IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA M. KIAKOMBUA, et al.,

Plaintiffs,

— versus —

KEVIN K. MCALEENAN, in his official capacities as
Acting Secretary of Homeland Security & Commissioner
of United States Customs and Border Protection, et al.,

Defendants.

Case No. 1:19-CV-1872-KBJ

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to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment

Kiakombua v. McAleenan, No. 1:19-cv-1872-KBJ
## Lesson Plan Overview

### Course
Refugee, Asylum, and International Operations Directorate Officer Training  
Asylum Division Officer Training Course

### Lesson
*Credible Fear of Persecution and Torture Determinations*

### Rev. Date
February 13, 2017; Effective as of Feb 27, 2017, April 30, 2019

### Lesson Description
The purpose of this lesson is to explain how to determine whether an alien subject to expedited removal or an arriving stowaway has a credible fear of persecution or torture using the credible fear standard.

### Terminal Performance Objective
The Asylum Officer will be able to correctly make a credible fear determination consistent with the statutory provisions, regulations, policies, and procedures that govern whether the applicant has established a credible fear of persecution or a credible fear of torture.

### Enabling Performance Objectives
1. Identify which persons are subject to expedited removal. (ACRR7)(OK4)(ACRR2)(ACRR11)(APT2)
2. Examine the function of credible fear screening. (ACRR7)(OK1)(OK2)(OK3)
3. Define the standard of proof required to establish a credible fear of persecution. (ACRR7)
4. Identify the elements of “torture” as defined in the *Convention Against Torture* and the regulations that are applicable to a credible fear of torture determination (ACRR7)
5. Describe the types of harm that constitute “torture” as defined in the *Convention Against Torture* and the regulations. (ACRR7)
6. Define the standard of proof required to establish a credible fear of torture. (ACRR7)
7. Identify the applicability of bars to asylum and withholding of removal in the credible fear context. (ACRR3)(ACRR7)

### Instructional Methods
Lecture, practical exercises

### Student Materials/References
Lesson Plan; Procedures Manual, Credible Fear Process (Draft); INA § 208; INA § 235; INA § 241(b)(3); 8 C.F.R. §1.2; 8 C.F.R. §§ 208.16-18; 8 C.F.R. § 208.30; 8 C.F.R. § 235.3.

Credible Fear Forms: **Form I-860**: Notice and Order of Expedited Removal; **Form I-867-A&B**: Record of Sworn Statement; **Form I-869**: Record of Negative Credible Fear Finding and Request for Review by Immigration Judge; **Form I-863**: Notice of Referral to Immigration
Method of Evaluation

Written test

Background Reading


5. Immigration and Customs Enforcement, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*, ICE
Directive No. 11002.1 (effective January 4, 2010).


Critical Tasks

Knowledge of U.S. case law that impacts RAIO (3)
Knowledge of the Asylum Division history. (3)
Knowledge of the Asylum Division mission, values, and goals. (3)
Knowledge of how the Asylum Division contributes to the mission and goals of RAIO, USCIS, and DHS. (3)
Knowledge of the Asylum Division jurisdictional authority. (4)
Knowledge of the applications eligible for special group processing (e.g., ABC, NACARA, Mendez) (4)
Knowledge of relevant policies, procedures, and guidelines establishing applicant eligibility for a credible fear of persecution or credible fear of torture determination. (4)
Skill in identifying elements of claim. (4)
Skill in assessing credibility of aliens in credible fear interviews (4)
Knowledge of inadmissibility grounds relevant to the expedited removal process and of mandatory bars to asylum and withholding of removal. (4)
Knowledge of the appropriate points of contact to gain access to a claimant who is in custody (e.g., attorney, detention facility personnel) (3)
Skill in organizing case and research materials (4)
Skill in applying legal, policy, and procedural guidance (e.g., statutes, case law) to evidence and the facts of a case. (5)
Skill in analyzing complex issues to identify appropriate responses or decisions. (5)
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I. INTRODUCTION

The purpose of this lesson plan is to explain how to determine whether an alien seeking admission to the United States, who is subject to expedited removal or is an arriving stowaway, has a credible fear of persecution or torture using the credible fear standard defined in the Immigration and Nationality Act (INA or the Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and implementing regulations.

II. BACKGROUND

The expedited removal provisions of the INA, were added by section 302 of IIRIRA, and became effective April 1, 1997.

In expedited removal, certain aliens seeking admission to the United States are immediately removable from the United States by the Department of Homeland Security (DHS), unless they indicate an intention to apply for asylum or express a fear of persecution or torture or a fear of return to their home country, in which case they are referred to an asylum officer to determine whether they have a credible fear of persecution or torture. Aliens who are present in the United States, and who have not been admitted, are treated as applicants for admission. Aliens subject to expedited removal are not entitled to a full immigration removal hearing or further review by a federal court unless they are able to establish a credible fear of persecution or torture.

INA section 235 and its implementing regulations provide that certain categories of aliens are subject to expedited removal. Those include the following: arriving stowaways; certain arriving aliens at ports of entry who are inadmissible under INA section 212(a)(6)(C) (because they have presented fraudulent documents or made a false claim to U.S. citizenship or other material misrepresentations to gain admission or other immigration benefits) or 212(a)(7) (because they lack proper documents to gain admission); and certain designated aliens who have not been admitted or paroled into the U.S.
Those aliens subject to expedited removal who indicate an intention to apply for asylum, a fear of persecution or torture, or a fear of return to their home country are referred to asylum officers to determine whether they have a credible fear of persecution or torture. An asylum officer will then conduct a credible fear interview to determine whether there is a significant possibility that the alien can establish eligibility for asylum as a refugee under section 208 of the INA or withholding of removal under section 241(b)(3) of the INA. Pursuant to regulations implementing the Convention Against Torture (CAT) and issued under the authority of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105-277, Div. G, Sec. 2242(b)), if an alien does not establish a credible fear of persecution, the asylum officer will then determine whether there is a significant

INA § 235(b)(1)(A); 8 C.F.R. § 208.30.
possession the alien can establish eligibility for protection under the
Convention Against Torture through withholding of removal or
deferral of removal.

October 21, 1998) and 8
C.F.R. § 208.30(e)(3).

A. Aliens Who May Be Subject to Expedited Removal

The following categories of aliens may be subject to expedited
removal:

1. Arriving aliens coming or attempting to come into the
United States at a port of entry or an alien seeking transit
through the United States at a port of entry.

Aliens attempting to enter the United States at a land
border port of entry with Canada must first establish
eligibility for an exception to the Safe Third Country
Agreement, through a Threshold Screening interview, in
order to receive a credible fear interview.

2. Aliens who are interdicted in international or United
States waters and brought to the United States by any
means, whether or not at a port of entry or not.

This category does not include aliens interdicted at sea
who are never brought to the United States.

3. Aliens who have been paroled under INA section
212(d)(5) on or after April 1, 1997, may be subject to
expedited removal upon termination of their parole.

This provision encompasses those aliens paroled for
urgent humanitarian or significant public benefit reasons.

This category does not include those who were given advance parole as described in Subsection B.6. below.

4. Aliens who have arrived in the United States by sea (either by boat or by other means) who have not been admitted or paroled, and who have not been physically present in the U.S. United States continuously for the two-year period immediately prior to the inadmissibility determination.

5. Aliens who have been apprehended within 100 air miles of any U.S. international land border, who have not been admitted or paroled, and who have not established to the satisfaction of an immigration officer (typically a Border Patrol Agent) that they have been physically present in the U.S. United States continuously for the 14-day period immediately prior to the date of encounter.

B. Aliens Seeking Admission Who are Exempt from Expedited
Removal

The following categories of aliens are exempt from expedited removal:

While Cuban citizens and nationals were previously exempt from expedited removal, the regulations at 8 C.F.R. § 235.3(b)(1)(i) were modified to remove the exemption. See Department of Homeland Security, Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 Fed. Reg. 4769 (Jan. 17, 2017), as corrected in Department of Homeland Security, Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 Fed. Reg. 8353 (Jan. 25, 2017).

1. Stowaways

Stowaways are not eligible to apply for admission to the U.S. United States, and therefore they are not subject to the expedited removal program under INA section 235(b)(1)(A)(i). They are also not eligible for a full hearing in removal proceedings under INA section 240. However, if a stowaway indicates an intention to apply for asylum under INA section 208 or a fear of persecution, an asylum officer will conduct a credible fear interview and refer the case to an immigration judge for an asylum and/or Convention Against Torture hearing if the stowaway meets satisfies the credible fear standard.

2. Persons granted asylum status under INA section 208.

3. Persons admitted to the United States as refugees under INA section 207.

4. Persons admitted to the United States as lawful permanent residents.

5. Persons paroled into the United States prior to April 1, 1997.

6. Persons paroled into the United States pursuant to a grant of advance parole that the alien applied for and obtained in the United States prior to the alien’s departure from and return to the United States.

7. Persons denied admission on charges other than or in

INA § 235(a)(2).

8 C.F.R. § 235.3(b)(3).
addition to INA Section 212(a)(6)(C) or 212(a)(7).


This exemption includes nationals of non-VWP countries who attempt entry by posing as nationals of VWP countries.

Individuals seeking admission under the Guam and Northern Mariana Islands visa waiver program under INA section 212(l) are not exempt from expedited removal provisions of the INA.

9. Asylum seekers attempting to enter the United States at a land border port of entry with Canada must first establish eligibility for an exception to the Safe Third Country Agreement, through a Threshold Screening interview, in order to receive a credible fear interview.

C. Historical Background

1. In 1991, the Immigration and Naturalization Service (INS) developed the credible fear of persecution standard to screen for possible refugees among the large number of Haitian migrants who were interdicted at sea during the mass exodus following a coup d’etat in Haiti.

2. Prior to implementation of the expedited removal provisions of IIRIRA, credible fear interviews were first conducted by INS trial attorneys and later by asylum officers, to assist the district director in making parole determinations for detained aliens.

3. In 1996, the INA was amended to allow for the expedited removal of certain inadmissible aliens, who would not be entitled to an immigration hearing or further review unless they were able to establish a credible fear of persecution. At the outset, expedited removal was mandatory for “arriving aliens,” and the Attorney General was given the discretion to designate applicability to certain other aliens who have not been admitted or paroled and who have not established to the satisfaction of an immigration officer continuous physical presence in the United States for the two-year period immediately prior to the date of the inadmissibility determination. Initially, expedited removal was only applied to “arriving aliens.”
4. The credible fear screening process was expanded to include the credible fear of torture standard with the promulgation of regulations concerning the Convention against Torture, effective March 22, 1999.

5. Designation of other groups of aliens for expedited removal

   a. In November 2002, the Department of Justice expanded the application of the expedited removal provisions of the INA to certain aliens who arrived in the United States by sea, who have not been admitted or paroled and who have not been physically present in the United States continuously for the two year period prior to the inadmissibility determination.

   b. On August 11, 2004, DHS further expanded the application of expedited removal to aliens determined to be inadmissible under sections 212 (a)(6)(C) or (7) of the INA who are physically present in the U.S. without having been admitted or paroled, who are apprehended within 100 air miles of the U.S. international land border, and who have not established to the satisfaction of an immigration officer that they have been physically present in the U.S. continuously for the fourteen day (14 day) period immediately prior to the apprehension.

   c. On January 17, 2017, DHS published a notice to apply the November 13, 2002 expanded application of expedited removal, and the August 11, 2004 expanded application of expedited removal, to Cuban citizens and nationals, who had previously been exempt.

6. The expedited removal provisions of the INA require that all aliens subject to expedited removal be detained through the credible fear determination until removal, unless found...
to have a credible fear of persecution, or a credible fear of torture. However, the governing regulation permits the parole of an individual in expedited removal, in the exercise of discretion, if such parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

III. FUNCTION OF CREDIBLE FEAR SCREENING

In applying the credible fear standard, it is critical to understand the function of the credible fear screening process. As explained by the Department of Justice when issuing regulations adding Convention Against Torture screening to the credible fear process, the function of the process is attempts to “to quickly identify potentially meritorious claims to protection and to resolve frivolous ones with dispatch... If an alien passes this threshold screening standard, his or her claim for protection... will be further examined by an immigration judge in the context of removal proceedings under section 240 of the Act. The screening mechanism also allows for the expeditious review by an immigration judge of a negative screening determination and the quick removal of an alien with no credible claim to protection.”

“Essentially, the asylum officer is applying a threshold screening standard to decide whether an asylum [or torture] claim holds enough promise that it should be heard through the regular, full process or whether, instead, the person’s removal should be effected through the expedited process.”

IV. DEFINITION OF CREDIBLE FEAR OF PERSECUTION AND CREDIBLE FEAR OF TORTURE

A. Definition of Credible Fear of Persecution

According to statute, the term credible fear of persecution means that an alien has a credible fear of persecution only if “there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum as a refugee under section 208 [of the INA].” Regulations further provide that the applicant will be found to have a credible fear of persecution if the applicant establishes that there is a significant possibility that he or she can establish eligibility for withholding of removal under section 241(b)(3) of the INA.
B. Definition of Credible Fear of Torture

An applicant will be found to have a credible fear of torture if the applicant establishes that there is a significant possibility that he or she is eligible for withholding of removal under section 241(b)(3) of the Act or deferral of removal, if the applicant is subject to a mandatory bar to withholding of removal under the regulations issued pursuant to the legislation implementing the Convention Against Torture, pursuant to 8 C.F.R. § 208.16 or § 208.17.
V. BURDEN OF PROOF AND STANDARD OF PROOF FOR CREDIBLE FEAR DETERMINATIONS

A. Burden of Proof / Testimony as Evidence

The applicant bears the burden of proof to establish a credible fear of persecution or torture. This means that the applicant must produce sufficiently convincing evidence that establishes the facts of the case, and that those facts must meet every element of the relevant legal standard.

Because of the non-adversarial nature of credible fear interviews, while the burden is always on the applicant to establish eligibility, there is a shared aspect of that burden in which asylum officers have an affirmative duty to elicit all information relevant to the legal determination. The burden is on the applicant to establish a credible fear, but asylum officers must fully develop the record to support a legally sufficient determination. Asylum officers are required by regulation to “conduct the interview in a nonadversarial manner.” The regulation also instructs asylum officers that “[t]he purpose of the [credible fear] interview shall be to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture….”

An applicant’s testimony is evidence to be considered and weighed along with all other evidence presented. Often times, in the credible fear context of expedited removal and detention, an applicant will not be able to provide additional evidence corroborating his or her otherwise credible testimony. An applicant may establish a credible fear with testimony alone if that testimony is detailed, consistent, and plausible. According to the INA, the applicant’s testimony may be sufficient to sustain the applicant’s burden of proof if it is “credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.” An applicant is a refugee only if he or she has been persecuted or has a well-founded fear of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.” To give effect to the plain meaning of the statute and each of the terms therein, a applicant's testimony must satisfy all three prongs of the “credible, persuasive, and … specific facts” test in order to establish his or her burden of proof without corroboration. Therefore, the terms “persuasive” and “specific facts” must have independent meaning above and beyond the first term “credible.” An applicant may be credible, but nonetheless fail to satisfy his or her burden to establish the required elements of eligibility. “Specific facts” are distinct from statements of belief. When assessing the probative value of an applicant’s testimony, the applicant’s testimony may be sufficient to sustain the applicant’s burden of proof if it is “credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”

See RAIO Training Module, Evidence.


8 C.F.R. § 208.30(d).

INA § 208(b)(1)(B)(ii).

INA § 101(a)(42)

INA § 208(b)(1)(B)(ii).
testimony, the asylum officer must distinguish between fact and opinion testimony and determine how much weight to assign to each of the two forms of testimony any claimed facts.
After developing a sufficient record by eliciting all relevant testimony, an asylum officer must analyze whether the applicant’s testimony is sufficiently credible, persuasive, and specific to be accorded sufficient evidentiary weight to meet the significant possibility standard. Under the INA, the asylum officer is also entitled to determine that the applicant must provide evidence that corroborates the applicant’s testimony, even where the officer might otherwise find the testimony credible. In cases in which the asylum officer determines that the applicant must provide such evidence, the asylum officer must provide the applicant notice and the opportunity to submit evidence, and the applicant must provide the evidence unless the applicant cannot reasonably obtain the evidence.

Additionally, pursuant to the statutory definition of “credible fear of persecution,” the asylum officer must take account of “such other facts as are known to the officer.” Such “other facts” include relevant country conditions information.

Similarly, country conditions information should be considered when evaluating a credible fear of torture. The Convention Against Torture and implementing regulations require consideration of “[e]vidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and [o]ther relevant information regarding conditions in the country of removal.”

The regulations instruct asylum officers as follows: “in deciding whether the alien has a credible fear of persecution or torture pursuant to § 208.30 of this part, …the asylum officer may rely on material provided by the Department of State, other USCIS offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.”

Thus, in evaluating the credibility of an applicant’s claim to be a refugee, the asylum officer must consider information about the country from which the alien claims refugee status, such as the prevalence of torture or persecution based on race, religion, nationality, membership in a particular social group, or political opinion. Such information may be derived from several sources.

**B. Credible Fear Standard of Proof: Significant Possibility**

The party who bears the burden of proof must persuade the adjudicator of the existence of certain factual elements according to a specified “standard of proof,” or degree of certainty. The relevant standard of proof specifies how convincing or probative the applicant’s evidence must be.
In order to establish a credible fear of persecution or torture, the applicant must show a "significant possibility" that he or she could establish eligibility for asylum, withholding of removal, or deferral of removal.

When interim regulations were issued to implement the credible fear process, the Department of Justice described the credible fear "significant possibility" standard as one that sets "a low threshold of proof of potential entitlement to asylum; many aliens who have passed the credible fear standard will not ultimately be granted asylum." Nonetheless, in the initial regulations, the Department declined suggestions to "adopt regulatory language emphasizing that the credible fear standard is a low one and that cases of certain types should necessarily meet that standard."

In fact, the showing required to meet the "significant possibility" standard is higher than the "not manifestly unfounded" screening standard favored by the Office of the United Nations High Commissioner for Refugees ("UNHCR") Executive Committee. A claim that has no possibility, or only a minimal possibility, or a mere possibility, of success, would not meet the "significant possibility" standard.

See INA § 235 (b)(1)(B)(v); 8 C.F.R. §§ 208.30(e)(2), (3).
While a mere possibility of success is insufficient to meet the credible fear standard, the “significant possibility” standard does not require the applicant to demonstrate that the chances of success are more likely than not.

In a non-immigration case, the “significant possibility” standard of proof has been described to require the person bearing the burden of proof to “demonstrate a substantial and realistic possibility of succeeding.” While this articulation of the “significant possibility” standard was provided in a non-immigration context, the “substantial and realistic possibility” of success description is a helpful articulation of the “significant possibility” standard as applied in the credible fear process.

The U.S. Court of Appeals for the D.C. Circuit found that the showing required to meet satisfy a “substantial and realistic possibility of success” is higher than the standard of “significant evidence” but lower than the that of “preponderance of the evidence-standard.”

In sum, “the credible fear “significant possibility” standard of proof can be best understood as requiring that the applicant “demonstrate a substantial and realistic possibility of succeeding,” but not requiring the applicant to show that he or she is more likely than not to succeed when before an immigration judge.” or establishing eligibility for asylum, withholding of removal, or deferral of removal. The standard requires the applicant to identify more than “significant evidence” that the applicant is a refugee entitled to asylum, withholding of removal, or deferral of removal, but the applicant does not need to show that the “preponderance” or majority of the evidence establishes that entitlement.

C. Important Considerations in Interpreting and Applying the
Standard

1. The "significant possibility" standard of proof required to establish a credible fear of persecution or torture must be applied in conjunction with the standard of proof required for the ultimate determination on eligibility for asylum, withholding of removal, or protection under the Convention Against Torture.

For instance, in order to establish a credible fear of torture, an applicant must show a "significant possibility" that he or she could establish eligibility for protection under the Convention Against Torture, i.e. a "significant possibility" that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. This is a higher standard to meet than for an applicant attempting to establish a "significant possibility" that he or she could establish eligibility for asylum based upon a well-founded fear of persecution on account of a protected characteristic, i.e. a "significant possibility" that he or she could establish a "reasonable possibility" of suffering persecution on account of a protected characteristic if returned to his or her home country.

2. Questions as to how the standard is applied should be considered in light of the nature of the standard as a screening standard to identify persons who could qualify for asylum or protection under the Convention against Torture, including when there is reasonable doubt regarding the outcome of a credible fear determination.

3. In determining whether the alien has a credible fear of persecution or a credible fear of torture, the asylum officer shall consider whether the applicant’s case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

4. Similarly, where there is:

   a. disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue; or,

   b. the claim otherwise raises an unresolved issue of law; and,

   c. there is no DHS or Asylum Division policy or guidance on the issue, then

8 C.F.R. § 208.30(e)(4).
generally the interpretation most favorable to the applicant is used when determining whether the applicant meets the credible fear standard.

1. When conducting a credible fear interview, an asylum officer must determine what law applies to the applicant’s claim. The asylum officer should apply all applicable precedents of the Attorney General and the Board of Immigration Appeals (BIA), which are binding on all immigration judges and asylum officers nationwide, to the extent those precedents do not conflict with binding federal court precedent.¹

Where there is disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue, the interpretation most favorable to the applicant is used when determining whether the applicant meets the credible fear standard.²

D. Identity

The applicant must be able to credibly establish his or her identity by a preponderance of the evidence credibly. In many cases, an applicant will not have documentary proof of identity or nationality. However, credible testimony alone can establish identity and nationality if it is credible, is persuasive, and identifies specific facts. Documents such as birth certificates and passports are accepted into evidence if available. The officer may also consider information provided by ICE or Customs and Border Protection (CBP).

VI. CREDIBILITY

A. Credibility Standard

¹ If the order in *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must additionally follow the following guidance:

“The asylum officer should also apply the case law of the relevant federal circuit court, together with the applicable precedents of the Attorney General and the BIA. The BIA defers to precedents of the circuit in which the removal proceedings took place, *Matter of Anselmo*, 20 I. & N. Dec. 25, 31 (BIA 1989), except in certain special situations, *see id.*; *see also Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005). (holding prior judicial construction of statute trumps agency construction otherwise entitled to Chevron deference only if prior court decision holds that its construction is required by unambiguous terms of statute and leaves no room for agency discretion).”

² If the order in *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018) is lifted, this policy will no longer apply. Officers will be required to apply the law in the circuit in which the alien is located.
In making a credible fear determination, asylum officers are specifically instructed by statute to “[take] into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer.”

The asylum officer should assess the credibility of the assertions underlying the applicant’s claim to be a refugee entitled to asylum, considering the totality of the circumstances, including other statements made by the applicant, evidence of country conditions, State Department reports, and all other relevant facts and evidence, and all relevant factors.

The U.S. Supreme Court has held that to properly consider the totality of the circumstances, “the whole picture...must be taken into account.” The Board of Immigration Appeals (BIA) has interpreted this to include taking into account the whole of the applicant’s testimony as well as the individual circumstances of each applicant. The Board of Immigration Appeals (BIA) has explained that the burden of proof is upon an applicant for asylum to establish that the reasonable person in her circumstances would fear persecution upon return to her home country on account of one of the five grounds specified in the Act. The applicant may satisfy that burden through a combination of credible testimony and the introduction of documentary evidence and background information that supports the claim.

B. Evaluating Credibility in a Credible Fear Interview

1. General Considerations
   a. The asylum officer must gather sufficient information to determine whether the alien has a credible fear of persecution or torture or persecution based on one of the five specified grounds. The applicant’s credibility should be evaluated (1) only after all information is elicited, and (2) in light of “the totality of the circumstances, and all relevant factors.”
   b. The asylum officer must remain neutral and unbiased
and must evaluate the record as a whole. The asylum officer’s personal opinions or moral views regarding an particular applicant should not affect the officer’s decision.

c. The applicant’s ability or inability to provide detailed descriptions of specific facts supporting the main points of the claim is critical to the credibility evaluation. The applicant’s willingness and ability to provide those descriptions may be directly related to the asylum officer’s skill at placing the applicant at ease and eliciting all the information necessary to make a proper decision. An asylum officer should be cognizant of the fact that an applicant’s ability to provide such descriptions may be.

An applicant may claim that his or her ability to identify such facts is impacted by the context and nature of the credible fear screenings process, but the INA requires the applicant to identify such facts in order to satisfy his or her burden of proof. It is the job of the asylum officer to determine whether that burden has been met.

2. Properly Identifying and Probing Credibility Concerns During the Credible Fear Interview

a. Identifying Credibility Concerns

In making this determination, the asylum officer should take into account the same factors considered in evaluating credibility in the affirmative asylum context, which are discussed in the RAIO Modules: Credibility and Evidence.

Section 208 of the Act provides a non-exhaustive list of factors that may be used in a credibility determination in the asylum context. These include internal consistency; external consistency; plausibility; demeanor; candor; and responsiveness.

The amount of detail provided by an applicant is another factor that should be considered in making a credibility determination. The INA requires an applicant to identify “specific facts.” In order to rely on “lack of detail” as a credibility factor, however, asylum officers must pose questions to the applicant regarding the type of detail sought, specify the level of detail sought. That can be done by asking specific, probing questions that seek to elicit specific facts from the applicant.
While demeanor, candor, responsiveness, and detail provided are to be taken into account in the credible-fear context when making a credibility determination, an asylum officer must also take into account cross-cultural factors, effects of trauma, and the nature of expedited removal and the credible-fear interview process—including detention, relatively brief and often telephonic interviews, etc.—when evaluating
these factors in the credible fear context.

b. **Informing the Applicant of the Concern and Giving the Applicant an Opportunity to Explain**

When credibility concerns present themselves during the course of the credible fear interview, the applicant must be given an opportunity to address and explain them. The asylum officer must follow up on all credibility concerns by making the applicant aware of each portion of the testimony, or his or her conduct, that raises credibility concerns, and the reasons the applicant’s credibility is in question. The asylum officer must clearly record in the interview notes the questions used to inform the applicant of any relevant credibility issues, and the applicant’s responses to those questions.

C. **Assessing Credibility in Credible Fear when Making a Credible Fear Determination**

1. In assessing credibility, the officer must consider the totality of the circumstances and all relevant factors, including any reports or data available to the officer regarding conditions in the country or region regarding which the applicant claims a fear of return. Credibility determinations must be made on a case-by-case basis, requiring the officer to consider the totality of the circumstances provided by the applicant’s testimony and all relevant country conditions information available to the officer.
2. When considering the totality of the circumstances in determining whether the assertions underlying the applicant’s claim are credible, the following factors must be considered as they may impact an applicant’s ability to present his or her claim:

- (i) trauma the applicant has endured;
- (ii) passage of a significant amount of time since the described events occurred;
- (iii) certain cultural factors, and the challenges inherent in cross-cultural communication;
- (iv) detention of the applicant;
- (v) problems between the interpreter and the applicant, including problems resulting from differences in dialect or accent, ethnic or class differences, or other differences that may affect the objectivity of the interpreter or the applicant’s comfort level; and
- (vi) unfamiliarity with speakerphone technology, the use of an interpreter the applicant cannot see, or the use of an interpreter that the applicant does not know personally.

Officers should refer to all relevant country conditions reports made available to USCIS by the Department of State or other intelligence sources to assess whether the applicant’s claims are credible and plausible in the regions in which the applicant claims they have or will occur, as well as to assess whether an applicant could relocate to another area of his or her home country in order to avoid the alleged persecution. If such internal relocation is reasonable, the applicant does not have a credible fear of persecution. Claims that are inconsistent with country conditions reports or are indicative of “boilerplate” language used in credible fear claims by applicants in different proceedings might be valid indications of fraud supporting an adverse credibility finding, although the applicant should be given the opportunity to explain.

3. The asylum officer must have followed up on all credibility
concerns during the interview by making the applicant aware of each concern, and the reasons the applicant’s testimony is in question bases for questioning the applicant’s testimony. The applicant must have been given an opportunity to address and explain all such concerns during the credible fear interview.

4. Generally, trivial or minor credibility concerns in and of themselves will not be sufficient to find an applicant not credible.

   Nonetheless, on occasion such credibility concerns may be sufficient to support a negative credible fear determination considering the totality of the circumstances and all relevant factors. Such concerns should only be the basis of a negative determination if the officer attempted to elicit sufficient testimony, and the concerns were not adequately resolved by the applicant during the credible fear interview. As recommended by Congress in enacting the REAL ID Act of 2005, in making credibility determinations, asylum officers should “rely on those aspects of demeanor that are indicative of truthfulness or deception...[and] a credibility determination should follow an examination of all relevant circumstances, including the circumstances of the individual applicant.”

5. Inconsistencies between the applicant’s initial statement to the CBP or ICE official and his or her testimony before the asylum officer must be probed during the interview. Such inconsistencies may provide support for a negative credibility finding when taking into account the totality of the circumstances and all relevant factors.

   The sworn statement completed by CBP (Form I-867A/B) is not intended, however, to always record detailed information about any fear of persecution or torture or other general information, such as the reason the individual came to the United States. The interview statement is intended to record whether or not the individual has a fear, not the nature or details surrounding that fear. However, in some cases, the asylum officer may find that the CBP officer did, in fact, gather additional information from the applicant regarding the nature of his or her claim. In such cases, the applicant’s prior statements should inform the asylum officer’s line of questioning in the credible fear interview, and any inconsistencies between those prior statements and the statements being made during the credible fear interview should be probed and assessed in determining the

   See 8 C.F.R. § 235.3(b)(4) (stating that if an applicant indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the “examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern,” and should then refer the alien for a credible fear interview).

applicant’s credibility.3

Id. at 212-213.

3 If the order in Grace v. Whitaker, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must additionally follow the following guidance:

A number of federal courts have cautioned adjudicators to keep in mind the circumstances under which an alien’s statement to a CBP official is taken when considering whether an applicant’s later testimony is consistent with the earlier statement. For instance, the Seventh Circuit noted that “airport interviews…are not always reliable indicators of credibility.” In addition, the Fourth Circuit identified the different purposes of CBP’s interview for the sworn statement and the asylum process: “the purpose of these [sworn statement] interviews is to collect general identification and background information about the alien. The interviews are not part of the formal asylum process. See, e.g., Balasubramanrim v. INS, 143 F.3d 157 (3d Cir. 1998); Lin Lin Tang v. U.S. Att’y Gen., 578 F.3d 1270, 1279-80 (11th Cir. 2009); cf. Ye Jian Xing v. Lynch, 845 F.3d 38, 44-45 (1st Cir. 2017) (while not requiring specifically enumerated factors for examining the reliability of the sworn statement, noting that an interpreter was used and Ye understood the questions asked); Joseph v. Holder, 600 F.3d 1235, 1243 (9th Cir. 2010) (in examining statements in a prior bond hearing, noting, “[w]e have rejected adverse credibility findings that relied on differences between statements a petitioner made during removal proceedings and those made during less formal, routinely unrecorded proceedings.”).

Some factors to keep in mind include: 1) whether the questions posed at the port of entry or place of apprehension were designed to elicit the details of an asylum claim, and whether the immigration officer asked relevant follow-up questions; 2) whether the alien was reluctant or afraid to reveal information during the first meeting with U.S. officials because of past abuse; and 3) whether the interview was conducted in a language other than the applicant’s native language. Ramsameachire v. Ashcroft, 357 F.3d 169, 179-81 (2d Cir. 2004) (holding that the BIA was entitled to rely on fundamental inconsistencies between the applicant’s airport interview statements and his hearing testimony where the applicant was provided with an interpreter, given ample opportunity to explain his fear of persecution in a careful and non-coercive interview, and signed and initialed the typed record of statement).

The Second Circuit has advised: “If, after reviewing the record of the [CBP] interview in light of these factors and any other relevant considerations suggested by the circumstances of the interview, the … [agency] concludes that the record of the interview and the alien’s statements are reliable, then the agency may, in appropriate circumstances, use those statements as a basis for finding the alien’s testimony incredible. Conversely, if it appears that either the record of the interview or the alien’s statements may not be reliable, then the … [agency] should not rely solely on the interview in making an adverse credibility determination.”

All reasonable explanations must be considered when assessing the applicant’s credibility. The asylum officer need not credit an unreasonable explanation.

If, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the officer finds that the applicant has provided a reasonable explanation, for inconsistencies between prior statements and statements made at the credible fear interview, those inconsistencies alone need not preclude a positive credibility determination when considering the totality of the circumstances and all relevant factors.

If, however, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the applicant fails to provide an explanation for such inconsistencies, or the officer finds that the applicant did not provide a reasonable explanation, a negative credibility determination based upon the totality of the circumstances and all relevant factors will generally be appropriate.
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Moab v. Gonzales, 500 F.3d 656, 660 (7th Cir. 2007) (internal citations omitted).

Qing Hua Lin v. Holder, 736 F.3d 343, 353 (4th Cir.)
these [sworn statement] interviews is to collect general identification and background information about the alien. The interviews are not part of the formal asylum process.

Some factors to keep in mind include: 1) whether the questions posed at the port of entry or place of apprehension were designed to elicit the details of an asylum claim, and whether the immigration officer asked relevant follow-up questions; 2) whether the alien was reluctant or afraid to reveal information during the first meeting with U.S. officials because of past abuse; and 3) whether the interview was conducted in a language other than the applicant’s native language.

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6. All reasonable explanations must be considered when assessing the applicant’s credibility. The asylum officer need not credit an unreasonable explanation.

If, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the officer finds that the applicant has provided a reasonable explanation, a positive credibility determination may be appropriate when
considering the totality of the circumstances and all relevant factors.

If, however, after providing the applicant with an opportunity to explain or resolve any credibility concerns, the applicant fails to provide an explanation, or the officer finds that the applicant did not provide a reasonable explanation, a negative credibility determination based upon the totality of the circumstances and all relevant factors will generally be appropriate.

D. Documenting a Credibility Determination

1. The asylum officer must clearly record in the interview notes the questions used to inform the applicant of any relevant credibility issues and the applicant’s responses to those questions.

2. The officer must specify in the written case analysis the basis for the negative credibility finding including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer’s determination of whether, in light of such facts, the alien has established a credible fear. In the case of a positive credibility determination, the officer should note any specific portions of testimony that contributed to the officer’s overall credibility determination, including specificity of the presentation, consistency with corroborating evidence submitted or country condition reports available and any other factors about the applicant’s narrative, demeanor, or presentation that weighed in favor of a positive credibility determination. In the case of a negative credibility determination, the officer must note any portions of the testimony found not credible, including the specific inconsistencies, lack of detail, or other factors, along with the applicant’s explanation and the reason basis for determining that the explanation is deemed not to be reasonable.

3. If information that impugns the applicant’s testimony becomes available after the interview but prior to serving the credible fear determination, a follow-up interview must be scheduled to confront the applicant with the derogatory information and to provide the applicant with an opportunity to address the adverse information. Unresolved credibility issues should not form the basis of a negative credibility determination.

8 C.F.R §§ 208.30(d)(7), (e)(1).
VII. ESTABLISHING A CREDIBLE FEAR OF PERSECUTION

A. General Considerations in Credible Fear

An applicant will be found to have a credible fear of persecution if there is a significant possibility the applicant

For the most recent Asylum Division guidance on eligibility for asylum under section 208 of the INA, please consult the latest applicable RAIO Training Module.

INA § 235(b)(1)(B)(v); 8 C.F.R. § 208.30(e)(2).
can establish eligibility for asylum as a refugee under section 208 of the Act or withholding of removal under section 241(b)(3) of the Act or deferral of removal, if the applicant subject to the mandatory denial of withholding of removal.

1. In general, a finding by the asylum officer that (1) there is a significant possibility – that is, a substantial and realistic possibility based on more than significant evidence – that the applicant experienced past persecution on account of a protected characteristic, (2) the conditions that gave rise to such persecution continue to exist in the applicant’s home country, and (3) the applicant could not avoid such persecution by relocating within his or her home country, are sufficient to satisfy the credible fear standard. This is because the applicant in such a case has shown a significant possibility of establishing that he or she is a refugee under section 208 of the Act and a full asylum hearing provides the appropriate venue to evaluate whether or not the applicant merits a favorable exercise of discretion to grant asylum.

However, if there is evidence so substantial that there is no evidence does not establish a significant possibility of future persecution, or other serious harm or other serious harm or that there are no reasons to grant asylum based on compelling reasons for being unwilling or unable to return to the applicant’s home country given the severity of the past persecution, or reasons why internal relocation is not possible, a negative credible fear determination may be appropriate. 4

2. When an applicant does not claim to have suffered any past harm or persecution, or where in which the evidence is insufficient to establish a significant possibility of past persecution under section 208 of the Act, the asylum officer must determine whether there is a significant possibility the applicant could establish a well-founded fear of persecution on account of a protected characteristic under section 208 of the Act. An applicant establishes that he or she has a well-founded fear of persecution if a reasonable person in the applicant’s circumstances would fear persecution upon return to his or her country of origin.

4 Only aliens who have been found to have suffered past persecution are eligible for a grant of asylum based on “other serious harm.” See 8 C.F.R. § 208.13(b)(1)(iii). If the alien demonstrates past persecution, he or she can be granted asylum if: (1) the applicant has also demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of past persecution or if (2) the applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country. Thus, if an alien establishes a significant possibility that he or she has suffered past persecution and either of the conditions described above exist, the alien could establish a credible fear of persecution.
B. Past Persecution/Well-Founded Fear of Future Persecution

1. Elements Required to Establish a Credible Fear: In order to establish a credible fear of persecution, the applicant must establish each one of the elements below, to the satisfaction of the asylum officer. If the applicant is not able to establish all of the elements, the applicant must receive a negative credible fear determination.

2. Severity of Harm: For a credible fear of persecution, there must be a significant possibility the applicant can establish that the harm the applicant has experienced was or fears he or she will experience if returned to his or her home country is sufficiently serious to amount to persecution.

   a. There is no requirement that an individual suffer serious injuries to be found to have suffered persecution. However, the presence or absence of physical harm is relevant in determining whether the harm suffered by the applicant rises to the level of persecution.

   b. Serious threats made against an applicant may constitute persecution even if the applicant was never physically harmed.

   c. Violations of “core” or “fundamental” human rights, prohibited by international law, may constitute harm amounting to persecution.

See RAIO Training Module, Persecution Well Founded Fear.
d. While less preferential treatment and other forms of discrimination and harassment generally are not considered persecution, discrimination or harassment may amount to persecution if the adverse practices accumulate or increase in severity to the extent that it leads to consequences of a substantially prejudicial nature. Asylum officers should evaluate the entire scope of harm experienced by the applicant to determine if he or she was persecuted, taking into account the individual circumstances of each case.

e. Generally, a brief detention, for legitimate law enforcement reasons, without mistreatment, will not constitute persecution. Prolonged detention is a deprivation of liberty, which may constitute a violation of a fundamental human right and amount to persecution. Evidence of mistreatment during detention also may establish persecution.

f. To rise to the level of persecution, economic harm must be deliberately imposed and severe.

g. Psychological harm alone may rise to the level of persecution. Evidence of the applicant’s psychological and emotional characteristics, such as the applicant’s age or trauma suffered as a result of past harm, are relevant to determining whether psychological harm amounts to persecution.

h. Rape and other severe forms of sexual harm constitute harm amounting to persecution, as they are forms of serious physical harm.

i. Harm to an applicant’s family member or another third party may constitute persecution of the applicant where the harm is serious enough to amount to persecution, and also where the persecutor’s motivation in harming the third party is to act against the applicant.

3. Future Fear (Well-Founded Fear): Well-founded Fear of Persecution
   a. In cases in which an applicant does not claim to have suffered any past harm, or in which the evidence is insufficient to establish a significant possibility of past persecution on account of a protected characteristic under section 101(a)(42)(A) of the Act, the asylum officer must determine whether there is a significant possibility the applicant could establish a well-founded fear of persecution under section 208 of the

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See RAIO Training Module, Well Founded Fear, for more detailed information about the subjective and objective elements of well-founded fear, including the standards of proof needed to
Act.

b. To establish a well-founded fear of persecution on account of a protected characteristic, an applicant must show that (1) he or she has a subjective fear of persecution, and (2) that such fear has an objective basis.

c. The applicant satisfies the subjective element if he or she credibly articulates a genuine fear of return. Fear has been defined as an apprehension or awareness of danger.

d. The applicant satisfies the objective element if he or she demonstrates past persecution based on continuing country conditions, or has a “well-founded fear” of persecution. An applicant has a well-founded fear of persecution if a reasonable person in the applicant’s circumstances would fear persecution upon return to his or her country of origin.

The Supreme Court concluded that the standard for establishing the likelihood of future harm in asylum is lower than the standard for establishing likelihood of future harm in withholding of deportation: “One can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place.”

To make the point, Cardoza-Fonseca used the following example: “In a country where every tenth adult male is put to death or sent to a labor camp, ‘it would be only too apparent that anyone who has managed to escape from the country in question will have ‘well-founded fear of being persecuted’ upon his eventual return.’”

Cardoza-Fonseca did not, however, hold that “well-founded fear” always equals a ten percent chance. Instead, Cardoza-Fonseca deemed the term “ambiguous,” and explicitly declined to set forth guidance on how the well-founded fear test should be applied. The Court merely held that the government was “incorrect in holding that the two standards [i.e., well-founded fear and clear probability] are identical” and invited the affected agencies to expound on the meaning of “well-founded fear.”

Cardoza-Fonseca’s extreme example of every tenth adult male being put to death or sent to a labor camp may well satisfy this standard in a particular case.
(assuming that all other requirements are met, including nexus), but officers must bear in mind the unusual severity of this example. While the Cardoza-Fonseca example seems simple, the Court describes an extremely unusual and high murder rate of 10 percent of adult males. It is important for officers to note that such rate is extraordinarily high and incredibly rare. Indeed, it is significantly higher than the murder rates in countries with even the highest rates of violence. Additionally, the asylum officer must determine whether the applicant’s testimony supports an objective finding that the applicant, himself or herself, will be persecuted, which requires a more extensive analysis than whether persecution is occurring at all in the country of origin. In doing that, the asylum officers must also determine whether any objective fear claimed by the applicant is credible. The officer may well find that a claimed rate of 10% chance of persecution, in light of the applicant’s statements and the country conditions available to the officer, is not credible. It is important to note also that rarely will an applicant be able to demonstrate, with certainty, the rates of people being persecuted countrywide.

After Cardoza-Fonseca, neither the Board of Immigration Appeals nor DHS has definitively resolved how much fear is “well-founded.” There is thus no single, binding interpretation of Cardoza-Fonseca’s discussion of “well-founded fear,” including its suggestions about a one-in-ten chance.

Thus, the determination of whether a fear is well-founded does not ultimately rest on the statistical probability of persecution, which is almost never available. Rather, the determination rests on whether the applicant’s fear is based on facts that would lead a reasonable person in similar circumstances to fear persecution.

4. **Motivation:** For a credible fear of persecution, there must be a significant possibility the applicant can establish that there is a significant possibility that the persecutor was or will be motivated to harm him or her on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.

a. Nexus analysis requires officers to determine the following: (1) whether the applicant possesses or is perceived to possess a protected characteristic; and (2) whether the
persecution or feared persecution is at least in part on account of that protected characteristic.

b. A “punitive” or “malignant” intent is not required for harm to constitute persecution. Persecution can consist of objectively serious harm or suffering that was inflicted because of a characteristic (or perceived characteristic) of the victim, regardless of whether the persecutor intended the victim to experience the harm as harm.

e. The applicant does not bear the burden of establishing the persecutor’s exact motivation. For cases where no nexus to a protected ground is immediately apparent, the asylum officer in credible fear interviews should ask questions related to all five grounds to ensure that no nexus issues are overlooked.

d. Although the applicant bears the burden of proof to establish a nexus between the harm and the protected ground, asylum officers have an affirmative duty to elicit all information relevant to the nexus determination. Evidence of motive can be either direct or circumstantial. Reasonable inferences regarding the motivations of persecutors should be made, taking into consideration the culture and patterns of persecution within the applicant’s country of origin and any relevant country of origin information, especially if the applicant is having difficulty answering questions regarding motivation.

b. There is no requirement that the persecutor be motivated only by the protected belief or characteristic of the applicant. As long as there is must be a significant possibility that at least one central reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic, the applicant may establish the harm is “on account of” a protected characteristic in the credible fear context.

If the injunction in *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must instead follow the following guidance:

There must be a significant possibility that at least one central reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic. In the Ninth Circuit, the alien need only establish a significant possibility that at least a reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic. *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017).
c. Particular Social Groups: The area of law surrounding particular social groups is evolving rapidly, and it is important for asylum officers to be informed about current DHS and Asylum Division guidance, as well as current case law and regulatory changes.
To determine whether the applicant belongs to a legally viable particular social group where there are no precedent decisions on point, asylum officers must analyze the facts using the BIA test for evaluating whether a group meets the definition of a particular social group: immutability requirement described in Matter of Acosta. The group must comprise individuals who share a common, immutable characteristic, which is either a characteristic that members cannot change or is a characteristic that is so fundamental to the member’s identity or conscience that he or she should not be required to change it.6

(i) First, the group must comprise individuals who share a common, immutable characteristic, which is either a characteristic that members cannot change or is a characteristic that is so fundamental to the member’s identity or conscience that he or she should not be required to change it.

(ii) Second, the group must be defined with particularity; it “must be defined by characteristics that provide a clear benchmark for determining who falls within the group.”

If the injunction in Grace v. Whitaker, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must instead follow the following guidance:

To determine whether the applicant belongs to a viable particular social group where there are no precedent decisions on point, asylum officers must analyze the facts using the BIA test for evaluating whether a group meets the definition of a particular social group, which is the immutability requirement described in Matter of Acosta:

First, the group must comprise individuals who share a common, immutable characteristic, which is either a characteristic that members cannot change or is a characteristic that is so fundamental to the member’s identity or conscience that he or she should not be required to change it.

Second, the group must be defined with particularity; it “must be defined by characteristics that provide a clear benchmark for determining who falls within the group.” A group is particular if the “group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” A particular social group must not be “amorphous, overbroad, diffuse, or subjective,” and “not every ‘immutable characteristic’ is sufficiently precise to define a particular social group.”

Third, the group must be socially distinct within the society in question. Social distinction involves examining whether “those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it.” In other words, “[m]embers of a particular social group will generally understand their own affiliation with that group, as will other people in their country.” Social distinction relates to society’s, not the persecutor’s, perception, though the persecutor’s perceptions may be relevant to social distinction. See Matter of A-B-, 27 I&N Dec. 316, 320 (AG 2018); Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014); Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014).

6 If the injunction in Grace v. Whitaker, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must instead follow the following guidance:
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5. **Persecutor:** For a credible fear of persecution, there must be a significant possibility the applicant can establish that the entity that harmed the applicant (the persecutor) is either an agent of the government or an entity that the government is unable or unwilling to control.

a. Evidence that the government is unwilling or unable to control the persecutor could include a failure to investigate reported acts of violence, a refusal to make a report of acts of violence or harassment, closing investigations on bases clearly not supported by the circumstances of the case, statements indicating an unwillingness to protect certain victims of crimes, and evidence that other similar allegations of violence go uninvestigated.

b. Asylum officers must recognize that no government can guarantee the safety of each of its citizens or control all potential persecutors at all times. It is not sufficient for an applicant to assert that the government lacks sufficient resources to address criminal activity. Rather, the government must have abdicated its responsibility to control persecution. A determination of whether a government is unable to control the entity that harmed the applicant...
requires evaluation of country of origin information and the applicant's circumstances. For example, a government in the midst of a civil war or one that is unable to exercise its authority over portions of the country might be unable to control the persecutor in areas of the country where its influence does not extend. Asylum officers must consult all available and salient information, including the objective country conditions set forth in Department of State country reports. In order to establish a significant possibility of past persecution, the applicant is not required to demonstrate that the government was unable or unwilling to control the persecution on a nationwide basis. The applicant may meet his or her burden with evidence that the government was unable or unwilling to control the persecution in the specific locale where the applicant was persecuted to which the applicant was subject.

c. To demonstrate that the government is unable or unwilling to protect an applicant, the applicant must show that he or she sought the protection of the government, or provide a reasonable explanation as to why he or she did not seek that protection. Reasonable explanations for not seeking government protection include evidence that the government has shown itself unable or unwilling to act in similar situations or that the applicant would have increased his or her risk by affirmatively seeking protection. In determining whether an applicant's failure to seek protection is reasonable, asylum officers should consult and consider country of origin information, in addition to the applicant's testimony.
C. Well-founded Fear of Persecution

1. When an applicant does not claim to have suffered any past harm or where the evidence is insufficient to establish a significant possibility of past persecution on account of a protected characteristic under section 101(a)(42)(A) of the Act, the asylum officer must determine whether there is a significant possibility the applicant could establish a well-founded fear of persecution under section 208 of the Act.

2. To establish a well-founded fear of persecution on account of a protected characteristic, an applicant must show that he or she has: 1) a subjective fear of persecution; and 2) that the fear has an objective basis.

   a. The applicant satisfies the subjective element if he or she credibly articulates a genuine fear of return. Fear has been defined as an apprehension or awareness of danger.
b. The applicant will meet the credible fear standard based on a fear of future harm if there is a significant possibility that he or she could establish that there is a reasonable possibility that he or she will be persecuted on account of a protected ground upon return to his or her country of origin.

3. The Mogharrabi Test: Matter of Mogharrabi lays out a four-part test for determining well-founded fear. To establish a credible fear of persecution on account of a protected characteristic based on future harm, there must be a significant possibility that the applicant can establish each of the following elements:

a. Possession (or imputed possession of a protected characteristic)

(i) The applicant must possess, or be believed to possess, a protected characteristic that the persecutor seeks to overcome. The BIA later modified this definition and explicitly recognized that a “punitive” or “malignant” intent is not required for harm to constitute persecution. The BIA concluded that persecution can consist of objectively serious harm or suffering that is inflicted because of a characteristic (or perceived characteristic) of the victim, regardless of whether the persecutor intends the victim to experience the harm as harm.

(ii) This analysis requires officers to determine: (1) whether the applicant possesses or is perceived to possess a protected characteristic; and (2) whether the persecution or feared persecution is on account of that protected characteristic.

(iii) For cases where no nexus to a protected ground is immediately apparent, the asylum officer in credible fear interviews must ask questions related to all five grounds to ensure that no nexus issues are overlooked.

(iv) Asylum officers have an affirmative duty to elicit all information relevant to the nexus determination. Officers should make reasonable inferences, keeping in mind the difficulty, in many cases, of establishing with precision a
persecutor's motives.

(i) To determine whether the applicant belongs to a viable particular social group where there are no precedent decisions on point, asylum officers must analyze the facts using the BIA test for evaluating whether a group meets the definition of a particular social group.

b. **Awareness** (the persecutor is aware or could become aware the applicant possesses the characteristic)

(i) Relevant lines of inquiry include: how someone would know or recognize that the applicant had the protected characteristic and how the persecutor would know that the applicant had returned to his or her country.

(ii) The applicant is not required to hide his or her possession of a protected characteristic in order to avoid awareness.

c. **Capability** (the persecutor has the capability to persecute the applicant)

(i) If the persecutor is a governmental entity, asylum officers should consider the extent of the government's power or authority and whether the applicant can seek protection from another government entity within the country.

(ii) If the persecutor is a non-governmental entity, relevant factors include: the extent to which the government is able or willing to control the entity; whether the government is able to or would want to protect the applicant; whether the applicant reported the non-governmental actor to the police; and whether the police or government could or would offer any protection to the applicant.

(iii) The extent to which the persecutor has the ability to enforce his or her will throughout the country is also relevant when evaluating whether the persecutor is capable of persecuting the applicant.

d. **Inclination** (the persecutor has the inclination to persecute the applicant)
(i) Factors to consider when evaluating inclination include: any previous threats or harm from the persecutor, the persecutor’s treatment of individuals similarly situated to the applicant who have remained in the home country or who have returned to the home country, and any time passed between the last threats received and flight from his or her home country.

(ii) For both capability and inclination, if the applicant is unable to answer questions regarding whether the persecutor is capable or inclined to persecute him or her, the asylum officer may use country of origin information to help determine the persecutor’s capability and inclination to persecute the applicant.

4. Pattern or Practice

   a. The applicant need not show that he or she will be singled out individually for persecution, if the applicant shows a significant possibility that he or she could establish:

      (i) There is a pattern or practice of persecution on account of any of the protected grounds of a group of persons similarly situated to the applicant.

      (ii) The applicant is included in and is identified with the persecuted group, such that a reasonable person in the applicant’s position would fear persecution.

5. Persecution of Individuals Closely Related to the Applicant

   The persecution of family members or other individuals closely associated with the applicant may provide objective evidence that the applicant’s fear of future persecution is well-founded, even if there is no pattern or practice of persecution of such individuals. On the other hand, continued safety of individuals similarly situated to the applicant may, in some cases, be evidence that the applicant’s fear is not well-founded. Furthermore, the applicant must establish some connection between such persecution and the persecution the applicant fears.
6. **Threats without Harm**

   A threat (anonymous or otherwise) may also be sufficient to establish a well-founded fear of persecution. The evidence must show that the threat is serious and that there is a reasonable possibility the threat will be carried out.

6. **Applicant Did Not Remains in Country after Threats or Harm**

   a. A significant lapse of time between the occurrence of incidents that form the basis of the claim and an applicant’s departure from the country may be evidence that the applicant’s fear is not well-founded. The lapse of time may indicate that the applicant does not possess a genuine fear of harm or the persecutor does not possess the ability or the inclination to harm the applicant.

   b. However, there may be valid reasons why the applicant did not leave the country for a significant amount of time after receiving threats or being harmed, including the following: lack of funds to arrange for departure from the country and time to arrange for the safety of family members; belief that the situation would improve; promotion of a cause within the home country; and temporary disinclination by the persecutor to harm the applicant.

7. **Return to Country of Persecution Applicant Has Not Acted Inconsistent with Subjective Fear of Persecution**

   An applicant’s return to the country of feared persecution generally weakens the applicant’s claim of a well-founded fear of persecution. It may indicate that the applicant does not possess a genuine (subjective) fear of persecution or that the applicant’s fear is not objectively reasonable. Consideration must be given to the reasons the applicant returned and what happened to the applicant once he or she returned. Return to the country of feared persecution does not necessarily defeat an applicant’s claim.

8. **Internal Relocation**

   a. In cases in which the feared persecutor is a government or is government-sponsored, there is a presumption that there is no reasonable
internal relocation option. This presumption may be overcome if a preponderance of the evidence shows that, under all of the circumstances, the applicant could avoid future persecution by relocating to another part of the applicant’s country, and that it would be reasonable to expect the applicant to relocate. Asylum officers must consult all available and salient information, including information in the objective country conditions set forth in Department of State country reports.

b. If the persecutor is a non-governmental entity, there must be a significant possibility that the applicant can demonstrate that there is no reasonable internal relocation option. cannot reasonably internally relocate within his or her country. In cases in which the persecutor is a non-governmental entity and the applicant has not established past persecution, the applicant has the burden of establishing that internal relocation is not reasonable.

8 C.F.R. § 208.13(b)(3)(i).

c. In assessing an applicant’s well-founded fear and internal relocation, apply the following two-step approach:

\[(i)\] Determine whether an applicant could avoid future persecution by relocating to another part of the applicant’s home country. If the applicant will not be persecuted in another part of the country, then:

\[(ii)\] Determine whether an applicant’s relocation, under all the circumstances, would be reasonable. Some factors that could be considered—but are in no way controlling or determinative—are listed in 8 C.F.R. § 208.13(b)(3).
d. In determining the reasonableness of internal relocation in relation to a well-founded fear claim, asylum officers should consider the following factors:

(i) Whether the applicant would face other serious harm that may not be inflicted on account of one of the five protected grounds in the refugee definition, but is so serious that it equals the severity of persecution;

(ii) Any ongoing civil strife such as a civil war occurring in parts of the country;

(iii) Administrative, economic, or judicial infrastructure that may make it very difficult for an individual to live in another part of the country;

(iv) Geographical limitations that could present barriers to accessing a safe part of a country or where an individual would have difficulty surviving due to the geography;

(v) Social and cultural constraints such as age, gender, health, and social and familial ties or whether the applicant possess a characteristic, such as a particular language or a unique physical appearance, that would readily distinguish the applicant from the general population and affect his or her safety in the
new location; and
(vi) any other factors specific to the case that would make it unreasonable for the applicant to relocate should be considered.

There is no requirement that an applicant first attempt to relocate in his or her country before flight. However, the fact that an applicant lived safely in another part of his or her country for a significant period of time before leaving the country may be evidence that the threat of persecution does not exist countrywide, and that the applicant can reasonably relocate within the country to avoid future persecution.

C. Multiple Citizenship

Persons holding multiple citizenship or nationalities must demonstrate a credible fear of persecution or torture from at least one country in which they are a citizen or national to be eligible for referral to immigration court for a full asylum or withholding of removal hearing. If the country of removal indicated is different from the applicant’s country of citizenship or nationality, fear from the indicated country of removal must also be evaluated.

Although the applicant would not be eligible for asylum unless he or she establishes eligibility with respect to all countries of citizenship or nationality, he or she might be entitled to withholding of removal with respect to one country and not the others. Therefore, the protection claim must be referred for a full hearing to determine this question.

In addition, if the applicant raises a fear with respect to another country, aside from the country of citizenship or nationality or the country of removal, the officer should memorialize it in the file to ensure that the fear is explored in the future if DHS ever contemplates removing the person to this other country.

D. Statelessness/Last Habitual Residence

The asylum officer does not need to make a determination as of whether an applicant is stateless or what the applicant’s country of last habitual residence is. The asylum officer should determine whether the applicant has a credible fear with respect to any country of proposed removal. If the applicant demonstrates a credible fear with respect to any country of proposed removal, regardless of citizenship or habitual residence, the applicant should be referred to the Immigration

See RAIO Training Module, Refugee Definition, for more detailed information about determining an applicant’s nationality, dual nationality, and statelessness.
Judge for a full proceeding, since he or she may be eligible for withholding of removal with respect to that country.
VIII. ESTABLISHING A CREDIBLE FEAR OF TORTURE

An applicant will be found to have a credible fear of torture if the applicant establishes that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to 8 C.F.R. §§ 208.16 or 208.17, the regulations issued pursuant to the legislation implementing the Convention Against Torture (CAT). In order to be eligible for withholding or deferral of removal under CAT, an applicant must establish that it is more likely than not that he or she would be tortured in the country of removal. The credible fear process is a “screening mechanism” that attempts to identify whether there is a significant possibility that an applicant can establish that it is more likely than not that he or she would be tortured in the country in question.

Because in the CAT withholding or deferral of removal hearing, the applicant will have to establish that it is more likely than not that he or she will be tortured in the country of removal. As discussed above, for asylum the applicant must establish either past persecution or a well-founded fear of persecution. Well-founded fear is a lower standard than “more likely than not.”

Therefore a significant possibility of establishing eligibility for CAT withholding or deferral of removal is necessarily a greater burden than establishing a significant possibility of eligibility for asylum. In other words, to establish a credible fear of torture, the applicant must show there is a significant possibility that he or she could establish in a full hearing that it is more likely than not he or she would be tortured in that country.

A. Definition of Torture

8 C.F.R. § 208.18(a) defines “torture” as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

B. General Considerations

1. U.S. regulations require that several elements be met before an act is found to constitute torture. Because credible-fear-of-torture interviews are employed as “screening-mechanisms to quickly identify potentially meritorious-claims to protection and to resolve frivolous ones with dispatch,” parts of the torture definition that require complex legal and factual analyses may be more

8 C.F.R. §§ 208.18(a)(1)-(8).
Immigration and Naturalization Service,
Regulations Concerning the Convention Against Torture,
appropriately considered in a full hearing before an immigration judge.

2. After establishing that the applicant’s claim would be found credible, the applicant satisfies the other elements of the credible fear of torture standard where there is a significant possibility that he or she could establish in a full withholding of removal hearing that:

a. The torturer specifically intends to inflict severe physical or mental pain or suffering;

b. The harm constitutes severe pain or suffering;

c. The torturer is a public official or other person acting in an official capacity, or someone acting at the instigation of or with the consent or acquiescence of a public official or someone acting in official capacity; and

d. The applicant is in the torturer’s custody or physical control.

e. Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions, including the death penalty and other judicially imposed sanctions. However, sanctions that defeat the object and purpose of the Convention are not lawful sanctions. Harm arising out of such sanctions may constitute torture.

3. The Convention Against Torture does not require that the torture be connected to any of the five protected characteristics identified in the definition of a refugee, or any other characteristic the individual possesses or is perceived to possess.


8 C.F.R. § 208.18(a)(5).

Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture. 8 C.F.R. § 208.18(a)(2).

8 C.F.R. § 208.18(a)(6).

8 C.F.R. § 208.18(a)(3).
C. Specific Intent

1. For an act to constitute torture, the applicant must establish that it is more likely than not that the act is specifically intended to inflict severe physical or mental pain or suffering. An intentional act that results in unanticipated and unintended severity of pain and suffering is not torture under the Convention definition.

2. The specific intent requirement is met when the evidence shows that an applicant may be specifically targeted for punishment or intentionally singled out for harsh treatment that may rise to the level of torture. Specific intent is "intent to accomplish the precise criminal act that one is later charged with" while "general intent" commonly "takes the form of recklessness…or negligence."

3. The Convention Against Torture does not require that the torture be connected to any of the five protected characteristics identified in the definition of a refugee, or any other characteristic the individual possesses or is perceived to possess.

D. Degree of Harm

1. For harm to constitute torture, the applicant must establish that it is more likely than not that the harm rises to the level of severity of torture.

2. Torture requires severe pain or suffering, whether physical or mental. “Torture” is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture. Therefore, certain forms of harm that may be considered persecution may not be considered severe enough to amount to torture.

3. Any harm must be evaluated on a case by case basis to determine whether it constitutes torture. Whether harm constitutes torture often depends on the severity and cumulative effect.

3. For mental pain or suffering to constitute torture, the mental pain must be prolonged mental harm caused by or resulting from:

   a. The intentional infliction or threatened infliction of severe physical pain or suffering;

   b. The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

   c. The credible threat of imminent death; or

   d. The credible threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

8 C.F.R. § 208.18(a)(1); 8 C.F.R. § 208.18(a)(2).
E. Identity of the Torturer

1. For an act to constitute torture, the applicant must establish that it is more likely than not that the harm he or she fears 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.”

2. Harm by a Public Official

a. Generally, in the credible fear context, if there is a significant possibility the applicant can establish that it is more likely than not that he or she was or would be harmed by a public official, the applicant has met the public official requirement for a credible fear of torture.

b. The term “public official” is broader than the “government” or “police” and can include any person acting in an official capacity or under color of law. A public official can include any person acting on behalf of a national or local authority or any national or local government employee regardless whether the official is acting in their official or personal capacity.

8 C.F.R. § 208.18(a)(1).

See ADOTC Lesson Plan, Reasonable Fear of Persecution and Torture Determinations for a more extensive discussion on this element of CAT eligibility.

7 If the injunction in Grace v. Whitaker, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must instead follow the following guidance:

In the withholding or deferral of removal setting, when a public official acts in a wholly private capacity, outside any context of governmental authority, the state action element of the torture definition may not be satisfied depending on the circuit. On this topic, the Second Circuit provided that, “[a]s two of the CAT’s drafters have noted, when it is a public official who inflicts severe pain or suffering, it is only in exceptional cases that we can expect to be able to conclude that the acts do not constitute torture by reason of the official acting for purely private reasons.”


Barajas-Romero v. Lynch, 846 F.3d 351 (9th Cir. 2017).
b. A public official is acting in an official capacity when “he misuses power possessed by virtue of law and made possible only because he was clothed with the authority of law.” To establish whether a public official is acting in under the color of law, the applicant must establish a nexus between the public official’s authority and the harmful conduct inflicted on the applicant by the public official. Such an inquiry is fact intensive and includes considerations like “whether the officers are on duty and in uniform, the motivation behind the officer’s actions and whether the officers had access to the victim because of their positions, among others.” The Fifth Circuit also addressed “acting in an official capacity” by positing “[w]e have recognized on numerous occasions that acts motivated by an officer’s personal objectives are ‘under color of law’ when the officer uses his official capacity to further those objectives.”

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

Id. at 901.

3. **Instigation, Consent, or Aquiescence**

   a. When the “torturer” is not a public official, a successful CAT claim requires that a public official or other person acting in an official capacity instigates, consents, or acquiesces to the torture. Asylum officers must consult all available and salient information, including information in the objective country conditions set forth in Department of State country reports.

   b. Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

   (i) The Senate ratification history for the Convention explains that the term “awareness” was used to clarify that government acquiescence may be established by evidence of *either* actual knowledge or willful blindness. “Willful blindness” imputes knowledge to a government official who has a duty to prevent misconduct and “deliberately closes his eyes to what would otherwise have been obvious to him.”

   (ii) While circuit courts of appeals are split with regards to the BIA’s “willful acceptance” phrase in favor of the more precise “willful blindness,” for purposes of threshold credible fear screenings, asylum officers must use the willful blindness standard.

   c. There is no acquiescence when law enforcement does not breach a legal responsibility to intervene to prevent torture.

   d. In the context of government consent or acquiescence, the court in *Ramirez-Peyro v. Holder* reiterated its prior holding that “use of official authority by low level officials, such a[s] police officers, can work to place actions under the color of law even when they act without state sanction.” Therefore, even if country conditions show that a national government is fighting against corruption, that fact will not necessarily
preclude a finding of consent/acquiescence by a local public official.

d. Evidence that private actors have general support in some sectors of the government, without more, may be insufficient to establish that the officials would acquiesce to torture by the private actors.

4. Consent or Acquiescence vs. Unable or Unwilling to Control

a. The public official requirement under CAT is distinct from the inquiry into a government’s ability or willingness to control standard applied under the refugee definition.

a. A finding that a government is unable to control a particular person(s) is not dispositive of whether a public official would instigate, consent to, or acquiesce to the feared torture.

b. A more relevant query is whether or not a public official who has a legal duty to intervene would be unwilling to do so. In these circumstances, the public official would also have to be aware or deliberately avoid being aware of the harm in order for the action or inaction to qualify as acquiescence under CAT.

e. The willingness in certain levels of a government to combat harm is not necessarily responsive to the question of whether torture would be inflicted with the consent or acquiescence of a public official. In De La Rosa v. Holder, the Second Circuit stated, “[i]n short, it is not clear to this Court why the preventative efforts of some government actors should foreclose the possibility of government acquiescence, as a matter of law, under the CAT. Where a government contains officials that would be complicit in torture, and that government, on the whole, is admittedly incapable of actually preventing that torture, the fact that some officials take action to prevent the torture would seem neither inconsistent with a finding of government acquiescence nor necessarily responsive to the question of whether torture 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.”

d. Similarly, the Third Circuit has indicated that the fact
that the government of Colombia was engaged in war against the FARC did not in itself establish that it could not be consenting or acquiescing to torture by members of the FARC.

**F. Past Harm**

Unlike a finding of past persecution, a finding that an applicant suffered torture in the past does not raise a *presumption* that it is *more likely than not* the applicant will be subject to torture in the future. However, regulations require that any past torture be *considered* in evaluating whether the applicant is likely to be tortured, because an applicant’s experience of past torture may be *probative* of whether the applicant would be subject to torture in the future.

Credible evidence of past torture is strong evidence in support of a claim for protection based on fear of future torture. For that reason, an applicant who establishes that he or she suffered past torture *will also* establishes a credible fear of torture, unless changes in circumstances are so substantial that the applicant has no significant possibility of future torture as a result of the change.

**G. Internal Relocation**

1. Regulations require immigration judges to consider evidence that the applicant could relocate to another part of the country of removal where he or she is not likely to be tortured, in assessing whether the applicant can establish that it is more likely than not that he or she would be tortured. Therefore, asylum officers should consider whether or not the applicant could safely relocate to another part of his or her country in assessing whether there is a significant possibility that he or she is eligible for CAT withholding of removal or deferral of removal. Asylum officers must consult all available and salient information, including the objective country conditions set forth in Department of State country reports.

2. **Under the Convention Against Torture**, the burden is on the applicant to show, for CAT withholding of removal or deferral of removal, that it is more likely than not that he or she would be tortured, and one of the relevant considerations is the possibility of relocation. In deciding whether the applicant has satisfied his or her burden, the adjudicator must consider all relevant evidence, including

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8 C.F.R. § 208.16(c)(3)(ii).

8 C.F.R. § 1208.16(c)(3)(ii).

*Maldonado v. Holder*, 786 F.3d 1155 (9th Cir. 2015) (overruling *Hassan v. Ashcroft*, 380 F.3d 1114, 1164 (9th Cir. 2004)) ("Section 1208.16(c)(2) does not place a burden on an applicant to demonstrate that")
but not limited to the possibility of relocation within the country of removal.

relocation within the proposed country of removal is impossible because the IJ must consider all relevant evidence; no one factor is determinative. See § 1208.16(c)(3)(i)(iv)....Nor do the regulations shift the burden to the government because they state that the applicant carries the overall burden of proof.

3. Credible evidence that the feared torturer is a public official will normally be sufficient evidence that there is no safe internal relocation option in the credible fear context.

2. Unlike the persecution context, the regulations implementing CAT do not explicitly reference the need to evaluate the reasonableness of internal relocation. Nonetheless, the regulations provide that “all evidence of relevant to the possibility of future torture shall be considered….” Therefore, asylum officers should apply the same reasonableness inquiry articulated in the persecution context to the CAT context.

IX. APPLICABILITY OF BARS TO ASYLUM AND WITHHOLDING OF REMOVAL

A. No Bars Apply

Pursuant to regulations, evidence that the applicant is, or may be, subject to a bar to asylum or withholding of removal does not have an impact on a credible fear finding.

B. Asylum Officer Must Elicit Testimony

Even though the bars to asylum do not apply to the credible fear determination, the interviewing officer must elicit and make note of all information relevant to whether or not a bar to asylum or withholding applies or not. The immigration judge is responsible for finally adjudicating whether or not the applicant is barred from receiving asylum or withholding of removal.

There are no bars to a grant of deferral of removal to a country where the applicant would be tortured.

Information should be elicited about whether the applicant:

1. Participated in the persecution of others;
2. Has been convicted by a final judgment of a particularly serious crime (including an aggravated felony), and constitutes a danger to the community of the United States; 

3. Is a danger to the security of the United States; 

4. Is subject to the inadmissibility or deportability grounds relating to terrorist activity as identified in INA section 208(b)(2)(A)(v); 

5. Has committed a serious nonpolitical crime; 

6. Is a dual or multiple national who can avail himself or herself of the protection of a third state; and, 

7. Was firmly resettled in another country prior to arriving in the United States. 

C. Flagging Potential Bars 

The officer must keep in mind that the applicability of these bars requires further evaluation that will take place in the full hearing before an immigration judge if the applicant otherwise has a credible fear of persecution or torture. In such cases, the officer should consult a supervisory officer, follow procedures on “flagging” such information for the hearing, and prepare the appropriate paperwork for a positive credible fear finding. Officers may be asked to prepare a memorandum to file outlining the potential bar that may be triggered. Although positive credible fear determinations that involve a possible mandatory bar no longer require USCIS-HQ review, supervisory officers may use their discretion to forward the case to USCIS-HQ for review.

X. OTHER ISSUES 

A. Treatment of Dependents 

A spouse or child of an applicant may be included in the alien’s credible fear evaluation and determination, if the spouse or child arrived in the United States concurrently with the principal alien and desires to be included in the principal alien’s determination. USCIS maintains discretion under this regulation not to allow a spouse or child to be included in the principal’s credible fear request.
Any alien also has the right to have his or her credible fear evaluation and determination made separately, and it is important for asylum pre-screening officers to question each member of the family to be sure that, if any member of the family has a credible fear, his or her right to apply for asylum or protection under CAT is preserved. When questioning family members, special attention should be paid to the privacy of each family member and to the possibility that victims of domestic abuse, rape and other forms of persecution might not be comfortable speaking in front of other family members.

The regulatory provision that allows a dependent to be included in a principal’s determination does not change the statutory rule that any alien subject to expedited removal who has a credible fear has the right to be referred to an immigration judge.

B. Attorneys and Consultants

The applicant may consult with any person prior to the credible fear interview. The applicant is also permitted to have a consultant present at the credible fear interview. Asylum officers should determine whether or not an applicant wishes to have a consultant present at the credible fear interview. Although an alien is permitted by regulation to have a consultant present at a credible fear interview, the availability of a consultant cannot unreasonably delay the process. A consultant may be a relative, friend, clergy person, attorney, or representative. If the consultant is an attorney or representative, he or she is not required to submit a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, but may submit one if he or she desires.

C. Factual Summary

For each credible fear interview, the asylum officer must create a summary of material facts as stated by the applicant. At the conclusion of the interview, the asylum officer must review the summary with the applicant and provide an opportunity to correct any errors therein. The factual summary and its review should be contemporaneously recorded at the end of the asylum officer’s interview notes.

D. No General Presumptions Against Certain Types of Cases.

Each claim must be evaluated on its own merits. Therefore, there is no general presumption against officers recognizing any particular type of fear claim.

For example, there is no general rule against claims involving
domestic violence and gang-related violence as a basis for membership in a particular social group. Similarly, there is no general rule that proposed particular social groups whose definitions involve an inability to leave a domestic relationship are circular and therefore not cognizable. While a particular social group cannot be defined exclusively by the claimed persecution, each particular social group should be evaluated on its own merits. If the proposed social group definition contains characteristics independent from the feared persecution, the group may be valid. Analysis as to whether a proposed particular social group is cognizable should take into account the independent characteristics presented in each case.

E. No Need for the Applicant to Formulate or Delineate a Particular Social Group.

In evaluating whether the applicant has established a credible fear of persecution, if the claim is based on a particular social group, then the asylum officer cannot require an applicant to formulate or delineate particular social groups. The asylum officer must consider and evaluate possible formulations of particular social groups as part of the officer’s obligation to elicit all relevant information from the applicant in this non-adversarial setting.

XIII. SUMMARY

A. Expedited Removal

In expedited removal, certain aliens seeking admission to the
United States are immediately removable from the United States by the Department of Homeland Security (DHS), unless they indicate an intention to apply for asylum or express a fear of persecution or torture or a fear of return to their home country. Aliens subject to expedited removal are not entitled to an immigration hearing or further review unless they are able to establish a credible fear of persecution or torture.

B. Function of Credible Fear Screening

The purpose of the credible fear screening process is to identify persons subject to expedited removal who might have a significant possibility of ultimately being found eligible for asylum under section 208 of the INA or withholding of removal or deferral of removal under the Convention Against Torture (CAT), and to identify and screen out non-meritorious asylum claims.

C. Credible Fear Standard of Proof: Significant Possibility

In order to establish a credible fear of persecution or torture, the applicant must show a “significant possibility” that he or she could establish eligibility for asylum, withholding of removal, or deferral of removal.

The “significant possibility” standard of proof required to establish a credible fear of persecution or torture must be applied in conjunction with the standard of proof required for the ultimate determination on eligibility for asylum, withholding of removal, or protection under the Convention Against Torture (CAT).

The asylum officer shall consider whether the applicant’s case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

Where there is disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue, or the claim otherwise raises an unresolved issue of law, and there is no DHS or Asylum Division policy or guidance on the issue, then generally the interpretation most favorable to the applicant is used when determining whether the applicant meets satisfies the credible fear standard.8

8If the order in Grace v. Whitaker, 344 F. Supp. 3d 96 (D.D.C. 2018), is lifted, then officers must instead follow the following guidance:

“The asylum officer should also apply the case law of the relevant federal circuit court, together with the applicable precedents of the Attorney General and the BIA. The BIA defers to precedents of the circuit in which the removal proceedings took place, Matter of Anselmo, 201 & N. Dec. 25, 31 (BIA 1989), except in certain special situations, see id.; see also Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs., 545 U. S. 967 (2005) (holding prior judicial construction of statute trumps agency construction otherwise entitled to Chevron deference only if prior court decision holds that its construction is required by unambiguous terms of statute and leaves no room for agency discretion).”
D. **Credibility**

The asylum officer should assess the credibility of the assertions underlying the applicant’s claim, considering the totality of the circumstances and all relevant factors.

E. **Establishing a Credible Fear of Persecution**

In general, a finding that (1) there is a significant possibility that the applicant experienced past persecution on account of a protected characteristic, (2) such conditions continue in the applicant’s home country, and (3) the applicant could not avoid such persecution by relocating within his or her home country are sufficient to satisfy the credible fear standard. However, if there is evidence so substantial that the applicant fails to present evidence demonstrating that there is a significant possibility of future persecution or other serious harm, or if there are no reasons to grant asylum based on the severity of the past persecution, a negative credible fear determination may be appropriate.

When an applicant does not claim to have suffered any past harm, or where the evidence is insufficient to establish a significant possibility of past persecution under INA section 208 of the Act, the asylum officer must determine whether there is a significant possibility the applicant could establish a well-founded fear of persecution on account of a protected characteristic under INA section 208 of the Act.

F. **Establishing a Credible Fear of Torture**

In order to be eligible for withholding or deferral of removal under CAT, an applicant must establish that it is more likely than not that he or she would be tortured in the country of removal. Therefore, a significant possibility of establishing eligibility for withholding or deferral of removal is necessarily a greater burden than establishing a significant possibility of eligibility for asylum.

After establishing that the applicant’s claim would be found credible, the applicant satisfies the credible fear of torture standard where there is a significant possibility that he or she could establish in a full withholding of removal hearing that: (a) the torturer specifically intends to inflict severe physical or mental pain or suffering; (b) the harm constitutes severe pain or suffering; (c) the torturer is a public official or other person acting in an official capacity, or someone acting at the instigation of or with the consent or acquiescence of a public official, or someone acting at the instigation of or with the
consent or acquiescence of a public official or someone acting in official capacity; and (d) the applicant is in the torturer’s custody or physical control. Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. However, sanctions that defeat the object and purpose of the Convention are not lawful sanctions. Harm arising out of such sanctions may constitute torture.

In order to assess whether an applicant faces torture in the proposed country of removal, an officer must consider all relevant evidence, which includes but is not limited to the following: credible evidence of past torture; credible evidence of past torture is strong evidence in support of a claim for protection based on fear of future torture. For that reason, an applicant who establishes that he or she suffered past
torture will establish a credible fear of torture, unless changes in circumstances are so substantial that the applicant has no significant possibility of future torture as a result of the change. Credible evidence that the applicant could internally relocate to avoid torture; and credible evidence of gross, flagrant, or mass violations of human rights within the country of removal, for which determination the officer must consult the objective country conditions set forth in Department of State country reports.

Under the Convention Against Torture (CAT), the burden is on the applicant to show that it is more likely than not that he or she will be tortured, and one of the relevant considerations is the possibility of internal relocation.

G. Other Issues

While the mandatory bars to asylum and withholding of removal do not apply to credible fear determinations, asylum officers must elicit and make note of all information relevant to whether or not a bar to asylum or withholding applies or not.

A spouse or child of an applicant may be included in the alien's credible fear evaluation and determination, if the spouse or child: arrived in the United States concurrently with the principal alien; and desires to be included in the principal alien's determination.

The applicant may consult with any person prior to the credible fear interview. The applicant is also permitted to have a consultant present at the credible fear interview. A consultant may be a relative, friend, clergy person, attorney, or representative.

For each credible fear interview, the asylum officer must create a summary of material facts as stated by the applicant and review the summary with the applicant.
Exhibit B

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA M. KIAKOMBUA, et al.,
Plaintiffs,

-versus-

KEVIN K. MCALEENAN, in his official capacities as
Acting Secretary of Homeland Security & Commissioner
of United States Customs and Border Protection, et al.,

Defendants.

Case No. 1:19-CV-1872-KBJ

DECLARATION OF PAUL GRUSSENDORF

I, Paul Grussendorf, upon my personal knowledge, hereby declare as follows:

1. In June of 2019, I retired from my position as a Supervisory Asylum Officer in the
   Asylum Division of U.S. Citizenship & Immigration Services ("USCIS"), which is a part of the
   U.S. Department of Homeland Security. I retired after a career of over three decades in
   immigration law, including as an immigration judge, a Supervisory Asylum Officer, a Refugee
   Officer, a clinical professor, and a practitioner. I remain an attorney and a member in good standing
   of the Bar of the District of Columbia.

2. I submit this declaration in support of Plaintiffs’ Opposition to Defendants’ Motion
   for Summary Judgment and Cross-Motion for Summary Judgment in the above-captioned case. I
   have reviewed the Complaint and Defendants’ Motion for Summary Judgment. I understand that
   Plaintiffs are challenging the revised Lesson Plan on Credible Fear of Persecution and Torture
   Determinations issued in April 2019. I submit the declaration to describe the role that lesson plans
   issued by the Asylum Division played in credible fear and asylum adjudications in my experience.
Experience

3. From October 2016 to June 2019, I worked as a Supervisory Asylum Officer in the Asylum Division of USCIS. In that position, I was responsible for supervising the Asylum Officers deciding credible fear and affirmative asylum cases, including by reviewing their decisions, answering questions raised in the course of their work, providing training, and conducting performance appraisals. The Arlington office where I worked historically reviewed a large percentage of the credible fear determinations made around the country. When I was reviewing credible fear cases, I reviewed approximately 35 cases each week.

4. From June 1997 to January 2004, I was an Immigration Judge with the U.S. Department of Justice. I adjudicated a range of immigration matters in this role, including asylum applications and review of credible fear denials.

5. In addition to those positions, I have worked in a variety of roles within the immigration system for over 34 years, including as a Refugee Officer in the Refugee Affairs Division of the USCIS; an Adjudications Officer and a Supervisory Adjudications Officer in the Immigrant Investor Visa Division of the USCIS; a Protection Officer and Refugee Officer for the United Nations High Commissioner for Refugees; and a practitioner of immigration law representing clients with asylum cases in affirmative and removal defense cases.

6. I have been a frequent lecturer and speaker on immigration law topics, including on asylum and refugee law. From 1986 to 1996, I was the Director of the Immigration Law Clinic at the George Washington University Law School, where I taught courses on immigration law and refugee law and supervised law students in direct representation of asylum applicants before legacy Immigration and Naturalization Service, the immigration courts, and the Board of Immigration Appeals. From 2001 to 2003, I was an Adjunct Professor of Immigration Law at the University of
San Francisco Law School. In 2012 and 2014, I was an Adjunct Professor of Refugee/Asylum Law at the Howard University School of Law. In addition, I have been a guest speaker on the subject of asylum issues at other academic institutions and at the Office of Immigration Litigation, Department of Justice.

**Role of Lesson Plans in the Asylum Division**

7. Lesson plans issued by the Asylum Division are formal, foundational policy guidance for asylum officers (including both Asylum Officers and Supervisory Asylum Officers) that instruct officers on how to perform their work. Defendants’ assertion and suggestion in their Motion for Summary Judgment that lesson plans are not binding on asylum officers contradict my experience. In my experience as described below, the Asylum Division requires its officers to follow the lesson plans and reinforces the importance of doing so by using the lesson plans for training, reference, supervision, and oversight.

8. The Asylum Division uses lesson plans to train new asylum officers. Asylum officers complete two required training programs before they are permitted to exercise the duties of an asylum officer: a combined one for asylum officers and refugee officers, and another one specifically for asylum officers. Each program starts with a distance learning component and concludes with a residential training component. During the distance learning component, the Asylum Division requires students to review and study the lesson plans. Residential training builds on what students learned during the distance learning and concludes with a mock interview that tests the student’s knowledge of the lesson plans. In addition, supervisors and training officers observe new asylum officers closely as they start their work to confirm that asylum officers know and are following the lesson plans.
9. The Asylum Division also continues to train asylum officers on the lesson plans after they start their jobs, during weekly trainings and other general trainings. Whenever the Asylum Division issued a revised lesson plan, it announced the revisions, distributed the new versions, and trained asylum officers on the revisions as expeditiously as possible. As a Supervisory Asylum Officer, I used the lesson plans to train asylum officers on a continuing basis.

10. The Asylum Division uses lesson plans as reference material for asylum officers. The lesson plans are the most important reference material for the asylum officers and the only comprehensive material issued by the Asylum Division containing instructions to officers on how to perform their work. Asylum officers expect the lesson plans to be accurate and regularly rely on the lesson plans for adjudication, usually without consulting the source material or any additional material. This is particularly so for the credible fear lesson plan given the time pressure of deciding credible fear cases. As a Supervisory Asylum Officer, I referred to the lesson plans continuously in doing my work and relied on the lesson plans as the first point of reference, only occasionally consulting the source material cited.

11. The Asylum Division uses lesson plans to supervise the asylum officers and to monitor the work of the Division. As a Supervisory Asylum Officer, I directed the asylum officers that I supervised or that asked me for advice to follow the lesson plans in adjudicating their cases.

12. Asylum Division headquarters (HQ) also uses lesson plans for quality control purposes and for oversight. Asylum Division HQ reviews batches of adjudications on a periodic basis and reviews certain special or novel cases. When HQ issued a decision after such quality control review, it typically cited to the lesson plans.

13. The Asylum Division reprimands asylum officers for failure to follow lesson plans and repeated failures could affect the asylum officers’ performance appraisals. For example, I was
once called into a meeting with my supervisor and my supervisor’s supervisor and reprimanded for signing off on a decision of an Asylum Officer that did not follow the protocol in a lesson plan. In addition, I routinely issued notices of corrective action to Asylum Officers who had failed to adhere to the lesson plan in a particular adjudication. The notice was placed in the officers’ folders to be considered in their performance appraisals. In conducting performance appraisals, I suggested that officers consult the lesson plans in order to improve their performance.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Washington, D.C. on September 3, 2019.

Paul Grussendorf
Exhibit C

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
DECLARATION OF MARIA M. KIAKOMBUA

I, Maria M. Kiakombua, upon my personal knowledge, hereby declare as follows:

1. My name is Maria Magdalena Kiakombua, and I am from Angola.

2. I am currently detained by the U.S. government at T. Don Hutto Residential Center (the "Detention Center") in Taylor, Texas.

3. Earlier this year, I fled persecution in my home country. For two years, I suffered domestic violence at the hands of my boyfriend because of my attempts to leave him. He would beat me, sometimes with a machete, and threatened to kill me if I left him. At least once, I was hospitalized for my injuries.

4. I could not go to the police or authorities for protection from my boyfriend because he is in the military. Because of his connection to the military, I also suffered repeated attacks by members of the police or military. On each occasion, they came to my house disguised in masks so I could not see their faces and brutally beat and raped me. They also beat my children and broke my son’s arm.

5. I fled Angola because I feared for my life and I was afraid that these beatings and repeated rapes would continue.

6. I arrived at the Mexico/United States border, went to a port of entry, and requested an opportunity to apply for asylum. I was detained, and have been at the Detention Center ever since.

7. I have had two credible fear interviews with asylum officers. The interviews were conducted over the phone and I was alone in the room. Because I speak Lingala, an interpreter was also on the phone.
8. I did not have an attorney or anyone else with me during the first interview. The documents immigration officials gave me say the interview lasted exactly one hour.

9. I was not feeling well during my first credible fear interview. My head was hurting, I had a bad toothache and high blood pressure. The asylum officer did not ask me how I was feeling. I was unable to fully express my fear of returning to Angola that day because of my health.

10. I was also unable to express my fear in the first interview because I did not feel comfortable talking about the sexual abuse I survived with a male asylum officer. We do not talk about rape in my culture – being a rape victim is something very shameful.

11. I also do not like to think about the sexual abuse because it is very painful for me. It happened many times in front of my children and I do not like to remember that.

12. I remember that the interpreter spoke very fast and sometimes I could not understand the questions. Even though I felt intimidated, I tried to ask for clarification a few times, but I was ignored and the interview continued.

13. After the interview, on or about May 13, 2019, I learned that the asylum officer decided that I did not have a credible fear. I asked for an immigration judge to review that decision, but the immigration judge decided the same thing.

14. Attached is a true and correct copy of a document I was given in detention, which has the title “Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.”

15. I was later interviewed a second time, but the determination that I did not have a “credible fear” did not change.
16. I am terrified of being deported to Angola. I believe that my boyfriend will carry out his threat to kill me now that I have left him. He is very powerful and I don’t believe that authorities in Angola can or will protect me. I am also afraid that the authorities will continue to target me and harm me because of my boyfriend’s association with the military.
I, Maria M. Kiakombua, swear under penalties of perjury and under the laws of the United States that the above declaration is true and accurate to the best of my abilities. This declaration was interpreted and read to me in Lingala, a language in which I am fluent.

Executed in Taylor, Texas on June 20, 2019.

[Signature]

Maria Magdalena Kiakombua
CERTIFICATE OF TRANSLATION

I, Maria R. Osornio, do hereby declare under penalty of perjury as follows:

I truthfully and fully read the foregoing declaration to Maria M. Kikombua in English and the declaration was translated to her from English to Lingala, a language in which she is fluent. I do not speak Lingala, and I used the assistance of an interpreter via the Certified Language Lines service. Maria M. Kikombua confirmed to me via the interpreter that she understood the interpreter’s translation of the declaration.

Executed in Taylor, Texas on June 20, 2019.

Maria R. Osornio
Case 1:19-cv-01872-KBJ   Document 57   Filed 10/03/19   Page 85 of 165

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

Allen File Number: A203 462 267

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.

Kikombua
Applicant's Last Name/First Name (Print) Maria
Applicant's First Name (Print)

Phillips
Asylum Officer's Last Name (Print) Daniel
Asylum Officer's First Name (Print)

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

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

MAY 13 2019

language

Fonn 1-4/02 (02/15/17)
Exhibit D

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
DECLARATION OF Ana

I, Ana, upon my personal knowledge, hereby declare as follows:

1. My name is Ana, I am a national of El Salvador.
2. I am currently detained by the U.S. government at the Karnes County Residential Center (the “Detention Center” in Karnes City, Texas).
3. Earlier this year, I fled persecution in my home country. My husband was targeted by gangs in El Salvador for being a landowner. He was extorted, threatened and shot as a result of being unable to pay, the gangs began to threaten me and the rest my family because of it. My granddaughter was shot in the head, but survived. My husband was also shot. We were all threatened with death through notes.
4. We reported to the police after my husband and granddaughter were shot, and someone was arrested. However, the police never called us back to do any witness statements or for a trial. I do not know where the man is now and I am afraid that he’s been released. I am also afraid of the other gang members with whom he is associated because they have also targeted us. The day of the shooting at least seven (7) gang members were involved.
5. I arrived at the Mexico/United States border on May 24, 2019, and requested an opportunity to apply for asylum. I was thereafter detained, and have been in detention ever since.
6. I had a credible fear interview with an asylum officer on June 11, 2019. During the interview the phone kept cutting out so I had a hard time understanding the questions. I
was too nervous and concerned for my family to think about asking for clarification, so I answered the best I could.

7. After that, I learned that the asylum officer decided that I did not have a credible fear because he determined that I did not have a nexus. Attached is a true and correct copy of a document I was given in detention, which has the title “Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.”

8. I was affirmed by the immigration judge on June 24, 2019.

9. I am very afraid of being deported to my home country. I fear that the gangs will continue to target my family and me and that they will kill us.

10. I am also afraid that using my real name in this lawsuit would lead to me being harassed or threatened by the gangs. I know that they are very vigilant on the news for what names are mentioned. I am afraid that if it is reported that I have continued to seek asylum and protection from the United States and I am deported that they would target me for continuing to defend myself against them.

11. For these reasons, I feel that my personal security and that of my family necessitates that I be allowed to proceed under a pseudonym.
I, Ana, swear under penalties of perjury that the above declaration is true and complete to the best of my abilities. This declaration was provided in Spanish, a language in which I am fluent, and was read back to me in Spanish.

Executed in Karnes City, Texas, on June 24, 2019.
CERTIFICATE OF TRANSLATION

I, Maria R. Osornio, hereby declare that I am fluent in the English and Spanish languages and that I read the above declaration to Ana in Spanish, a language in which she is fluent.

Maria R. Osornio
c/o RAICES
1305 N. Flores St.
San Antonio, TX 78212
Tel.: 210-226-7722

Date 06/24/19
Case 1:19-cv-01872-KBJ Document 57 Filed 10/03/19 Page 91 of 165

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

Alien File Number: [redacted]

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.

[ ] Ana

Applicant’s Last Name/ Family Name (Print)

Applicant’s First Name (Print)

Applicant’s Signature

Lankford
Asylum Officer’s Last Name (Print)

Katherine
Asylum Officer’s First Name, (Print)

Date

6/12/19

6/12/19

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

Interpreter used:

By telephone (list interpreter service/ID number used 12586072).

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

12586072

Interpreter’s Signature

Date

6/12/19

Form I-869 (02/15/17)
Exhibit E

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
DECLARATION OF Emma

I, Emma, upon my personal knowledge, hereby declare as follows:

1. My name is Emma, I am a national of El Salvador.

2. I am currently detained by the U.S. government at the Karnes County Residential Center (the “Detention Center”) in Karnes City, Texas.

3. Earlier this year, I fled persecution in my home country of El Salvador. I fled El Salvador because I was unable to leave an abusive relationship. The father of my child would beat me and would threaten to keep my daughter from me when I decided to leave him. He would frequently harass me and sexually abused me after I broke off our relationship. I also fled El Salvador because I am afraid of my brother, who used to sexually abuse me.

4. I never reported any of the abuses by my daughter’s father because he had friends that were police officers. Once, one of his police officer friends threatened me that he would help take my daughter away from me. He tried to detain me because he said I was being to “aggressive” in my speech with him, and that I needed to respect his authority. I also had heard similar stories of women who had abusive ex-partners whose children were taken from them by the father. The father of my daughter would also threaten me that he would tell everyone about my brother sexually abusing me. I never reported by brother because I was ashamed, and he was the only brother I had. I fled El Salvador because I was scared these abuses would continue and that I would be killed.
5. I arrived at the Mexico/United States border on May 22, 2019. I requested an opportunity to apply for asylum. I was thereafter detained and have been in detention ever since.

6. I had a credible fear interview with an asylum officer on June 10, 2019. I did not meet with an attorney before my interview and I was not entirely clear what information I needed to share.

7. During the interview, I was in a room with a male asylum officer. There was a Spanish translator on the phone. The interview was hard for me because the officer that interviewed me kept telling me to stop, and to give short answers. I was also unable to tell the full story of why I fled El Salvador because I felt uncomfortable talking to a male officer about the sexual abuse I survived. I was not advised by the asylum officer that I could ask for a female asylum officer during my interview, I would have felt more comfortable sharing all the reasons I fled El Salvador with a female asylum officer.

8. After that, I learned that the asylum officer decided that I did not have a credible fear. Attached is a true and correct copy of a document I was given in detention, which has the title “Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.”

9. I am currently awaiting review of my negative credible fear finding with an immigration judge. I have been waiting for about fifteen days.

10. I am very afraid of being deported to my home country. I am scared that the father of my child will continue to abuse me because I do not want to be in a relationship with him. Recently, my brother found out that I had separated from my daughter’s father. He
sent me a message on Facebook asking if I wanted to “be with him” again. I was so scared that he reached out that I blocked him.

11. For similar reasons, I am afraid of using my real name in this lawsuit. I am ashamed of being sexually abused by my brother and the father of my daughter, and I am concerned that if they find out that I have talked about it publicly, they will target me for further abuse and harassment, especially if I am deported back to El Salvador. For my own safety, I respectfully request permission to proceed in this lawsuit under a pseudonym.
I, [REDACTED], swear under penalties of perjury that the above declaration is true and complete to the best of my abilities. This declaration was provided in Spanish, a language in which I am fluent, and was read back to me in Spanish.

Executed in Karnes City, Texas, on June 27, 2019.

[REDACTED]

CERTIFICATE OF TRANSLATION

I, Haley N. Olig, hereby declare that I am fluent in the English and Spanish languages and I read the above declaration to [REDACTED], a language in which she is fluent.

[Signature]

Haley N. Olig
Co RAICES
1305 N. Flores St.
San Antonio, TX 78212
Tel.: 210-226-7722

Date: 10/27/2019
Record of Negative Credible Fear Finding and Request for Review by Immigration Judge

Alien File Number: [Redacted]

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 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)  Emma
Applicant's First Name (Print)  Emma

NEBO
Asylum Officer's Last Name (Print)

Ben
Asylum Officer's First Name (Print)

Date 6/10/2019

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

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

In person (1, ____________________________, certify that I am fluent in both the Spanish and English languages. I interpreted the above information completely and accurately to the alien.)

Interpreter's Signature  12591260
Date 6/18/19

Form I-869 (Rev. 10/24/02) N
Exhibit F

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
DECLARATION OF Sofia

I, Sofia, upon my personal knowledge, hereby declare as follows:

1. I am a 26 year old national of Cuba. I am a medical doctor. My husband is a Lawful Permanent Resident in the United States.

2. In spring of 2019, I fled persecution on the basis of political opinion in Cuba. While in Cuba I was surveilled, disciplined, detained, threatened, and accused of being anti-revolutionary by government officials because I was against the Cuban government and refused to comply with an influential government official’s unlawful request. The stress and fear I experienced due to the government’s heightening threats and harassment caused me to miscarry my pregnancy. After the miscarriage I decided to flee to safety in the United States.

3. I arrived at a port of entry on the Mexico/United States border and requested an opportunity to apply for asylum. In the days after I arrived, officials treated me with disgust when they asked me why I was seeking asylum in the United States.

4. I was detained for approximately two months in multiple different facilities.

5. I had a credible fear interview with an asylum officer in May 2019. The interview was over the telephone, and with an interpreter, who was also on the telephone. According to the documents I was given in detention, the interview lasted about one hour and twenty minutes.

6. During the interview, I explained why I had left Cuba, but there were problems with the interpretation. At one point, the asylum officer yelled at me for giving too many details in my testimony. I also had to explain to the interpreter some of the
words I was using. I am not confident that everything I said was accurately interpreted.

7. After that, I learned that the asylum officer decided that I did not have a credible fear. Attached is a true and correct copy of a document I was given in detention, which has the title “Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.” My identifying information has been redacted from this document.

8. Thereafter, an Immigration Judge reviewed my negative credible fear determination and made the same decision. A little while later, I was deported back to Cuba.

9. I am afraid that using my real name in this lawsuit would reveal that I fled to the United States to escape political persecution in Cuba, and would lead to me and my family members in Cuba being harassed or threatened by the Cuban government officials and local police that threatened and harassed me before I fled. As soon as I arrived in Cuba after being deported I was questioned at the airport about my interactions with U.S. authorities and ordered to report to the police station.

10. In addition, I am fearful that my participation in this lawsuit against United States federal government officials could jeopardize my attempts to obtain legal status in the United States, or result in retribution against my husband in the United States.

11. For these reasons, I respectfully ask that, for my safety and the safety of my family, I be allowed to use a pseudonym in this lawsuit.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Holguin, Cuba on June 26, 2019.
Record of Negative Credible Fear Finding and Request For Review by Immigration Judge

Alien File Number: [Redacted]

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 an 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 when 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.

Sofia

Applicant's Last Name/ Family Name (Print)

Applicant's First Name (Print)

Applicant's Signature

MAY 7, 2019

Sofia

Asylum Officer's Last Name (Print)

Asylum Officer's First Name (Print)

Date

Collins

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

Interpreter used:

☐ By telephone (list interpreter service/ID number used)

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

Interpreter's Signature

Date

Form 1-860 (02/15/17)
DECLARACIÓN DE

Yo, Sofia, a mi leal saber y entender, declaro lo siguiente:


2. En la primavera de 2019, salí de Cuba, huyendo de la persecución con base en mi opinión política, llevada a cabo por el gobierno cubano. Viviendo en Cuba, fui vigilada, sancionada, detenida, amenazada y acusada de ser anti revolucionaria por oficiales del gobierno debido a mi oposición al gobierno, así como por rehusarme a satisfacer el requerimiento ilegal solicitado de mi persona, por un alto e influyente oficial del gobierno. El terror y estrés generado por las amenazas y acoso por parte del gobierno ocasionó que sufriera un aborto espontáneo. Después de sufrido el aborto, decidí escapar a los Estados Unidos en busca de seguridad.

3. Llegué a la vía de entrada en la frontera de México/Estados Unidos y solicité asilo. En los días posteriores a mi llegada, los oficiales de migración me trataron con desprecio cuando me preguntaban la razón por la cuál estaba solicitando asilo en los Estados Unidos.

4. Estuve detenida durante dos meses aproximadamente, en múltiples centros de detención.

5. En mayo de 2019, se realizó mi entrevista de temor creíble con un oficial de asilo. La entrevista se llevó a cabo por medio de una llamada telefónica, y con un intérprete, quien también participó por teléfono. De conformidad con los documentos que recibí estando en el centro de detención, la entrevista tuvo una duración de aproximadamente una hora y veinte minutos.

6. Durante la entrevista, expliqué las razones por las cuales salí de cuba, pero hubo problemas con la interpretación de mis palabras. Hubo un momento en el cual el oficial
de asilo me gritó por dar demasiados detalles en mi testimonio. Asimismo, tuve que explicarle al intérprete el significado de las palabras que estaba usando. No estoy segura de que todo lo que expresé haya sido interpretado correctamente.

7. Posteriormente, tuve noticia de que el oficial de asilo decidió que no tengo un temor creíble. Adjunto al presente, sírvase encontrar una copia fiel y exacta de un documento que recibí durante el tiempo que estuve detenida el cual lleva por título “Registro de Conclusión Negativa de Temor Creíble y Solicitud de Revisión por Un Juez de Migración”. Mi información personal ha sido omitida de dicho documento.

8. Al poco tiempo, un Juez de Migración revisó mi determinación negativa de temor creíble y llegó a la misma conclusión. A los pocos días fue deportada de regreso a Cuba.

9. Tengo miedo de que de usar mi nombre real en la presente demanda sería revelado que hui a los Estados Unidos para escapar la persecución política que sufrí en Cuba, lo cual pudiera resultar en que mi familia y yo seamos acosados y amenazados por los mismos oficiales de gobierno y la policía local cubana que me acosaron y amenazaron antes de salir de Cuba. Desde el momento en que aterrí en Cuba, después ser deportada, fui interrogada en el aeropuerto sobre mi interacción con las autoridades de los Estados Unidos e inmediatamente fui recibí un requerimiento para presentarme en los cuarteles policiales.

10. Asimismo, tengo miedo de que mi participación en esta demanda en contra de oficiales del gobierno federal de los Estados Unidos pudiera poner en riesgo mis intenciones de obtener estatus legal en los Estados Unidos, o bien, que mi esposo, que reside en los Estados Unidos, sea afectado negativamente por mi participación.
11. Por las razones mencionadas en el presente escrito, solicito atentamente, que por mi seguridad y la seguridad de mi familia, me sea concedido el permiso de utilizar un pseudónimo en la presente demanda.
Declaro so pena de perjuro y de conformidad con las leyes de los Estados Unidos que la información que antecede es verdadera y correcta. Otorgada le presente declaración en Holguín.

Cuba el 26 de junio de 2019.

Sofía

Sofía
CERTIFICATION OF TRANSLATION

I, Ilana Langston, do hereby declare as follows:

I am fluent in both English and Spanish and am competent to translate and interpret from one to the other. I accurately translated to the best of my abilities the foregoing declaration to the signatory, who informed me in signing it that she understood its contents.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Los Angeles, California on June 26th, 2019.

[Signature]
Ilana Langston
Exhibit G

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
DECLARATION OF Julia

I, Julia, upon my personal knowledge, hereby declare as follows:

1. My name is Julia. I am a national of El Salvador.

2. I am currently living in El Salvador after being returned here by the U.S. government. I am afraid to be here.

3. Earlier this year, I fled El Salvador out of fear for my life after I received several death threats from members of the MS13 gang. These threats began after I witnessed my cousin, who is a member of the MS13 gang, and four other individuals murder my neighbor. I was walking home from school when I saw my cousin and four other individuals take my neighbor from his home while his wife watched, crying. I was afraid and kept walking towards my house. Then I heard gun shots. Later I learned that my neighbor’s family found his body in an abandoned lot next to my home.

4. After this happened, my cousin visited my home on three separate occasions and threatened me, saying that if I told anyone what I had seen I would pay for it. He said that they would kill me.

5. I was very scared and did not report what I had seen to the police because I believed that my cousin and the others who murdered my neighbor would harm me if I made a report.

6. For this reason I fled El Salvador. I arrived at the Mexico/United States border and turned myself in to U.S. officials. I requested an opportunity to apply for asylum. I was detained and several weeks later I had a credible fear interview on May 1, 2019.

7. During the interview, I did not fully understand what was happening because the interpreter had a bad telephone connection and it was difficult to understand what he was saying. We
lost the connection mid-way through my interview and another interpreter was called. I remember not understanding some of the words that the interpreters used.

8. I did not feel prepared to share my story during my credible fear interview. I learned about the interview only a few hours before it was scheduled and I was unable to meet with an attorney to discuss my case or the purpose of the interview before it took place.

9. After my interview, I learned that the asylum officer decided that I did not have a credible fear because the officer determined that I did not have a nexus. Attached is a true and correct copy of a document I was given in detention, which has the title “Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.”

10. I requested review of that decision by an immigration judge, but the immigration judge affirmed the asylum officer’s negative fear finding.

11. I am very afraid to be back in El Salvador. My cousin has threatened me and I do not believe that the police can keep me safe. My cousin and his gang have a network of informants throughout the country and I do not feel I will be safe anywhere in El Salvador because he will always be able to find me.

12. For similar reasons, I am afraid of using my real name in this lawsuit. If my name is revealed in this lawsuit, my cousin’s connection to my neighbor’s murder will become public and my life will be in imminent danger. I fear that he may believe I disclosed his involvement in the murder I witnessed and carry out his threats to kill me. For that reason, I respectfully request permission to proceed in this case under a pseudonym.
I, Julia, swear under penalty of perjury that the above declaration is true and complete to the best of my abilities. This declaration was provided to me in English, my native language, and was read back to me in Spanish.

Executed in San Miguel, El Salvador, on June 27, 2019.

Julia

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

Alien File Number: [Redacted]

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.

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

   QUINTANILLA
   Asylum Officer's Last Name (Print)
   Edward
   Asylum Officer's First Name (Print)

   MAY 08, 2019
   Date

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

   Interpreter used: LIONBRIDGE
   By telephone (list interpreter service/ID number used)
   12443832

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

   Interpreter's Signature
   Date

Form I-869 (02/15/17)
Exhibit H

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA M. KIAKOMBUA, et al.,

Plaintiffs,

– versus –

KEVIN K. MCALEENAN, in his official capacities as
Acting Secretary of Homeland Security & Commissioner
of United States Customs and Border Protection, et al.,

Defendants.

Case No. 1:19-CV-1872-KBJ

DECLARATION OF SERENA KUMALMAZ

I, Serena Kumalmaz, upon my personal knowledge, hereby declare as follows:

1. I am a litigation paralegal with the International Refugee Assistance Project
   (“IRAP”). I make this declaration in support of Plaintiffs’ Cross-Motion for Summary Judgment
   and their opposition to Defendants’ Motion for Summary Judgment (“Plaintiffs’ Cross-Motion”).

2. Attached as Exhibit A to Plaintiffs’ Cross-Motion for Summary Judgment is a
   redline document (the “Redline”) showing the changes between two documents Defendants
   produced as part of the Administrative Record (“AR”) in this case: the Lesson Plan on Credible
   Fear of Persecution and Torture Determinations dated April 30, 2019 (“2019 Lesson Plan”), AR
   1-37; and the Lesson Plan on Credible Fear of Persecution and Torture Determinations dated

3. I was responsible for creating the Redline. Exhibit A is a true and correct copy of
   what I created. I provide this declaration principally to explain how I did so.

4. To prepare the Redline, I took the following steps:
a. First, I printed a copy each of the 2017 and 2019 Lesson Plans.

b. Second, I reviewed the paper copies of the two Lesson Plans side by side, compared them, and annotated them by hand. In the 2017 Lesson Plan, I struck through text that did not appear in the 2019 Lesson Plan and noted the places where text was added in 2019. To ensure accuracy during the transfer to electronic format, I made corresponding annotations to the paper copy of the 2019 Lesson Plan, marking places where additions, removals, and other edits were made.

c. Third, I transferred my handwritten markings from my paper copies of the 2017 and 2019 Lesson Plans to an electronic copy of the 2017 Lesson Plan. The electronic copy was in .docx file format, exported from the original .pdf format using Adobe Acrobat Pro DC.

5. To represent my annotations in electronic format, I used Microsoft Word.

6. Because of the limits of the “track changes” feature in Microsoft Word and the lack of an alternative, I opted to manually create a redline showing the changes between the two Lesson Plans.

7. I used red font color and red strikethrough formatting to mark text that was absent from the 2019 Lesson Plan but present in the 2017 Lesson Plan. I used green font color to mark text that was absent from the 2017 Lesson Plan but present in the 2019 Lesson Plan.

8. To the best of my efforts, knowledge, and belief, the Redline reflects all of the substantive changes between the 2017 Lesson Plan and the 2019 Lesson Plan.

9. However, not all the differences in formatting between the two Lessons Plans are captured in the Redline, principally due to technological constraints. At times, due to the
limitations of the numbered list function in Microsoft Word, I was unable to represent both the deletion and addition of an outline numeral or letter without corrupting the formatting of the text. In such cases, I simply indicated the change by adjusting the font color of the numeral or letter to green. However, in some instances, this too was not possible without affecting the rest of the list numerals or letters. In these cases, the numerals or letters were simply left in black font color.

10. Similarly, in some cases, the limitations of the numbered list function in Microsoft Word prevented me from changing numerals or letters to reflect the deletion or addition of list items present in the 2019 Lesson Plan. As a result, the Redline contains some inconsistencies in how some lists are numbered.

11. In these instances, I prioritized visual clarity and preserving the content of the substantive changes between the 2017 and 2019 Lesson Plans, rather than formatting particularities.

12. For similar reasons, rather than mark changes to the date and page numbers within the footer, I simply omitted the footers to avoid confusion.

13. The full Redline went through the following quality control review process.
   a. First, in the process of transferring my handwritten markings into the electronic copy of the 2017 Lesson Plan, I manually checked my work against the annotated copies of the 2017 and 2019 Lesson Plans, line-by-line and page-by-page.
   b. Second, after I entered the annotations electronically, I shared my draft Redline with an IRAP colleague for proofreading. The colleague provided me with a handwritten markup of the draft Redline based on her proofreading review. I
compared the notes in the markup against the 2017 and 2019 Lesson Plans and entered changes in the electronic copy of the draft Redline as appropriate.
c. Third, the draft Redline went through an out-loud read-through process. I compared the draft Redline against the original .pdf copies of the 2017 and 2019 Lesson Plans by reading through the draft Redline with the assistance of two IRAP colleagues, twice.
   i. First, one of us read through the draft Redline aloud, focusing on all text in green and original (black) font, while another silently followed along with the 2019 Lesson Plan and noted any divergence in content.
   ii. Second, one of us read through the draft Redline aloud, focusing on all text in red and original (black) font, while another silently followed along with the 2017 Lesson Plan and noted any divergence in content.
   iii. I transferred all corrections into the electronic copy of the draft Redline.
14. After I had completed quality control review, an IRAP colleague converted the document to .pdf format and added page numbers to the Redline using Adobe Acrobat Pro DC’s footer tool.
15. Because it contains all the removals and additions between the two Lesson Plans, the final version of the Redline is 69 pages long; for comparison, the 2017 and 2019 Lesson Plans are 47 and 37 pages long, respectively. Consequently, the page numbers listed in the Redline’s table of contents do not reflect the actual page numbers as found in the footer, but rather the changes in page numbers between the two versions of the Lesson Plan.
16. Attached to Plaintiffs’ Cross-Motion as Exhibit I is a true and correct copy of a March 29, 2019 Newsweek article by Donica Phifer entitled “Donald Trump Calls Asylum Claims


18. Attached to Plaintiff’s Cross-Motion as Exhibit K is a true and correct copy of a November 1, 2018 White House fact sheet entitled “Our Nation’s Weak Asylum Laws are Encouraging an Overwhelming Increase In Illegal Immigration,” downloaded from https://www.whitehouse.gov/briefings-statements/nations-weak-asylum-laws-encouraging-overwhelming-increase-illegal-immigration/.

19. Attached to Plaintiff’s Cross-Motion as Exhibit L is a true and correct copy of April 2, 2019 remarks by President Trump and NATO Secretary General Jens Stoltenberg before a bilateral meeting, downloaded from https://www.whitehouse.gov/briefings-statements/remarks-president-trump-nato-secretary-general-jens-stoltenberg-bilateral-meeting/.

20. Attached to Plaintiff’s Cross-Motion as Exhibit M is a true and correct copy of a series of Twitter posts by USCIS Acting Director Kenneth Cuccinelli, beginning on August 28, 2019 at 2:14 pm, downloaded from https://twitter.com/usciscuccinelli/status/1166776004439920641?s=21.

21. Attached to Plaintiff's Cross-Motion as Exhibit N is a true and correct copy of a June 18, 2019 BuzzFeed News article by Hamed Aleaziz entitled “A Top Immigration Official

22. Attached to Plaintiffs’ Cross-Motion as Exhibit O is a true and correct copy of an excerpt from USCIS’s Credible Fear Frequently Asked Questions website, last updated July 8, 2019, and downloaded from https://www.uscis.gov/faq-page/credible-fear-faq#t12831n40242.


24. Attached to Plaintiffs’ Cross-Motion as Exhibit Q is a true and correct copy of a December 8, 2006 Memorandum from then-Acting Director of the Asylum Division of USCIS’s Refugee, Asylum and International Operations Directorate Joseph E. Langlois entitled “Streamlining the Credible Fear Process.”

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in New York, New York on September 5, 2019.

Serena Kumalmaz
Exhibit I

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
President Donald Trump took time during his campaign rally Thursday in Grand Rapids, Michigan, to dispute the asylum claims from immigrants who are trying to enter the United States.

During an 83-minute speech, Trump called some of the claims a "big fat con job" amid a larger monologue on his proposed border wall and immigration policies established by Democrats, including former President Barack Obama.

"You have people coming, you know they're all met by the lawyers... And they come out, and they're met by the lawyers, and they say, 'Say the following phrase: I am very afraid for my life. I am afraid for my life.' OK. And then I look at the guy. He looks like he just got out of the ring. He's a heavyweight champion of the world. It's a big fat con job."

The president again insisted that new portions of the wall were currently being built, despite no evidence that any new construction had begun along the U.S.-Mexico border.

"If you look at the border, if you look at the hundreds of thousands of people that are invading, or at least trying to invade our country, you would know that we need it and we're building it," Trump said. "And we're building it a lot faster than anybody would—and better! And better. It's better, it's faster, and it's less expensive. And it's also much more beautiful."

Repairs and renovations have begun on existing sections of the border wall, something Trump said the news media had "not given us credit for."

President Donald Trump speaks to supporters during a rally at the Van Andel Arena on March 28, 2019 in Grand Rapids, Michigan. Grand Rapids was the final city Trump visited during his 2016 campaign. Photo by Scott Olson/Getty Images

Trump said later in his speech that the increase in immigration was connected to the U.S. economy, which he called the "hottest economy anywhere on earth." Trump said that immigrants must enter the country "legally and they have to come in based on merit," though he did not elaborate on what "merit" might mean.

The president also slammed Democrats for several immigration policies, including catch and release, which took
effect in the administration former President George W. Bush and was reinstated by Obama and visa lotteries.

"Think of it. Visa lottery; you're in a lottery system from these countries, you pick up a name. 'Oh isn't that nice, she's from...' Guess what? Do you think they're giving us their best people? No, they're not. They're giving us their worst people and so would you and so would I. Visa lottery, that's another beauty," Trump said. "We have nothing but bad coming out of those laws."

The president blamed Mexico for failing to stop migrant caravans headed to the United States, saying Mexico could stop them "so easy" before saying that Mexico would lose "a hell of a lot of money" if they continue to allow the caravans through.

"They could do it so easily. So easily. And if they don't, I'm telling you right now; we will close the damn border," he said.

Trump said that 30 percent of car manufacturing jobs in the United States went to Mexico and, should the border be closed, the cars would not be allowed to enter the country and that would result in automotive industry jobs returning to the U.S.

Trump later referred to the number of immigrants at the southern border as an "invasion," which he has called it before, saying the U.S. would see a million undocumented immigrants attempting to rush the border, and said, against evidence to the contrary, that open borders would lead to an increase in crime.

"We are also protecting America's borders, and we are taking on the extremists. They are, really radical extremist Democrats who want open borders and crime, because that's what happens," he said.

The infographic below, provided by Statista, illustrates the number of people granted asylum in the United States since 1975.

Number of people granted asylum in the United States since 1975. Statista
Exhibit J

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment

Kiakombua v. McAleenan, No. 1:19-cv-1872-KBJ
President Trump referred to some asylum seekers as gang members, and he disparaged asylum as a "scam" and a "hoax" during a visit to the southern border, in Calexico, California Friday. His visit to California came amid his threats to close the border, and followed soon after announcing his nominee for director of Immigration and Customs Enforcement (ICE), Ron Vitiello, would not be the permanent pick to head ICE after all.

Mr. Trump said Friday afternoon that the U.S. asylum system was full, and could not take any more "asylum people." He claimed that some of those seeking asylum were actually gang members.

"I look at some of these asylum people, they're gang members," he said. "They're not afraid of anything. They have lawyers greeting them. They read what lawyers tell them to read." Mr. Trump added that it was a "scam."

"It's a scam. It's a hoax. I know about hoaxes. I just went through a hoax," he said in a veiled reference to the Russia collusion probe.

"The system is full. We can't take you anymore. Whether it's asylum. Whether it's anything you want. It's illegal immigration," he continued.

During a roundtable meeting with Customs and Border Patrol officials in Calexico, the president emphasized the need for a border wall, something echoed by those selected to sit at the table with him. Mr. Trump also announced he'd hold a news conference at the White House next week to talk about the things his administration is doing to curb the flow of opioids and other hazards at the southern border. He had previously said he would hold a news conference during his trip to California.
Earlier on Friday, the president, speaking to reporters on the White House South Lawn before leaving for California, explained his administration want to go in a "tougher direction" than Vitiello.

"Ron's a good man, but we're going in a tougher direction," Mr. Trump said.

Mr. Trump is in Calexico to look at what the White House says is new border wall construction. Mr. Trump is then flying to Beverly Hills for GOP fundraisers and then will travel to Las Vegas.

On Friday morning, the president reiterated his threat to impose 25% tariffs on cars coming from Mexico if immigrants continue to enter the U.S. over the southern border in large numbers. He said that Mexico has been doing an "absolutely terrific" job for last few days in stemming the flow of undocumented migrants since he threatened close the border last week.

"If they apprehend people at their southern border, where they don't have to walk through, that's a big home run," Mr. Trump said. He called on Congress to scrap the current the asylum system, and reiterated his desire to "get rid of judges" who rule against his immigration policies.

Mr. Trump also told reporters that he will not be attending the White House Correspondents Dinner for the third year in a row, and will instead host a rally on that night. On the night of the dinner in 2017, he did a rally in Harrisburg, Pennsylvania; and on the night of the dinner in 2018, he did a rally in Washington Township, Michigan.

"The dinner is so boring, and so negative," Mr. Trump explained. "I like positive things."

The president has continued to push Congressional Democrats to act on border security and immigration reform, most recently threatening to close large sections of the border.

"Congress must get together and immediately eliminate the loopholes at the Border! If no action, Border, or large sections of Border, will close. This is a National Emergency!" the president tweeted earlier this week.

Before leaving, Mr. Trump's re-election campaign released a video highlighting the "undeniable crisis" at the southern border. The video features a variety of 2020 Democratic contenders slamming the president's immigration policies and long-promised border wall, and later claims that Democrats "do not want to keep Americans safe."

"Democrats refuse to admit there is a crisis along our southern border and are even actively campaigning on an open borders platform," said Trump campaign National Press Secretary Kayleigh McEnany in a statement. "President Trump has been an unmistakable leader on the issue of illegal immigration since before he took office and will not rest until our border is secured."
Exhibit K

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
Our Nation’s Weak Asylum Laws are Encouraging an Overwhelming Increase in Illegal Immigration

We will not rest until our border is secure, our citizens are safe, and we finally end the immigration crisis once and for all.”

President Donald J. Trump

MISUSED ASYLUM LAWS: Flaws in our asylum system allow illegal aliens with meritless claims to cross our borders and remain here for years.

- Our Nation’s asylum laws have allowed illegal aliens with meritless claims to easily enter and stay in the United States while awaiting legal proceedings.

- Asylum seekers at the border only have to meet the low bar for establishing a “credible fear” of returning under which they must show a “possibility” to qualify for asylum.

- Aliens who claim a credible fear of returning do not have to provide any verification or corroboration of their claims in order to receive a positive determination and be released into the interior of the United States.

- As a result, illegal aliens with meritless cases that are released from detention are able to remain in our communities for years, while their cases are litigated in immigration courts.
AN OVERWHELMING SURGE: Our country faces a growing and overwhelming surge of illegal aliens seeking to take advantage of our weak asylum laws.

- Today, approximately one in 10 illegal aliens arriving at our southern border claims a credible fear of return, up from one out of every 100 prior to 2013.
  - Since 2010, these claims have spiked by 1,700 percent.
  - This staggering increase has contributed to a backlog of hundreds of thousands of cases in our immigration courts.
- This surge is only growing, with reports showing that asylum requests at the southern border have recently increased from 1,500 per week to approximately 2,000 per week.
- U.S. Citizenship and Immigration Services (USCIS) processed approximately 100,000 credible fear claims this last fiscal year (FY), surpassing the 94,000 record set in FY 2016.
  - In FY 2018, USCIS received approximately 106,000 new asylum requests from those admitted legally, compared to only 25,500 in 2008.
  - Immigration courts received approximately 160,000 asylum requests in FY 2018, compared to only 42,000 in FY 2008.

A DRIVING FACTOR IN ILLEGAL IMMIGRATION: The standards that apply to the credible fear process is a major driver of our Nation’s immigration crisis.

- While there has been an enormous spike in credible fear-initiated claims, relatively few asylum claims have ultimately been found to be meritorious.
- Approximately 80 percent of aliens arriving from Guatemala, Honduras, and El Salvador passed initial credible fear screenings, but only 15 percent of those were granted asylum.
- There has been a major increase in the number of illegal alien family units arriving at our border and family units now make up a significant percentage of credible fear claims.
  - The number of family units apprehended by U.S. Customs and Border Protection has increased 620 percent during the past five years.
  - Family units make up about 40 percent of all credible fear-initiated asylum claims.
  - As a result of loopholes, nearly all asylum seekers in family units are permitted by the Department of Homeland Security to remain in the United States, pending their asylum hearing.
Exhibit L

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
Remarks by President Trump and NATO Secretary General Jens Stoltenberg Before Bilateral Meeting

Oval Office

1:53 P.M. EDT

PRESIDENT TRUMP: Thank you very much. It’s a great honor to have Secretary General Stoltenberg of NATO with us. We have developed a very great relationship, and I’m very happy to say the Secretary General will be with us for quite a long time because he was just extended. So congratulations on that.

SECRETARY GENERAL STOLLENBERG: Thank you very much.

PRESIDENT TRUMP: That’s a big thing. And I was with you 100 percent. But you know that. I felt very strongly about that.

We’ve worked together on getting some of our allies to pay their fair share. It’s called burden sharing. And as you know, when I came, it wasn’t so good, and now it’s — they’re catching up.

We have 7 of the 28 countries are currently current and the rest are trying to catch up, and they will catch up. And some of them have no problems because they haven’t been paying and they’re very rich. But we’re looking at the 2 percent of GDP level. And at some point, I think it’s going to have to go higher than that. I think probably it should be higher. But we’re at a level of 7 out of the 28.

The United States pays for a very big share of NATO — a disproportionate share. But the relationship with NATO has been very good. The relationship with the Secretary General has been outstanding. And I think tremendous progress has been made.
If you look — in fact, you showed me this originally, yourself — if you look at the charts and the different things, if you go back 10 and 15 years, and it's a roller coaster ride down, in terms of payment.

And since I came to office, it's a rocket ship up. We've picked up over $140 billion of additional money, and we look like we're going to have at least another $100 billion more in spending by the nations — the 28 nations. We're going to have — and that's exclusive of the United States. We'll have another $100 billion more by 2020 or a little bit into 2020.

So tremendous progress has been made, and NATO is much stronger because of that progress. And, Mr. Secretary General, it's a great to honor to have you with us at the White House. Thank you. Thank you very much.

SECRETARY GENERAL STOLTENBERG: Thank you so much, Mr. President. And once again, thank you for hosting me and my delegation, once again, in the White House. And it's great to be back, great to see you. And thank you for your strong commitment to NATO, to our alliance, and to our transatlantic bond, and especially for your very strong leadership on burden sharing. Because as you just mentioned, after years of cutting defense budgets, NATO Allies have now started to invest more. And by the end of next year, they will have added $100 billion more into their defense budgets since you took office.

And that helps and it proves also that NATO is a strong alliance. We have increased the readiness of forces. We have stepped up in our joint fight against terrorism. And we are investing more.

So, actually, North America, United States, and Europe, we are doing more together now than have done for many, many years. And that shows the strength of this alliance. In the year, we actually are celebrating the 70th anniversary of NATO.

So it's great to see you. I look forward to our meeting. And thank you for your support.

PRESIDENT TRUMP: Well, thank you. And it has been an honor. And we're very proud of what's happened over the last couple of years with respect to the relationship and to NATO.

A lot of the media doesn't understand what took place, but a tremendous amount of additional money was invested by other nations, which was a fair thing from the United States — you know, from our standpoint, the standpoint of the United States. And a lot more money will be invested.

But we've been picking up a tremendous and disproportionate share, and we just want fairness. I have to have fairness for our taxpayer too. And I think that's what's happening, and I very much appreciate it. Thank you very much.

Thank you all very much.
Q Mr. President, is your intention, sir, to close the border this weekend? What would it take to not close the border?

PRESIDENT TRUMP: Well, I haven’t made that intention known. And I’m ready to close it, if I have to close it.

Mexico, as you know, as of yesterday, has been starting to apprehend a lot of people at their southern border coming in from Honduras and Guatemala and El Salvador. And they’ve — they’re really apprehending thousands of people. And it’s the first time, really, in decades that this has taken place. And it should have taken place a long time ago.

You know, Mexico has the strongest immigration laws in the world. There’s nobody who has stronger. I guess some have the same, but you can’t get any stronger than what Mexico has. And we don’t want people coming up making that very dangerous journey and coming in.

Our system is absolutely maxed out. And Border Patrol has done an incredible job, but the system is absolutely maxed out. And it’s a very unfair thing.

So Mexico has, as of yesterday, made a big difference. You’ll see that — because few people, if any, are coming up. And they say they’re going to stop them. Let’s see. They have the power to stop them. They have the laws to stop them.

And what we have to do is Congress has to meet quickly and make a deal. I could do it in 45 minutes. We need to get rid of chain migration. We need to get rid of catch and release and visa lottery. And we have to do something about asylum. And to be honest with you, you have to get rid of judges.

Every time — and you won’t even believe this, Mr. Secretary General — you catch somebody that’s coming illegally into your country, and they bring them to a court. But we can’t bring them to a court because you could never have that many judges. So they take their name, they take their information, and they release them. Now, we don’t release too many. We keep them. It’s called “catch and keep.” But you don’t have facilities for that. But you have to bring them through a court system. If they touch your land — one foot on your land: “Welcome to being Perry Mason. You now have a big trial.”

So what they’ve done over the years is they release them into the United States and they say, “Come back in four years for a trial.” And nobody comes back. I guess 1 percent — 1 to 2 percent, on average, come back. And nobody can understand why they come back. They’re the only ones that come back.

It is the worst, dumbest immigration system in the world. The Democrats could change it with one meeting. Everybody would agree. But they don’t want to change it because they don’t want to give the Republicans a victory. They don’t want to change it because they want open borders, which means crimes — and lots of other things coming in, including drugs.
So we'll see what happens. I think the Democrats — today, I spoke to a couple of them and they — all of a sudden, they’re changing because they’re seeing it really is a crisis. It is a national emergency on the border. And let’s see if they can do it.

But I want to thank — it’s a very short period of time, because for years this should have been done. But Mexico is now stopping people coming — very easy for them to do — stopping people coming in through Mexico. Let’s see if they keep it done, if — if they keep doing that.

Now, if they don’t, or if we don’t make a deal with Congress, the border is going to be closed, 100 percent. And this should have been done by other Presidents. So many things should have been done by other Presidents.

But if we don’t make a deal with Congress, or if Mexico — and probably you can say “and/or” — if Mexico doesn’t do what they should be doing — they shouldn’t have people coming into their country either; this is their southern border that they have to protect — then we’re going to close the border. That’s going to be it. Or we’re going to close large sections of the border. Maybe not all of it. But it’s the only way we’re getting a response, and I’m totally ready to do it.

And I will say this: Many people want me to do it, because we’re being abused by a bad legal system that was put in by Democrats. And that has to be changed. And it can be changed in 45 minutes, if they want to change it. Let’s see what they do.

Yes, Steve.

Q  Do you worry about the impact on the U.S. economy by closing the border?

THE PRESIDENT: Sure. It’s going to be — have a negative impact on the economy. It’s one of the biggest trade deals in the world that we’ve just done with the USMCA.

It’s a very big trading partner. But to me, trading is very important, the borders are very important, but security is what is most important to me. I have to have security. This is what this gentleman is all about — to my right. And we’re going to have security in this country. That’s more important than trade.

Hey, all you hear me talking about is trade. But let me just give you a little secret: Security is more important to me than trade.

So we’re going to have a strong border, or we’re going to have a closed border. And you know, when we close that border, we will stop hundreds of millions of dollars of drugs from coming in, because tremendous amounts of drugs come through our southern border. And so that’s one of the benefits.
So I’m totally prepared to do it. We’re going to see what happens over the next few days.

Q  It sounds like Mexico is doing enough to keep you from immediately closing the border, though, from all their apprehensions (inaudible).

THE PRESIDENT: Well, they made a big step over the last two days. Look, they are apprehending people. You see how many there are. A lot. It’s a lot of people. And the fact that they’re doing that means fewer people are going to come. But, you know, we pay hundreds of millions of dollars to Honduras and Guatemala and El Salvador as a combination. And what do they do? They don’t do anything for us. You know, it’s supposed be money well spent. I understand the reason for it, but that money doesn’t get there.

So we’re giving hundreds of millions of dollars to these three countries, and the money is not going to where it’s supposed to be going, number one. Number two, they’re taking advantage of the United States, and they have been for many years. So I cut off the payments yesterday. I know what the payments are supposed to be for; they’re supposed to be to help so that they don’t have this problem. But they don’t do that. The money is gone. It’s not spent properly.

And they arrange — I mean, the thing that bothers me more than anything: They arrange these caravans and they don’t put their best people in those caravans. They put people in there that you don’t want to have in the United States. And we’re not going to have them in the United States. It’s very simple. It’s very, very simple.

Q  Are you happy with Stoltenberg as leader of NATO?

THE PRESIDENT: Say it?

Q  Why are you happy with Stoltenberg as the leader of NATO?

THE PRESIDENT: I think he’s been a terrific leader. And I can just say, during my time — so it’s already amazing, two and half years — but we get along really well. And he made — his first statement was — we had our first meeting, and I think I got them to put up — the other countries, respectfully — 27 countries; put up the other 27 — $64 billion. Sixty-four billion. That’s a lot of money.

And he went out and he said what a great job he did. A lot of people don’t like giving credit. Like the media never gives me credit, but he gave me credit. Now we’re up to way over a $100 billion, and it’s going to be a lot higher than that by the end of 2020.

But I appreciate the job he’s done. He’s done an excellent job. And when it came time to renew — because a lot of people wanted that job; that’s a great job. I mean, it really is. But a lot of people wanted it. But I had no doubt in my mind who I wanted.
Q Have you ever contemplated moving the U.S. out of NATO?

THE PRESIDENT: People are paying, and I'm very happy with the fact that they're paying.

Yeah?

Q What kind of security threat do you think Russia poses to NATO?

THE PRESIDENT: I hope that it's not going to be a security threat. I hope we have a good relationship with Russia and with, by the way, China and everybody else. But I think the fact that we have NATO — and NATO is a lot stronger since I've been President, would you say that's correct? We've taken a lot more money and —

SECRETARY GENERAL STOLTENBERG: Allies are investing more, and that provides some new capabilities. We need to maintain credible defense and defense for all NATO countries.

THE PRESIDENT: But I think we'll get along with Russia. I do — I do believe that.

Q Mr. President, on healthcare, why are you pushing a vote on a healthcare replacement until after the 2020 election?

THE PRESIDENT: Because I think we're going to have a great healthcare package. I think the Republican Party will become the party of healthcare. I see what the Democrats are doing; it's a disaster what they're planning and everyone knows it. You're going to lose 180 million people under private insurance.

And I think, really, very important, Obamacare has been such a catastrophe because it's far too expensive. It costs the people so much; they can't afford it. And, of course, the premiums are very high: seven to eight thousand dollars on average. So you have to spend over $8,000 before you even hit.

So, Obamacare has been bad. So if we get back the House, and on the assumption we keep the Senate and we keep the presidency — which I hope are two good assumptions — we're going to have a phenomenal healthcare.

Q Did Mitch McConnell ask you to delay this?

THE PRESIDENT: No, I wanted to delay it myself. I want to put it after the election because we don't have the House. So even though the healthcare is good, really good — it's much better than — when the plan comes out, which we'll be showing you at the appropriate time, it's much better than Obamacare.

So when the plan comes out, you'll see it. It's possible the Democrats would want to do it. I mean, it's much better for the people, but I'm assuming they won't because the Democrats never do anything that necessarily
is going to be anything other than political.

So what happens is we’ll go through the election, we have a very good chance at retaking the House, and we have a very good chance of keeping the Senate. And I think we will keep the Senate. And I think we’re going to keep the presidency and we’ll vote in the best healthcare package we’ve ever had.

Q Mr. President, what do you think that NATO has accomplished in 70 years?

THE PRESIDENT: I think many things they’ve accomplished, but I think they also really stand for a signal of truth and of strength. And we have a great leader.

Q Are you going to talk about Germany today? The news from —

THE PRESIDENT: I’ll be talking about Germany. I always talk about Germany. I mean, Germany, honestly, is not paying their fair share. I have great respect for Angela and I have great respect for their country. My father is German. Right? Was German. And born in a very wonderful place in Germany, and so I have a great feeling for Germany.

But they’re not paying what they should be paying. They’re paying close to 1 percent, and they’re supposed to be paying 2 percent. And the United States, over the years, got to a point where it’s paying 4.3 percent, which is very unfair. And the U.S. GDP, especially under me — because the GDP has gone up so much, because it’s 4.3 of a much larger GDP. So we’re paying for a big proportion of NATO, which basically is protecting Europe. So we’re protecting Europe.

At the same time, they’ve taken advantage of us on trade. So we have the best of all worlds: We’re protecting countries that have taken advantage of the United States on trade. But it’s all changing. It’ll take a little while, but it’s all changing.

Q Mr. President, there is going to be a vote in the House Judiciary Committee tomorrow whether or not to authorize subpoenas to demand an unredacted version of the Mueller report and all of the background materials. If they do vote out the authority for subpoenas, will the White House fight those?

THE PRESIDENT: Well, I think it’s ridiculous. We went through two years of the Mueller investigation. We have — I mean, not only that. You read the wording. It was proven. Who could go through that and get wording where it was no collusion, no nothing?

So there’s no collusion. The Attorney General now, and the Deputy Attorney General, ruled no obstruction. They said no obstruction. And so there’s no collusion. There’s no obstruction. And now we’re going to start this process all over again? I think it’s a disgrace.
These are just Democrats that want to try and demean this country. And it shouldn’t be allowed. And I’ll totally live by what the Attorney General — I have great respect for the Attorney General. I’ll live by what he said.

But I will tell you this: Nothing you give them, whether it’s Shifty Schiff or Jerry Nadler, who I’ve known — he’s been fighting me for half of my life, in Manhattan, and I was very successful, thank you. But Nadler has been fighting me for years and years in Manhattan — not successfully.

I will tell you: Anything we give them will never be enough. We could give them — it’s a 400-page report, right? We could give them 800 pages and it wouldn’t be enough. They’ll always come back and say, “It’s not enough. It’s not enough.”

This thing has gone on for two years. And, really, it started long before that. It practically started from the time I came down the escalator, because this was a whole — this was a whole plot, whether you want to use the insurance policy as a timeframe. This was an insurance policy just in case she — Hillary Clinton — loses. Well, she lost and she lost big.

This has been going on for years. Now they want to keep it going on? We had the most — they spent over $30 million on an investigation. They found no collusion — which, by the way, was the most ridiculous premise I’ve ever heard of anyway, and you understand exactly what I mean. No collusion. There was no collusion. There never was.

After $30 million, we’re going to start this process again because Jerry Nadler wants to start it or because Schiff wants to start it? I’ll rely on the Attorney General to make decisions, but I will tell you: Anything that’s given to them will never be good enough. You could give them more documents than they’ve ever seen and it would never be good enough.

So I think it’s somewhat of a waste of time. This is just politics at a very low level.

Q What about the fact that Congressman Nadler opposed the release of the Starr report in 1998?

THE PRESIDENT: Well, that’s a good thing. That’s very nice that you bring that up. The fact is that Jerry Nadler was on the opposite side of this. And he thought it was a disgusting, terrible thing to even think about giving the Starr report but now we should give the Mueller report.

And actually, the Mueller report is actually much tighter because the Starr report went to Congress. The Mueller report goes to the Attorney General. So there’s a big difference. They made that because the Starr report got out of control with respect to going to Congress, because I guess lots of people had it that maybe shouldn’t have had it and did bad things with it.
So now they limited it to the Attorney General and they did that specifically for that reason. So Jerry Nadler thought the concept of giving the Starr report was absolutely something you could never do. But when it comes to the Mueller report, which is different on our side, that would be something that he should get. It's hypocrisy and it's a disgrace.

I will say this: Look, there was no collusion. There was no obstruction. They were very disappointed. I don't know what they were thinking, because they all know. I guarantee you, they go into a room — between Nadler, Schiff, and the group — and they laugh like hell at how they've kept this thing going for two years. They laugh like hell.

And I hope that this investigation now, which is finished — it's totally finished. No collusion. No obstruction. I hope they now go and take a look at the oranges [origins] — the origins of the investigation, the beginnings of that investigation. If you look at the origin of the investigation — where it started; how it started; who started it, whether it's McCabe or Comey or a lot of them; where does it go; how high up in the White House did it go — you will all get Pulitzer Prizes, okay? You'd all get Pulitzer Prizes. You should have looked at it a long time ago.

And that's the only thing that's disappointing to me about the Mueller report. The Mueller report, I wish, covered the oranges [origins] of how it started — the beginnings of the investigation and how it started. It didn't cover that. And for some reason, none of that was discussed.

Now, if you look at the IG report, it's very serious. Now, we have another IG report coming out, hopefully, very soon. And I think you're going to learn a lot.

But you should look at the beginnings and where it started — the whole situation. Because this has been a very, very bad thing for our country. The question was asked before about Russia, about Germany, about all of the different things that you and I discuss so often.

This has been a very bad thing for the United States. It's been a total waste of time. But what hasn’t been a waste of time is some very bad people started something that should have never been started. And I hope that's going to continue forward because people did things that were very, very bad for our country and very, very illegal and, you could even say, "treasonous." Okay?

Thank you very much everybody.

END

2:16 P.M. EDT
Exhibit M

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
Lots of people talk (incl. moi) about how easy some of the asylum loopholes & weaknesses are to fix, so I thought I’d show you.

With the #FloresFix last week, the 2 biggest flaws in our laws relate to trafficking children from countries other than Mex & the credible fear standard.

2:14 PM · Aug 28, 2019 · Twitter Web App

48 Retweets 105 Likes
USCIS Acting Director Ken Cuccinelli @USCISCuccinelli · Aug 28
And here is the credible fear fix:
Amend clause (y) of section 235(b)(1)(B) of the Immigration & Nationality Act (8 U.S.C. 1225(b)(1)(B)) to read as follows:
“(v) CREDIBLE FEAR OF PERSECUTION.—For purposes of this subparagraph, the term ‘credible fear of persecution’ means …

USCIS Acting Director Ken Cuccinelli @USCISCuccinelli · Aug 28
...that it is more likely than not, taking into account the credibility of the statements made by the alien in support of the alien’s claim, as determined pursuant to section 208(b)(1)(B)(iii), & such other facts as are known to the officer, that the alien would be able to …

USCIS Acting Director Ken Cuccinelli @USCISCuccinelli · Aug 28
...establish eligibility for asylum under section 208, and it is more likely than not that the statements made by, and on behalf of, the alien in support of the alien’s claim are true.

USCIS Acting Director Ken Cuccinelli @USCISCuccinelli · Aug 28
Explanation:
This modifies the initial credible fear (CF) standard to raise it from “significant possibility” to “more likely than not.” It also adds language ensuring asylum officers determine whether the statements made in support of the alien’s CF claims are true.

USCIS Acting Director Ken Cuccinelli @USCISCuccinelli · Aug 28
Congress can fix both of these problems with the amendments in this twitter thread, and they fit on one side of one piece of paper! How hard is this? Pres. Obama wanted the TVPRA fix too - this isn’t partisan, it’s just smart.

Legal Abuse & Immigration Fraud Victim @LegalAbuse4Imm... · Aug 28
RePLYING to @USCISCuccinelli
Now time to fix the FRAUD loopholes! Hearsay allowed in administrative proceedings. Sponsors and interested parties denied ability to participate. FRAUD is rampant bcuz no oversight and only real witnesses denied ability to participate or produce evidence!

Ethan Allen @adviceforbernie · Aug 28
RePLYING to @USCISCuccinelli
Ken, are you writing the tweets yourself? Sounds like it.
Exhibit N

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
A Top Immigration Official Appears To Be Warning Asylum Officers About Border Screenings

By Hamed Aleaziz

The newly appointed leader of US Citizenship and Immigration Services, Ken Cuccinelli, sent an email to staffers Tuesday in which he appeared to push asylum officers to stop allowing some people seeking refuge in the country passage at an initial screening at the border.

“Under our abused immigration system if an alien comes to the United States and claims a fear of return the alien is entitled to a credible fear screening by USCIS and a hearing by an immigration judge,” Cuccinelli wrote to USCIS staffers.

Cuccinelli began the message by relaying the number of apprehensions at the southwest border and that the system had reached a breaking point. He told staffers that USCIS needed to do its "part to help stem the crisis and better secure the homeland."

"Asylum officers, you took an oath to support and defend the constitution of the United States. As a public servant your role as an asylum officer requires faithful application of the law."

The acting director cited statistics used by the Trump administration about the individuals who do not show up for their immigration court hearings and those who do not end up being granted asylum.

Cuccinelli then told staffers, in an apparent warning, that the gulf between the number of individuals granted passage under the screening and those who are granted asylum by an immigration judge was wider than the “two legal standards would suggest.”

“Therefore, USCIS must, in full compliance with the law, make sure we are properly screening individuals who claim fear but nevertheless do not have a significant possibility of receiving a grant of asylum or another form of protection available under our nation’s laws,” he said.

Cuccinelli added that officers have tools to combat “frivolous claims” and to “ensure that [they] are upholding our nation’s laws by only making positive credible fear determinations in cases that have a significant possibility of success.”

One official at the Department of Homeland Security — of which USCIS is a part — said the email was “insane,” while former officials said the email was clearly a threat.

“I read this only in one way — a threat. A threat that asylum officers will be blamed by their new boss for the repeated failures of the Trump administration,” Ur Jaddou, a former chief counsel at USCIS, told BuzzFeed News. “This is an unbelievable threat and not something a director would normally ever send.”

Sarah Pierce, a policy analyst at the Migration Policy Institute, said Cuccinelli was trying to ramp up the pressure on officers in whatever way he could. His understanding of the law, however, was misguided, she said.
"The acting director is trying to place the burden of reducing the difference between the high level of credible-fear acceptances and the low level of ultimate asylum approvals on the shoulders of asylum officers," she said. "However, the reason for this difference can be traced back to Congress—which purposefully made a low bar for the credible-fear process—and the failure to provide counsel for asylum-seekers, which all but guarantees the majority will fail in the court system."

Pierce said the standard for being allowed initial entry into the country when claiming asylum in the screening was actually lower than Cuccinelli made it seem.

"To obtain asylum, applicants must establish that there is as little as a 10 percent chance that they will be persecuted on account of a protected ground," Pierce said. "To demonstrate a credible fear, applicants need only show a 'significant possibility' that they could establish at least that 10 percent chance."
Exhibit O

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
Credible Fear FAQ

<< List of all sets of Frequently Asked Questions

What Is a Credible Fear of Torture?

Are There Any Mandatory Bars to Establishing a Credible Fear of Persecution or Torture?

What Happens if an Individual Decides Not to Seek Protection in the U.S.?

How Is an Individual Found to Have a Credible Fear of Persecution?

Under What Circumstances Do Asylum Officers Conduct Credible Fear Interviews?

What Will Happen if the Asylum Officer Does Not Find a Credible Fear?

What Will Happen Before the Immigration Judge?

What Is a Credible Fear of Persecution or Torture?

What Will Happen if the Asylum Officer Finds a Credible Fear?

When Do Credible Fear Interviews Take Place?

After the applicant is taken into custody, he or she will be given an orientation to the credible fear process and given a list of pro bono (free or low cost) legal service providers. USCIS requires a wait of at least one full calendar day after the applicant arrives at the detention site before conducting the credible fear interview, in order to give the applicant time to contact a consultant. This period may be waived by the applicant. Decisions about credible fear cases are made as expeditiously as possible by USCIS.

Last Reviewed/Updated: 07/08/2019
Exhibit P

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
Removal of 26 Documents for Asylum Officer Training from the USCIS Website

Access Assessment Report
May 29, 2018

Sunlight Foundation’s Web Integrity Project
webintegrity@sunlightfoundation.com

Report writer: Jon Campbell
Comprehensive reviewer: Rachel Bergman
Content reviewer: Toly Rinberg
See WIP’s Report Production Protocol for details of our review process

<table>
<thead>
<tr>
<th>Classification</th>
<th>Changed in this report?</th>
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<tbody>
<tr>
<td>1. Altering or removing text and non-text content</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Altering or removing links</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Moving an entire webpage or collection of webpages or establishing redirects</td>
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</tr>
<tr>
<td>4. Altering or removing an entire pertinent section of a webpage or collection of webpages</td>
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<tr>
<td>6. Overhauling or removing an entire website</td>
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<td>7. Altering or removing search engines and open data platforms</td>
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</tr>
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<td>8. Altering, removing, or deleting datasets</td>
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</tr>
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</table>

The Sunlight Foundation’s Web Integrity Project does not intend to assess any government agency’s intentions in presenting the changes to webpages or other Web content that appear in this report.

The format of this report and the methodology used to generate it are based on those developed during 2017 by the Environmental Data & Governance Initiative’s Website Monitoring Team, which our co-founders helped lead.
Removal of 26 Documents for Asylum Officer Training from the USCIS Website

Overview
Between March and April 2017, a series of 26 documents pertaining to training asylum officers were removed from the U.S. Citizenship and Immigration Services (USCIS) website. The materials were prepared for personnel charged with reviewing and vetting asylum claims under certain international agreements and provisions of U.S. law. An entire section titled “Asylum Officer Basic Training Course Lesson Modules,” which included links to the training documents, was removed from the “Asylum Division Training Programs” page. Although some related material can be found elsewhere on the USCIS domain, the agency did not announce the removals or create a comprehensive archive of the resources.

Background
Agency details: According to its website, “U.S. Citizenship and Immigration Services (USCIS) is the federal agency that oversees lawful immigration to the United States.” Housed within the Department of Homeland Security, it administers applications for residency and citizenship, work authorizations, and operates “humanitarian programs” for immigrants “displaced by war, famine and civil and political unrest, and those who are forced to flee their countries to escape the risk of death and torture at the hands of persecutors.”

Communications about changes: The office has not proactively communicated about or explained the changes described within this report.

Known archives: A public Web archive for some USCIS material can be found at https://www.uscis.gov/archive. The USCIS website links to this archive in the footer of webpages throughout the domain. Another public Web archive for the uscis.gov domain, collected by the Federal Depository Library Program Web Archive, can be found at https://wayback.archive-it.org/6745/*/https://www.uscis.gov/. The USCIS website does not link to these archives. Both archives are also incomplete, and do not contain website snapshots pertaining to the materials or dates of many of the changes detailed within this report.

Description of Most Notable Changes
1. 26 “Asylum Officer Basic Training Course” lesson module PDFs were entirely removed from the USCIS website; the corresponding URLs currently lead to “Page not found” notices. Among the removed course modules are lessons about: Corps Values and Goals, Sources of Authority, Reading Case Law, International Human Rights Law, and Credible Fear (Webpage 1; See Table 1 for full list).
   a. The “Asylum Officer Basic Training Course Lesson Modules” section was removed from the “Asylum Division Training Programs” page at the URL https://www.uscis.gov/humanitarian/refugees-asylum/asylum/asylum-division-training-programs (Webpage 1). The section included descriptive text and 26 links to
the removed lesson module documents (compare page versions from March 2, 2017 and April 27, 2017).

b. Training material related to some of the removed training documents can be found elsewhere on the USCIS domain, although most resources remain inaccessible (See Additional Information section).
# Table of Contents

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<tr>
<th>Report Section</th>
<th>Webpage Title</th>
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Detailed Description of Changes in Access and Content

Note: Throughout the entire report, links to the Internet Archive’s Wayback Machine’s (IAWM) versions of corresponding pages are provided for reference. IAWM displays time in GMT.

Webpage 1: Asylum Division Training Programs

- URL: https://www.uscis.gov/humanitarian/refugees-asylum/asylum/asylum-division-training-programs
- Changes occurred between March 2, 2017 and April 27, 2017.
- USCIS Web archives (See Additional Information for full assessment):
  - USCIS.gov archive: No archived version of page.
  - Federal Depository Library Program Web Archive: No archived version of page.

Webpage 1 Details:
Changes to the “Asylum Division Training Programs” page:
1. The “Asylum Officer Basic Training Course Lesson Modules” section on this page, including text and links, was removed between March 2, 2017 and April 27, 2017. The text and links removed from this page related to training materials for USCIS personnel handling asylum claims, and included the following content:

   *Asylum Officer Basic Training Course Lesson Modules*

   The Asylum Officer Basic Training Course lesson modules are used to train Asylum Officers at the mandatory 5-week AOBTC.

   The AOBTC lesson modules were developed and are updated by the Asylum Division following a standardized procedure for U.S. Government training initiatives. The materials used in the course have been reviewed by a number of subject matter experts, including Asylum Division staff, the USCIS Office of the Chief Counsel, law professors, immigration attorneys in private practice, and practitioners working with refugees and asylees.

   The lessons are updated as the need arises to address new case law, statutory requirements, and procedural directives. These lessons are not only used for the instruction of newly-hired Asylum Officers, but are also used to articulate and communicate Asylum Division guidance on the substantive adjudication of asylum cases, and the lesson modules are also used as a reference tool for Asylum Officers as they perform their duties.

   - Corps Values and Goals (PDF, 53 KB)
   - Sources of Authority (PDF, 53 KB)
   - Reading Case Law (PDF, 63 KB)
2. All lesson modules PDFs linked from the “Asylum Officer Basic Training Course Lesson Modules” section on this page were removed. See Table 1 below for full assessment of access to documents corresponding to links in this section:

Table 1: Links removed from the “Asylum Division Training Programs” page (Webpage 1)
The following table details the links for lesson modules that appeared on the “Asylum Division Training Programs” page (Webpage 1) before they were removed between March 2, 2017 and April 27, 2017. For each link, the table indicates the current status of the corresponding document; contains previous and current Internet Archive Wayback Machine (IAWM) versions of the document. Some related training materials can be found in the “Legal standards governing Asylum claims and issues related to the adjudication of children” document accessible from the USCIS “Electronic Reading Room” page, indicated accordingly in the table below. Some asylum-related material can be found elsewhere on the USCIS website, although most training resources remain inaccessible (see Additional Information for details on the analysis).
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* "Yes" indicates that a training material with the same or similar title as the removed lesson modules appears in the "Legal standards..." document (See Additional Information).
Screenshot 1.1: A portion of the “Asylum Division Training Programs” page (Webpage 1), from the Internet Archive’s Wayback Machine on March 2, 2017. The entire “Asylum Officer Basic Training Course Lesson Modules” section was removed from the page by April 27, 2017.

Asylum Officer Basic Training Course Lesson Modules

The Asylum Officer Basic Training Course lesson modules are used to train Asylum Officers at the mandatory 5-week AOBTC.

The AOBTC lesson modules were developed and are updated by the Asylum Division following a standardized procedure for U.S. Government training initiatives. The materials used in the course have been reviewed by a number of subject matter experts, including Asylum Division staff, the USCIS Office of the Chief Counsel, law professors, immigration attorneys in private practice, and practitioners working with refugees and asylees.

The lessons are updated as the need arises to address new case law, statutory requirements, and procedural directives. These lessons are not only used for the instruction of newly-hired Asylum Officers, but are also used to articulate and communicate Asylum Division guidance on the substantive adjudication of asylum cases, and the lesson modules are also used as a reference tool for Asylum Officers as they perform their duties.

- Corps Values and Goals (PDF, 53 KB)
- Sources of Authority (PDF, 53 KB)
- Reading Case Law (PDF, 63 KB)
- International Human Rights Law (PDF, 81 KB)
- Credible Fear (PDF, 125 KB)
- Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution (PDF, 458 KB)
- Well Founded Fear (PDF, 131 KB)
- Nexus and the Five Protected Characteristics (PDF, 348 KB)
- Burden of Proof Standards of Proof Evidence (PDF, 136 KB)
- Bar to Asylum and Discretion (PDF, 242 KB)
- Interview Part 1 Overview of Nonadversarial Asylum Interview (PDF, 98 KB)
- Interview Part 2 Note-Taking (PDF, 44 KB)
- Interview Part 3 Eliciting Testimony (PDF, 94 KB)
- Interview Part 4 Inter-Cultural Communication (PDF, 74 KB)
- Interview Part 5 Interviewing Survivors (PDF, 143 KB)
- Interview Part 6 Working with an Interpreter (PDF, 86 KB)
- Making an Asylum Decision (PDF, 60 KB)
- Decision Writing Part 1 Overview and Components (PDF, 98 KB)
- Decision Writing Part 2 Legal Analysis (PDF, 90 KB)
- One-Year Filing Deadline (PDF, 133 KB)
- NACARA (PDF, 319 KB)
- Female Asylum Applicants and Gender-Related Claims (PDF, 170 KB)
- Reasonable Fear of Persecution and Torture Determinations (PDF, 125 KB)
- International Religious Freedom ACT IRF and Religious Persecution Claims (PDF, 148 KB)
- Guidelines for Children’s Asylum Claims (PDF, 229 KB)
- UNHCR and Concepts of International Protection (PDF, 105 KB)
Additional Information: Assessment of Access to Asylum Officer Basic Training Course Lesson Information Elsewhere on the USCIS Website

1. USCIS maintains an “Electronic Reading Room” page at the URL https://www.uscis.gov/about-us/electronic-reading-room that “provides access to information identified under the Freedom of Information Act (FOIA).”
   a. The PDF document with the link text “Legal standards governing Asylum claims and issues related to the adjudication of children,” currently hosted at the URL https://www.uscis.gov/sites/default/files/files/nativedocuments/Legal_standards_governing_Asylum_claims_and_issues_related_to_the_adjudication_of_children.pdf (May 25, 2018) is a compilation of pages from various resources and documents, and can be found in the “Electronic Reading Room” page (May 15, 2018; Screenshot A.1).
   i. The PDF contains training material with titles that are the same or similar to those of modules removed from and detailed in Webpage 1, but which have been taken from documents different than those modules. (see Table 1).
   Note: The content in the training materials found in the “Legal standards governing Asylum claims and issues related to the adjudication of children” PDF have not been comprehensively compared with the content in the lesson modules removed from Webpage 1, although keyword searches were conducted for each module

2. The USCIS domain hosts various other documents on its website with materials similar, but not identical, to some of the removed lesson modules. These documents, which can be found through a key term search using the USCIS website’s search bar include:
   a. Asylum and Female Mutilation (May 25, 2018)
   c. RAIO Directorate- Officer Training I RAIO Combined Training Course (February 22, 2018)
      i. A separate PDF, which is part of the “Combined Training Course” titled “Guidance for Adjudicating LGBTI Refugee and Asylum Claims” was identified (August 8, 2017)
   e. Guidelines for Children's Asylum Claims (December 5, 2017) (Appears to be same as removed training module listed in Index 25, Table 1)
   Note: The content in the above documents has not been comprehensively cross-referenced to determine which lesson module topics appear in each.
3. USCIS maintains archived content at the URL https://www.uscis.gov/archive. A keyword search for relevant terms that appear in the link text of the links removed from Webpage 1 (see Table 1 for full list) indicates that the PDFs corresponding to these links do not appear in the USCIS archive.

4. Searching for the Webpage 1 URL or the Table 1 PDF URLs in the Federal Depository Library Program Web Archive does not yield any results indicating that the page and documents are not stored in these archives.

Screenshot A.1
A portion of the USCIS “Electronic Reading Room” page, which contains a link to a PDF with information related to some of the modules removed from Webpage 1, from the Internet Archive’s Wayback Machine on May 15, 2018. The link, with the text “Legal standards governing Asylum claims and issues related to the adjudication of children,” is highlighted (May 25, 2018).
Exhibit Q

to Plaintiffs’ Combined Memorandum of Law in Support of Their Cross-Motion for Summary Judgment & in Opposition to Defendants’ Motion for Summary Judgment
December 8, 2000

MEMORANDUM FOR: Asylum Office Directors
   Deputy Directors
   Supervisory Asylum Officers
   Asylum Officers

FROM: Joseph E. Langlois, Acting Director
      Asylum Division
      Office of International Affairs

SUBJECT: Streamlining the Credible Fear Process

INTRODUCTION:

This memorandum introduces new procedures designed to streamline the credible fear process and provides guidance for implementing those procedures. The memorandum is designed to provide an overview of streamlining. The draft Credible Fear Procedures manual (attached) should be referred to for a more specific discussion of the streamlining procedures. The Credible Fear Lesson Plan (attached) remains the primary source for instruction on the legal standard.

BACKGROUND:

Asylum Officers have been conducting credible fear interviews since April 1997. Since that time, there have been two GAO reports, several studies by NGOs, and visits by INSpect teams that have, in various ways, examined our effectiveness in implementing the credible fear process. Within the asylum program, there has been headquarters review of all negative decisions, high profile cases, gender related cases, and cases involving possible terrorists and persecutors, in addition to a sampling of positive decisions from each office. The HQ Expedited Removal team has visited each asylum office and many remote interview locations, observed interviews, met with district personnel and reviewed the quality and efficiency of the office APSO programs.

With the information from the various examinations of the program in mind, a team met in Washington in February to evaluate the program, consider possible areas for improvement, and devise a strategy to make suggested improvements. Attendees included Asylum Division Director (Acting) Joseph Langlois, HQ Branch Chiefs Christine Davidson and Joanna Ruppel, ZLA Director
Robert Looney, ZCH Director Robert Esbrook, and the HQ expedited removal team. The group consensus was that the asylum program has been effective in carrying out the credible fear standard mandated by Congress in a consistent manner. National and local training, training material developed by asylum officers with credible fear interview experience in consultation with the Office of General Counsel, strict field and HQ decision review requirements, regular conference calls, and the flexibility and expertise of field asylum officers have fostered consistent decision making.

The group voiced some concern about the efficiency of the credible fear process, a concern which has often been voiced by the asylum officers and supervisory asylum officers in the field. Discussion centered on whether it would be possible to speed up the process, while maintaining substantive and procedural rights of applicants and preserving decision-making integrity. As a result of that meeting, and consultations with the INS Offices of Policy and Planning, Field Operations and General Counsel, Headquarters Asylum developed a more streamlined Credible Fear process.

**STREAMLINED PROCESS**

The nuts and bolts of the streamlined process are described in the attached Credible Fear Procedures manual, and are supported by the revised Form I-870 (attached). The manual should be reviewed in its entirety, with special focus on the sections entitled "APSO Conducts A Credible Fear Interview;" (Pages 11-20) and "APSO Concludes A Credible Fear Interview;" (Pages 20-21). The only changes being made to the credible fear process are procedural. The credible fear standard is unchanged. The AOBTC Credible Fear Lesson Plan, also attached, continues to be the primary source of instruction for asylum officers when determining whether an applicant has met the credible fear standard. Asylum pre-screening officers (APSOs) and Supervisory asylum pre-screening officers (SAPSOs) should review the lesson plan, as it puts the procedural changes in proper context. The lesson plan also serves as a reminder that the credible fear interview is a "screening" interview and that, generally, the credible fear interview will be briefer than the asylum interview, because asylum officers generally do not need to gather as much detailed information for a credible fear determination as for an asylum adjudication.

**Negative Determinations – No Procedural Changes**

Experience has shown that current procedural requirements for negative decisions are justified. Those procedures were developed to preserve the right of potential refugees to be heard, and to assure reviewing organizations that the credible fear process protects all potential refugees. The procedures ensure that all possible bases of asylum eligibility are explored in interviews, and documents that those bases of eligibility have been explored before a negative decision is made. The credible fear process allows, at the applicant's request, Immigration Judge review of all negative decisions. At EOIR's request, to ensure accuracy of review, the interview question and answer notes must be typed when a negative decision is made. Thus, the decision-making process for negative credible fear decisions, including typed question and answer notes and mandatory HQ review, is unchanged. Note that the revised Form I-870 eliminates extraneous information gathering requirements for negative as well as positive decisions.

**Positive Determinations -- Changes in Decision Documentation Requirements**

Under the streamlined procedures, AOs will no longer be required to prepare typed question and answer interview notes or write detailed assessments. Typed question and answer notes and detailed written assessments are unnecessary to meet the asylum program responsibility of screening in all potential refugees for a hearing on the merits of the asylum claim. Since positive decisions are referred for de novo hearings before immigration judges (IJ's), there is no IJ review of the credible fear decision made by the asylum officer, and no requirement that the notes be typed. The revised form I-870 provides basic eligibility questions and provides space to record the applicant's answers. Additional information from the interview may be recorded in legible, handwritten informal notes.
The decision is to be documented on the Form I-870, with a brief statement of the facts and description of the basis for the decision. There is generally no need for a detailed written assessments.

Streamlining can assist asylum officers in quickly processing decisions after the necessary eligibility information is elicited. Since a large percentage of credible fear interviews result in positive decisions, a substantial reduction of the time spent to document positive decisions should significantly improve program efficiency.

Use of Telephonic Interviews

Conducting credible fear interviews by telephone can also increase program efficiency. Field trials have demonstrated that asylum officers can often obtain the information necessary to make a credible fear decision by telephone. Asylum Office Directors will exercise discretion to determine when to conduct credible fear interviews by telephone. Factors to consider include avoiding travel, and saving financial and personnel resources. When an asylum office is located near to a detention facility, as Krome is to ZMI, or as Elizabeth is to ZNK, credible fear interviews will generally be conducted in person at those facilities. Recognizing that some applicants may have difficulty expressing themselves over the telephone, and to ensure that all applicants have the same opportunity to be heard, a negative decision cannot ever be based solely on a telephone interview. A follow-up, face-to-face interview must be conducted, before a negative decision may be processed. Certain sensitive interviews may also require face-to-face interviews.

Increased use of the telephone interview option, when appropriate, could result in significant savings to the Service without adversely affecting the rights or protection of potential refugees. Applicants as well as the Service will benefit from a faster processing time.

IMPLEMENTATION

Implementation of streamlining procedures can be accomplished by the field APSO teams. The role of Headquarters in the implementation process is intended to be one of support. Following distribution of this memorandum, I will schedule a conference call to discuss implementation. Directors, deputies, SAPSO's and QA/Trainers should attend. Due to the significant procedural changes being implemented, SAPSOs and QA/T's should present a formal training session on the new procedures as soon as possible after the conference call. Implementation of the new procedures can take place immediately after training. Training is required before an officer may conduct interviews using the new streamlining procedures. Trainers should consult Jim Wyrough (202/305-2667) if questions arise after reviewing the attached material.

Field offices are asked to stagger training schedules to ensure that HQ is available to provide assistance by telephone, if needed, during scheduled training sessions. Please contact Jim Wyrough to finalize training schedules.

To follow-up on the in-office training, we intend to schedule an APSO Supervisors Conference at HQ in January. Directors, of course, will have the option of attending. The initial impact of the streamlined credible fear procedures will be on the agenda. The experience gained in implementing the new procedures will enable us to identify any problems and consider further improvements. Before January, SAPSOs should focus on implementation issues so that they can bring questions, issues and ideas about the streamlined procedures to the conference. HQ plans at least two field offices visits prior to the conference to observe interviews and discuss the process with field APSO teams.

The streamlined credible fear process is an attempt to improve a program that has been successful. The new procedures should improve efficiency without affecting the quality of decision-
making. I look forward to discussing the streamlined process with you on our upcoming conference call, and to meeting with you in January.
cc: HQASM
OFFICIAL FILE
HQ AOs AND SAOS
Kelly Ryan, HQCOU

HQASM: JWYROUGH: jw: 12/0/00