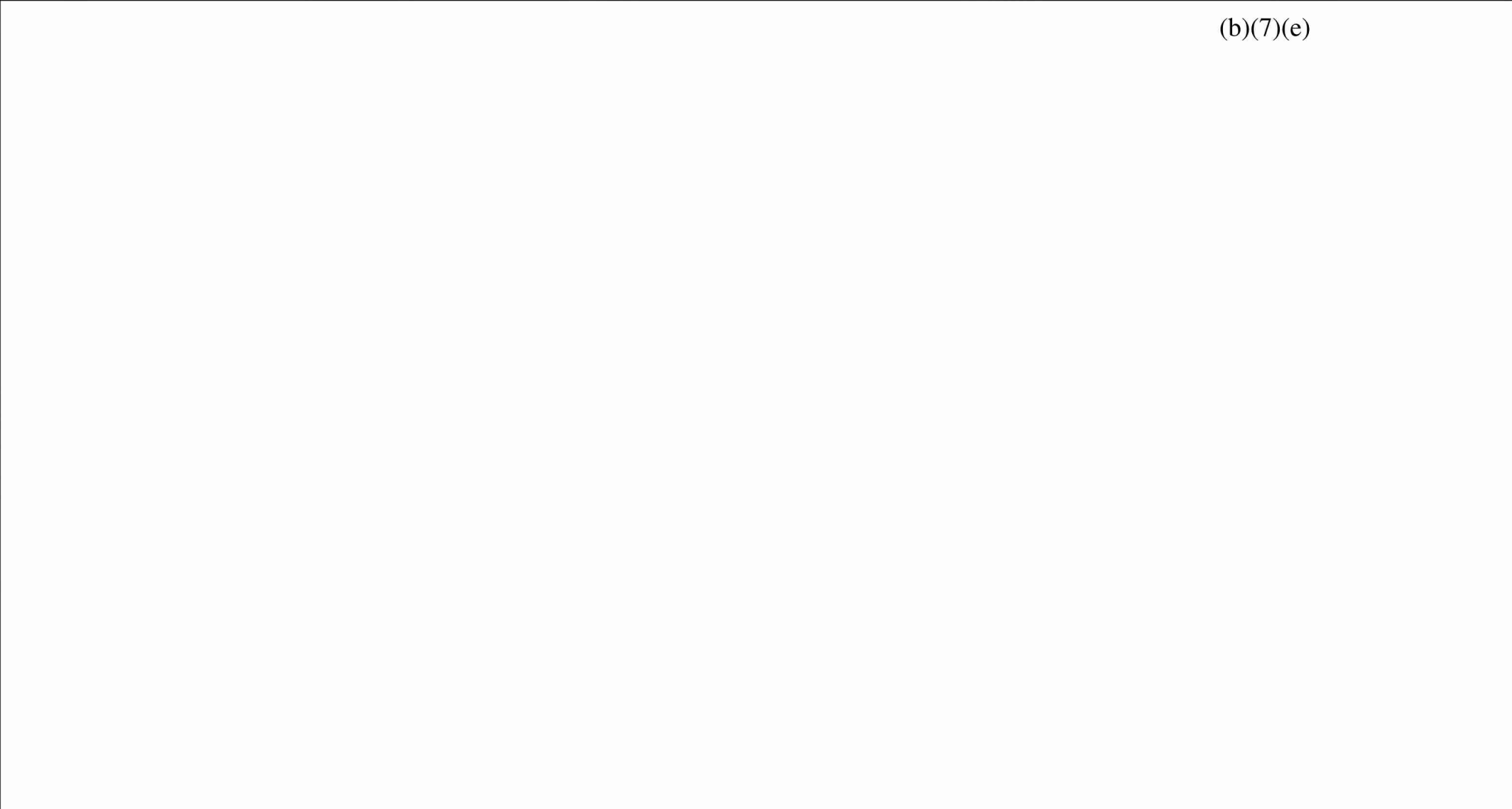
- ▶ Perpetrator threatens future harm contingent upon some future action (e.g., reporting to police, not moving away from area).

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- ▶ Perpetrator makes a threat, but insufficient evidence to show he would follow through with it.
- ▶ Basing likelihood of harm on applicant's belief without specific facts to support this belief.
- ▶ Fear of deportation: not aware of COI that supports this fear, applicant must provide specific examples to support belief.

Likelihood of Harm: Sample Unsupported Positive



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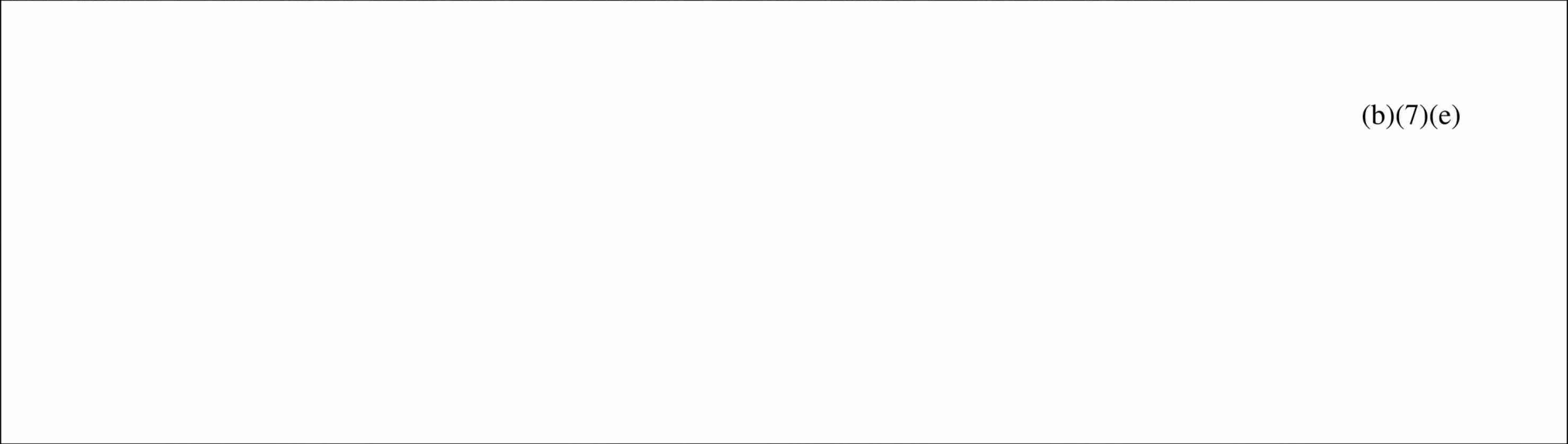
Likelihood of Harm: Model Follow-Up

- ▶ What makes you think they will see you as soon as you enter?
- ▶ Will you be living in the same location if you return to Mexico?
- ▶ If you haven't seen these men around your home in the past two months, what makes you think they still want to harm you?
- ▶ Do you know of anyone else who has been harmed by these men?

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Likelihood of Harm: Patterns in Unsupported Negatives

- ❖ Making an assumption without eliciting testimony.



- ❖ Failing to explore applicant's assertion that harm would escalate in the future.

Nexus (Nationality): Intro

- ▶ There can be more than one central reason. (9th Circuit: Apply “a reason” standard.)
- ▶ A reference to applicant’s specific nationality requires follow-up, even if applicant also being targeted for other reasons.
- ▶ Refrain from leading questions.
- ▶ An applicant does not bear the burden of establishing the persecutor’s exact motivation; the applicant must establish the protected ground is either a reason or one central reason (depending on the jurisdiction).
- ▶ Both direct and circumstantial evidence are relevant to establish nexus.

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Case Law on Nexus (Nationality)

- ▶ *Matter of O-Z- & I-Z-*, 22 I.&N. Dec. 23 (BIA 1998) (persecution of Ukrainian Jews by a non-governmental nationalist group)
- ▶ *Matter of J-B-N- & S-M-*, 24 I & N Dec. 208 (BIA 2007) (applying one central reason)
- ▶ *Mendoza-Pablo v. Holder*, 667 F.3d 1308 (9th Cir. 2012) (persecution of indigenous Mayans in Guatemala)
- ▶ *Compare Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009) (applying one central reason)
with
Borja v. I.N.S., 175 F.3d 732, 735 (9th Cir. 1999) (applying “a reason”/“at least in part” standard).

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Nexus: Some standard questions

- ▶ What exactly did [perpetrator] say to you? Did he say anything else? Have you told me everything he said to you?
 - ▶ If necessary: What do you think he meant by that? Why do you think this?
- ▶ Why do you think he targeted you rather than some other person?
 - ▶ What makes you think this? Any other reason?
- ▶ Do you think he would have harmed you if you had been Mexican or [Honduran]? Why / why not?
- ▶ Wrap up: Do you know of any other reason for why he did this?

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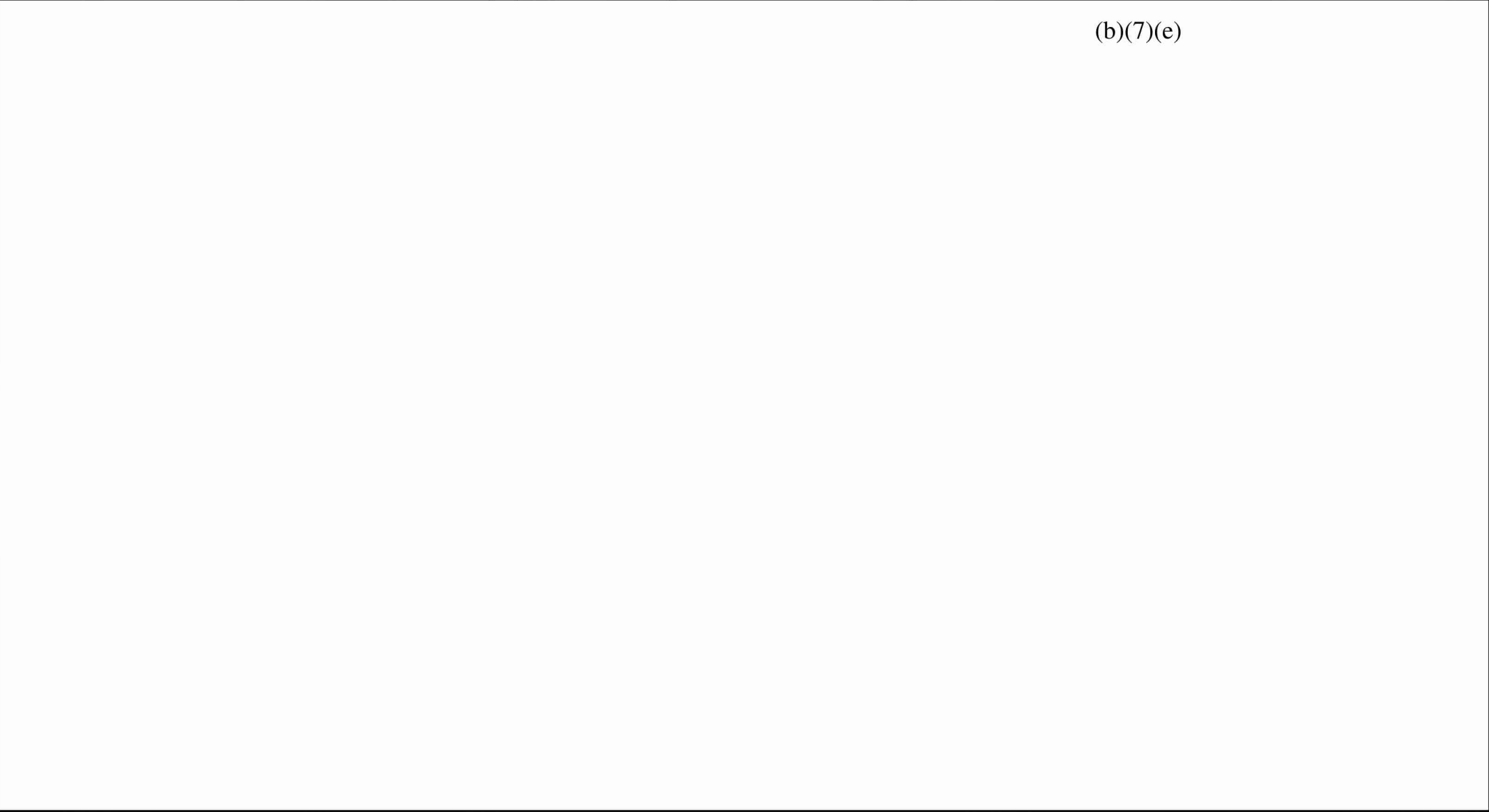
Nexus: Patterns in Unsupported Positives

- ▶ Leading questions.
- ▶ Relying on a single reference to nationality without further development to establish one central reason.
- ▶ Absent sufficient development of the record, concluding that the applicant was harmed on account of nationality solely because the same perpetrator harmed other people from the applicant's country.
- ▶ Absent sufficient development of the record, conflating a reference to a person's migrant status with a reference to their nationality.

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Nexus (Nationality): Sample Unsupported Positive

(b)(7)(e)

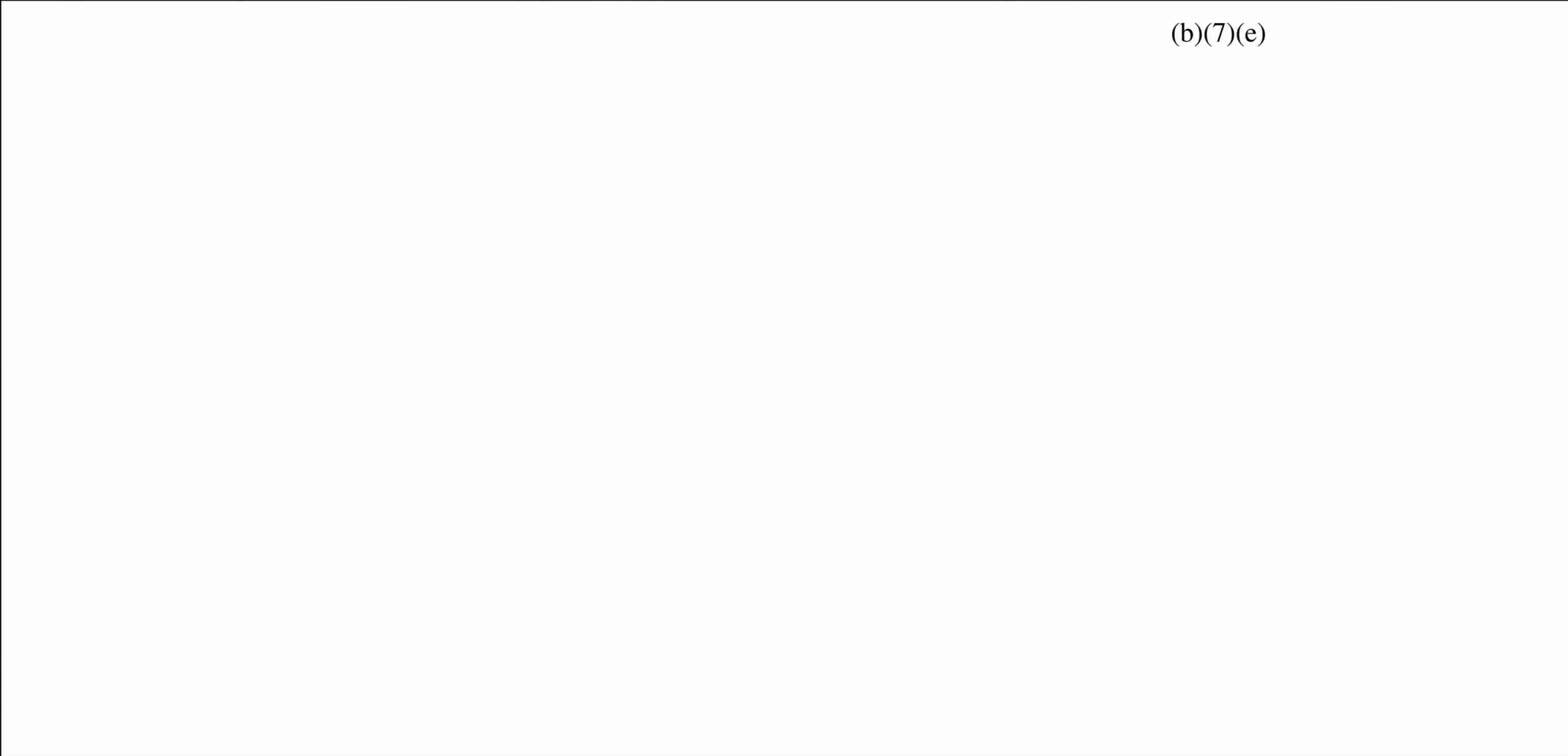


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Nexus (Nationality): Model Follow-Up

(b)(7)(e)



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Q: Was Manuel interested in you for any other reason?

Nexus: Patterns in Unsupported Negatives

- ▶ Insufficient follow-up when the applicant indicates that the persecutor mentioned the applicant's nationality.
- ▶ Assuming that persecutors motivated by financial gain may not also be motivated on account of nationality.
- ▶ Assuming that perpetrator's targeting of other nationalities rules out harm on account of the applicant's nationality.
- ▶ Limiting questions about dialogue between the applicant and the persecutor to specific timeframes (such as time of harm) without closing the loop on dialogue at any other time.
- ▶ Not asking applicant why she thinks the perpetrator targeted her.

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Consent/Acquiescence: Intro

- ▶ **Issue:** Has the applicant demonstrated a clear probability that a public official or other person acting in an official capacity would consent or acquiescence to torture?
- ▶ What kind of evidence?
 - ▶ Credible?
 - ▶ Specific and persuasive?
 - ▶ Whether the applicant has any firsthand experience
 - ▶ Whether the applicant has personally reported any incidents or harm to law enforcement
 - ▶ What else the applicant has seen or heard
 - ▶ If the applicant knows someone in a similar situation who reported harm to law enforcement
 - ▶ If the applicant is aware of corruption (and how this will factor into the harm the applicant fears)
 - ▶ And if none of the above, what is underpinning the applicant's belief in the future behavior of law enforcement?

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Case Law on Consent/Acquiescence



▶ **No consent or acquiescence found:**

- ▶ Failure to apprehend/bring a perpetrator to justice in gang context
 - ▶ *Garcia-Milian v. Holder*, 755 F.3d 1026 (9th Cir. 2014)
- ▶ Lack of sufficient resources to protect/understaffing
 - ▶ *Tamara-Gomez v. Gonzales*, 447 F.3d 343 (5th Cir. 2006)
- ▶ Insufficient information to solve crime
 - ▶ *Rreshpja v. Gonzales*, 420 F.3d 551 (6th Cir. 2005)

▶ **Compare with:**

- ▶ Refusing to intervene, even due to fear
 - ▶ *Zelaya v. Holder*, 668 F.3d 159 (4th Cir. 2012)
- ▶ Specific and persuasive evidence of corruption
 - ▶ *Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013)



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Consent/Acquiescence: Some standard Qs

- ▶ Did you report the harm/threats to the police?
- ▶ If so: What exactly did you tell them? / What exactly did they say to you? / What did they do? (How do you know?) / Did you follow-up?
- ▶ If not: Why didn't you report to the police? Any other reason?
 - ▶ Had you reported, what do you think they would have done?
- ▶ Do you know of anyone in your country who has reported similar incidents to the police in your area?
 - ▶ If so: What did they tell police? / What did police say? / Etc.
- ▶ Is there any connection between the person/people you fear and any public official?
- ▶ If police in your area were aware these people were going to harm you, would they try to protect you?
- ▶ Wrap up: Is there any other reason why you think the police would not try to protect you in the future?

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Did you report
to the police?

(b)(7)(e)

Move
On!

Supplemental Release

- ▶ This is just a rough template - additional follow-up will likely be necessary.
- ▶ Though you may move on to a different topic after exploring the issue, be prepared to do additional follow-up if the applicant says something later in the interview that raises the possibility of eliciting additional information.

Consent/Acquiescence : Patterns in Unsupported Positives

- ▶ Insufficient evidence that police would acquiesce to severe pain or suffering (as opposed to a lesser form of harm).

(b)(7)(e)

- ▶ Police failure to intervene based on lack of sufficient information about perpetrators, rather than actual breach of duty.
- ▶ Using generalized COI where applicant otherwise cannot meet burden.

Consent/Acquiescence: Patterns in Unsupported Negatives

- ❖ Asking about police/government connections to perpetrator, but not about police failure to respond (breach of duty).
- ❖ Failing to ask about similarly situated individuals.
- ❖ Police give ambiguous reason for not taking report, but not following-up to determine if a sound basis (e.g., “better to keep quiet,” need to be with Mexican citizen to report).

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Reasonable Access to Safe Regions in Mexico

- ▶ Internal relocation inquiry, as articulated in regulations and case law, should NOT be applied to MPP determinations
- ▶ Rather, in conducting the interview, the officer should take into account the following:
 - ▶ whether the alleged harm could occur in the region in which the alien would remain within the contiguous country from which he or she arrived, pending removal proceedings, and
 - ▶ whether remaining within another region of the country to which he or she would have *reasonable access* could mitigate against the alleged harm.

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Reasonable Access cont.

- ▶ Individuals in MPP must be reasonably able to return to POE where processed to attend immigration court hearings
- ▶ May need to return to specific POE multiple times for hearings
- ▶ Consider whether the individual has the resources to return multiple times to the specific POE
- ▶ Consider whether individual has lived elsewhere in Mexico or relocated within Mexico after harm
- ▶ Consider whether there are any constraints on the individual's ability to reside in another area
- ▶ Individuals may lack knowledge about Mexico

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Relevant Reasonable Access Questions

- ▶ Does the applicant have resources and support elsewhere in Mexico?
- ▶ Does the applicant have reasonable access to that region?
- ▶ Would the applicant have any difficulty moving to another area of Mexico?
- ▶ Would residing in that region mitigate the harm?
- ▶ Has the applicant ever lived in another area of Mexico?

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Additional Considerations

- ▶ All family members must have an opportunity to testify before rendering a negative decision.
 - ▶ Ex: Second spouse only asked if she had anything to add to first spouse's testimony – this does not meet AO's duty to elicit testimony.
- ▶ Remember that a particular social group (PSG) must be socially distinct in Mexican society and thus the record should be developed as to this point.

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