20-3837

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 20-3837

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiff-Appellee,

—v.—

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, UNITED STATES DEPARTMENT OF STATE, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Defendants-Appellants,

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES CUSTOMS AND BORDER PROTECTION,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
VOLUME II OF II
(Pages JA-301 to JA-575)

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY
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(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

From: (b)(6);(b)(7)(C)
Sent: 4 May 2017 15:57:55 -0400
To: Loiacono, Adam V
Subject: RE: Endorsing and espousing terrorist activity paper

Do you have the final version that went back to DHS?

(b)(6);(b)(7)(C)
Chief
Homeland Security Investigations Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
(202) 732-(b)(6); (office)
(646) 221-(b)(7)((cell)
(b)(6);(b)(7)(C)

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From: Loiacono, Adam V
Sent: Thursday, April 27, 2017 8:10 AM
To:
Cc: (b)(6);(b)(7)(C) Loiacono, Adam V
Subject: RE: Endorsing and espousing terrorist activity paper

Folks-

We also just received comments and edits from USCIS on a separate version. Please combine the documents and try to address the USCIS comments too.

Thanks,

Adam V. Loiacono
(A) Deputy Principal Legal Advisor for Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732-(b)(6);(
Iphone: 202-500-(b)(6);
(b)(6);(b)(7)(C)

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From: Loiacono, Adam V
Sent: Wednesday, April 26, 2017 9:26 PM
To:
Cc: (b)(6);(b)(7)(C) Loiacono, Adam V
Subject: FW: Endorsing and espousing terrorist activity paper

(b)(6);(b)(7)(C)

Can your teams please work together to review and address the DOS comments and edits on the endorse or espouse paper tomorrow. I would like to get this back by 4pm so I can review and get back to the group by 5pm (I have a hard stop tomorrow) but let me know first thing if that is not reasonable. I can't see the comments on my phone.

Thanks!

Adam V. Loiacono
(A) Deputy Principal Legal Advisor for Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732-(b)(6);(
Iphone: 202-500-(b)(6);
(b)(6);(b)(7)(C)

Sent with BlackBerry Work (www.blackberry.com)

From: (b)(6);(b)(7)(C)
Date: Wednesday, Apr 26, 2017, 9:21 PM
To: Loiacono, Adam V (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: RE: Endorsing and espousing terrorist activity paper

Adam,

Can your team take the lead in addressing the comments/edits from DOS.

(b)(6);(b)(7)(C)

If you have any edits/comments on this paper please get them to (b)(6); asap.

Thanks,

(b)(6);(b)(7)(C)
Associate General Counsel, Immigration

Department of Homeland Security, Office of the General Counsel
Office: 202-282-(b)(6);(
Cell: 202-360-(b)(6);(
email: (b)(6);(b)(7)(C)

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To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Loiacono, Adam V
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: Endorsing and espousing terrorist activity paper

Attached are State Department's edits/comments to the DHS drafted paper on the use of endorsing and espousing terrorist activity.

We believe OSC should review this issue in light of the significant Constitutional issues involved.

(b)(6);(b)(7)(C)
Deputy Director of Legal Affairs, Visa Office
Bureau of Consular Affairs, U.S. Department of State
(b)(6);(b)(7)(C)
(202) 485-(b)(6);(b)(7)(

SBU
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From: (b)(6);(b)(7)(C)
Sent: 1 May 2017 21:55:56 +0000
To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: RE: Endorsing and espousing terrorist activity paper
Attachments: Inadmissibility Based on Endorsing or Espousing Terrorist Activity (DHS ....docx

Please find attached an updated version of the endorsing or espousing terrorist activity paper addressing prior comments/edits. This is now ready for any further edits by the group.

(b)(6);(b)(7)(C)

For the meeting tomorrow, while the papers will not go to the PCC, can you send us the drafts so the legal working group has them in our back pocket as needed at the meeting?

Thanks,

(b)(6);(b)(7)(C)
Associate General Counsel, Immigration
Department of Homeland Security, Office of the General Counsel
Office: 202-282-(b)(6);(b
Cell: 202-360(b)(6);(
email: (b)(6);(b)(7)(C)

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To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Loiacono, Adam V
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: Endorsing and espousing terrorist activity paper

Attached are State Department's edits/comments to the DHS drafted paper on the use of endorsing and espousing terrorist activity.

(b)(5)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)
Deputy Director of Legal Affairs, Visa Office
Bureau of Consular Affairs, U.S. Department of State
(b)(6);(b)(7)(C)
(202) 485-(b)(6);(b)

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Inadmissibility Based on Endorsing or Espousing Terrorist Activity: First Amendment Concerns

(b)(5);WIF Draft

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DISCUSSION

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INA § 212(a)(3)(B)(vi)(I) - Tier I Terrorist Organizations

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INA § 212(a)(3)(B)(vi)(II) - Tier II Terrorist Organizations

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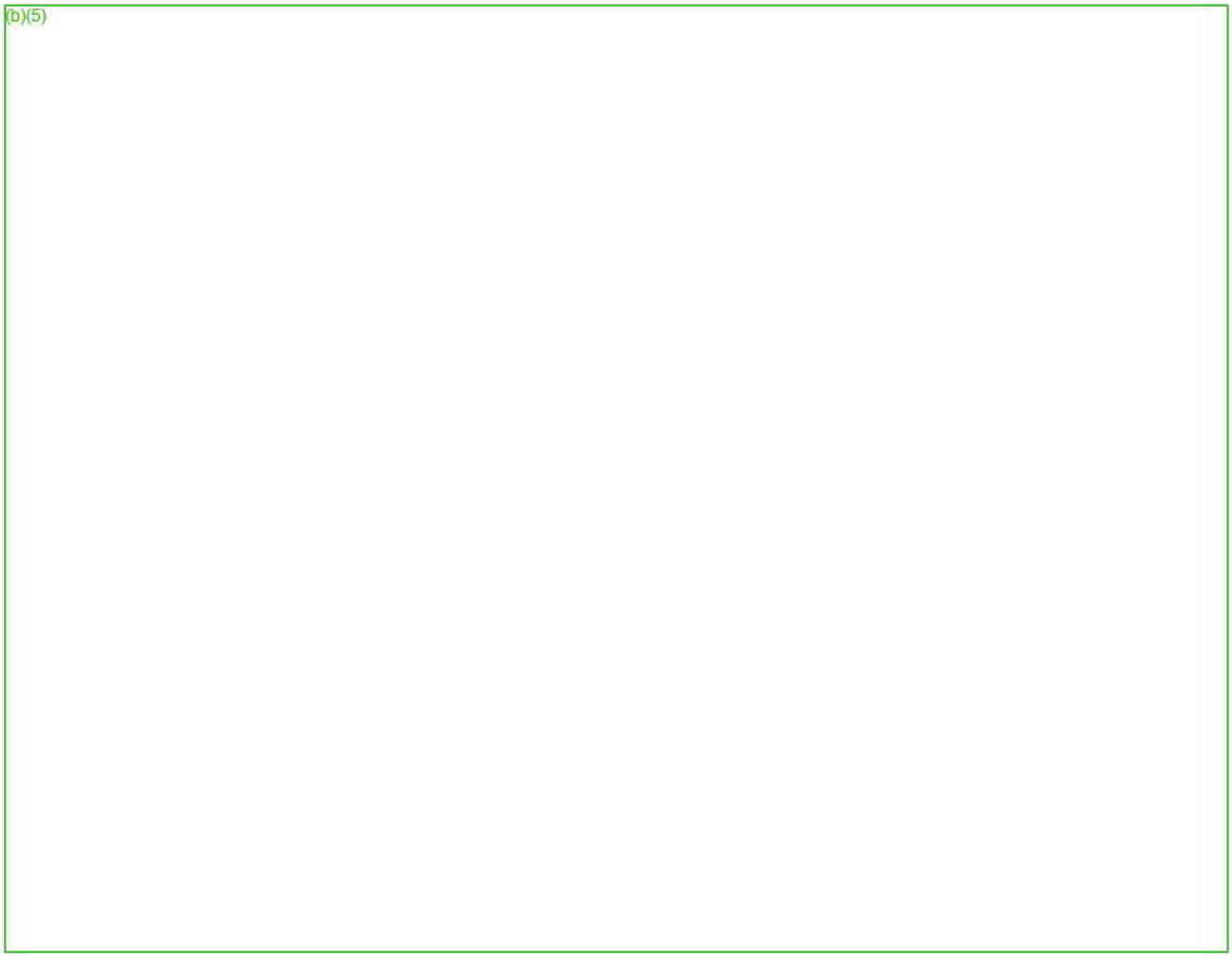
INA § 212(a)(3)(B)(vi)(III) - Tier III Terrorist Organizations

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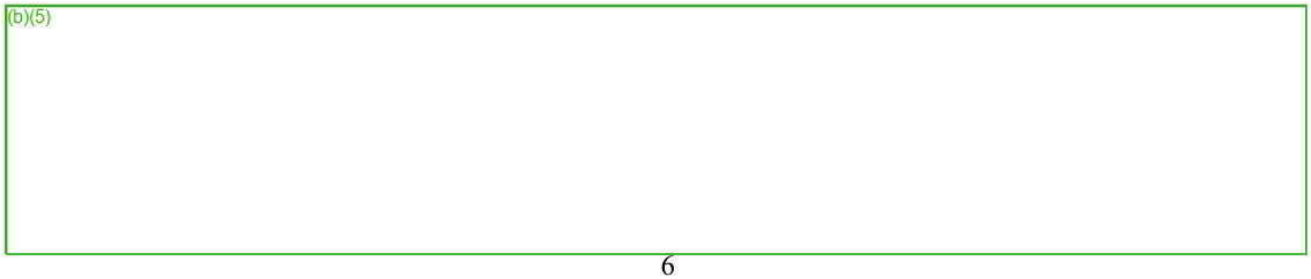
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A. Office of Foreign Assets Control (OFAC) Orders on the Taliban

On July 4, 1999, President Clinton issued Executive Order No. 13129 which placed a comprehensive assets freeze and trade embargo against the Taliban. In response to a finding that the Taliban had allowed territory under its control to be used as a safe haven and base of operations for Bin Laden and Al-Qaeda who were committing acts of terrorism against the United States and its interests, the President declared an international "emergency" and threat to United States national security. This order was issued under the authority of the International Emergency Economic Powers Act (IEEPA) at 50 U.S.C. §§ 1701-1706, the National Emergencies Act under 50 U.S.C. § 1601 et seq., and 3 U.S.C. § 301. Pursuant to these authorities, the United States Treasury Department's Office of Foreign Assets Control (OFAC) issued the Taliban Sanctions regulations at 31 C.F.R. Part 545. These regulations blocked all property in which the Taliban has an interest, directly or indirectly,

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Attorney-Client Privileged Material
2018-ICAP-00118 863

that is in the United States or that comes within the possession or control of United States persons, including their overseas branches. Unless authorized by OFAC, all commercial and trade transactions between United States persons and the Taliban were prohibited.

On September 23, 2001, President Bush issued Executive Order No. 13324. This order specifically declared a national emergency under IEEPA as a result of the attacks on September 11, 2001. The order also initiated a list of individuals and entities whose assets were to be frozen because of their known support of Al-Qaeda and terrorism in general. In essence, this order blocked United States-based assets of organizations and individuals designated by the State Department as having participated in or aided terrorist acts around the world. On July 2, 2002, following the United States invasion of Afghanistan, President Bush issued Executive Order No. 13268 which ended the emergency declared for Afghanistan in Order No. 13129. This emergency was halted due to the overthrow of the Taliban regime and its control of Afghanistan as had been the case when order No. 13129 was issued by President Clinton. However, Order No. 13268 also amended Order 13224 to add the Taliban and Mohammed "Mullah" Omar to that OFAC list. These blocks remain in place today.

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OTHER FACTORS FOR CONSIDERATION

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RECOMMENDATION

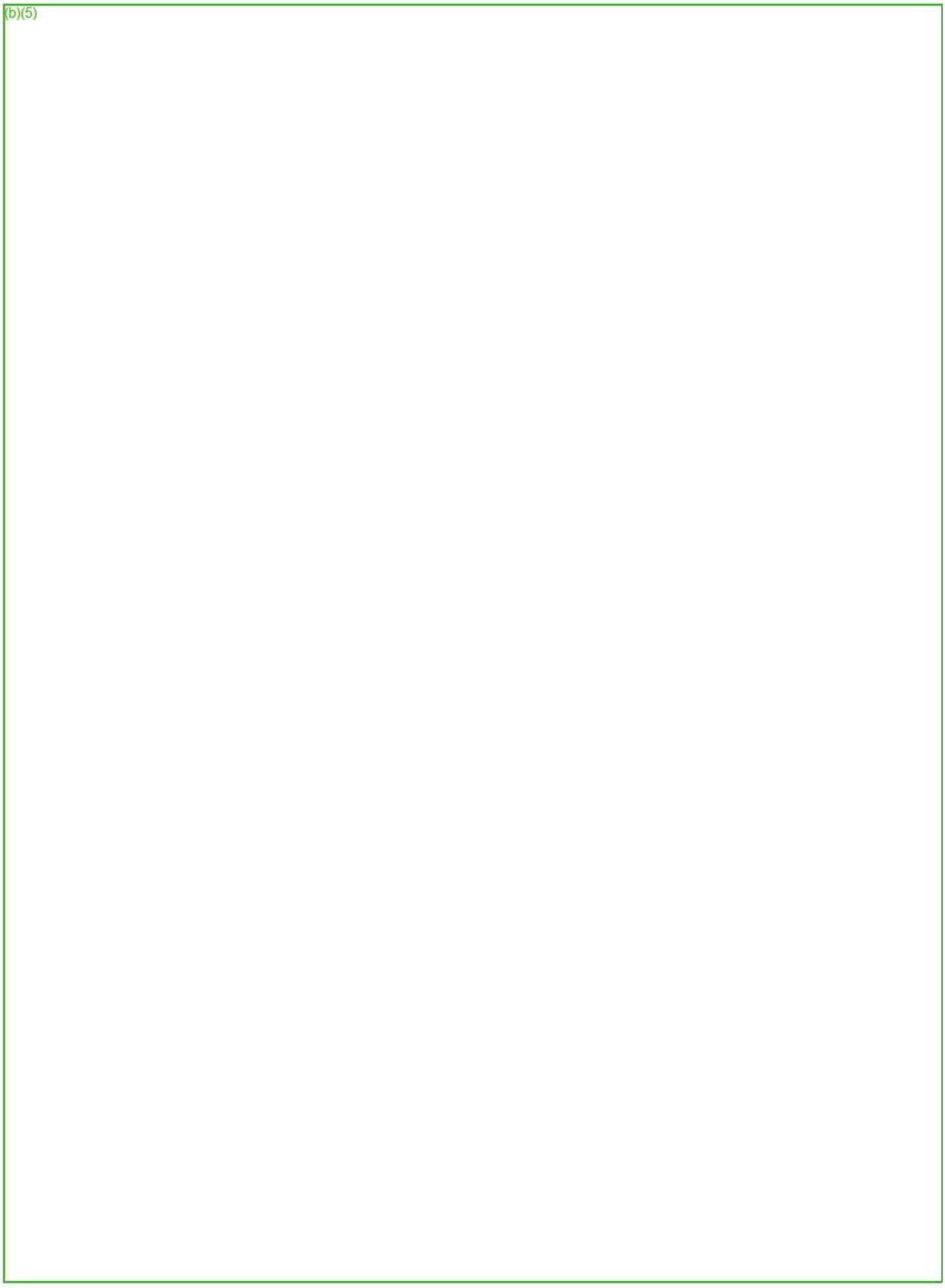
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ICE ability to use 212(a)(3)(C) Foreign Policy Charge:

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3. "Options Paper: Exercise of Authority Relating to the Terrorism-Related Inadmissibility Grounds." 11–17

4. Terrorism Related Inadmissibility Grounds (TRIG) Instructor Guide, version dated May 2017. 18–80

5. Terrorism-Related Inadmissibility Grounds Exemptions – Group-Based Exemptions / Situational Exemptions. 81–113

6. USCIS Refugee, Asylum and International Operations Directorate (RAIO) Officer Training – Combined Training Course on National Security, version dated Oct. 26, 2015. 114–215

JA-335

U.S. Citizenship and Immigration Services

BRIEFING MEMO FOR THE ACTING DIRECTOR

Recommendation to Eliminate the USCIS Terrorism-Related Inadmissibility Grounds (TRIG) Hold Policy

(b)(5)

February 9, 2017

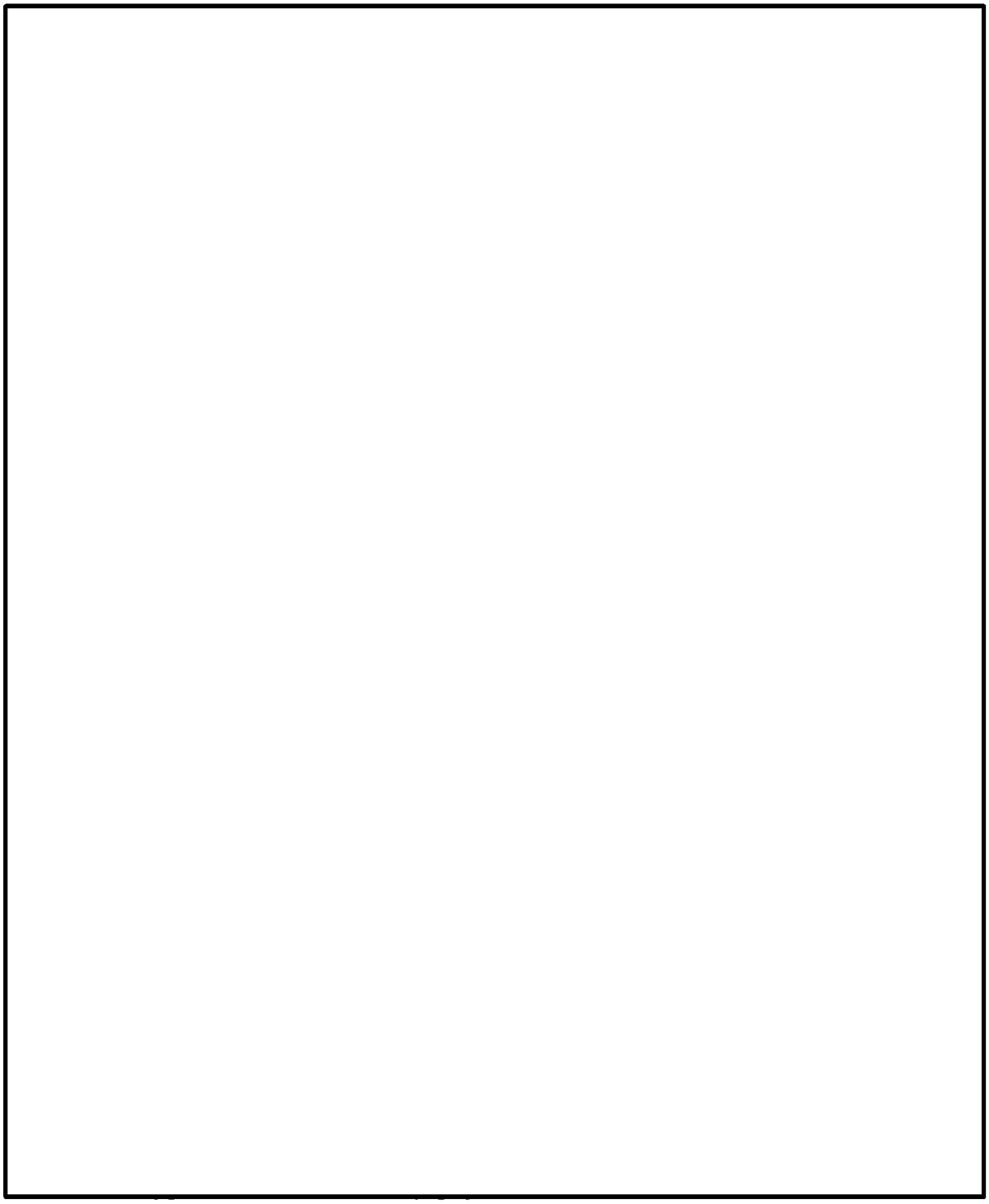
Overview:

This paper provides information regarding cases currently being held by USCIS pursuant to the existing USCIS Terrorism-Related Inadmissibility Grounds (TRIG) hold policy and a review of relevant considerations for determining whether these cases should continue to be held or released for adjudication.

(b)(5)

U.S. Citizenship and Immigration Services

BRIEFING MEMO FOR THE ACTING DIRECTOR



U.S. Citizenship and Immigration Services

(b)(5)

BRIEFING MEMO FOR THE ACTING DIRECTOR

[redacted]

Attachments:

A. Existing Exercises of Authority (Exemptions)
B. Statistics for Cases on Hold for TRIG, by Form Type and Nationality
C. Senior Policy Council Briefing Paper: TRIG Exemptions & INA 318
D. Draft PM Eliminating the USCIS Hold Policy (will require clearance through Exec Sec process)

(b)(5)

[redacted]

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of the Director (MS-2000)
Washington, DC 20529-2000

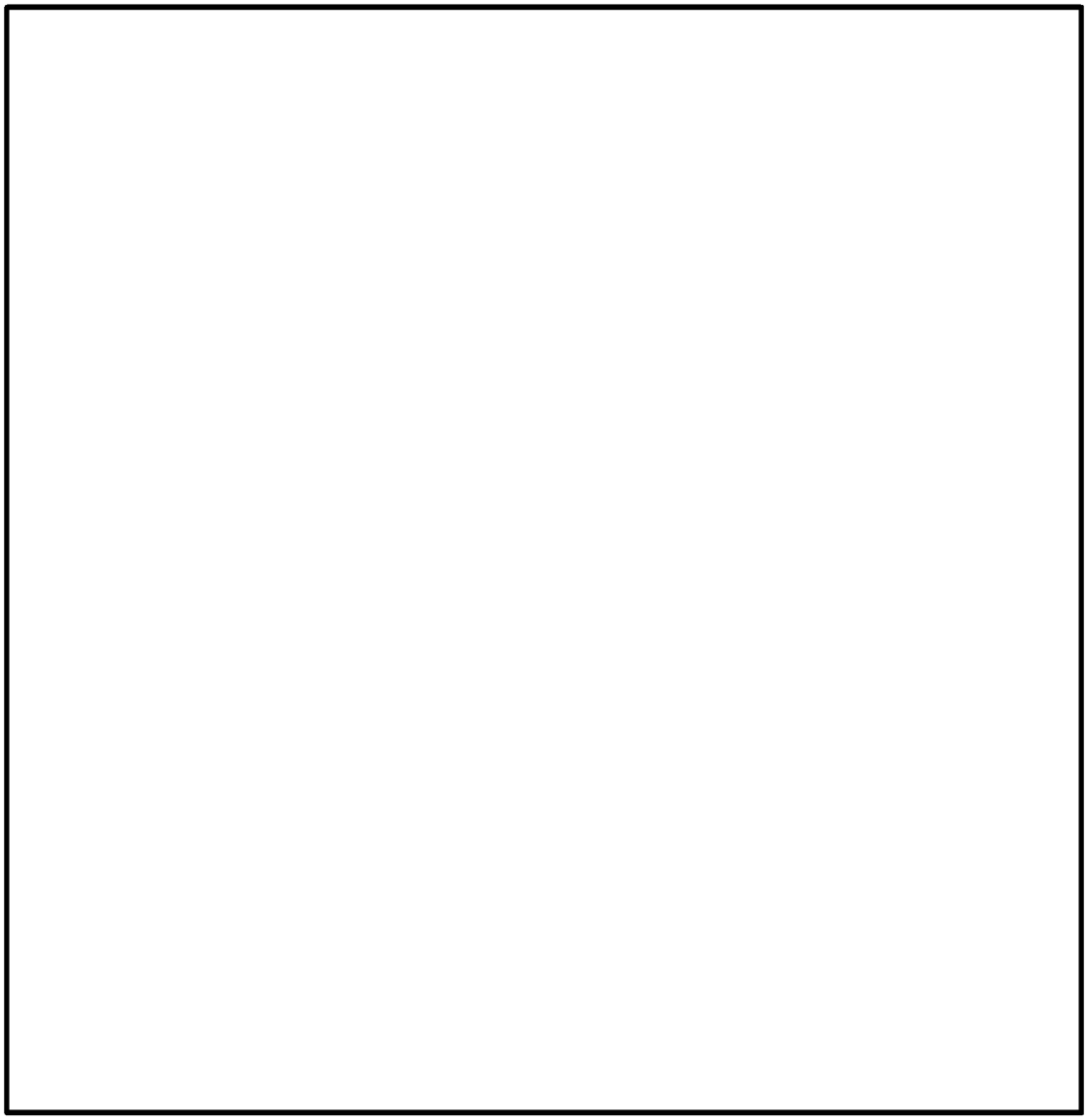
U.S. Citizenship and Immigration Services

PM-XXX-XXXX

Policy Memorandum

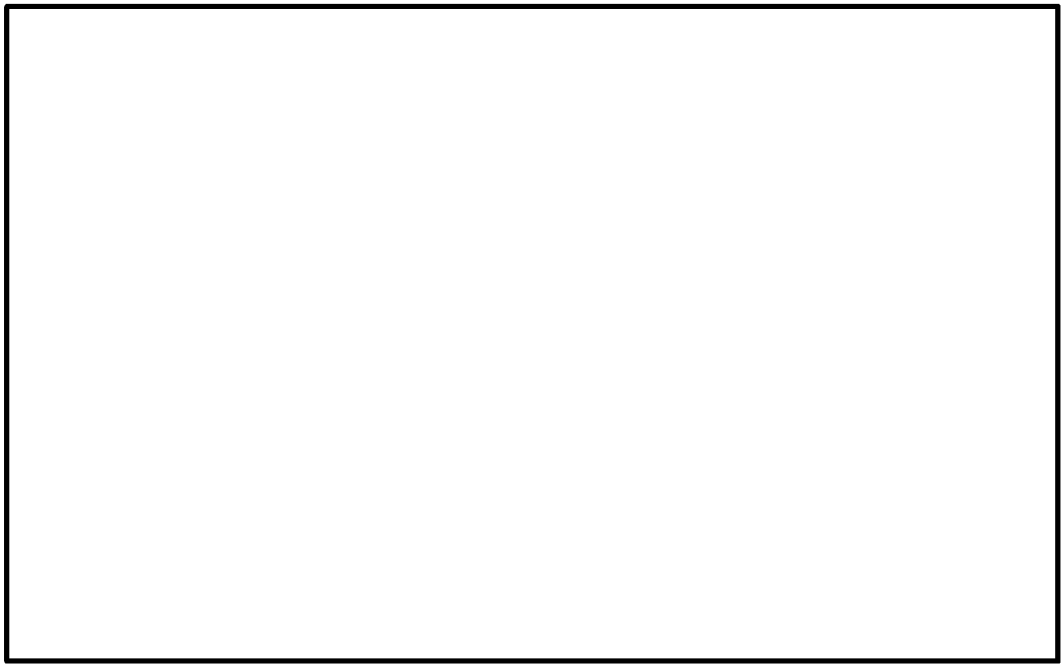
(b)(5)

SUBJECT: Revised Guidance for Processing Cases Involving Terrorism-Related Inadmissibility Grounds and Elimination of the Hold Policy for Such Cases



(b)(5)

Revised Guidance for Processing Cases Involving Terrorism-Related Inadmissibility Grounds and Elimination of the Hold Policy for Such Cases
Page 2



Senior Policy Council – Briefing Paper

TRIG Exemptions & INA § 318

POCs: OCC/FOD

[redacted]

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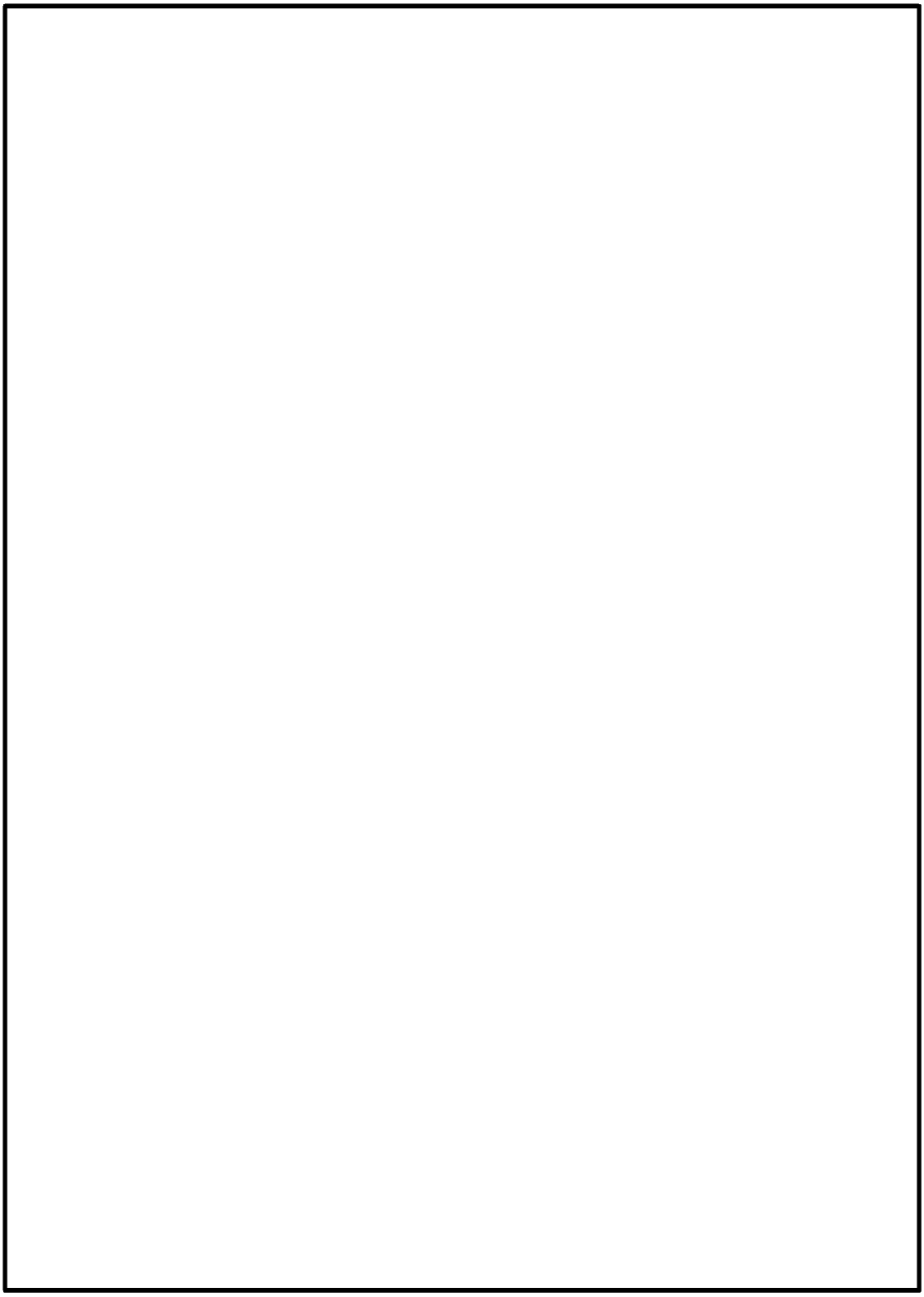
Applicable Laws and Regulations

Immigration and Nationality Act (INA) §§ 212(a)(3)(B); 212(d)(4); 318.

[redacted]

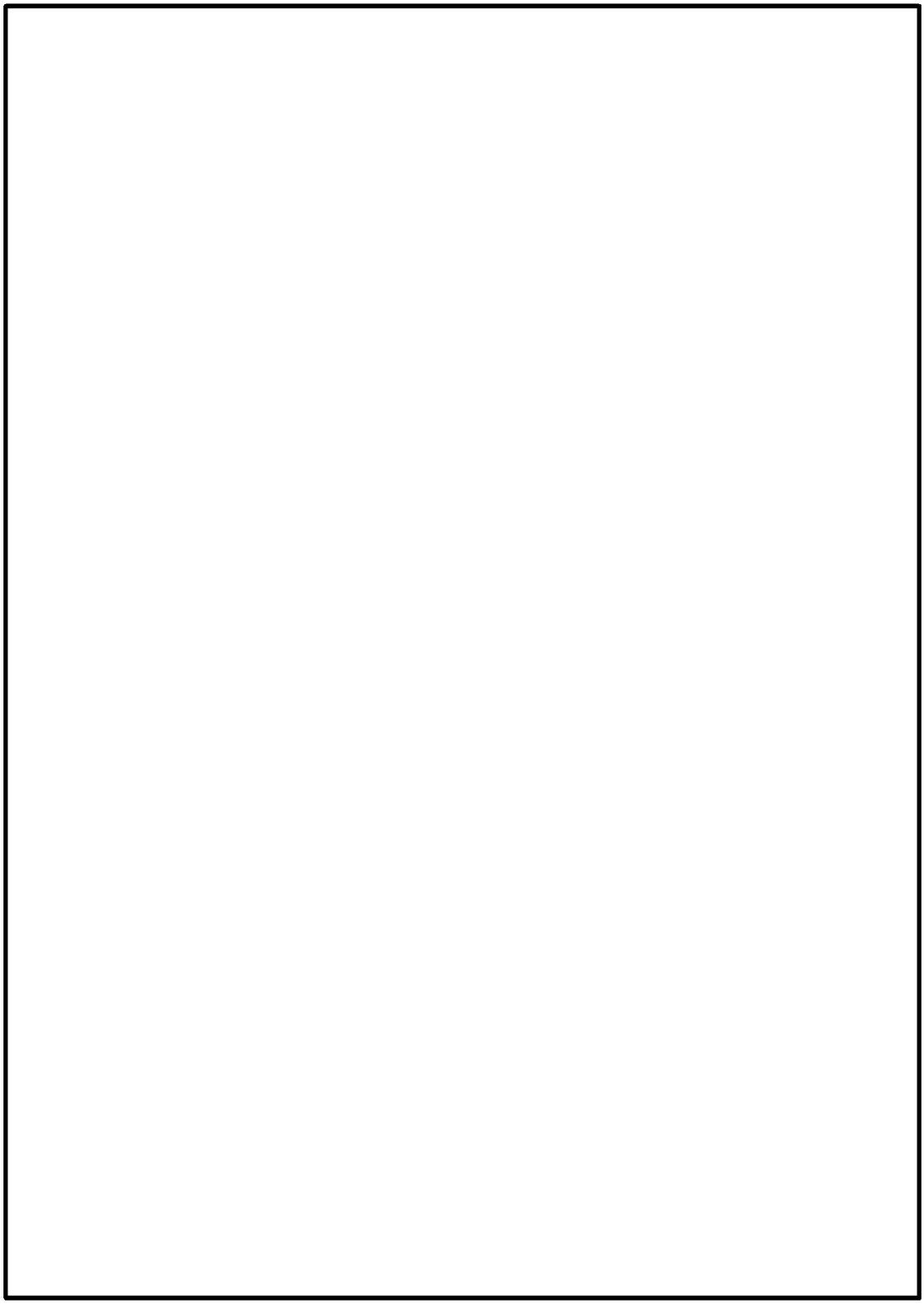
SPC Briefing Paper: *TRIG Exemptions & INA 318*
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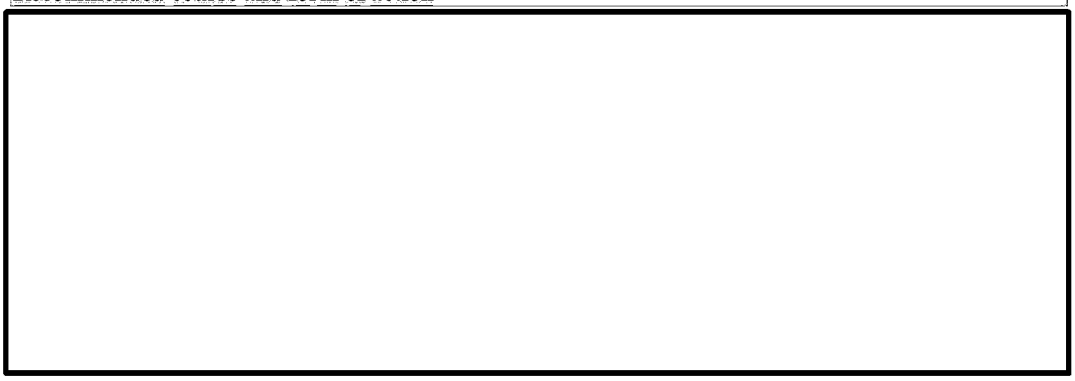
SPC Briefing Paper: *TRIG Exemptions & INA 318*
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SPC Briefing Paper: *TRIG Exemptions & INA 318*
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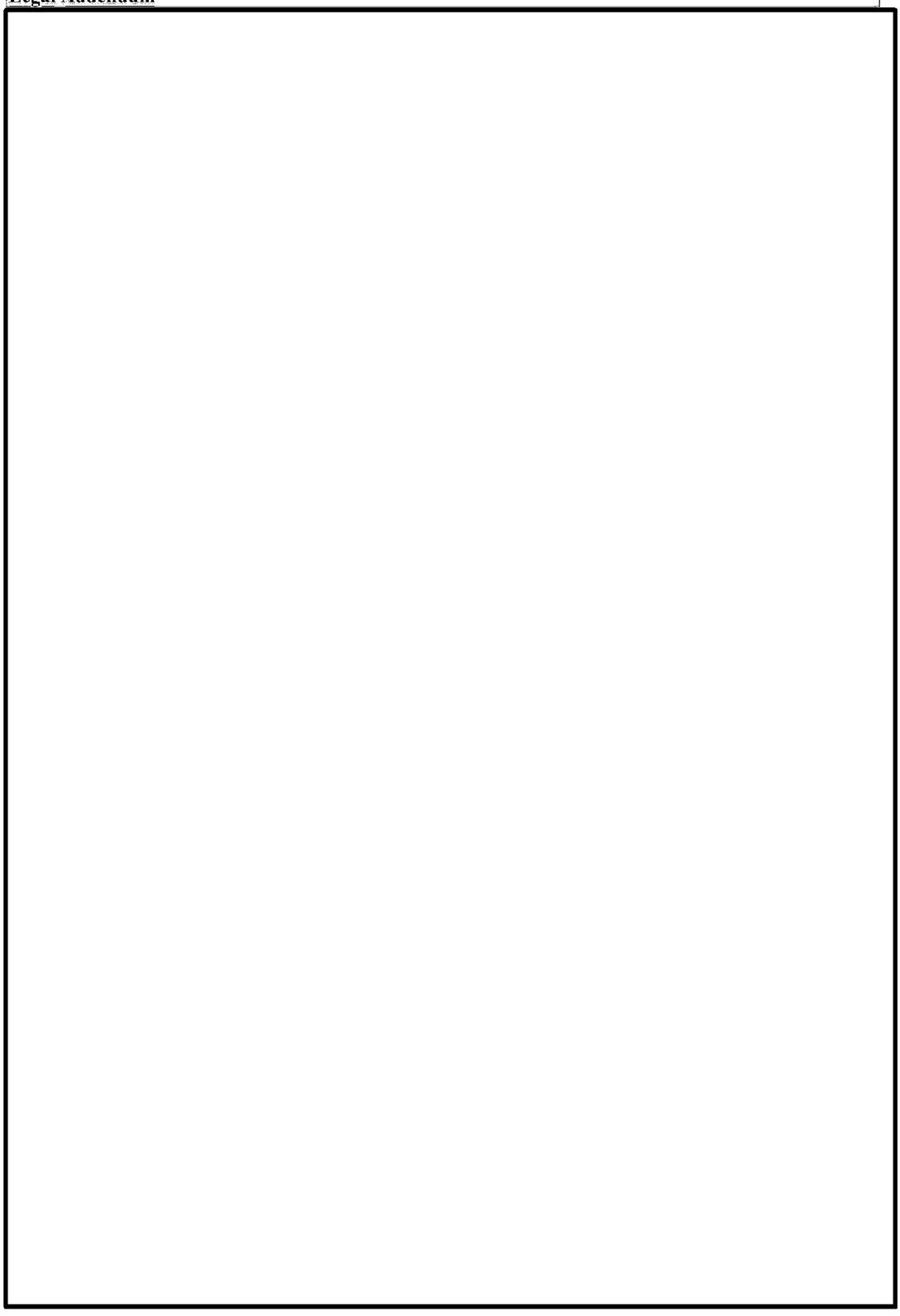
Recommended course and form of action



SPC Briefing Paper: *TRIG Exemptions & INA 318*
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Legal Addendum



Options Paper:

Exercises of Authority Relating to the Terrorism-Related Inadmissibility Grounds

This paper outlines options relating to Section 7 of Executive Order 13780, *Protecting The Nation From Foreign Terrorist Entry Into the United States*, which directs the Secretaries of State and Homeland Security, in consultation with one another and the Attorney General, to consider rescission of the terrorism-related inadmissibility grounds (TRIG) exercises of authority (exemptions) permitted by section 212(d)(3)(B) of the Immigration and Nationality Act (INA). Specifically, the paper presents three options responsive to this directive:

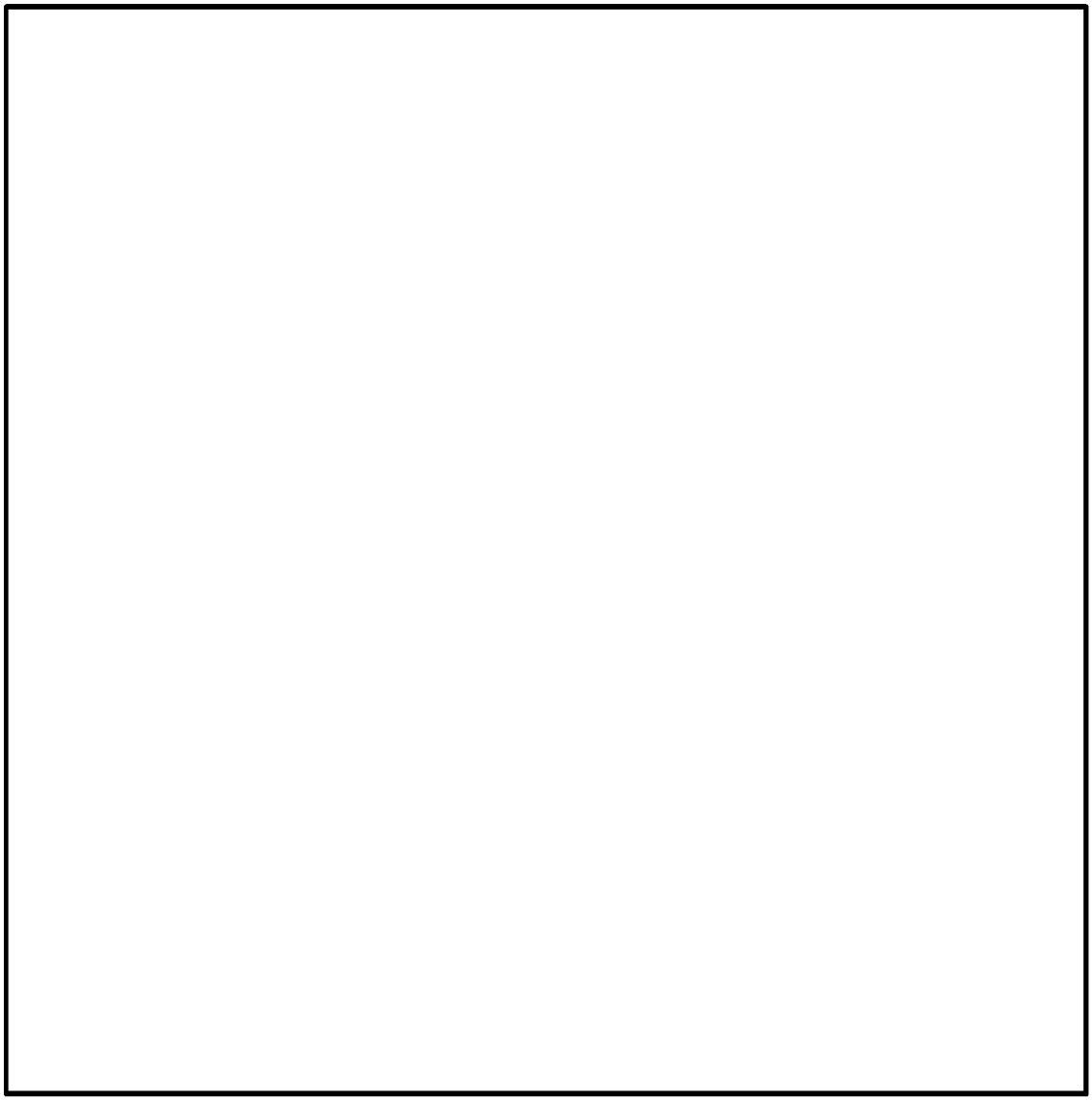
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Background

The terrorism-related inadmissibility grounds, or "TRIG," as defined in INA § 212(a)(3)(B), render certain individuals inadmissible to the United States. Such individuals are unable to obtain most immigration benefits.

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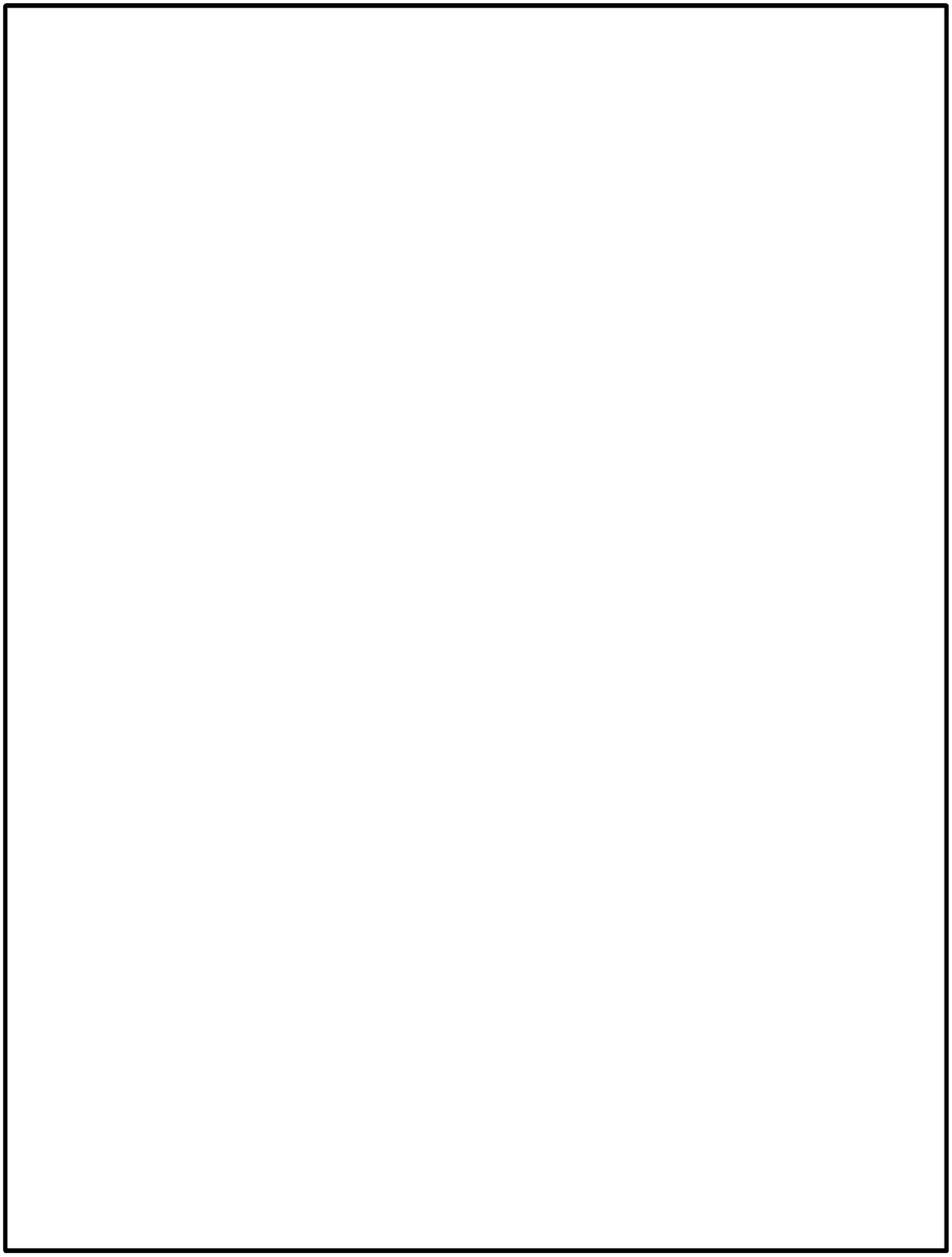


Methodology



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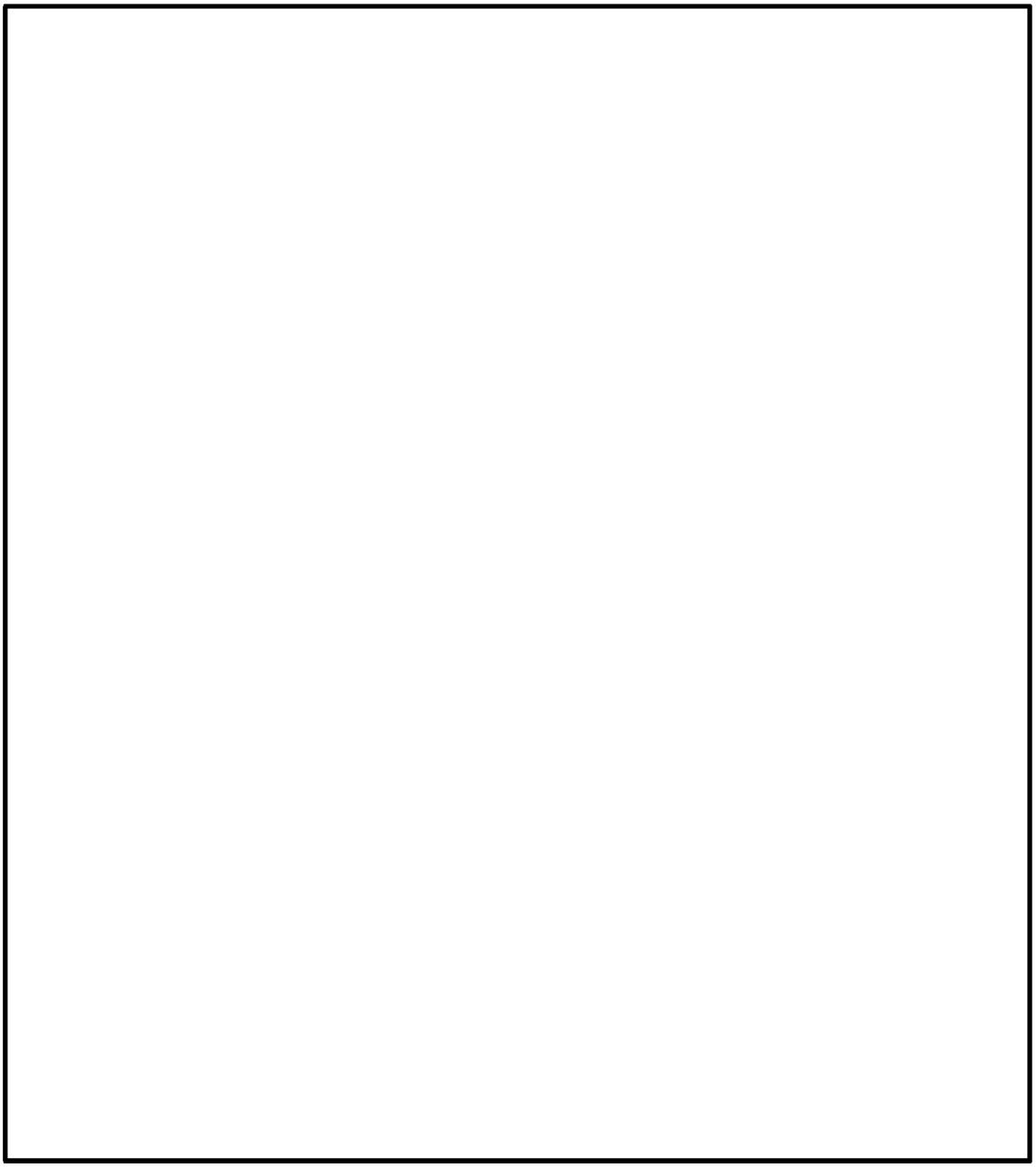


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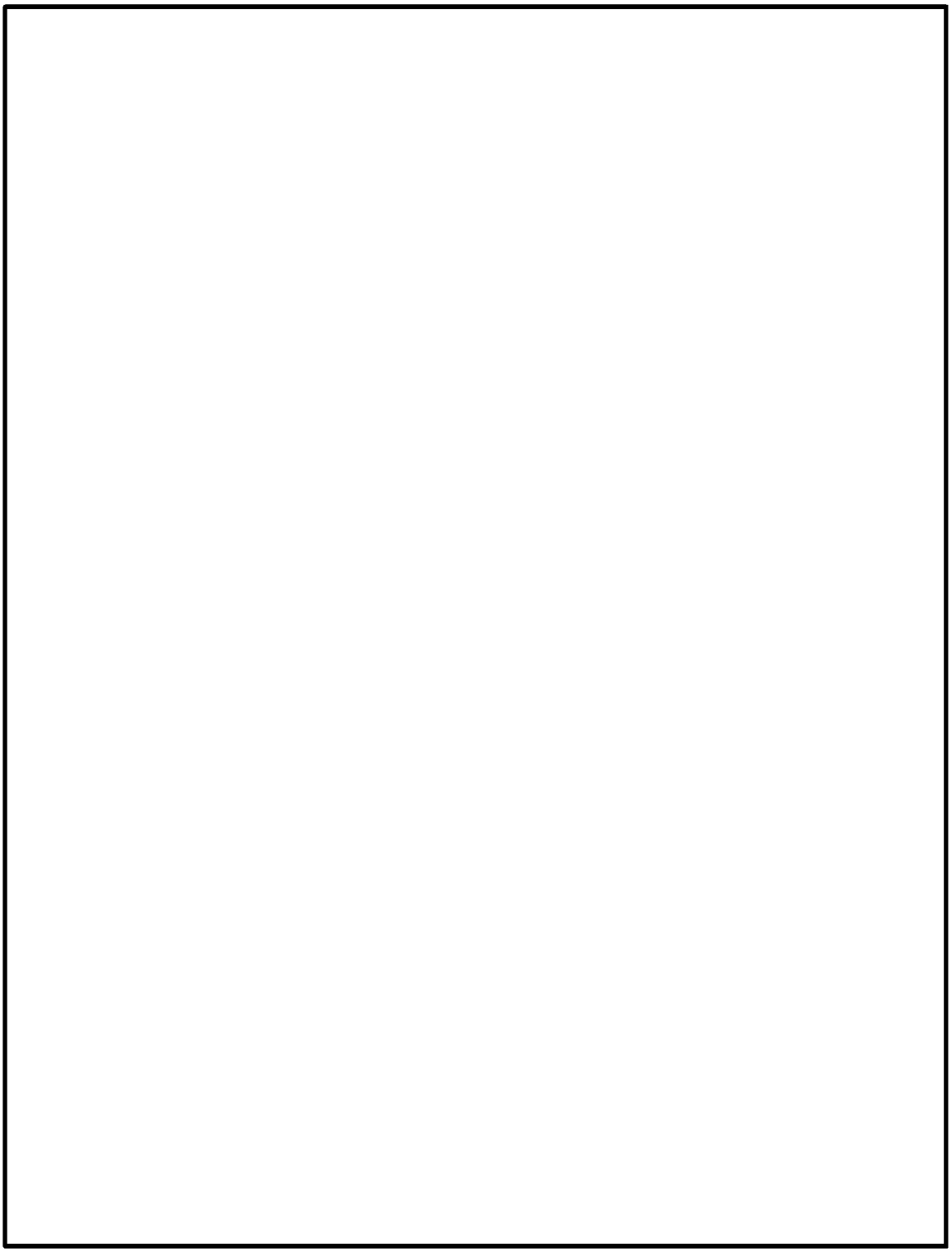


Options



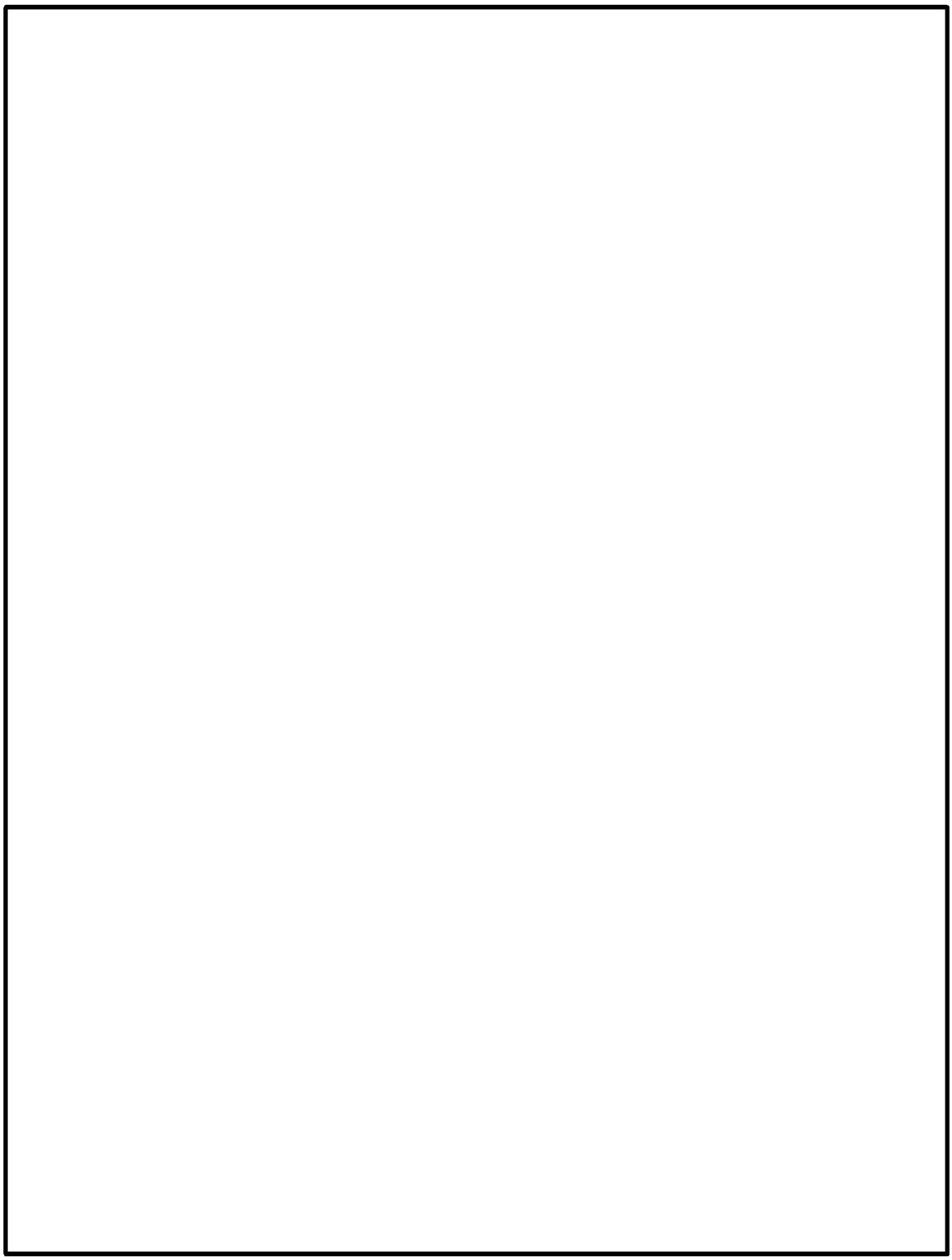
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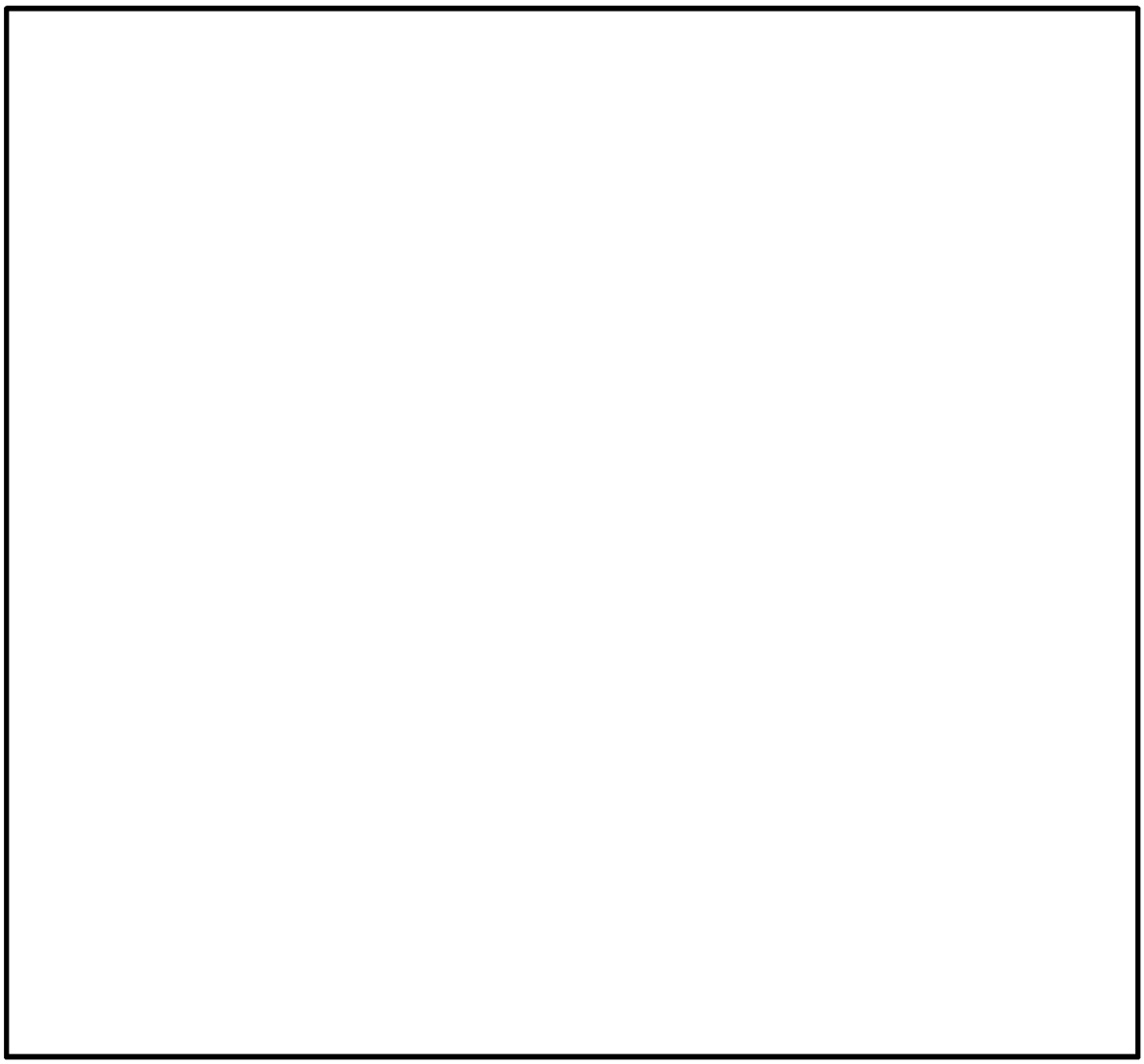


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Attachments

Attachment A: Summary of Group-Based Exercises of Authority
Attachment B: Summary of Situational Exercises of Authority

U.S. Citizenship and Immigration Services
Academy Training Center
BUILDING THE WORKFORCE OF TOMORROW

Terrorism-Related Inadmissibility Grounds (TRIG)

BSC 234

Instructor Guide
Revision Date: May 2017

OFFICE OF HUMAN CAPITAL AND TRAINING

USCIS, ACADEMY TRAINING CENTER
FEDERAL LAW ENFORCEMENT TRAINING CENTER| NORTH CHARLESTON, SC

BSC 234 - Terrorism-Related Inadmissibility Grounds (TRIG)

Revision Date: May 2017

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Instructor Preparation

Estimated Instructional Time	4 hours
Lesson Description	This course examines TRIG pursuant to INA § 212(a)(3)(B) as well as the currently available exceptions and exemptions for TRIG and its requirements and scope.
Terminal Objective	Upon completion of this module, you will be able to identify the TRIG grounds of inadmissibility and determine whether these grounds apply when adjudicating an application for an immigration benefit. If a TRIG ground does apply, you will be able determine if an exemption is available, and be able to apply the relevant inadmissibility ground(s) and USCIS policy to adjudicate the exemption(s).
Enabling Objectives	1. Identify the basic principles of TRIG, the scope of TRIG, and to which immigration benefits TRIG applies 2. Specify activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i) 3. Identify the three types of terrorist organizations described in INA § 212(a)(3)(B)(vi) 4. Define "Terrorist Activity" under INA § 212(a)(3)(B)(iii) 5. Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv) 6. Identify the exceptions to TRIG 7. Identify the exemptions from TRIG 8. Identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy and demonstrate familiarity with the exception(s) to the TRIG Hold Policy
Training Facilities	Classroom to accommodate the requisite number of participants.
Methods of Instruction	The methods of instruction used in this lesson include: • Instructor presentation • Illustrative examples
Instructor References	The instructor will need the following documents to teach this lesson: • Instructor Guide
Participant Materials	The trainees will need the following materials to participate in this lesson: • Participant Guide
Training Aids	The instructor will need the following materials to teach this lesson: • PowerPoint Presentation • Instructor Guide
Equipment and Supplies	The instructor will need the following items to teach this lesson: • Laptop/computer for presentation • Projector for PowerPoint presentation • Projection screen (if applicable) • Cables to connect laptop/computer to projector • Presentation "clicker" to advance slides

Terrorism-Related Inadmissibility Grounds (TRIG)

Introduction

Introduction

TERRORISM RELATED INADMISSIBILITY GROUNDS (TRIG)

Course 234

This course examines TRIG pursuant to INA § 212(a)(3)(B) as well as the currently available exceptions and exemptions for TRIG and its requirements and scope. The material is very important as it relates to national security issues.

The TRIG grounds of inadmissibility are also grounds for deportability pursuant to INA § 237(a)(4)(B). INA § 237(a)(4)(B) renders an alien deportable if he or she is inadmissible under INA § 212(a)(3)(B).

Even when it is determined that an alien is not statutorily barred or inadmissible on the basis of TRIG, the factors that led to an examination of potential inadmissibility and statutory ineligibility may be applicable to discretionary benefit applications.

If a TRIG bar does apply to a benefit application, a USCIS Immigration Services Officer (ISO) must be able to identify which TRIG bar(s) apply, identify any applicable exception(s) or exemption(s) or lack thereof, and adjudicate the case to completion by using the TRIG Exemption Worksheet or placing the case on hold per USCIS policy.

New exemptions become available on an ongoing basis, and you must be aware of all available exemptions, applicable USCIS implementation guidance, the proper use of the USCIS TRIG ECN site, and USCIS hold policies.

Immigrant Stories **Gain Attention**



Before getting started, I want to introduce to you three new people. Pay close attention and make notes as their stories are important. I will ask for three volunteers to read each of the three scenarios in Appendix A, which will be followed up with a discussion.

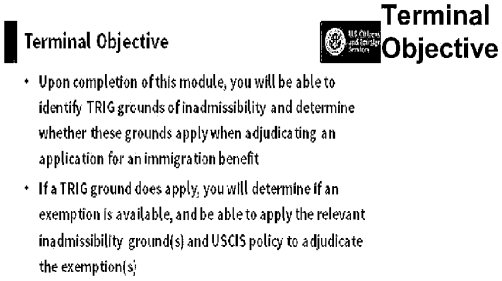
Instructor Note: Approach this activity by asking the class after each scenario is read if they think the person is inadmissible for terrorism related activities or if the person is not inadmissible.

Then tally the votes and place them on the board for each scenario, and task the class why they voted the way they voted for each scenario.

Tell the class that they will return to the scenarios later in the presentation.

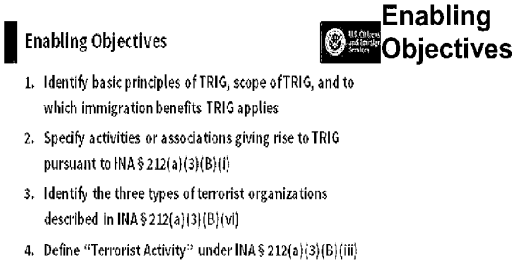
Return to the scenarios after EO #5 and ask the class what they think now, discussing whether their conclusions have changed, why they have changed, and who they now think is inadmissible and why.

After the EO #7, you may wish to return to the scenarios to discuss possible exemptions for each scenario with the class.



Upon completion of this module, you will be able to identify the TRIG grounds of inadmissibility and determine whether these grounds apply when adjudicating an application for an immigration benefit.

If a TRIG ground does apply, you will be able determine if an exemption is available, and be able to apply the relevant inadmissibility ground(s) and USCIS policy to adjudicate the exemption(s).



Our objectives for this lesson are as follows.

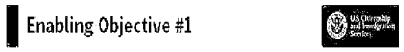
1. Identify the basic principles of TRIG, the scope of TRIG, and to which immigration benefits TRIG applies
2. Specify activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i)
3. Identify the three types of terrorist organizations described in INA § 212(a)(3)(B)(vi)
4. Define "Terrorist Activity" under INA § 212(a)(3)(B)(iii)
5. Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)
6. Identify the exceptions to TRIG
7. Identify the exemptions from TRIG
8. Identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy and demonstrate familiarity with the exception(s) to

Enabling Objectives *(cont'd)*

5. Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)
6. Identify the exceptions to TRIG
7. Identify the exemptions from TRIG
8. Identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy, and demonstrate familiarity with exceptions to the TRIG Hold Policy

the TRIG Hold Policy

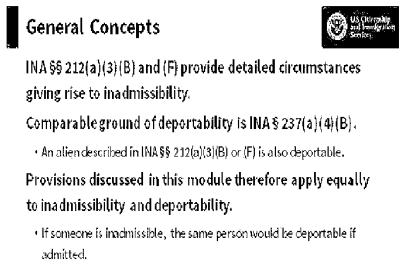
Topic 1: Basic principles of TRIG, scope of TRIG, and applicable immigration benefits



Topic One: Principles, Scope and Benefits

Upon completion of this topic, you will be able to:

- Identify the basic principles of TRIG;
- Identify the scope of its provisions; and
- Identify to which benefits TRIG applies.

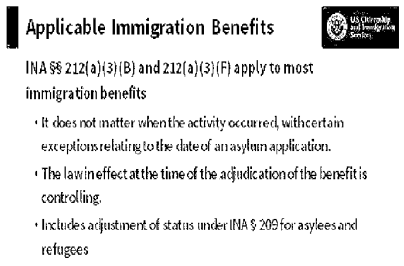


General Concepts

INA §§ 212(a)(3)(B) and (F) provide detailed circumstances giving rise to inadmissibility with the comparable ground of deportability found at INA § 237(a)(4)(B). Thus, an alien described in INA §§ 212(a)(3)(B) or (F) is also deportable.

The provisions discussed in this module, therefore, apply equally to inadmissibility and deportability.

If someone is inadmissible, the same person would be deportable if admitted.



Applicable Immigration Benefits

INA §§ 212(a)(3)(B) and 212(a)(3)(F) apply to most immigration benefits.

It does not matter when the activity occurred, with certain exceptions relating to the date of an asylum application.

The law in effect at the time of the adjudication of the benefit is controlling. This includes adjustment of status under INA § 209 for asylees and refugees.

The TRIG activity encountered in your adjudications often occurred in the past, although TRIG may apply to current activity or likely future activity as well.

Congress has amended INA § 212(a)(3)(B) several times over the years, broadening the reach and scope of the statute each time. All of these amendments are effective retroactively. Thus, an applicant who was eligible for asylum in 2000 may now be ineligible for adjustment of status due to a change in the law. If an exemption is currently unavailable, and the case falls within current USCIS hold guidance, then the case is placed on hold in the expectation that a future exemption may become available that would apply to the applicant.

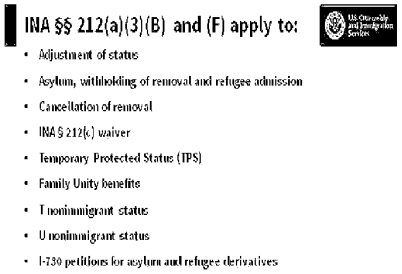
Note, however, that most of the major changes to this

section occurred in 2001, making many more cases ineligible for the benefit sought now than would have been ineligible previously. Later changes, such as in 2005, were not as sweeping and affected fewer cases.

- When the Form I-589 was filed may matter with respect to asylum and withholding eligibility. *See* 8 C.F.R §§ 208.13(c)(2)(i)(F),1208.13(c)(2)(i)(F).

- This is not true for the subsequent adjustment of status by a refugee or an asylee. *See* INA § 209; 8 C.F.R. §§ 209.1 (refugees), 209.2 (asylees).

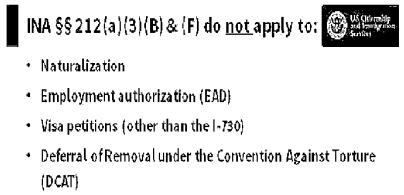
Instructor Note: Unlike every other application, the regulations for asylum have special rules where an older version of the law is applied for applications filed before April 1, 1997. Though all of the TRIG grounds are now bars to asylum, this was not always the case. Prior to 2001, the TRIG grounds were considerably narrower. However, the current version of TRIG applies at the time of an asylee's adjustment application. There are, therefore, some aliens who are ineligible to adjust due to terrorist activities, who nonetheless, under the current regulations and the TRIG grounds that existed at the time of the grant, have valid asylee status.



Applicable Immigration Benefits

INA §§ 212(a)(3)(B) and(F) **apply to** the following benefits:

- Adjustment of status – INA §§ 209, 245(a)(2), 245(c)(6)
- Asylum – INA § 208(b)(2)(A)(v)
- Withholding of removal – INA § 241(b)(3)(B)
- Refugee admission – INA § 207(c)(3)
- Cancellation of removal – INA § 240A(c)(4)
- INA § 212(c) waiver (as it existed until 1997); 8 C.F.R. § 212.3(f)(3)
- Temporary Protected Status (TPS) – INA §§ 244(c)(2)(A)(iii)(III), 244(c)(2)(B)(ii)
- Family Unity – 8 C.F.R. § 236.13(c)
- T nonimmigrant status – 8 C.F.R. § 212.16(b)(1)
- U nonimmigrant status - 8 C.F.R. § 212.17(b)(1)
- I-730 Relative Petitions for asylum and refugee derivatives – 8 C.F.R. § 208.21(a)



Inapplicable Immigration Benefits

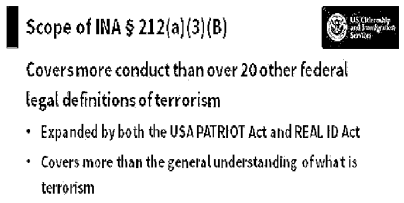
INA §§ 212(a)(3)(B) and (F) **do not** apply to the following:

- Naturalization
- Employment authorization (EAD)
- Visa petitions (other than I-730s)
- Deferral of Removal under the Convention Against Torture (DCAT)

Instructor Note:

While not a bar to naturalization, TRIG is relevant to the analysis of Good Moral Character (GMC) within the requisite statutory period for naturalization. Depending on the timing of the activity, it may also be relevant to whether the naturalization applicant lawfully acquired permanent residence. *See* INA § 318.

Deferral of Removal under the Convention Against Torture (DCAT) is a form of relief from removal that one can never become ineligible for based on misconduct. There are no exceptions to DCAT if it is more likely than not that a person will be tortured upon return to his or her country. Withholding of Removal under CAT does have bars, but DCAT does not. These forms of relief are heard only in removal proceedings by an Immigration Judge of the Executive Office for Immigration Review (EOIR).

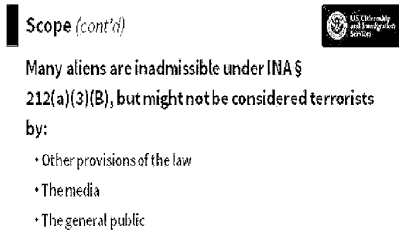


Scope of INA § 212(a)(3)(B)

INA § 212(a)(3)(B) was created by the Immigration Act of 1990 (IMMACT 90) and has been amended several times since its enactment.

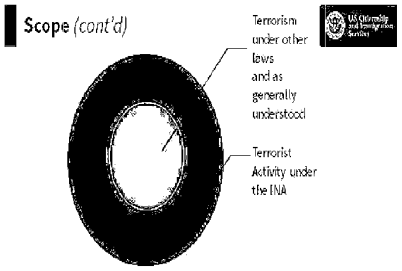
INA § 212(a)(3)(B) covers more conduct than any of the over 20 other federal legal definitions of terrorism.

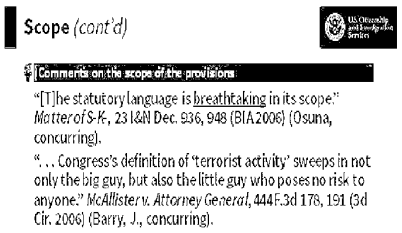
It has been expanded by the USA PATRIOT and the REAL ID Acts, among others.



Many aliens are inadmissible under INA § 212(a)(3)(B) who would not be considered terrorists under other U.S. laws, the media, or the general public.

Therefore, terrorist activity under INA § 212(a)(3)(B) includes more than the general understanding of terrorism.

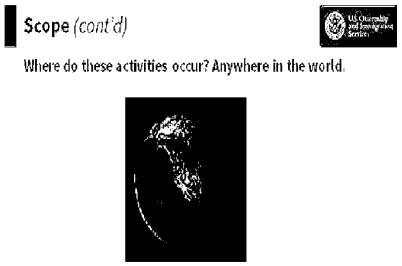




Scope - Comments

Comments on the scope of INA § 212(a)(3)(B):

- "[T]he statutory language is breathtaking in its scope." *Matter of S-K-*, 23 I&N Dec. 936, 948 (BIA 2006) (Osuna, concurring).
- " . . . Congress's definition of 'terrorist activity' sweeps in not only the big guy, but also the little guy who poses no risk to anyone." *McAllister v. Attorney General*, 444 F.3d 178, 191 (3d Cir. 2006) (Barry, J., concurring).



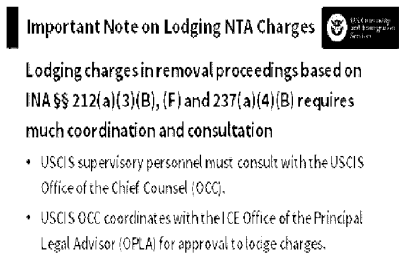
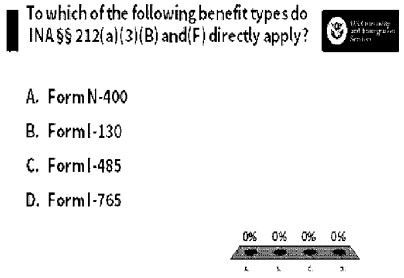
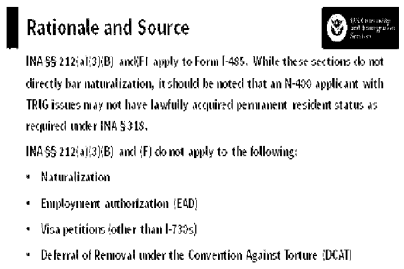
Scope - Unlimited

Terrorist activity is not limited to any one part of the world, but can be found anywhere the world.

Terrorist activity as defined in the INA can also be committed in the United States. This is unlike the grounds of inadmissibility for torture and extrajudicial killing which must occur outside of the U.S. *See* INA § 212(a)(3)(E)(iii).

There is no exception for "freedom fighters," or groups the U.S. supports or has supported in the past. *See Matter of S-K-* at 941.

INA § 212(a)(3)(B) contains separate definitions for "terrorist activity," "engage in terrorist activity," and "terrorist organizations."

		Instructor Note: INA § 212(a)(3)(B) is extremely complex. The actual grounds of inadmissibility are found at INA § 212(a)(3)(B)(i), but the definition of "engage in terrorist activity" found at INA § 212(a)(3)(B)(iv) contains many of the primary activities that bring an applicant within TRIG. It is important to note that, while reference must be made to INA § 212(a)(3)(B)(iv) (which defines "engage in terrorist activity"), as well as INA § 212(a)(3)(B)(iii) (which defines "terrorist activity"), in order to ascertain if an applicant is ineligible under TRIG, the actual ground of inadmissibility cited will always be under INA § 212(a)(3)(B)(i), which sets out the inadmissibility grounds. The most common ground is INA § 212(a)(3)(B)(i)(I), "has engaged in terrorist activity."
	**Notice to Appear (NTA)**	Lodging charges of inadmissibility or deportability in removal proceedings based upon INA §§ 212(a)(3)(B), (F) and 237(a)(4)(B) requires coordination and consultation with HQ USCIS. This requires USCIS supervisory approval in consultation with the USCIS Office of the Chief Counsel (OCC) and the approval of the ICE Office of the Principal Legal Advisor (OPLA) after consultation with OCC.
	**Progress Check Question**	To which of the following benefit types do INA §§ 212(a)(3)(B) and(F) directly apply? A. Form N-400 B. Form I-130 C. Form I-485 D. Form I-765
	**Rationale and Source**	**The correct answer is C.** **Rationale:** INA §§ 212(a)(3)(B) and(F) apply to Form I-485, Application to Register Permanent Resident or Adjust Status. While these sections do not directly bar naturalization, it should be noted that an N-400 applicant with TRIG issues may not have lawfully acquired permanent resident status as required under INA § 318. INA §§ 212(a)(3)(B) and (F) **do not** apply to the

following:

- Naturalization
- Employment authorization (EAD)
- Visa petitions (other than I-730s)
- Deferral of Removal under the Convention Against Torture (DCAT)

Reference: Topic 1

Topic 2: Activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i)

Enabling Objective #2 Specify activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i)	**Topic Two:** **INA § 212(a)(3)(B)(i)**	Upon completion of this topic, you will be able to specify the activities or associations giving rise to TRIG pursuant to INA § 212(a)(3)(B)(i).
INA § 212(a)(3)(B)(i) "In General . . . Any alien who - "	**INA § 212(a)(3)(B)(i)**	"In General . . . Any alien who –"
INA § 212(a)(3)(B)(i)(I) ". . . has engaged in a terrorist activity . . . is inadmissible." • Refers only to past activity	**INA § 212(a)(3)(B)(i)(I)**	". . . has engaged in a terrorist activity . . . is inadmissible." INA § 212(a)(3)(B)(i)(I). • This refers only to past activity. • This is the most commonly cited TRIG ground. • Both the definition of "terrorist activity" and "engaging in terrorist activity" are discussed later in this presentation.

INA § 212(a)(3)(B)(i)(II) "... a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity . . . is inadmissible." • Refers to present and future activity	**INA § 212(a)(3)(B)(i)(II)** ". . . a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity . . . is inadmissible." INA § 212(a)(3)(B)(i)(II). • This refers to present and future activity. • The reasonable grounds standard is a lower standard than preponderance of the evidence and is satisfied when there is sufficient information for a reasonable person to believe that the alien may pose a danger to national security. *See In Re A-H-*, 23 I&N Dec. 774, 789 (A.G. 2005). • This ground cannot be exempted. *See* INA § 212(d)(3)(B)(i). Exemptions are discussed later in this presentation.
INA § 212(a)(3)(B)(i)(III) "... has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity . . . is inadmissible." • Speech related provision • Incitement must include intention to cause harm or serious bodily injury	**INA § 212(a)(3)(B)(i)(III)** ". . . has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity . . . is inadmissible." INA § 212(a)(3)(B)(i)(III). • This is one of two speech-related provisions. • This ground requires that the incitement of terrorist activity include an intention to cause harm or serious bodily injury.
INA § 212(a)(3)(B)(i)(IV) "...is a representative . . . of . . . (aa) a terrorist organization [designated and undesignated]; (bb) a political, social or other group that endorses or espouses terrorist activity. . . is inadmissible." • Representative includes officer, official, spokesman, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.	**INA § 212(a)(3)(B)(i)(IV)** " . . . is a representative . . . of . . . • (aa) a terrorist organization [designated and undesignated]; or • (bb) a political, social or other group that endorses or espouses terrorist activity. . . is inadmissible." INA § 212(a)(3)(B)(i)(IV). The term "representative" is broadly defined and ". . . includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity." INA § 212(a)(3)(B)(v).

INA § 212(a)(3)(B)(i)(V) "…is a member of a [designated] terrorist organization…is inadmissible." • Refers to present activities • Applies to Tier I and Tier II terrorist organizations **INA § 212(a)(3)(B)(i)(V)**	". . . is a member of a [designated] terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(V). • Applies to Tier I and Tier II terrorist organizations. • Language only refers to present activity, *i.e.*, "is a member." • State Department Foreign Affairs Manual (FAM) also states that it only applies to current members (9 FAM § 40.34 N5.1). • No knowledge of the nature of organization required. • Contrast this with the following section regarding undesignated organizations.
INA § 212(a)(3)(B)(i)(VI) "…is a member of an [undesignated] terrorist organization … unless the alien can demonstrate by clear and convincing evidence that [he or she] did not know, and should not reasonably have known that the organization was a terrorist organization…is inadmissible." • Refers to present activities • Applies to Tier III organizations **INA § 212(a)(3)(B)(i)(VI)**	". . . is a member of an [undesignated] terrorist organization . . . unless the alien can demonstrate by clear and convincing evidence that [he or she] did not know, and should not reasonably have known that the organization was a terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(VI). • Applies to Tier III terrorist organizations. • The lack of knowledge exception is discussed in more detail later in Topic 6. • The language here also only refers to present activity.
INA § 212(a)(3)(B)(i)(VII) "…endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization…is inadmissible." • Speech related provision • No requirement for the speaker to intend to cause death or serious bodily harm **INA § 212(a)(3)(B)(i)(VII)**	". . . endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(VII). • This is the second speech-related provision. • Unlike the incitement provision, there is no requirement for the speaker to intend to cause death or serious bodily harm.

INA § 212(a)(3)(B)(i)(VIII) "…has received military-type training…from or on behalf of any organization that, at the time the training was received, was a [designated or undesignated] terrorist organization…is inadmissible." • Organization has to be a terrorist organization at the time of the training	**INA § 212(a)(3)(B)(i)(VIII)** ". . . has received military-type training . . . from or on behalf of any organization that, at the time the training was received, was a [designated or undesignated] terrorist organization . . . is inadmissible." INA § 212(a)(3)(B)(i)(VIII). • Organization has to be a terrorist organization at the time of the training. • Military-type training is defined to include "training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction." 18 U.S.C. § 2339D(c)(1).
INA § 212(a)(3)(B)(i)(IX) "…is the spouse or child of an alien who is inadmissible …if the activity causing the alien to be found inadmissible occurred within the last five years…is inadmissible." • Term "child" means unmarried and under 21. See INA § 101(b)(1). • "Spouse" means current spouse	**INA § 212(a)(3)(B)(i)(IX)** ". . . is the spouse or child of an alien who is inadmissible . . . if the activity causing the alien to be found inadmissible occurred within the last five years . . . is inadmissible." INA § 212(a)(3)(B)(i)(IX). • The term "child" means unmarried and under 21. *See* INA § 101(b)(1). • "Spouse" means current spouse. **Instructor Note:** As this provision is in present tense, the age and marital status of the applicant is examined at the time of adjudication. Thus, a child who turns 21 or gets married would not fall within this provision. Similarly, a divorced spouse would not be subject to this provision.
INA § 212(a)(3)(B)(i)(IX) *(cont'd)* The preceding ground of inadmissibility does not apply to a "spouse or child . . . "(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or (II) whom the consular officer or Attorney General has reasonable grounds to believe [the spouse or child] has renounced the activity causing the alien to be found inadmissible . . ." INA § 212(a)(3)(B)(ii)	**INA § 212(a)(3)(B)(ii)** The preceding ground of inadmissibility does not apply to a "spouse or child . . . • "(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or • (II) whom the consular officer or Attorney General has reasonable grounds to believe [the spouse or child] has renounced the activity causing the alien to be found inadmissible . . ." INA § 212(a)(3)(B)(ii).

Special Mention of the PLO

"[a]n alien who is an officer, official, representative, or spokesman of the Palestinian Liberation Organization [PLO] is considered . . . to be engaged in a terrorist activity."

- Only organization singled out by name in the INA

Mention of PLO

Note that "[a]n alien who is an officer, official, representative, or spokesman of the Palestinian Liberation Organization [PLO] is considered . . . to be engaged in a terrorist activity." INA § 212(a)(3)(B)(i).

- Language refers to present tense.
- An applicant who falls within this provision would be inadmissible under INA § 212(a)(3)(B)(i)(II) for being currently engaged in terrorist activity.
- This provision does not establish that the PLO is a terrorist organization, only that those falling within the provision are inadmissible.
- You would need to analyze the activities of the PLO to determine whether it meets the INA definition of a terrorist organization.

Instructor Note: The reference to the PLO is the only instance where the INA refers to an organization in the terrorism provisions. In separate legislation not in the INA, Congress explicitly stated that, for immigration purposes, the Taliban is to be considered a Tier I terrorist organization.

INA § 212(a)(3)(F)

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

- Decision at the cabinet level by the Secretary of State, Secretary of Homeland Security or the Attorney General

INA § 212(a)(3)(F) – Associations With Terrorist Organizations

"Any alien who the Secretary of State . . . or the Attorney General . . . determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible." INA § 212(a)(3)(F).

- The decision to apply this inadmissibility ground is made at the cabinet level by the Secretary of State, Secretary of Homeland Security or the Attorney General.
- As a result, this inadmissibility ground is rarely used.

Which of the following activities or associations does NOT give rise to TRIG pursuant to INA § 212(a)(3)(B)?

A. Alien who has engaged in terrorist activity in the past
B. Alien who conspires to commit a human trafficking offense
C. Alien who the Secretary of Homeland Security knows is likely to engage in terrorist activity after entry
D. Alien who is an officer of a social group that endorses terrorist activity

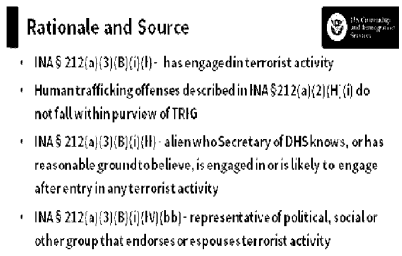


Progress Check Question

Which of the following activities or associations does NOT give rise to TRIG pursuant to INA § 212(a)(3)(B)?

A. Alien who has engaged in terrorist activity in the past
B. Alien who conspires to commit a human trafficking offense
C. Alien who the Secretary of Homeland Security knows is likely to engage in terrorist

activity after entry
D. Alien who is an officer of a social group that endorses terrorist activity



Rationale and Source

The correct answer is B.

Rationale: INA § 212(a)(3)(B)(i)(I) states that any alien who has engaged in a terrorist activity is inadmissible.

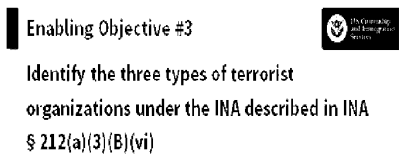
Human trafficking offenses described in INA §212(a)(2)(H)(i) do not fall within the purview of TRIG.

INA § 212(a)(3)(B)(i)(II) states that any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity is inadmissible.

INA § 212(a)(3)(B)(i)(IV)(bb) states that any alien who is a representative of a political, social or other group that endorses or espouses terrorist activity is inadmissible.

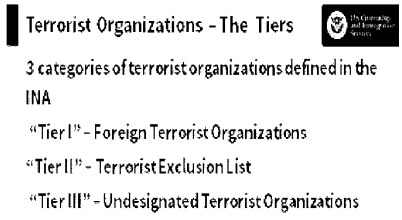
References: INA §§ 212(a)(3)(B)(i)(I), (II) and (IV)

Topic 3: Three types of terrorist organizations described in INA § 212(a)(3)(B)(vi)



Topic Three: Types of Terrorist Organizations

Upon completion of this topic, you will be able to identify the three types of terrorist organizations described in INA § 212(a)(3)(B)(vi).



Types of Terrorist Organizations

There are three categories of terrorist organizations defined in INA § 212(a)(3)(B)(vi) that are frequently referred to as "The Tiers":

- "Tier I" – Foreign Terrorist Organizations
- "Tier II" – Terrorist Exclusion List
- "Tier III" – "Undesignated" Terrorist Organizations

Instructor Note: Tier I and Tier II organizations are considered "designated" terrorist organizations.

Tier I - INA § 212(a)(3)(B)(vi)(I)

Tier I Terrorist Organizations

A Foreign Terrorist Organization (FTO) designated under INA § 219 by the Secretary of State.

- Includes well known organizations such as al Qaeda, HAMAS, ETA, Shining Path, FARC
- 59 FTOs plus the Taliban
- Congress "statutorily designated" the Taliban as a Tier I terrorist organization for purposes of INA § 212(a)(3)(B) even though it was not designated by DOS.

The term "terrorist organization" includes those "terrorist organizations" designated pursuant to INA § 219. *See* INA § 212(a)(3)(B)(vi)(I).

Those "terrorist organizations designated under INA § 219 are commonly referred to as Tier I organizations.

The Foreign Terrorist Organization (FTO), Tier I List, includes well-known terrorist organizations such as al Qaeda, Hamas, ETA, Shining Path, FARC, and can be found at https://www.state.gov/j/ct/rls/other/des/123085.htm

Although it is not an FTO designated by the Department of State, Congress mandated that the Taliban is to be considered a Tier I terrorist organization for purposes of INA § 212(a)(3)(B) in the "Consolidated Appropriations Act, 2008," Pub. L. No. 110-161 (Dec. 26, 2007). The Taliban is a militant group that controlled a great deal of territory in Afghanistan between 1996 and 2001, and it continues to engage in conflict with the government of Afghanistan and others.

Tier II - INA § 212(a)(3)(B)(vi)(II)

Tier II Terrorist Exclusion List

Terrorist Exclusion List (TEL) - an organization designated by the Secretary of State in consultation with or at the request of DHS or DOJ after finding that it engages in terrorist activity.

- Includes the Lord's Resistance Army, Babbar Khalsa, Lashkar-e-Tayyiba and the Revolutionary United Front (RUF).
- Over 50 organizations on the TEL
- Same immigration consequences as FTOs

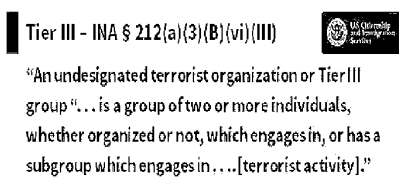
DOS also maintains another listing of terrorist organizations call the Terrorist Exclusion List (TEL) or Tier II List.

This list includes organizations designated by the Secretary of State in consultation with or at the request of DHS or DOJ after a finding that it engages in terrorist activity. *See* INA § 212(a)(3)(B)(vi)(II).

The TEL includes, but is not limited to, the Lord's Resistance Army, Babbar Khalsa, Lashkar-e-Tayyiba, and the Revolutionary United Front (RUF), and can be found at http://www.state.gov/j/ct/rls/other/des/123086.htm.

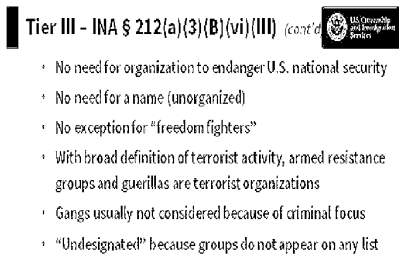
Membership on the TEL includes the same immigration consequences as FTOs on the Tier I list.

Instructor Note: The term "Terrorist Exclusion List" is not in the statute but has been adopted by the State Department as the title for the list. While the process and requirements for groups to be added to the list vary, the immigration consequences are identical to those on the Tier I list. There are many more consequences outside of immigration law for the FTOs than for TEL groups, but not in immigration law.



An undesignated terrorist organization or Tier III group ". . . is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in . . . [terrorist activity] . . ." INA § 212(a)(3)(B)(vi)(III).

Because of the broad sweep of the definition of "terrorist activity" at INA § 212(a)(3)(B)(iii)(V)(b) ("use of an explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property"), armed resistance groups and guerillas meet the definition of undesignated terrorist organizations.



Note the following with respect to TIER III groups:

- There is no need for an organization to endanger U.S. national security. Indeed, the organization can even be helping the United States and qualify as a terrorist organization.
- No need even for a name (unorganized).
- No exception for "freedom fighters." *Matter of S-K-*, *supra*.
- Gangs usually are not considered Tier III terrorist organizations because of their criminal focus (i.e., their activities further personal monetary gain).
    - Criminal organizations whose violent activities are motivated purely by a desire for monetary gain are generally not considered Tier III organizations because their activities fall within the statutory exception at INA § 212(a)(3)(B)(iii)(V)(b).
    - If you have any questions regarding whether a criminal gang or other organized criminal group may fall within this exception, please contact your supervisor for referral of the issue to the appropriate TRIG Point of Contact (POC).
- Called "undesignated" because these groups do not appear on any list.

Instructor Note: INA § 212(a)(3)(B) does not include activity of a recognized and duly constituted foreign government within the definition of "terrorist activity" or "engaging in terrorist activity." Political parties that participate in, or have representation in, a government generally are not considered synonymous with the government of a country for purposes of this determination. Also, entities in *de facto* control of an area may not be recognized as the government of that area. If you have questions as to whether an entity should be considered the government for purposes of this determination or other questions related to this issue, please contact your supervisor for referral of the issue to appropriate TRIG POC and local counsel.

Issue Spotting for Tier III Cases

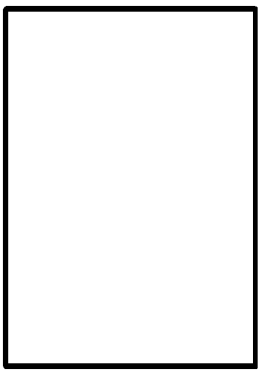
Key words in Tier III issue spotting:



Tier III Issue Spotting

(b)(7)(e)

For issue spotting Tier III Terrorist Organizations, key words to look for include but are not limited to the following:



Tier III Issue Spotting *(cont'd)*

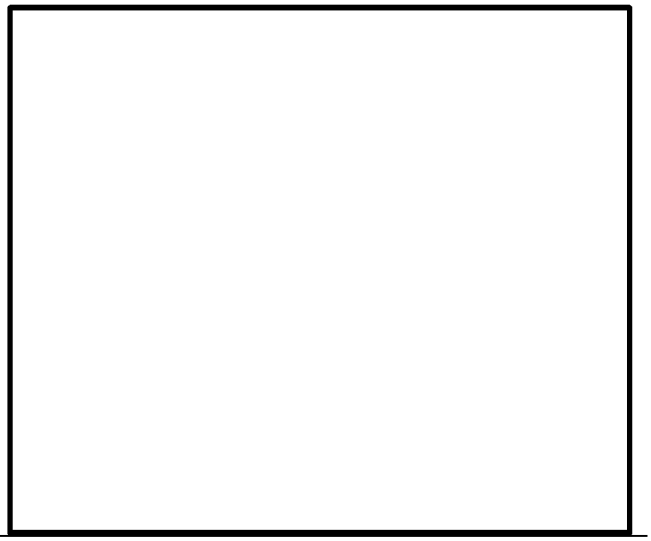
If a group is involved, determine as much as possible about group:



Tier III - Research

(b)(7)(e)

If a group is involved, determine as much as possible about the group such as the following:



(b)(7)(e)



Specially Designated Global Terrorists Entities (SDGT) List

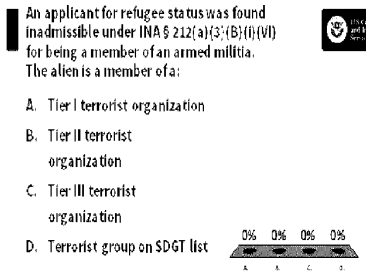
There are several other government lists designating terrorist organizations, most notably the Specially Designated Global Terrorists Entities (SDGT) List. The SDGT list is included in the Specially Designated Nationals List (SDNL) which is posted by the Treasury Department's Office of Foreign Assets Control (OFAC) and is found at http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx.

The INA does not contain immigration consequences for being on this list. The SDGT list is authorized by Executive Order 13224, but it is included in the SDNL that is published by OFAC. The SDNL contains names of persons and organizations designated by OFAC under various sanctions programs, not all of which are specific to terrorism issues.

Inclusion on the SDGT list may be evidence in support of a determination that a group meets the definition of an undesignated terrorist organization.

The SDNL includes both groups and individuals who have committed, or pose a significant risk of committing, acts of terrorism.

Instructor Note: The SDNL is an integrated listing of individuals and entities designated by OFAC under OFAC's various sanctions programs, not all of which are related to terrorism issues. If you come across an individual or entity listed on the SDNL, then you should raise the issue through appropriate channels in order to determine why the person or entity was listed on the SDNL.



Progress Check Question

An applicant for refugee status was found inadmissible under INA § 212(a)(3)(B)(i)(VI) for being a member of an armed militia. The alien is a member of a:

A. Tier I terrorist organization
B. Tier II terrorist organization
C. Tier III terrorist organization
D. Terrorist group on the SDGT list

Rationale and Source

Undesignated (Tier III) - group of 2 or more individuals, whether organized or not, which engages in, or has subgroup which engages in terrorist activity. An unnamed armed militia meets this definition.

Tier I terrorist organizations appear on the Foreign Terrorist Organization list. Tier II terrorist organizations appear on the Terrorist Exclusion List. Tier I and II terrorist organizations are designated organizations.

Rationale and Source

The correct answer is C.

Rationale: An undesignated terrorist organization or Tier III group is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in terrorist activity. An unnamed armed militia meets the definition of a Tier III terrorist organization.

Tier I terrorist organizations appear on the Foreign Terrorist Organization (FTO) list. Tier II terrorist organizations appear on the Terrorist Exclusion List (TEL). Tier I and II terrorist organizations are designated organizations.

References: INA §§ 212(a)(3)(B)(vi)(I), (II) and (III)

Topic 4: Definition of "Terrorist Activity" under INA § 212(a)(3)(B)(iii)

Enabling Objective #4

Define "Terrorist Activity" under INA § 212(a)(3)(B)(iii)

Topic Four: INA § 212 (a)(3)(B)(iii)

Upon completion of this topic, you will be able to define "Terrorist Activity" under INA § 212(a)(3)(B)(iii).

Terrorist Activity – INA § 212(a)(3)(B)(iii)

Under the INA, ". . . the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:"....."

INA § 212 (a)(3)(B)(iii)

Under the INA, ". . . the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:" INA § 212(a)(3)(B)(iii).

- The activity does not require a conviction, but must be either illegal in the U.S. or illegal where it occurred and involve the activities listed below.

INA § 212(a)(3)(B)(iii)(I)

"(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle)."

- Includes piracy and mutiny of ships

INA § 212 (a)(3)(B)(iii)(I)

"(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle)." INA § 212(a)(3)(B)(iii)(I).

- This includes piracy and mutiny of ships.

INA § 212(a)(3)(B)(iii)(II)

"(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a government organization) to do or abstain from doing any act as an explicit or implicit condition for release of the individual seized or detained."

INA § 212 (a)(3)(B)(iii)(II)

"(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a government organization) to do or abstain from doing any act as an explicit or implicit condition for release of the individual seized or detained." INA § 212(a)(3)(B)(iii)(II).

- Compelling the detained person to do something is not included. It must be a person other than the kidnapped victim who is being compelled to act. For example, kidnapping a nurse to make the nurse give medical care does not qualify as terrorist activity under this particular provision of the INA.
- Kidnapped individuals who are compelled to work or carry out activities for their captors may have given material support or engaged in other terrorist activities under duress.

INA § 212(a)(3)(B)(iii)(III)

"(III) A violent attack upon an internationally protected person . . . or upon the liberty of such a person."

- Head of State or Foreign Minister when outside of his/her country, or
- Diplomat, or other government or international organization employee

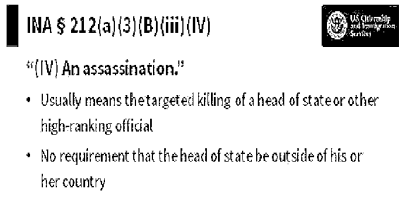
INA § 212 (a)(3)(B)(iii)(III)

"(III) A violent attack upon an internationally protected person . . . or upon the liberty of such a person." INA § 212(a)(3)(B)(iii)(III).

This provision of the statute concerns the following:

- Heads of State or Foreign Ministers and their family members when outside of their country
- Diplomats or other government or international organization employees and their family members.

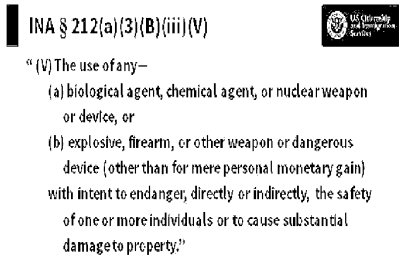
Instructor Note: The term "Internationally protected person" ". . . means-- (A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is *in a country other than his [or her] own* and any member of his family accompanying him [or her]; or (B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his [or her] person, freedom, or dignity, and any member of his [or her] family then forming part of his [or her] household." 18 U.S.C. § 116(b)(4)(A)-(B) (emphasis added).



INA § 212 (a)(3)(B)(iii)(IV)

"(IV) An assassination." INA § 212(a)(3)(B)(iii)(IV).

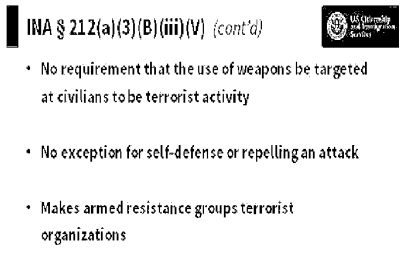
- "Assassination" is not defined but usually means the targeted killing of a head of state or other high-ranking official.
- Unlike the violent attack provision, there is no requirement that the head of state be outside of his or her country.



INA § 212 (a)(3)(B)(iii)(V)

"(V) The use of any—

- (a) biological agent, chemical agent, or nuclear weapon or device, or
- (b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain)
- with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property." INA § 212(a)(3)(B)(iii)(V).

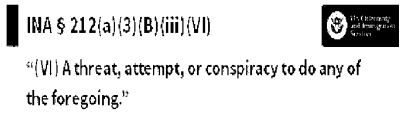


INA § 212 (a)(3)(B)(iii)(V)

The explosive, firearm or other weapon provision –

- Has no requirement that the use of weapons be targeted at civilians to be terrorist activity.
- Has no exception for self-defense or repelling an attack. However, the act must be illegal to qualify as terrorist activity.
- Makes resistance groups that use violence "terrorist organizations".

Instructor Note: The use of firearms or other dangerous devices is one of the most inclusive provisions of the section. This is one of many provisions which subjects applicants to the TRIG grounds.

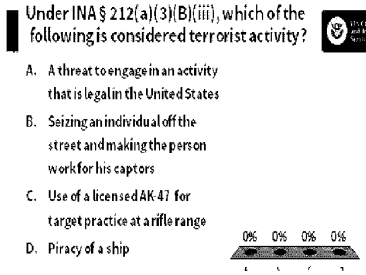


INA § 212 (a)(3)(B)(iii)(VI)

"(VI) A threat, attempt, or conspiracy to do any of the foregoing." INA § 212(a)(3)(B)(iii)(VI).

Always remember that the terrorist activity must either be against the law where it is committed or be illegal in the U.S. had it been committed in the U.S.

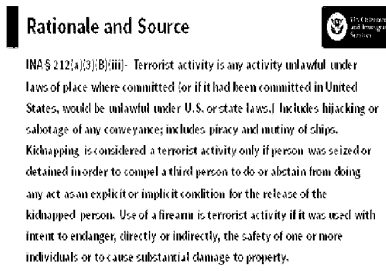
Remember also that the definition of "terrorist activity" is different from the definition of "engage in terrorist activity," which is broader.



Progress Check Question

Under INA § 212(a)(3)(B)(iii), which of the following is considered terrorist activity?

A. A threat to engage in an activity that is legal in the United States
B. Seizing an individual off the street and making the person work for his captors
C. Use of a licensed AK-47 for target practice at a rifle range
D. Piracy of a ship



Rationale and Source

The correct answer is D.

Rationale: Under INA § 212(a)(3)(B)(iii), the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State), and includes:

Hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle) also includes piracy and mutiny of ships.

Kidnapping a person is considered a terrorist activity only if the person was seized or detained in order to compel a third person to do or abstain from doing any act as an explicit or implicit condition for the release of the kidnapped person.

Use of a firearm is terrorist activity if it was used with an intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

References: INA §§ 212(a)(3)(B)(iii)(I), (II) and (V).

Topic 5: Definition of "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)

Enabling Objective #5 Define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv)	**Topic Five:** **INA § 212 (a)(3)(B)(iv)**	Upon completion of this topic, you will be able to define "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv).
INA § 212(a)(3)(B)(iv) "The term "engage in terrorist activity" means, in an individual capacity or as a member of an organization…"	**INA § 212 (a)(3)(B)(iv)**	"The term "engage in terrorist activity" means, in an individual capacity or as a member of an organization —
INA § 212(a)(3)(B)(iv)(I) "(I) To commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity."	**INA § 212 (a)(3)(B)(iv)(I)**	"(I) To commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity." INA § 212(a)(3)(B)(iv)(I).
INA § 212(a)(3)(B)(iv)(II) "(II) To prepare or plan a terrorist activity."	**INA § 212 (a)(3)(B)(iv)(II)**	"(II) To prepare or plan a terrorist activity." INA § 212(a)(3)(B)(iv)(II).
INA § 212(a)(3)(B)(iv)(III) "(III) To gather information on potential targets for terrorist activity."	**INA § 212 (a)(3)(B)(iv)(III)**	"(III) To gather information on potential targets for terrorist activity." INA § 212(a)(3)(B)(iv)(III).

INA § 212(a)(3)(B)(iv)(IV) "(IV) to solicit funds or other things of value for– (aa) a terrorist activity; (bb) a designated terrorist organization [Tier I or Tier II]. . . OR (cc) an undesignated [Tier III] terrorist organization unless alien can show by clear and convincing evidence that he or she did not know and should not reasonably have known that it was a terrorist organization."	**INA § 212 (a)(3)(B)(iv)(IV)**	"(IV) to solicit funds or other things of value for – • (aa) terrorist activity; • (bb) A designated terrorist organization [Tier I or Tier II] . . .; or • (cc) [an undesignated] terrorist organization . . . unless the alien can show by clear and convincing evidence that he or she did not know and should not reasonably have known that it was a terrorist organization." INA § 212(a)(3)(B)(iv)(IV).
INA § 212(a)(3)(B)(iv)(V) (v) To solicit any individual– • (aa) To engage in [a terrorist activity]; • (bb) for membership in a [designated] terrorist organization; or • (cc) for membership in [an undesignated] terrorist organization unless [alien] can demonstrate by clear and convincing evidence that he [or she] did not know and should not reasonably have known, that the organization was a terrorist organization."	**INA § 212 (a)(3)(B)(iv)(V)**	(V) To solicit any individual— • (aa) To engage in [a terrorist activity]; • (bb) for membership in a [designated] terrorist organization; or • (cc) for membership in [an undesignated] terrorist organization unless [alien] can demonstrate by clear and convincing evidence that he [or she] did not know and should not reasonably have known, that the organization was a terrorist organization." INA § 212(a)(3)(B)(iv)(V). The lack of knowledge exception is discussed in more detail in Topic 6.
INA § 212(a)(3)(B)(iv)(VI) "(VI) To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological or radiological weapons), explosives or training . . ."	**INA § 212 (a)(3)(B)(iv)(VI)**	"(VI) To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological or radiological weapons), explosives or training . . ." • (aa) for the commission of a terrorist activity;
INA § 212(a)(3)(B)(iv)(VI) *(cont'd)* • (aa) for the commission of a terrorist activity; • (bb) to any individual who the [alien] knows or reasonably should know, has committed or plans to commit a terrorist activity; • (cc) to a [designated] terrorist organization. . . or to a member of a [designated] organization; or • (dd) to an [undesignated] terrorist organization. . . or to any member of such an organization, unless the [alien] can demonstrate by clear and convincing evidence that [he or she] did not know and should not reasonably have known that the organization was a terrorist organization."		• (bb) to any individual who the [alien] knows or reasonably should know, has committed or plans to commit a terrorist activity; • (cc) to a [designated] terrorist organization . . . or to a member of a [designated] organization; or • (dd) to an [undesignated] terrorist organization . . . or to any member of such an organization, unless the [alien] can demonstrate by clear and

convincing evidence that [he or she] did not know and should not reasonably have known that the organization was a terrorist organization." INA § 212(a)(3)(B)(iv)(VI).

The lack of knowledge exception is discussed in more detail in Topic 6.

Instructor Note: The material support provision discussed is the most applied part of the definition of engaging in terrorist activity for USCIS and, arguably, of INA § 212(a)(3)(B). Most of the aliens in our cases who are subject to INA § 212(a)(3)(B) are inadmissible for providing something that falls within the definition of material support. This provision is significantly broader than the criminal law on material support which is limited to fewer organizations and fewer activities.

INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

Material Support:

- No need for support to benefit terrorist activity
- Covers "virtually all forms of assistance"
- No exception for routine commercial transactions
- No duress exception in the statute
- No age exception
- Requires an act that affords material support

Material Support

Consider the following with respect to material support:

- No need for the support to benefit a terrorist activity.
- Covers "virtually all forms of assistance", *i.e.*, no "de minimis" exception. *See Matter of S-K-*, *supra*.
- No exception for routine commercial transactions.

(b)(7)(e) [redacted]

- No duress exception in the statute.
- No age exception, although capacity issues may be considered.
- Requires an affirmative act that affords material support. For example

(b)(7)(e) [redacted]

(b)(7)(e)

- Remember that material support is not the only way to engage in terrorist activity.

- Lack of knowledge will be considered and discussed in Topic 6.

- Please note that in captive situations, applicants

(b)(7)(e)

INA § 212(a)(3)(B)(iv)(VI) *(cont'd)*

Material support issue spotting:

Testimony or evidence that an applicant provided:

Material Support Issue Spotting

(b)(7)(e)

Material support issue spotting – look for testimony or evidence that an applicant did one of the following:

(b)(7)(e)

[redacted]

INA § 212(a)(3)(B)(iv)(VI) (cont'd)

Questions to determine if material support provided:

[redacted]

Material Support Questions

(b)(7)(e)

Possible material support questions to address in an interview or Request for Evidence (RFE)

[redacted]

Which of the following activities would be considered providing material support to a terrorist organization?

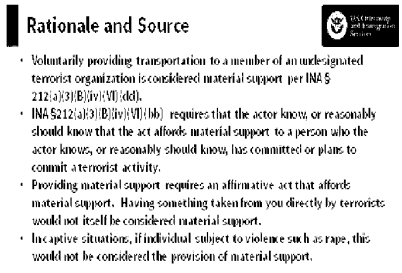
A. Providing safe house to person that the actor does not know or could not have known is planning to commit a terrorist activity
B. Voluntarily providing a ride to a known member of an undesignated terrorist organization
C. Having a purse snatched by a member of a Tier I organization
D. Being raped by a member of a terrorist organization, while being held captive

0% 0% 0% 0%

Progress Check Question

Which of the following activities would be considered the provision of material support to a terrorist organization?

A. Providing a safe house to a person that the actor does not know and could not have known is planning to commit a terrorist activity
B. Voluntarily providing a ride to a known member of an undesignated terrorist organization
C. Having a purse snatched by a member of a Tier I organization
D. Being raped by a member of a terrorist organization, while being held captive



Rationale and Source

The correct answer is B.

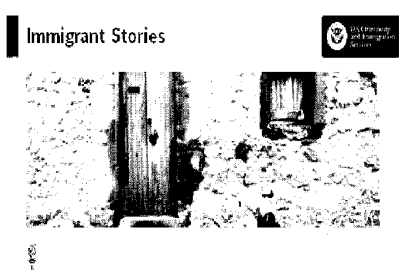
Rationale: Voluntarily providing transportation to a member of an undesignated terrorist organization is considered material support per INA § 212(a)(3)(B)(iv)(VI)(dd).

INA §212(a)(3)(B)(iv)(VI)(bb) requires that the actor know, or reasonably should know that the act affords material support to a person who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity.

Providing material support requires an affirmative act that affords material support. For example, having something taken from you directly by terrorists would not itself be considered material support (though the act of handing over something over would qualify as material support).

In captive situations, applicants may have been forced to carry out various activities, and also may have been the victims of violent acts. To the extent that kidnapped/captive individuals are required to carry out various routine activities by their captors, such as cooking, cleaning, carrying luggage/cargo, and the like, their provision of labor is considered the provision of material support under duress. However, to the extent that such individuals may have been subjected to violence, including rape and other forms of sexual violence, this would not be considered the provision of material support.

Reference(s): INA § 212 (a)(3)(B)(iv)(VI)



Immigrant Stories

Instructor Note: Return to the initial scenarios in Appendix A read by the volunteers and ask the class what they think now, discussing whether their conclusions have changed, why they have changed, and who they now think is inadmissible and why.

Topic 6: Exceptions to TRIG

Enabling Objective #6

Identify the exceptions to TRIG

Topic Six: Exceptions to TRIG

Upon completion of this topic, you will be able to identify the exceptions to TRIG.

Individual Exceptions

Lack of Knowledge Exception for Undesignated Terrorist Organizations

- Membership in terrorist organization
- Soliciting funds
- Soliciting people
- Providing material support to undesignated organization
- Unless the alien "can demonstrate by clear and convincing evidence that [he or she] did not know, and should not reasonably have known, that the organization was a terrorist organization."

Lack of Knowledge Exception for Tier III Organization

As noted in our discussion several of the TRIG grounds contain a lack of knowledge exception. The exception applies if the applicant did not know, or should not have reasonably known, that the group was a Tier III organization. These exceptions apply to the following activities:

- Membership in a terrorist organization. *See* INA § 212(a)(3)(B)(i)(VI).
- Engaging in terrorist activity by soliciting funds for a terrorist organization. *See* INA § 212(a)(3)(B)(iv)(IV)(cc).
- Soliciting people for membership in a terrorist organization. *See* INA § 212(a)(3)(B)(iv)(V)(cc).
- Providing material support for an undesignated organization (Tier III). *See* INA § 212(a)(3)(B)(iv)(VI)(dd).

Unless the alien "can demonstrate, by clear and convincing evidence that he [or she] did not know, and should not reasonably have known, that the organization was a terrorist organization."

Individual Exceptions *(cont'd)*

Lack of knowledge exception for undesignated terrorist organizations:

- Requires both actual lack of knowledge (subjective) and that a reasonable person would not have known (objective)
- Turns on what the applicant knew or did not know of the organization's activities, not whether he or she subjectively considered the actions to be terrorism

Lack of Knowledge Exception for Tier III Organization

These "lack of knowledge" carve-outs refer to the applicant's lack of knowledge that the organization at issue carries out activities of the type that bring it within the definition of a Tier III terrorist organization, not to a lack of knowledge that a U.S. government entity finds that the group is a Tier III organization under the INA.

This distinction is important because it clarifies that the inquiry rests with what the applicant knew, or reasonably should have known, about the group's activities at the time of his or her act or association with the group.

Also, this "lack of knowledge" exception carries a higher burden of proof for the applicant. The applicant must

Individual Exceptions *(cont'd)*

Lack of knowledge exception for undesignated terrorist organizations:

- Does not apply to designated (Tier I & II) organizations, no matter how reasonable the lack of knowledge
- Does not apply to being a representative of or attending terrorist training camp of or on behalf of an undesignated terrorist organization

demonstrate by clear and convincing evidence his or her own lack of knowledge (subjective) and that a reasonable person would not have known (objective).

As noted, this exception only applies to undesignated Tier III organizations. It does not apply to designated (Tier I and II) organizations, no matter how reasonable the lack of knowledge.

This exception does not apply to receiving military type training or being a representative of an undesignated terrorist organization.

Individual Exceptions *(cont'd)*

Lack of knowledge exception – Questions to ask:

[redacted]

Lack of Knowledge Exception for Tier III Organization

(b)(7)(e)

What is reasonable lack of knowledge?

[redacted]

Individual Exceptions *(cont'd)*

Lack of knowledge exception – Clear and Convincing standard:

- More than preponderance of the evidence
- Less than beyond a reasonable doubt

Remember: Lack of knowledge exception only applies to involvement with undesignated organizations.

Lack of Knowledge Exception for Tier III Organization

(b)(7)(e)

What is "clear and convincing evidence?" It is more than preponderance of the evidence but less than beyond a reasonable doubt.

Instructor Note: Consider this example:

[redacted]

Individual Exceptions *(cont'd)*

Material Support Knowledge Element in INA § 212 (a)(3)(B)(iv)(VI):

"to commit an act that the actor knows or reasonably should know affords material support . . ."

- Applies to knowledge that the act afforded support
- Possible, although unlikely, that an individual could supply material support to a member of a terrorist organization and not know it was material support

Material Support Knowledge Element

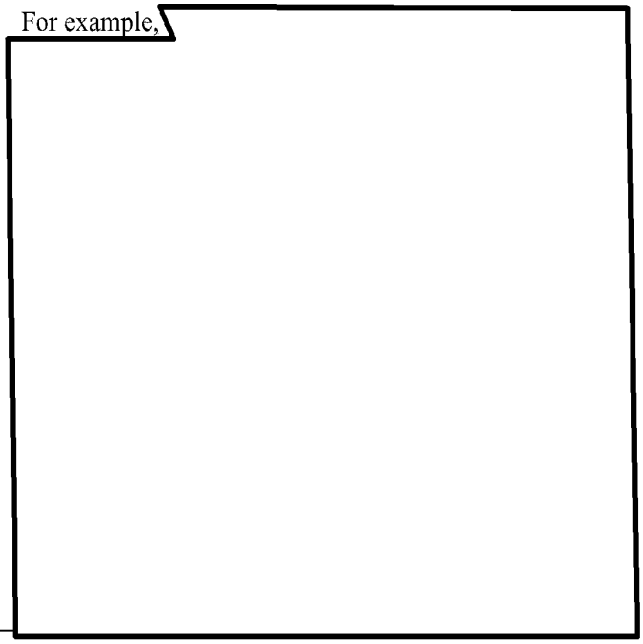
Additionally, the material support provision also contains a knowledge element found at INA § 212(a)(3)(B)(iv)(VI). It reads "to commit an act that the actor knows or reasonably should know affords material support . . ." INA § 212(a)(3)(B)(iv)(VI).

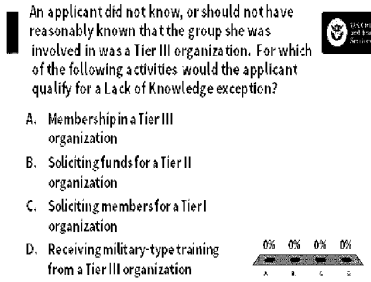
This is not the same as the lack of knowledge exception regarding knowledge that the organization was a Tier III organization; rather, it applies to knowledge that the applicant's act itself afforded material support to any organization at all, or for the commission of a terrorist activity, or to an individual that has committed or plans to commit a terrorist activity.

It is possible, although unlikely, that an individual could supply material support to a member of a terrorist organization (Tier I, II, or III), for the commission of a terrorist activity, or to an individual that has committed or will commit a terrorist activity and not know that it constituted material support to or for any of these specified organizations, activities, or individuals. If so, the applicant would not have provided material support as defined in the statute, and there would be no TRIG for such activity.

For example,

(b)(7)(e)

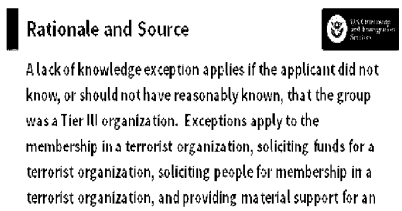




Progress Check Question

An applicant did not know, or should not have reasonably known that the group she was involved in was a Tier III organization. For which of the following activities would the applicant qualify for a Lack of Knowledge exception?

A. Membership in a Tier III organization
B. Soliciting funds for a Tier II organization
C. Soliciting members for a Tier I organization
D. Receiving military-type training from a Tier III organization



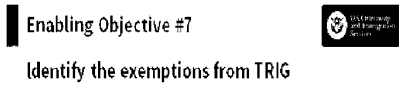
Rationale and Source

The correct answer is A.

Rationale: A lack of knowledge exception applies if the applicant did not know, or should not have reasonably known, that the group was a Tier III organization. Exceptions apply to the membership in a terrorist organization, soliciting funds for a terrorist organization, soliciting people for membership in a terrorist organization, and providing material support for an undesignated organization. This exception only applies to undesignated Tier III organizations. It does not apply to designated (Tier I and II) organizations, no matter how reasonable the lack of knowledge. This exception does not apply to receiving military type training or being a representative of an undesignated terrorist organization.

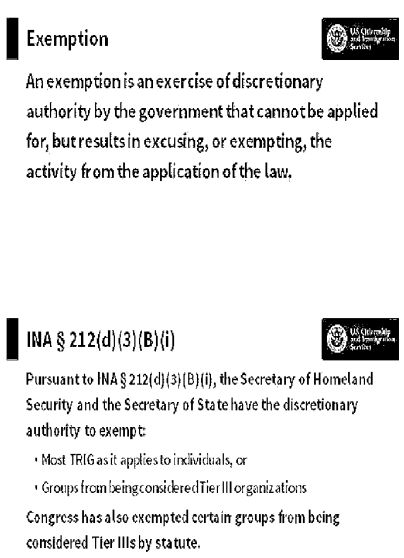
Reference(s): INA § 212(a)(3)(B)(i)(VI), INA § 212(a)(3)(B)(iv)(IV)(cc), INA § 212(a)(3)(B)(iv)(V)(cc), INA § 212(a)(3)(B)(iv)(VI)(dd)

Topic 7: Exemptions from TRIG



Topic Seven: Exemptions

Upon completion of this topic, you will be able to identify the exemptions from TRIG.



Realizing the broad scope of TRIG, Congress included an exemption provision for INA § 212(a)(3)(B) since the USA PATRIOT Act of 2001, though it has changed and expanded over time.

The USA PATRIOT Act included an exemption provision in the material support provision itself. The REAL ID Act of 2005 created a broader stand-alone exemption provision at INA § 212(d)(3)(B)(i), and the Consolidated Appropriations Act of 2008 (CAA) expanded the discretionary exemption authority at INA § 212(d)(3)(B)(i) to include most of INA § 212(a)(3)(B). Certain TRIG grounds, however, cannot be exempted.

Under INA § 212(d)(3)(A), there is an exemption provision relating to nonimmigrants that can be exercised by the Secretary of Homeland Security or the Secretary of State.

Under INA § 212(d)(3)(B)(i), the Secretary of Homeland Security and the Secretary of State, after consultation with each other and the Attorney General, have the discretionary authority to exempt certain activities and associations from TRIG as they relate to individuals, and to determine that certain groups will not be considered undesignated terrorist organizations (Tier III). Authority not to apply the terrorist organization definition to exempt a group only extends to Tier III organizations.



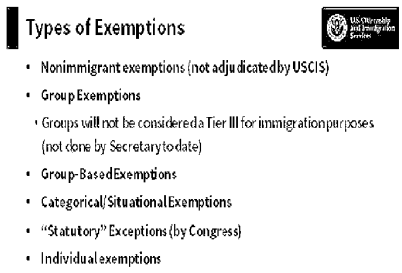
In each of the exercises of exemption authority to date, the Secretary of Homeland Security delegated to USCIS, in consultation with ICE, the authority to determine whether a particular alien meets the criteria required for the exercise of the exemption.

This authority also usually applies to consular officers for DOS adjudications. Within DHS, USCIS adjudicates Secretarial exemptions under the INA § 212(d)(3)(B)(i) exercises of the exemption authority. Neither ICE nor CBP personnel have this delegated authority. The Department of Justice, including the Executive Office for Immigration Review (EOIR), has no authority under the statute to exercise the exemption authority or grant exemptions under existing exercises of the exemption authority.

As a general matter, once the Secretary signs the exemption documents for an exemption under INA § 212(d)(3)(B)(i), and the USCIS Director issues implementing guidance, USCIS posts (via the USCIS Intranet) the exemption document along with a

corresponding policy memorandum or fact sheet that provides further guidance to adjudicators on implementing the new discretionary exemption.

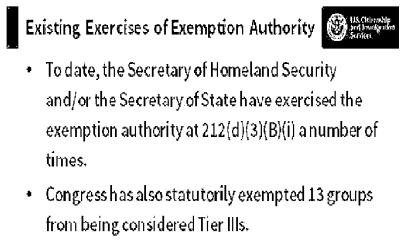
Congress has also created a number of statutory exceptions clarifying that certain groups should not be treated, for the purposes of TRIG, as falling within the Tier III definition. These are different from Secretarial exemptions and may be applied by entities adjudicating benefit applications, including USCIS officers and immigration judges.



Types of TRIG Exemptions

There are six types of Secretarial exemptions for TRIG.

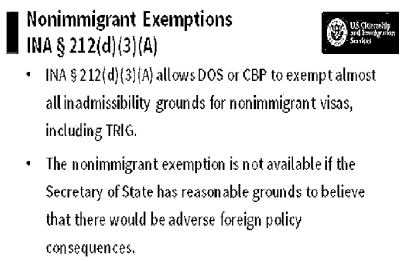
1. Nonimmigrant. *See* INA § 212(d)(3)(A).
2. Group Exemptions. *See* INA § 212(d)(3)(B)(i).
   - Groups will not be considered Tier III for immigration purposes (not done by Secretary to date)
3. Group-Based Exemptions. *See* INA § 212(d)(3)(B)(i).
   - Pertain to individuals having associations or activities with a particular group or groups
4. Categorical/Situational Exemptions. *See* INA § 212(d)(3)(B)(i).
   - Relate to a certain activity, such as providing material support or medical care
5. "Statutory" exceptions designated by Congress.
6. Individual. *See* INA § 212(d)(3)(B)(i).
   - Pertain to a specific applicant



Existing Exercises of the Exemption Authority

There have been a number of exemptions issued to date by the Secretaries under INA § 212(d)(3)(B)(i), which USCIS adjudicates with regard to applicants for immigration benefits.

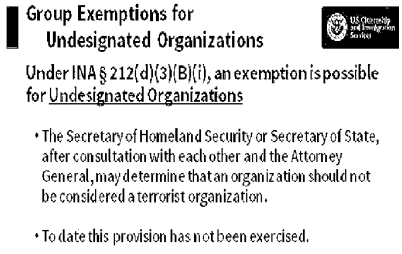
Congress has also statutorily exempted 13 groups from being considered Tier IIIs.



Nonimmigrant Exemptions

Nonimmigrants can be admitted for temporary visits under INA § 212(d)(3)(A) in the discretion of the Secretary of Homeland Security or Secretary of State.

- Despite terrorism-related grounds or any other ground of inadmissibility except for some of the other security-related provisions at INA § 212(a)(3).
- Under such conditions as appropriate including the payment of bond to regulate the admission and return of the alien.
- Note that USCIS does not adjudicate this provision. CBP and the Department of State (DOS) apply these provisions in concert with one another.

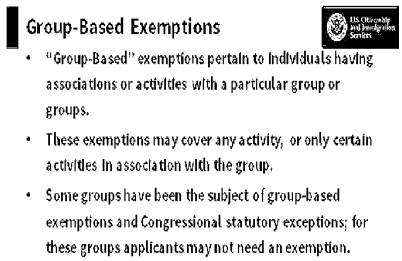


Group Exemptions for Undesignated Organizations

The Secretaries may issue a "group exemption" stating that a certain group will not be considered a Tier III for INA § 212(a)(3)(B) purposes. This has not been done to date. *See* INA § 212(d)(3)(B)(i).

The Secretaries may also exempt almost any INA § 212(a)(3)(B) activity for Tier IIIs; they have a somewhat more limited ability to exempt activity relating to Tier I and Tier II organizations.

Frequently, such exemptions are issued with reference to a particular group (such as all exemptible activity relating to the All Burma Students Democratic Front, or ABSDF). These are referred to often as "group-based" exemptions, to distinguish them from actual "group exemptions."



Group-Based Exemptions

"Group-Based" exemptions pertain to individuals having associations or activities with a particular group or groups.

These exemptions are designed to exempt an individual's activities or affiliations with specified terrorist groups or organizations. Additionally, each group-based exercise of authority and its implementing guidance specifies how exemptions should be applied, including specifically which grounds of inadmissibility are covered. The group based exemptions vary in terms of what grounds they cover; some are broad while others are to be applied more narrowly.

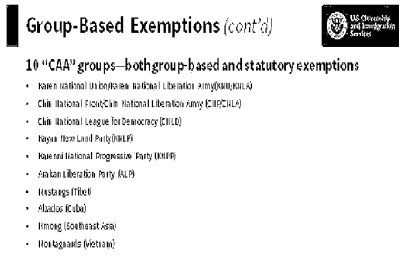
Some groups have been the subject of both "group-based" exemptions and Congressional "statutory" exceptions. This may be because the congressional action looks to activity for a certain period of time (*e.g.*, up until the passage of a Congressional act), and the companion

Secretarial exemption extends the authority to not apply the inadmissibility ground to present time, or for a larger range of grounds. For groups that have both group-based and "statutory" exemptions, it must be determined whether an exemption is needed or not.

A few important notes to bear in mind with respect to group-based exemptions:

- Group-based exemptions for Tier III organizations apply to voluntary activity. This is in contrast to a general duress exemption, which we will discuss shortly.

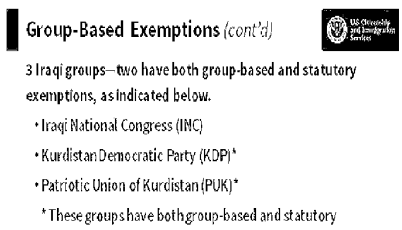
- Each Secretarial exercise of authority, and accompanying implementation guidance, may contain additional requirements for certain groups (such as not targeting noncombatant persons or U.S. interests).



Group-Based Exemptions- 10 CAA Groups

These groups have been the subject of both group-based and "statutory" exemptions. All are Burmese opposition groups unless otherwise indicated. The groups are as follows:

- Karen National Union/Karen National Liberation Army (KNU/KNLA)
- Chin National Front/Chin National Liberation Army (CNF/CNLA)
- Chin National League for Democracy (CNLD)
- Kayan New Land Party (KNLP)
- Karenni National Progressive Party (KNPP)
- Arakan Liberation Party (ALP)
- Mustangs (Tibet)
- Alzados (Cuba)
- Hmong (Southeast Asia)
- Montagnards (Vietnam)



Group-Based Exemptions – Iraqi Groups

There are three Iraqi Groups which have group-based exemptions. Two of these are also the subject of "statutory" exemptions. These groups are as follows:

- Iraqi National Congress (INC)
- Kurdistan Democratic Party (KDP)
- Patriotic Union of Kurdistan (PUK)

KDP and PDK also have "statutory exemptions. Please contact your supervisor if you encounter the KDP or PUK.

Group-Based Exemptions *(cont'd)* • All Burma Students Democratic Front (ABSDF) • All India Sikh Student Federation-Bittu faction (AISSF-Bittu) • Democratic Movement for the Liberation of Eritrean Kunama (DMLEK) (Eritrea) • Eritrean Liberation Front (ELF) (Eritrea) • Ethiopian People's Revolutionary Party (EPRP)(Ethiopia) • Farabundo Marti National Liberation Front (FMLN)(El Salvador)	**Group-Based Exemptions - Other**	Additionally, there are other group-based exemptions as follows: • All Burma Students Democratic Front (ABSDF) • All India Sikh Student Federation Bittu faction (AISSF-Bittu) • Democratic Movement for the Liberation of Eritrean Kunama (DMLEK) (Eritrea) • Eritrean Liberation Front (Eritrea) • Ethiopian People's Revolutionary Party (EPRP) (Ethiopia) • Farabundo Marti National Liberation Front (FMLN) (El Salvador)
Group-Based Exemptions *(cont'd)* • Kosovo Liberation Army (KLA) • Nationalist Republican Alliance (ARENA) (El Salvador) • Oromo Liberation Front (OLF) (Ethiopia) • Tigray People's Liberation Front (TPLF) (Ethiopia)	**Group-Based Exemptions - Other**	• Kosovo Liberation Army (KLA) • Nationalist Republican Alliance (ARENA) (El Salvador) • Oromo Liberation Front (OLF) (Ethiopia) • Tigray People's Liberation Front (TPLF) (Ethiopia) • Certain Burmese Groups (see USCIS Policy Memo 602-0135 for complete list)
Categorical/Situational Exemptions • Most INA § 212(a)(3)(B) grounds can be exempted by the Secretary of DHS or Secretary of State. • Exemptions for certain activities committed under duress • Exemptions for certain activities that were voluntary • Not group specific, but may apply to certain type of terrorist organization (such as Tier III) • Certain grounds cannot be exempted	**Categorical/ Situational Exemptions**	Most, though not all, TRIG grounds can be exempted by the Secretaries under INA § 212(d)(3)(B)(i). Categorical or situational exemptions pertain to a certain activity, such as providing material support or medical care, and are not group specific. However, they may apply only to a particular type of terrorist organization (such as a Tier III organization). Some situational exemptions require that the activity took place under duress. Duress-based exemptions require an examination into the duress factors to determine eligibility for the exemption.
Material Support under Duress Exemption Applies to material support given under duress to: • Tier III organizations • Tier I and II organizations	**Material Support Under Duress**	Exemptions may be granted for applicants who provided material support under duress to designated or undesignated terrorist organizations, which, at minimum require that the material support was provided in response to a reasonably-perceived threat of serious harm. • For the provision of material support to Tier III organizations • For the provision of material support to Tier I or Tier II organizations
	(b)(7)(e)	An example of material support under duress could [redacted]

	(b)(7)(e)	
Solicitation Under Duress Solicitation of funds or other things of value under duress to: • Tier I, II, and III organizations Solicitation of members (recruitment) under duress to: • Tier I, II, and III organizations	**Solicitation Under Duress**	Exemptions may be granted to certain applicants who, under duress, solicited funds or members for a terrorist organization. • For the solicitation of funds or other things of value under duress (Tier I, II, or III organizations) • For the solicitation of members under duress (recruitment) (Tier I, II, or III organizations)
Military-type training under duress To Tier I, II, and III organizations	**Military Type Training Under Duress**	Exemptions may be granted to certain applicants who, under duress, received military-type training from, or on behalf of, a terrorist organization. • For the receipt of military-type training under duress (Tier I, II, or III organizations)
Voluntary Medical Care Exemption Applies to the voluntary provision of medical care (as material support): • To members of Tier I, II, and III organizations • Provision of care need not be under duress • Includes dental, first aid, and other health care, by health professionals or volunteers • Exemption not available for those who voluntarily and knowingly provided medical care on behalf of a Tier I or Tier II organization	**Voluntary Medical Care Exemption**	Exemptions can be granted to certain applicants who provided medical care to individuals that the applicant knew, or reasonably should have known, committed or planned to commit a terrorist activity, or to members of a terrorist organization as described in INA § 212(a)(3)(B)(vi). • Applies to the voluntary provision of medical care to members of Tier I, II, or III organizations • Includes medical, dental, and first aid care by medical professionals or volunteers • Is not available to those who voluntarily and knowingly provided medical care on behalf of a Tier I or II organization (*e.g.*, staff doctors)
Limited General Exemption • Applies to certain individuals having specified voluntary activities with qualified Tier III organizations. • Applies to provision of material support, solicitation of funds, solicitation of members, and receipt of military-type training	**Limited General Exemption**	The Limited General Exemption is a unique exercise of authority that applies to certain applicants with *existing immigration benefits* but who have been unable to be granted further status, such as lawful permanent residency. This exemption can be granted for certain applicants with existing immigration benefits who are currently inadmissible under INA § 212(a)(3)(B)(i). Applicants eligible for this exemption must have only select

voluntary, nonviolent associations or activities with certain undesignated terrorist organizations, as described by the relevant Secretarial exercise of authority and accompanying implementation guidance.

This exemption may be applied only to applicants who currently possess lawful status in the United States by the date the exercise of authority was issued, August 10, 2012. Generally, applicants with asylee or refugee status, temporary protected status, or those who adjusted status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA), or a similar immigration benefit (other than a nonimmigrant visa), and those who are beneficiaries of a Form I-730, Refugee/Asylee Relative Petition, filed at any time by such an asylee or refugee, may qualify.

- Applies to certain individuals having specified voluntary activities with qualified Tier III organizations
- There are both individual and group qualifications for this exemption.
- Applies to the provision of material support; solicitation of funds; solicitation of members; and the receipt of military-type training.

Iraqi Uprisings Exemption

Applies to certain applicants who participated in the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991

Iraqi Uprisings

The Iraqi Uprisings Exemption applies to certain applicants who participated in the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991.

Certain Limited Material Support (CLMS)

Applies to minimal amounts of material support given to Tier III organizations. May include:

[redacted]

Certain Limited Material Support (CLMS)

(b)(7)(e)

The Certain Limited Material Support (CLMS) Exemption can be granted not to apply the material support inadmissibility ground to certain applicants who provided certain limited material support to an undesignated terrorist organization (Tier III), or to a member of such an organization.

Limited material support may include:

- [redacted]

Insignificant Material Support (IMS) • Applies to minimal amounts of material support given to Tier III organizations under specified circumstances • Complex topic addressed in specialized training for TRIG adjudicators	**Insignificant Material Support (IMS)** The Insignificant Material Support (IMS) Exemption can be granted not to apply the material support inadmissibility ground to applicants who provided insignificant material support to an undesignated terrorist organization (Tier III), or to a member of such an organization. **Instructor Note**: Due to their complexity, follow-up training with respect to the CLMS and IMS exemptions is provided to TRIG adjudicators.
Individual Exemptions • The Secretaries may exercise their exemption authority with regard to a particular individual. • Individual exemptions are signed by the Secretaries after interagency consultation. • This is not done frequently.	**Individual Exemptions** Individual exemptions pertain to a specific applicant. • These are signed by one of the Secretaries, and must go through interagency consultation. • These are complex to adjudicate and have been rare in the past; if you have any questions about whether a particular case may merit an individual exemption, please contact your supervisor and TRIG component POC.
"Statutory" Exceptions for Terrorist Activity Consolidated Appropriations Act (CAA), 2008, Pub. L. No. 110-161 • 10 (mainly Burmese) organizations not to be considered terrorist organizations for any activity committed before 12/26/2007 • African National Congress (ANC) added to CAA list by Pub. L. No. 110-257 (July 1, 2008)	**Statutory Exceptions - CAA** Congress may state that a particular undesignated or Tier III group should not be considered a terrorist organization for immigration purposes, via legislation. • Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161 (Dec. 26, 2007) ("CAA of 2008"): Among other things, the CAA stated that 10 groups should not be considered Tier III terrorist organizations for activity committed prior to December 26, 2007. • The African National Congress (ANC) was added to the CAA list by Pub. L. No. 110-257 (July 1, 2008).
"Statutory" Exceptions *(cont'd)* National Defense Authorization Act, 2015, Pub. L. No. 113-291 (Dec. 19, 2014) (NDAA 2015) • Two organizations not to be considered terrorist organizations (KDP and PUK), no time limitation	**Statutory Exemptions - NDAA** • National Defense Authorization Act 2015 (Pub. L. No. 113-291) (Dec. 19, 2014) ("NDAA 2015"): Stated that two groups—the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) should not be considered terrorist organizations under the INA. No time limit.

Exemption Guidance

See: https://www.uscis.gov/laws/terrorism-related-inadmissability-grounds/terrorism-related-inadmissibility-grounds-trig

Exemption Guidance

Each of the above-mentioned Secretarial exercises of authority has USCIS implementation guidance instructing adjudicators on how it should be adjudicated.

This guidance is available on the ECN, and for the most part on the uscis.gov website.

To review the exemptions and their specific requirements, please refer to https://www.uscis.gov/laws/terrorism-related-inadmissability-grounds/terrorism-related-inadmissibility-grounds-exemptions.

Instructor Note: When discussing exemption processing, show the students the exemption worksheet.

Which of the following TRIG grounds may qualify for an exemption?

A. Voluntarily providing food and supplies to a Tier II organization
B. Providing medical care as staff doctor to a Tier I organization
C. Providing money to a Tier III organization under duress
D. Voluntarily receiving military-type training from a Tier III organization

0% 0% 0% 0%

Progress Check Question

Which of the following TRIG grounds may qualify for an exemption?

A. Voluntarily providing food and supplies to a Tier II organization
B. Providing medical care as staff doctor to a Tier I organization
C. Providing money to a Tier III organization under duress
D. Voluntarily receiving military-type training from a Tier III organization

Rationale and Source

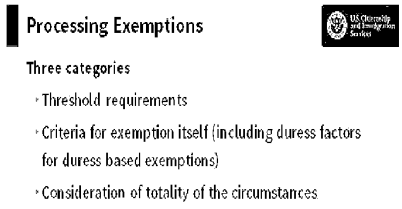
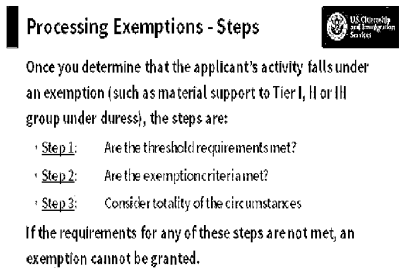
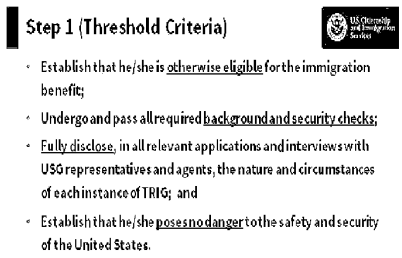
Exemptions may be granted for applicants who provided material support under duress to designated or undesignated terrorist organizations, which require that material support was provided in response to a reasonably-perceived threat of serious harm. An exemption is not available to those who voluntarily and knowingly provided medical care on behalf of a Tier I or II organization (e.g., staff doctors). Exemptions may be granted to certain applicants who received military-type training under duress from or on behalf of a Tier I, II or III organization. See INA § 212(d)(3)(B)(i)

Rationale and Source

The correct answer is C.

Rationale: Exemptions may be granted for applicants who provided material support **under duress** to designated or undesignated terrorist organizations, which, at minimum require that the material support was provided in response to a reasonably-perceived threat of serious harm. An exemption is not available to those who voluntarily and knowingly provided medical care on behalf of a Tier I or II organization (*e.g.*, staff doctors). Exemptions may be granted to certain applicants who received military-type training **under duress** from or on behalf of a Tier I, II or III organization.

Reference(s): INA § 212(d)(3)(B)(i)

	**Exemption Guidance- Criteria**	In processing exemptions, you should be mindful to ensure that applicants meet the specific requirements, which generally fall within the following categories: • Threshold requirements • Criteria for the exemption itself (including duress factors for duress-based exemptions) • Consideration of the totality of the circumstances, if all other criteria have been met. The implementation guidance for each exemption sets forth the applicable criteria and should be consulted when adjudicating exemptions. The implementation guidance can be found on the USCIS RAIO TRIG ECN site.
	**Exemption Guidance- Processing Steps**	Generally, once you determine that the applicant's activity falls under an existing exemption (such as material support to Tier I, II or III group under duress), the steps for processing an exemption are: • Step 1: Are the threshold requirements met? • Step 2: Are the exemption criteria met? • Step 3: Consider the totality of the circumstances. If the requirements for any of these steps are not met, an exemption cannot be granted.
	**Step 1 - Threshold Criteria**	In order to be considered for any existing exemption from TRIG, an applicant must meet the following threshold requirements: • Establish that he or she is otherwise eligible for a visa or the immigration benefit or protection being sought. o Otherwise eligible means that but for TRIG, an applicant would be eligible for or granted the benefit. o For example, the applicant must be credible and must not be barred or inadmissible on another basis. • Undergo and pass all required background and security checks. o Background and security checks must be complete.

- Fully disclose, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each TRIG activity or association.

Instructor Note: You may get question regarding an applicant who did not provide information, for example at an airport interview, because he was not asked about TRIG activity. Best answer: If not asked in person or on application, not a failure to disclose.

- Establish that he or she poses no danger to the safety and security of the United States.



Step 2 - Exemption Criteria

Some exemptions contain additional requirements.

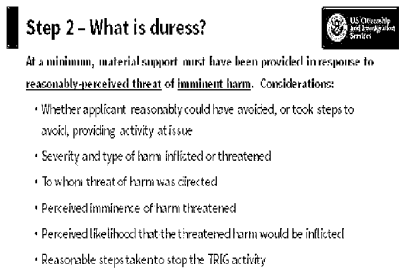
If the applicant meets the threshold requirements, then the next step is to consider whether the applicant meets the requirements of the exemption itself.

For example, (b)(7)(e)



Step 2 – Duress Considerations

If you find there is no duress when you are considering a duress-based exemption, and/or if you find that the applicant does not merit an exemption in the totality of the circumstances, you should deny the exemption, and you may deny the case and/or refer it, depending on what kind of application you are adjudicating.



Step 2 – What is Duress?

For duress-based exemptions, you will consider specific duress factors in the adjudication of the exemption. The factors vary slightly, but at the minimum, there has to have been a reasonably-perceived threat of serious harm under which the activity at issue was carried out.

In general, the duress-based exemptions all require consideration of the following issues:

- Whether the applicant could have reasonably avoided the TRIG activity, *e.g.*, providing material support;

- The severity and type of harm inflicted or threatened;
- To whom the threat of harm was directed, *e.g.*, the applicant, the applicant's family, the applicant's community, etc.;
- The perceived imminence of the harm threatened; and
- The perceived likelihood that the threatened harm would be carried out, *e.g.*, based on instances of past harm to the applicant, to the applicant's family, to the applicant's community, and the manner in which harm was threatened, etc.
- In addition, country conditions play a significant role in this determination. For example, if a group's atrocities against those it perceives as resisting its demands are well known, then overt threats of violence are not required.
- Any steps the applicant took to stop the TRIG activity, *e.g.*, moving, escape, reporting to authorities, etc.
- The test here is one of reasonableness. USCIS does not require attempts to escape or other actions if to do so would make the threatened harm more likely and/or more severe.

Step 2 – What is duress? *(cont'd)*

Additional questions to consider with respect to when the applicant encountered the group:

[redacted]

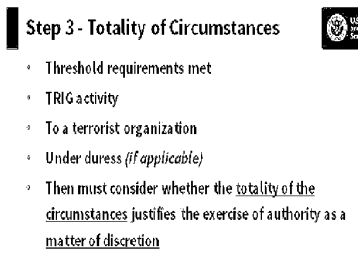
Step 2 – Duress Factors - Questions

(b)(7)(e)

Additional questions to consider with respect to when the applicant encountered the group:

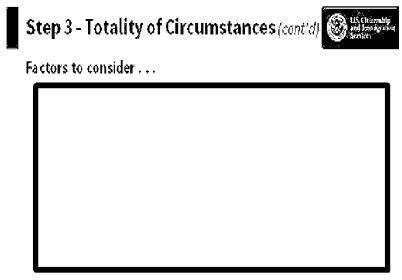
[redacted]

Instructor Note: The prototypical example of duress is a gun to the head. However, not all cases will involve such a direct and immediate threat. You may need to look at country conditions to determine how the group treated individuals who refused to comply (such as if it was well-known that the group carried out reprisals against those who refused its demands). Note that in captive situations, we would not require an attempt to escape (risk could be too grave). In non-captive situations, we don't require resistance. Fair questions though. If no duress, duress exemption may not be granted, and case will be referred or denied in accordance with the material support exemption implementation instructions. Please note that these duress factors are not requirements for an exemption; they are simply factors to be considered in individual cases.



Totality of the Circumstances

Finally, if the threshold requirements and the criteria for the exemption itself have been met and there has been a determination of duress (if required), you must then consider whether the applicant merits an exemption in the totality of the circumstances.



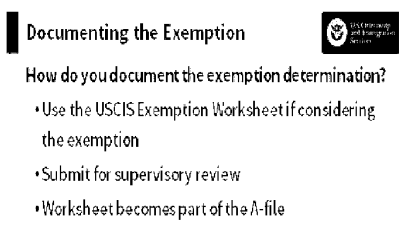
Totality of Circumstances - Factors

This is a general discretionary analysis that takes into account any and all relevant factors (positive and negative) in considering whether an exemption is warranted.

A non-exhaustive list of appropriate factors includes:

(b)(7)(e)

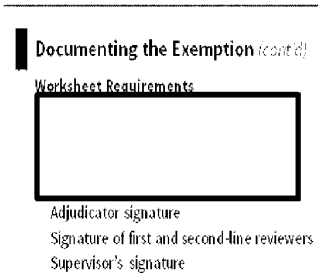
Please note that the "totality of the circumstances" factors are not requirements; they are simply factors to be considered in individual cases.



Documenting the Exemption

All USCIS exemptions that are considered are processed using the USCIS Exemption Worksheet.

All exemption worksheets should be submitted for further supervisory review.



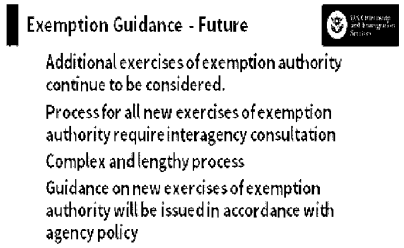
Exemption Worksheet

(b)(7)(e)

The exemption worksheet becomes part of the A-file. It requires the following:

- Adjudicator signature
- Signatures of first and second-line reviewers
- Supervisor's signature

Instructor Note: At this time return to the scenarios in Appendix A to discuss possible exemptions for each scenario with the class.

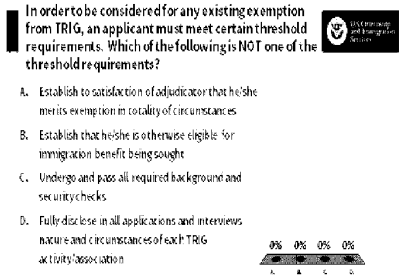


Exemption Guidance - Future

Additional exercises of the exemption authority continue to be considered.

However, the process for all new exercises of the exemption authority, require interagency consultation (per INA § 212(d)(3)(B)(i)). This is a complex and lengthy process.

Guidance on new exercises of the exemption authority will be issued in accordance with agency policy.



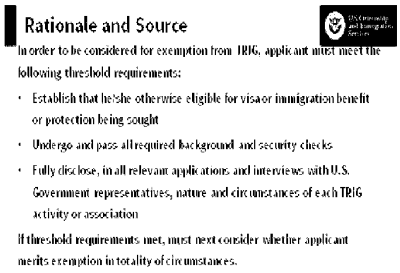
Progress Check Question

In order to be considered for any existing exemption from TRIG, an applicant must meet certain threshold requirements. Which of the following is NOT one of the threshold requirements?

A. Establish to the satisfaction of the adjudicating officer that he/she merits an exemption in the totality of circumstances
B. Establish that he or she is otherwise eligible for the immigration benefit being sought
C. Undergo and pass all required background and

security checks

D. Fully disclose in all applications and interviews the nature and circumstances of each TRIG activity/association



Rationale and Source

The correct answer is A.

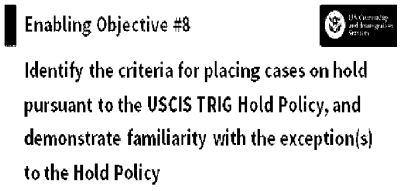
Rationale: In order to be considered for any existing exemption from TRIG, an applicant must meet the following threshold requirements:

- Establish that he or she is otherwise eligible for a visa or the immigration benefit or protection being sought
- Undergo and pass all required background and security checks
- Fully disclose, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each TRIG activity or association

If the threshold requirements and the criteria for the exemption itself have been met and there has been a determination of duress (if required), you must then consider whether the applicant merits an exemption in the totality of the circumstances. The "totality of the circumstances" factors are not requirements; they are simply factors to be considered in individual cases.

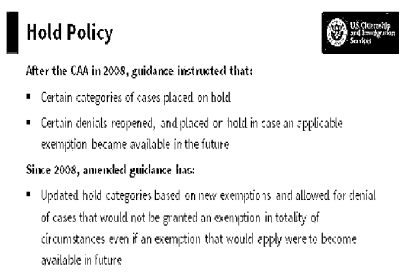
Reference(s): TRIG Exemption Worksheet Instructions

Topic 8: USCIS TRIG Hold Policy



Topic Eight: USCIS TRIG Hold Policy

Upon completion of this topic, you will be able to identify the criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy, and demonstrate familiarity with the exception(s) to the Hold Policy.



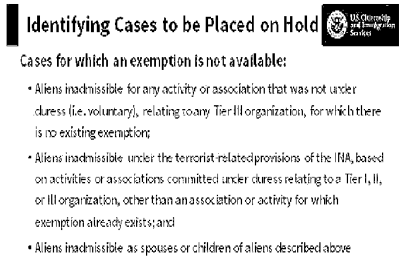
USCIS TRIG Hold Policy - History

After the CAA 2008 was passed, which expanded the exemption authority at INA § 212(d)(3)(B)(i), USCIS issued a memorandum announcing a TRIG hold policy.

Under the hold policy, the following was required:

- Certain cases inadmissible for TRIG for which there were no available exemptions, but for which an applicable exemption might be authorized in the future, were required to be placed on hold. This was so that these applications could benefit from a future applicable exemption if one became available.
- Certain cases denied for TRIG were reopened and placed on hold.

Since USCIS issued the original TRIG hold memorandum in March 2008, other memoranda have revised and updated it. As new exemptions have been issued, certain categories of cases are no longer required to be held for TRIG, including all refugee, asylum, and NACARA applications.



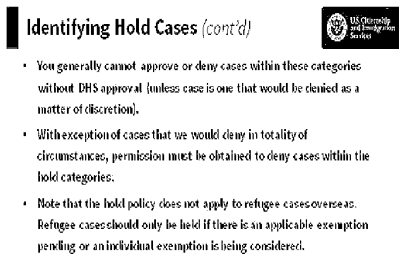
Current TRIG Hold Policy

Aside from refugee, asylum, and NACARA applications, there are currently three categories of benefit applications that should be placed on hold:

1. Voluntary association/activity with a Tier III organization other than association/activity for which an exemption currently exists (*i.e.*, group-based exemptions, voluntary medical care).

2. Any association/activity with any designated (Tier I/II) or undesignated (Tier III) terrorist organization under duress, other than association/activity for which an exemption currently exists (*i.e.*, material support, solicitation, and military type training), which may be adjudicated.

3. Spouses and children of TRIG inadmissible aliens whether or not the inadmissible aliens have applied for an immigration benefit.



TRIG Hold Policy – Exception

An applicant in one of the three categories above can be denied without being placed on hold if an exemption would be denied in the totality of the circumstances.

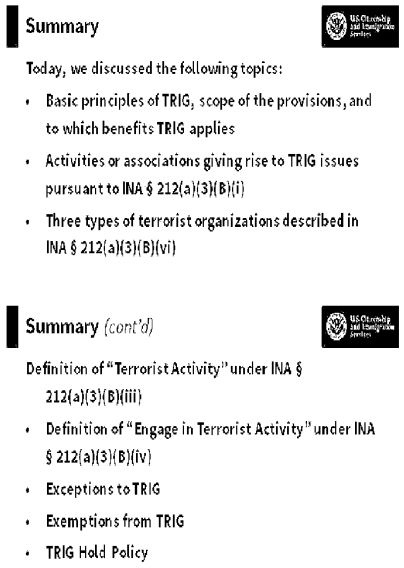
This is true even if an applicable exemption becomes available. Adjudicators must describe in detail why the case should be denied in the totality of the circumstances as part of the adjudication process; this is not frequently done. To deny an exemption in the totality of the circumstances, you must document:

- Nature of an applicant's association or activities with the group,
- Identity and nature of the group, and
- Factors warranting a denial of the exemption in the exercise of discretion.

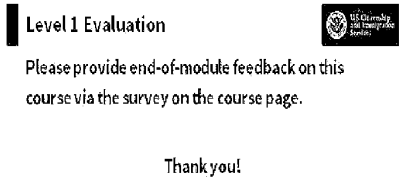
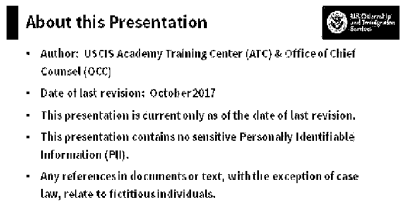
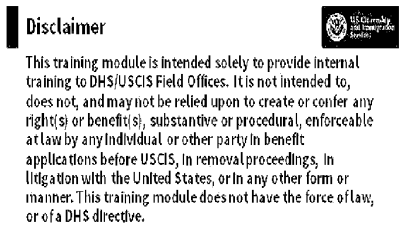
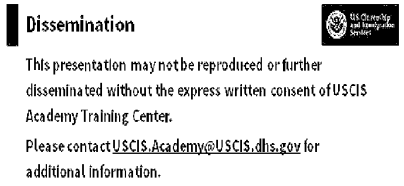
If a case is within a hold category, you must obtain authorization to adjudicate (and deny) the case if it does not fall into the exception above; you may not deny such cases without appropriate authorization. Contact your supervisor and component TRIG POC for any questions relating to denials of cases that fall within the TRIG Hold categories.

As noted, the hold policy described above does not apply to refugee cases overseas, or asylum or NACARA cases. Those cases should only be held if there is an applicable exemption pending or an individual exemption is being considered. *See PM-602-0132 (May 5, 2016) Revised Guidance for Processing Refugee Cases Involving Terrorism-Related Inadmissibility Grounds and Amendment to the Hold Policy for Such Cases; PM-602-0137, "Revised Guidance for Processing Asylum Cases Involving Terrorism-Related Inadmissibility Grounds and Amendment to Hold Policy for Such Cases," dated October 5, 2016.*

Summary



Summary	**Today, we discussed the following topics** • The basic principles of TRIG, the scope of the provisions, and to which benefits TRIG applies • The activities or associations giving rise to TRIG issues pursuant to INA § 212(a)(3)(B)(i) • The three types of terrorist organizations described in INA § 212(a)(3)(B)(vi) • The definition of "Terrorist Activity" under INA § 212(a)(3)(B)(iii) • The definition of "Engage in Terrorist Activity" under INA § 212(a)(3)(B)(iv) • The exceptions to TRIG • The exemptions from TRIG • The criteria for placing cases on hold pursuant to the USCIS TRIG Hold Policy and the exception(s) to the TRIG Hold Policy
Re-Motivation	TRIG is complex, both as a matter of law and a matter of application. To summarize INA § 212(a)(3)(B) please see the TRIG Job Aid in your student materials. In addition, you should take care to properly identify applications, for which an exemption is available, and properly adjudicate it if so, or place the case on hold or deny it in other appropriate instances. For material providing a general overview of TRIG and its exemptions, go to TRIG at www.uscis.gov. You are also directed to your component-specific guidance regarding the details of TRIG processing and the use of the USCIS TRIG ECN site. You should raise novel and/or complex issues through the appropriate component point of contact to the USCIS TRIG Working Group, which is responsible for examining such issues and issuing guidance, either on a case-by-case basis, or USCIS wide, as necessary.

	**Level 1 Evaluation**	***(Remind participants to please provide end-of-module feedback via the survey on the course page.)***
	**About this Presentation**	• Author: Office of the Chief Counsel; Academy Training Center • Date of last revision: October 2017. This presentation is current only as of the date of last revision. • This presentation contains no sensitive Personally Identifiable Information (PII). • Any references in documents or text, with the exception of case law, relate to fictitious individuals. Images in this presentation are from USCIS training databases and contain no PII.
	**Disclaimer**	This training module is intended solely to provide internal training to DHS/USCIS Field Offices. It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in benefit applications before USCIS, in removal proceedings, in litigation with the United States, or in any other form or manner. This training module does not have the force of law, or of a DHS directive.
	**Dissemination**	This presentation may not be reproduced or further disseminated without the express written consent of USCIS Academy Training Center. Please contact USCIS.Academy@USCIS.dhs.gov for additional information.
	Transition	***Now that we have discussed TRIG, let's review the material with the exercises found at Appendix B and C.***

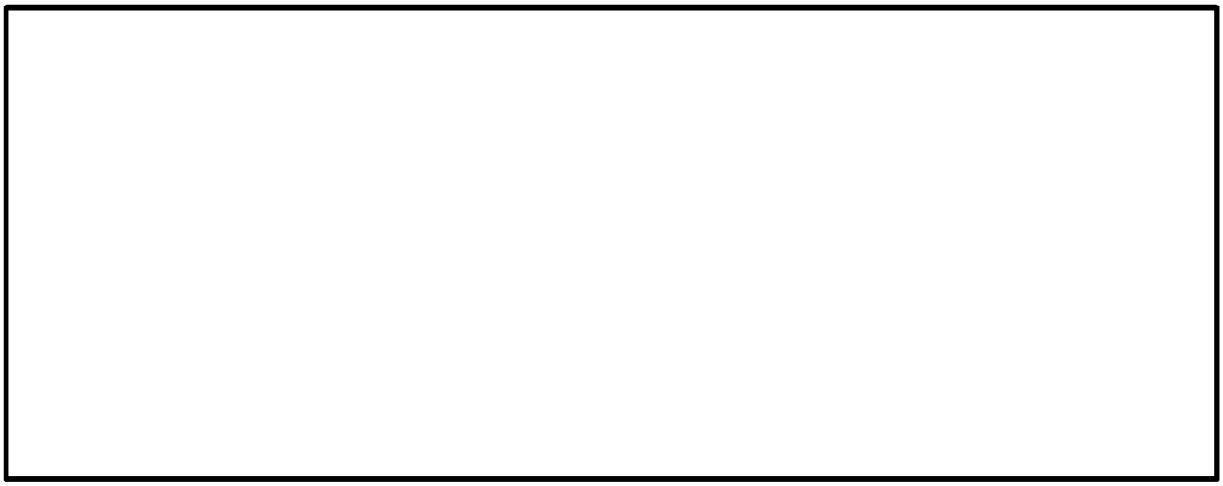
Appendix A: Scenarios

Instructor Note: Wait until after the discussion of each scenario before having the volunteer read the answer below. As noted above, the instructor may wish to wait until after EPO #5 to return to this scenario, ask the class what they think now, and ask the volunteer to read the answer. The instructor may wish to wait until after EPO #7 to discuss the possible application of exemptions to this scenario.

Scenario #1 (b)(7)(e)

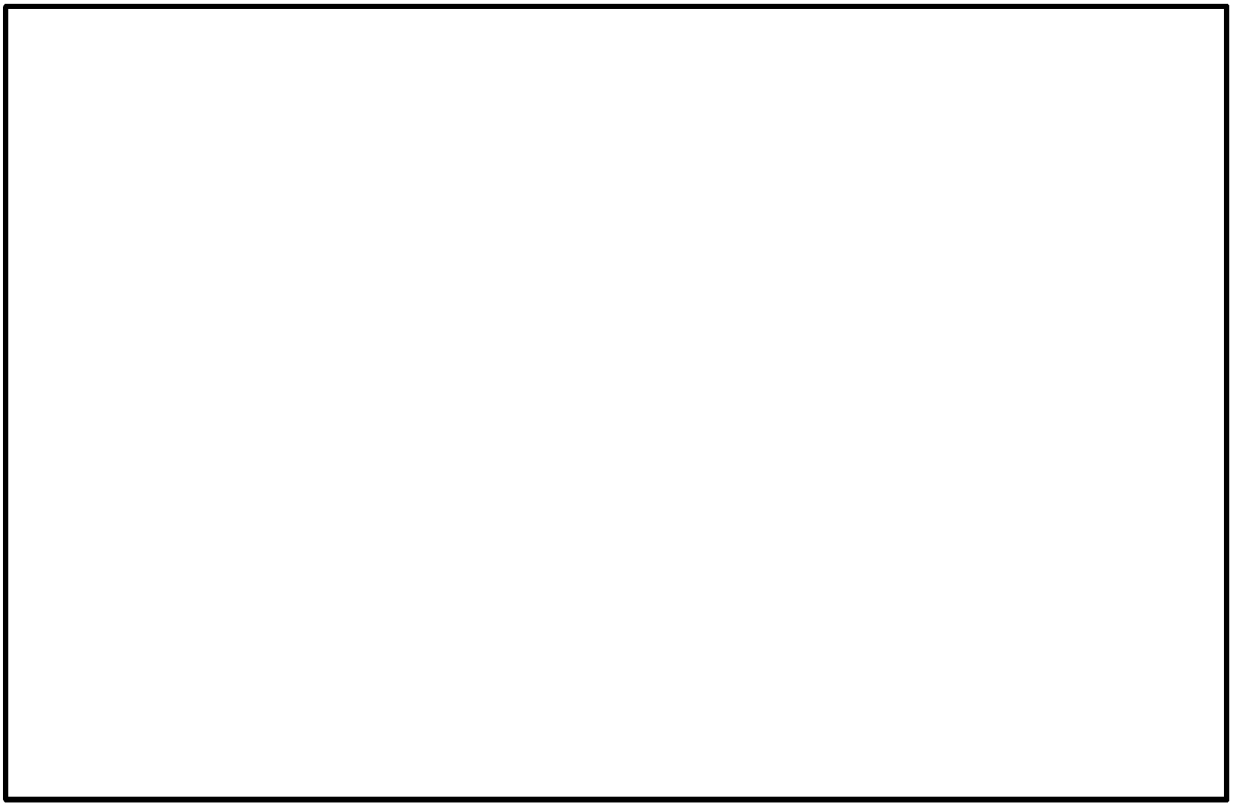
Scenario #2 (b)(7)(e)

(b)(7)(e)

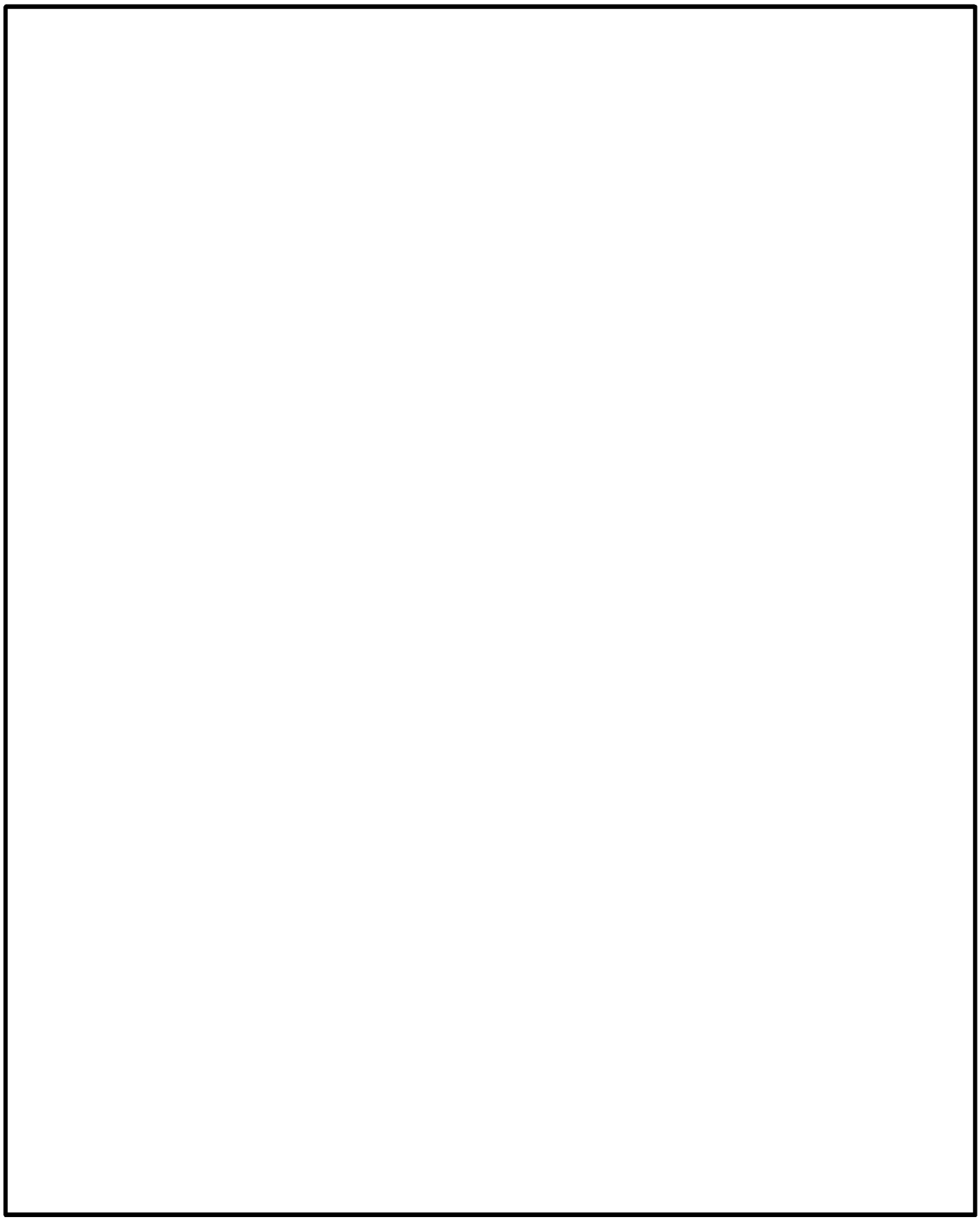


Scenario #3

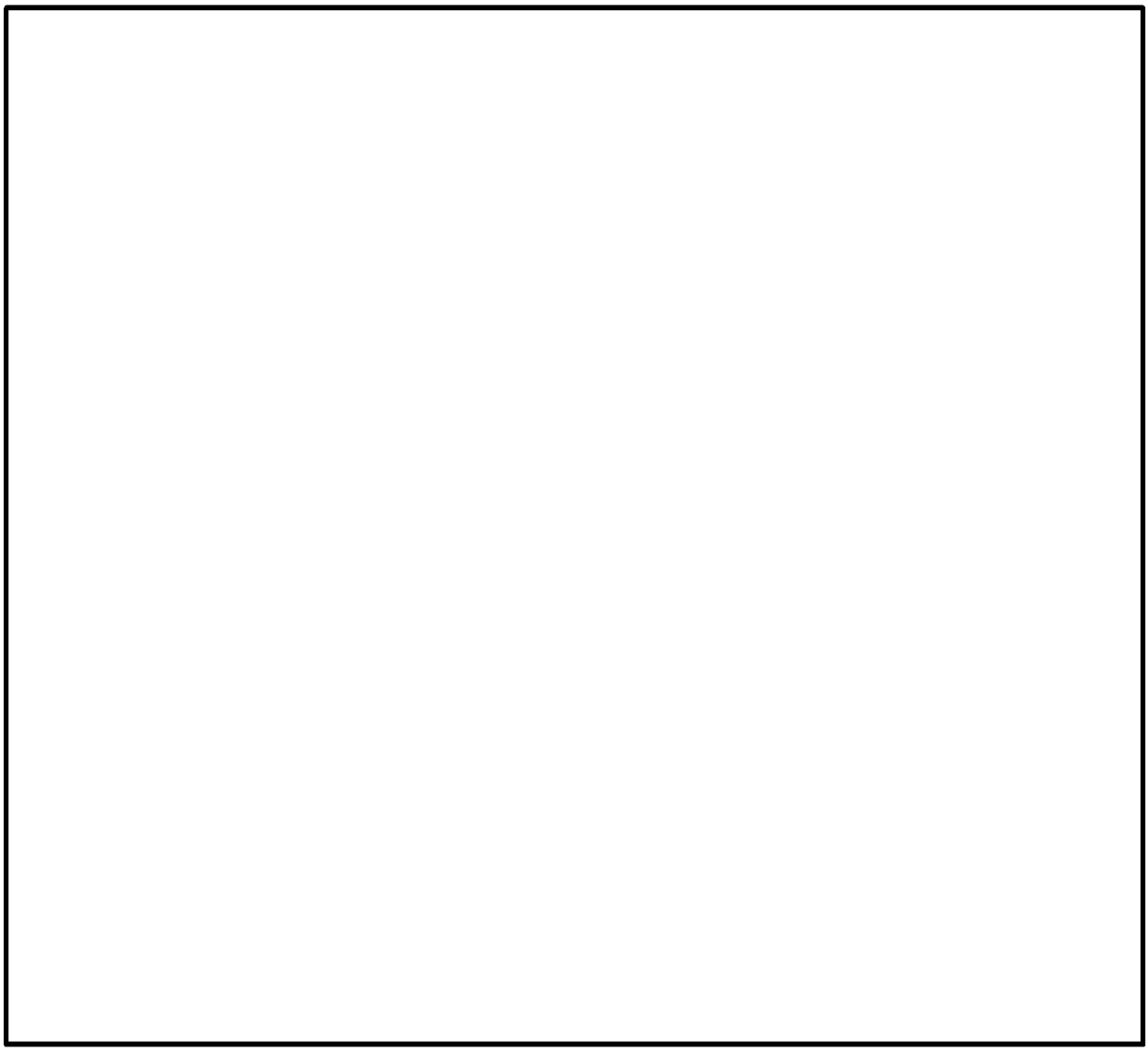
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Appendix B: Laboratory

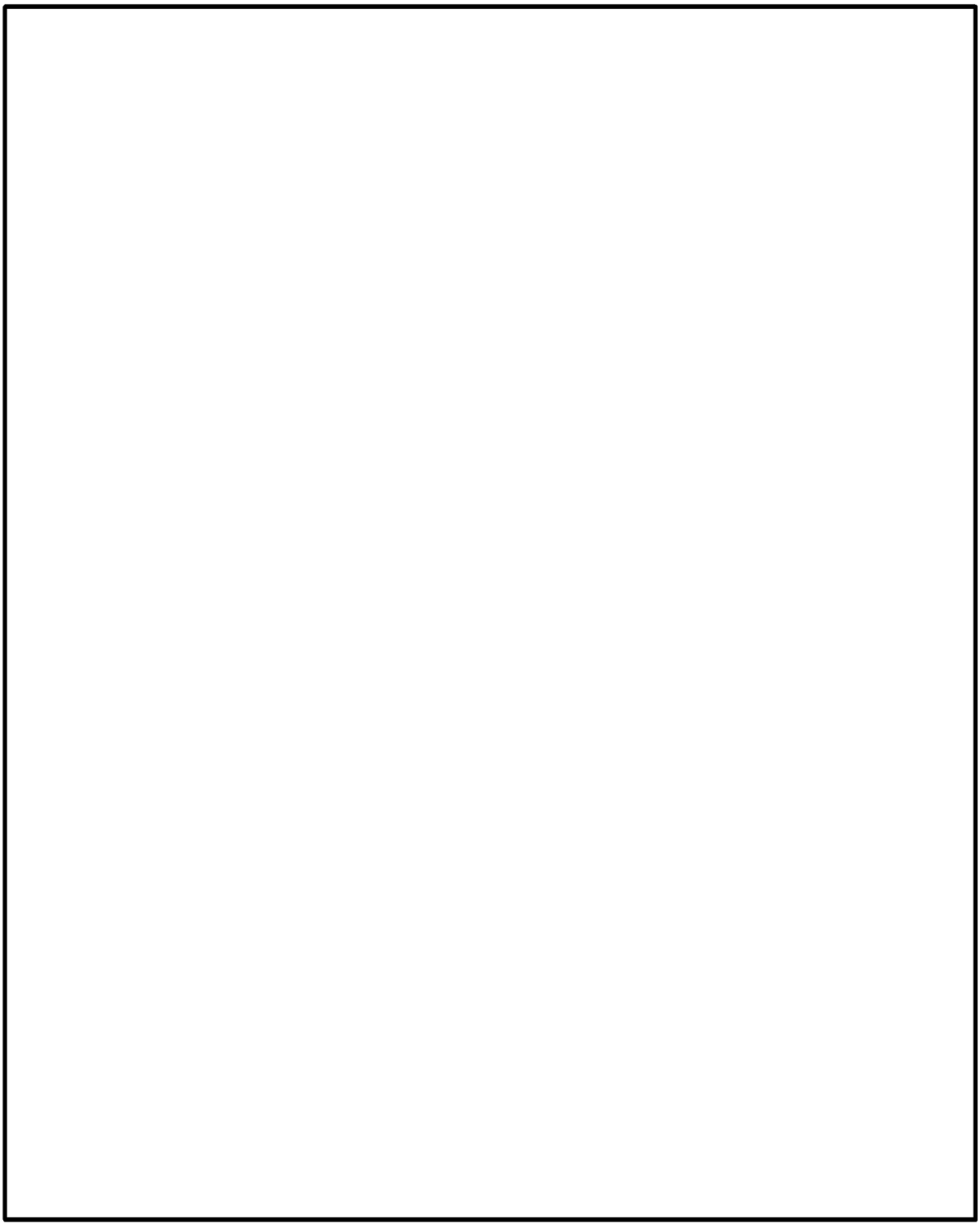


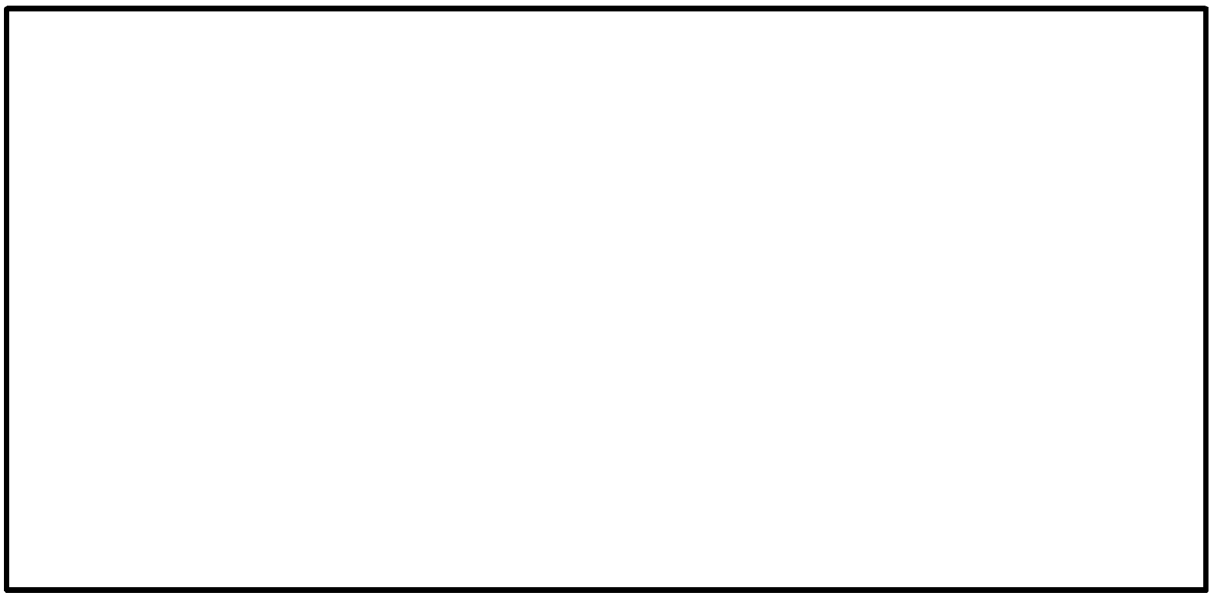
(b)(7)(e)



(b)(7)(e)

Appendix C: Practical Exercises





Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

10 Named Organizations in the Consolidated Appropriations Act of 2008 (CAA)

Date of Exercise of Authority	June 18, 2008[1], Secretaries Chertoff and Rice
Description and Covered Activity(ies)	In the Consolidated Appropriations Act of 2008 (CAA), Congress named 10 organizations that are not to be considered undesignated terrorist organizations (Tier III) based on activity before December 27, 2007, the date of Act's passage. The June 18, 2008 Secretarial exercises of authority extended the CAA provisions to cover activities that took place after December 27, 2007, as well as certain additional activities. The groups included in the CAA and the 2008 exercises of authority include: • Karen National Union/Karen National Army (KNU/KNA) - Burma • Chin National Front/Chin National Army (CNF/CNA) - Burma • Chin National League for Democracy (CNLD) - Burma • Kayan New Land Party (KNLP) - Burma • Arakan Liberation Party (ALP) - Burma • Tibetan Mustangs - Tibet • Cuban Alzados - Cuba • Karenni National Progressive Party (KNPP) - Burma • "Appropriate groups affiliated with the Hmong" – Vietnam • "Appropriate groups affiliated with Montagnards" – Vietnam All applicable terrorism–related inadmissibility grounds (TRIG), including violent activities, may be exempted, except for future intent to engage in terrorist activity after entry to the United States.
Purpose/Value	[redacted] (b)(5)

[1] Certain activities related to certain applicants associated with these groups were covered in part by previous exercises of authority on May 3, 2006, August 24, 2006, October 11, 2006, February 20, 2007 and October 22, 2007.

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

	[redacted]	(b)(5)
Case Examples[2]	[redacted]	(b)(5) (b)(6)

(b)(5)

[redacted]

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Iraqi National Congress (INC), Kurdish Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK)

Date of Exercise of Authority	September 21, 2009, Secretaries Napolitano and Clinton
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds for certain activities and associations involving the Iraqi National Congress (INC), the Kurdistan Democratic Party (KDP), and the Patriotic Union of Kurdistan (PUK). More recently, section 1264(a)(1) of the National Defense Authorization Act (NDAA) FY 2015 provides that the KDP and PUK are excluded from the definition of an undesignated terrorist organization (Tier III) under the INA, which renders a number of the inadmissibility grounds not applicable. All applicable terrorism–related inadmissibility grounds, including violent activities, may be exempted except for future intent to engage in terrorist activity after entry to the United States.
Purpose/Value	[redacted] (b)(5)
	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Case Examples	[redacted]

(b)(5)

(b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

All India Sikh Student's Federation- Bittu Faction (AISSF-Bittu)

Date of Exercise of Authority	October 16, 2010, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority not to apply the material support inadmissibility ground to certain applicants who voluntarily provided material support to the All India Sikh Student's Federation-Bittu Faction.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

All Burma Students Democratic Front (ABSDF)

Date of Exercise of Authority	December 16, 2010, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants who have voluntary associations or have engaged in voluntary activities with the All Burma Student's Democratic Front (ABSDF). All applicable terrorism–related inadmissibility grounds, including violent activities, may be exempted except for future intent to engage in terrorist activity after entry to the United States.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Kosovo Liberation Army (KLA)

Date of Exercise of Authority	June 4, 2012, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants who have certain voluntary activities with Kosovo Liberation Army (KLA). Specifically, the exercise of authority covers the following activities: • Solicitation of funds or other things of value for; • Solicitation of any individuals for membership in; • Provision of material support to; or • Receipt of military-type training from, or on behalf of, the KLA.
Purpose/Value	[redacted] (b)(5)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Farabundo Marti para la Liberacion National (FMLN) and Nationalist Republican Alliance (ARENA)

Date of Exercise of Authority	April 3, 2013, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to applicants for voluntary activities or associations relating to the Farabundo Marti National Liberation Front (FMLN) or to the National Republican Alliance (Alianza Republicana Nacionalista, or ARENA). The exemption only applies to activities against military, intelligence, or related forces of the Salvadoran Government in the context of the civil war. All terrorism–related inadmissibility grounds, including violent activities, may be exempted, except for future intent to engage in terrorist activity after entry to the United States.
Purpose/Value	[redacted] (b)(5)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

(b)(5)

Case Examples	

(b)(5)

(b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Ethiopia People's Revolutionary Party (EPRP)

Date of Exercise of Authority	October 17, 2013, Acting Secretary Beers
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants for voluntary activities or associations relating to the Ethiopian People's Revolutionary Party (EPRP). Specifically, the exercise of authority covers the following activities: • Solicitation of funds or other things of value for; • Solicitation of any individuals for membership in; • Provision of material support to; or • Receipt of military-type training from, or on behalf of, the EPRP.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Oromo Liberation Front (OLF)

Date of Exercise of Authority	October 2, 2013, Acting Secretary Beers
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants for voluntary activities or associations relating to the Oromo Liberation Front (OLF). Specifically, the exercise of authority covers the following activities: • Solicitation of funds or other things of value for; • Solicitation of any individuals for membership in; • Provision of material support to; or • Receipt of military-type training from, or on behalf of, the OLF. Exemptions are available to individuals admitted as a refugee, granted asylum, with a pending asylum or refugee application as of the date the exemption was issued (October 2, 2013), or who were beneficiaries of an I-730 Refugee/Asylee Relative Petition filed at any time by a petitioner who was an asylee or refugee on or before the exercise of authority was issued. The exemption does not apply to applicants who have been placed in removal proceedings unless the proceedings were terminated.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

(b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Tigray Peoples Liberation Front (TPLF)

Date of Exercise of Authority	October 17, 2013, Acting Secretary Beers
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants for voluntary activities or associations relating to the Tigray People's Liberation Front (TPLF). Specifically, the exercise of authority covers the following activities: • Solicitation of funds or other things of value for; • Solicitation of any individuals for membership in; • Provision of material support to; or • Receipt of military-type training from, or on behalf of, the TPLF.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

	[redacted]

(b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Democratic Movement for the Liberation of Eritrean Kunama (DMLEK)

Date of Exercise of Authority	October 17, 2013, Acting Secretary Beers
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants for voluntary activities or associations relating to the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK). Specifically, the exercise of authority covers the following activities: • Solicitation of funds or other things of value for; • Solicitation of any individuals for membership in; • Provision of material support to; or • Receipt of military-type training from, or on behalf of, the DMLEK.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Eritrean Liberation Front (ELF)

Date of Exercise of Authority	October 17, 2013, Acting Secretary Beers
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants for voluntary activities or associations relating to the Eritrean Liberation Front (ELF). Specifically, the exercise of authority covers the following activities: • Solicitation of funds or other things of value for; • Solicitation of any individuals for membership in; • Provision of material support to; or • Receipt of military-type training from, or on behalf of, the ELF. Additionally, an applicant who had activities or associations with the ELF before January 1, 1980, must already have an existing or pending immigration benefit that meets one of the following criteria: 1. On or before October 17, 2013, the applicant was admitted as a refugee or granted asylum, or had an asylum or refugee application pending; or 2. The applicant is the beneficiary of a Form I-730 Refugee/Asylee Relative Petition filed at any time by a petitioner who was an asylee or refugee on or before October 17, 2013.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Group-Based Exemptions

Certain Burmese Groups

Date of Exercise of Authority	March 11, 2016, Secretary Johnson
Description and Covered Activity(ies)	Provides discretionary authority not to apply certain terrorism-related inadmissibility grounds to certain applicants who have voluntary associations or activities with any of 21 Burmese resistance groups. All terrorism–related inadmissibility grounds, including violent activities, may be exempted except for future intent to engage in terrorist activity after entry to the United States.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

DHS Group-Based Exemption Utilization

Exercise of Authority	Date of Signature	FY 2013	FY 2014	FY 2015	FY 2016
Karen National Union/Karen National Army (KNU/KNA)	June 18, 2008	48	19	43	2
Chin National Front/Chin National Army (CNF/CNA)	June 18, 2008	0	1	0	0
Chin National League for Democracy (CNLD)	June 18, 2008	0	0	0	0
Kayan New Land Party (KNLP)	June 18, 2008	0	0	0	0
Arakan Liberation Party (ALP)	June 18, 2008	0	0	0	0
Tibetan Mustangs	June 18, 2008	0	0	0	0
Cuban Alzados	June 18, 2008	1	14	0	2
Karenni National Progressive Party (KNPP)	June 18, 2008	172	18	19	0
"Appropriate groups affiliated with the Hmong"	June 18, 2008	1	1	0	0
"Appropriate groups affiliated with the Montagnards"	June 18, 2008	0	0	0	0
Iraqi National Congress (INC), Kurdish Democratic Party (KDP) & Patriotic Union of Kurdistan (PUK)	September 21, 2009	39	66	1 (INC)	4 (1 INC; 3 KDP)
All India Sikh Student's Federation-Bittu Faction (AISSF-Bittu)	October 16, 2010	0	0	1	0
All Burma Students Democratic Front (ABSDF)	December 16, 2010	20	12	3	4
Kosovo Liberation Army (KLA)	June 4, 2012	2	1	2	5
Farabundo Marti para la Liberacion National (FMLN)	April 3, 2013	80	27	3	12
Nationalist Republican Alliance (ARENA)	April 3, 2013	5	3	2	0
Ethiopia People's Revolutionary Party (EPRP)	October 17, 2013	n/a	32	60	31
Oromo Liberation Front (OLF)	October 2, 2013	n/a	364	34	28
Tigray Peoples Liberation Front (TPLF)	October 17, 2013	n/a	7	6	15
Democratic Movement for the Liberation of Eritrean Kunama (DMLEK)	October 17, 2013	n/a	27	9	0
Eritrean Liberation Front (ELF)	October 17, 2013	n/a	35	33	7
Certain Burmese Groups	March 11, 2016	n/a	n/a	n/a	9

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Material Support Under Duress

Date of Exercise of Authority	Department of Homeland Security (DHS) – February 26, 2007 (undesignated terrorist organizations) and April 27, 2007 (designated terrorist organizations), Secretary Chertoff; Department of State (DOS) – October 25, 2015 (designated and undesignated terrorist organizations), Secretary Kerry.
Description and Covered Activity(ies)	Provides discretionary authority not to apply the material support inadmissibility ground to certain applicants who provided material support under duress to undesignated or designated terrorist organizations, which, at a minimum, requires that the material support have been provided in response to a reasonably perceived threat of serious harm.
Purpose/Value	[redacted] (b)(5)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

	[redacted]	(b)(5)
Case Examples[1]	[redacted]	(b)(5) (b)(6)

(b)(5)

[redacted]

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Solicitation Under Duress

Date of Exercise of Authority	January 7, 2011, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority not to apply the solicitation inadmissibility grounds to certain applicants who, under duress, solicited funds or members for a designated (Tier I/II) or undesignated (Tier III) terrorist organization.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Receipt of Military-Type Training Under Duress

Date of Exercise of Authority	January 7, 2011, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority not to apply the receipt of military type-training inadmissibility ground to certain applicants who, under duress, received military-type training from, or on behalf of, a designated (Tier I/II) or undesignated (Tier III) terrorist organization.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

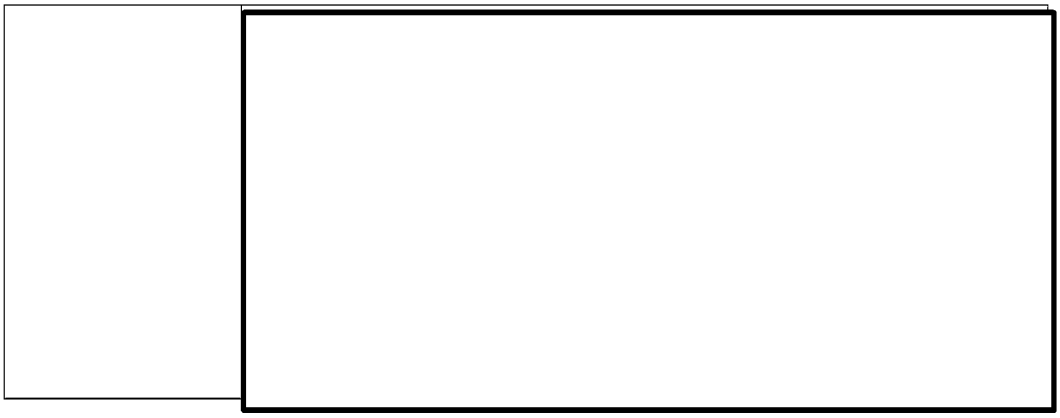
Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Voluntary Provision of Medical Care

Date of Exercise of Authority	October 13, 2011, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority to exempt certain applicants who provided medical care to members of a terrorist organization or to individuals that the applicant knew, or reasonably should have known, committed or planned to commit a terrorist activity.[2]
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

[redacted] (b)(5)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions



(b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Certain Applicants with Existing Immigration Benefits

Date of Exercise of Authority	August 10, 2012, Secretary Napolitano
Description and Covered Activity(ies)	Also known as the Limited General Exemption (LGE), this exemption provides discretionary authority not to apply specified inadmissibility grounds to certain applicants with existing immigration benefits. Specifically, the exercise of authority provides the United States Government discretion to grant exemptions to applicants inadmissible for the following voluntary activities: • Solicitation of funds or other things of value for; • Solicitation of any individuals for membership in; • Provision of material support to; or • Receipt of military-type training from, or on behalf of, an undesignated terrorist organization. To be eligible, the undesignated terrorist organization (Tier III), with which the applicant voluntarily interacted in one of the above ways, may not have: • Targeted United States interests or persons at any time; • Engaged in a pattern or practice of torture or genocide; • Utilized child soldiers; or • Appeared on certain specified lists of terrorist organizations. This exemption may be applied only to applicants who possessed lawful status in the United States (i.e., asylee or refugee status, temporary protected status, or adjustment of status under the Nicaraguan Adjustment and Central American Relief Act or Haitian Refugee Immigration Fairness Act, or similar immigration benefit other than a nonimmigrant visa) on or before August 10, 2012, and to beneficiaries of a Form I-730 Refugee/Asylee Relative Petition, filed at any time by such an asylee or refugee.
Purpose/Value	[redacted] (b)(5)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Iraqi Uprisings

Date of Exercise of Authority	August 17, 2012, Secretary Napolitano
Description and Covered Activity(ies)	Provides discretionary authority not to apply all of the terrorism-related inadmissibility grounds, except for future intent to engage in terrorist activity after entry to the United States, to applicants who participated in the Iraqi Uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991.
Purpose/Value	[redacted] (b)(5)
Case Example	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Certain Limited Material Support

Date of Exercise of Authority	February 5, 2014, Secretaries Johnson and Kerry
Description and Covered Activity(ies)	Provides discretionary authority not to apply the material support inadmissibility ground to certain applicants who provided certain types of limited material support to an undesignated terrorist organization (Tier III), or to a member of such an organization. Specifically, the kinds of limited material support that may be exempted under this exercise of authority are: (1) certain routine commercial transactions; (2) certain well-established or verifiable routine social transactions; (3) certain humanitarian assistance; and (4) support provided under substantial pressure that does not rise to the level of duress. Material support may only be covered by this exemption if it was provided without any intent to support a terrorist organization or terrorist activities. For this reason, aliens who provided certain types of support are precluded from receiving this exemption. This includes the provision of weapons, ammunition, explosives, or components thereof, or the transportation or concealment of such items, as well as the provision of military-type training.
Purpose/Value	[redacted] (b)(5)
	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Case Examples	(b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Insignificant Material Support

Date of Exercise of Authority	February 5, 2014, Secretaries Johnson and Kerry
Description and Covered Activity(ies)	Provides discretionary authority not to apply the material support inadmissibility ground to applicants who provided insignificant material support to an undesignated terrorist organization (Tier III), or to a member of such an organization. The applicant must have had no intent to further terrorist activity or to support the terrorist or violent activities of the organization.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

Afghan Civil Servants

Date of Exercise of Authority	January 18, 2017, Secretaries Johnson and Kerry
Description and Covered Activity(ies)	Provides discretionary authority not to apply the material support inadmissibility ground to certain applicants whose employment with the Afghan government during the period of Taliban control from September 27, 1996, to December 22, 2001, did not directly advance the Taliban's political or ideological agenda and was carried out under compelling circumstances such that the applicant reasonably believed he or she could not leave the employment. Under the Consolidated Appropriations Act of 2008, Congress provided that the Taliban should be treated as a designated (Tier I) terrorist organization for immigration purposes. As such, anyone who worked for the Taliban when it controlled the Afghan government is barred by TRIG for having provided material support to the Taliban.
Purpose/Value	[redacted] (b)(5)
Case Examples	[redacted] (b)(5) (b)(6)

Terrorism-Related Inadmissibility Grounds Exemptions
Situational Exemptions

(b)(5)

(b)(6)

DHS Situational Exemptions Granted

Exercise of Authority	Date of Signature	FY 2013	FY 2014	FY 2015	FY 2016
Material Support Under Duress to a Tier III Terrorist Organization	February 26, 2007	594	627	715	902
Material Support Under Duress to a Tier I/II Terrorist Organization	April 27, 2007	142	189	143	209
Solicitation Under Duress	January 7, 2011	0	0	1	0
Receipt of Military-Type Training Under Duress	January 7, 2011	7	9	2	11
Voluntary Provision of Medical Care	October 13, 2011	16	28	17	31
Certain Applicants with Existing Immigration Benefits or Limited General Exemption (LGE)	August 10, 2012	160	37	13	123
Iraqi Uprisings	August 17, 2012	3	1	1	2
Certain Limited Material Support (CLMS)	February 5, 2014	n/a	n/a	29	403
Insignificant Material Support (IMS)	February 5, 2014	n/a	n/a	47	147

U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

NATIONAL SECURITY

TRAINING MODULE

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NATIONAL SECURITY

TRAINING MODULE

MODULE DESCRIPTION:

This module provides guidance on the proper adjudication and processing of cases for status-conferring immigration benefits on matters related to national security through legal analysis, including terrorism-related inadmissibility grounds (TRIG), and through the agency's Controlled Application Review and Resolution Program (CARRP). The module provides the context, definitions, explanations of available exemptions, and other tools that will guide in the proper analysis of cases involving national security issues.

TERMINAL PERFORMANCE OBJECTIVE(S)

When interviewing, you (the officer) will conduct appropriate pre-interview preparation to identify national security (NS) indicators and elicit all relevant information from an applicant with regard to national security issues. You will recognize when an applicant's activities or associations render him or her an NS concern, including when NS indicators may establish an articulable link to a TRIG or other security-related inadmissibility grounds or bars. You will be able to properly adjudicate and process the case by identifying the specific TRIG, any exceptions, and available exemptions. You will also recognize non-TRIG NS indicators that may establish an articulable link to an NS concern that requires CARRP vetting. As part of the CARRP process, you will be able to recognize the four stages of CARRP and when deconfliction is necessary and appropriate.

ENABLING PERFORMANCE OBJECTIVE(S)

1. Analyze the general elements of INA § 212(a)(3)(B) TRIG inadmissibilities and bars
2. Explain the appropriate INA ground under which the alien is inadmissible/barred from the immigration benefit being sought
3. Analyze whether a group could be identified as an undesignated terrorist organization ("Tier III")

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4. Explain statutory exceptions to TRIG
5. Explain the exemptions available for TRIG inadmissibilities
6. Analyze in a written assessment, notes, and/or a § 212(a)(3)(B) Exemption Worksheet, a proper discretionary determination for an exemption on a case involving TRIG
7. Apply the appropriate exemption to the case, if eligibility for an exemption has been established
8. Explain when a TRIG case needs to be placed on hold, recorded, and/or submitted to Headquarters
9. Explain the purpose of the CARRP process
10. Explain the steps involved in processing national security cases
11. Analyze fact patterns to determine if a national security concern exists

INSTRUCTIONAL METHODS

- Interactive presentation
- Discussion
- Practical exercises

METHOD(S) OF EVALUATION

- Multiple-choice exam
- Observed practical exercises

REQUIRED READING

1. INA 212(a)(3)(B).
2. "Policy for Vetting and Adjudicating Cases with National Security Concerns" Memo, Jonathan R. Scharfen, Deputy Director (April 11, 2008) and accompanying Attachment A - Guidance for Identifying National Security Concerns".

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

1. See ECN TRIG site under "Guidance" for memos, legal guidance, legislation and other national security-related resources.

2. See TRIG ECN Home Page for TRIG Exemption Worksheet.

3. "Handling Potential National Security Concerns with No Identifiable Records" Memo, Steve Bucher, Associate Director of Refugee, Asylum and International Operations (August 29, 2012).

4. "Updated Instructions for Handling TECS B10 Records" Memo, Office of the Director (May 23, 2012).

5. "Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases" Memo, Office of the Director (November 20, 2011).

6. "Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists" Memo, Office of the Director (July 26, 2011).

7. Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases" Memo, Michael Aytes, Acting Deputy Director (February 13, 2009).

8. "Additional Guidance on Issues Concerning the Vetting and Adjudication of Cases Involving National Security Concerns" Memo, Michael Aytes, Acting Deputy Director (February 6, 2009).

9. "Implementation of Section 691 of Division J of the Consolidated Appropriations Act, 2008, and Updated Processing Requirements for Discretionary Exemptions to Terrorist Activity Inadmissibility Grounds" Memo, Michael L. Aytes, Acting Deputy Director (July 28, 2008).

10. "Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns" Memo, Donald Neufeld, Acting Associate Director of Domestic Operations (April 24, 2008) and accompanying Operational Guidance.

11. "Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups" Memo, Jonathan Scharfen, Deputy Director (March 26, 2008).

12. "Collecting Funds from Others to Pay Ransom to a Terrorist Organization" Memo, Dea Carpenter, Deputy Chief Counsel (February 6, 2008).

13. "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations" Memo, Jonathan Scharfen, Deputy Director (May 24, 2007).

14. *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006).

15. Nicholas J. Perry, "The Breadth and Impact of the Terrorism-Related Grounds of Inadmissibility of the INA," Immigration Briefings (October 2006).

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR3	Knowledge of the relevant sections of the Immigration and Nationality Act (INA) (4)
ILR13	Knowledge of inadmissibilities (4)
ILR23	Knowledge of bars to immigration benefits (4)
ILR26	Knowledge of the Controlled Application Review and resolution Program (CARRP) procedures (4)
ILR27	Knowledge of policies and procedures for terrorism-related grounds of inadmissibility (TRIG) (4)
IRK2	Knowledge of the sources of relevant country conditions information (4)
IRK11	Knowledge of the policies and procedures for reporting national security concerns and/or risks (3)
IRK13	Knowledge of internal and external resources for conducting research (4)
TIS2	Knowledge of the ECN/RAIO Virtual Library (4)
TIS3	Knowledge of Customs and Border Protection TECS database (3)
AK14	Knowledge of policies and procedures for preparing summary documents (e.g., fraud or national security leads, research, assessments) (3)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI6	Skill in identifying information trends and patterns (4)
RI9	Skill in identifying inadmissibilities and bars (4)
RI10	Skill in identifying national security issues (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)

T2	Skill in accessing and navigating ECN/RAIO VL (4)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
AK14	Knowledge of policies and procedures for preparing summary documents (e.g., fraud or national security leads, research, assessments) (3)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI6	Skill in identifying information trends and patterns (4)
RI9	Skill in identifying inadmissibilities and bars (4)
OK9	Knowledge of Fraud Detection and National Security (FDNS) functions and responsibilities (2)
RI11	Skill in handling, protecting, and disseminating information (e.g., sensitive and confidential information) (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
10/26/15	Throughout document	Updated broken links and citations; added new TRIG exemptions; minor formatting changes; added new case law	RAIO Training, RAIO TRIG Program

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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

Since the events of September 11, 2001, the national security landscape has changed significantly. With it, the statutory definitions of terrorist activity and those who engage in such activities broadened to include acts that the general public may not necessarily associate with terrorism.[1] These changes affect the way immigration benefits are processed.

This lesson plan covers the relevant law regarding national security and introduces USCIS's Controlled Application Review and Resolution Program (CARRP), which is the agency's policy for vetting and adjudicating cases with "national security concerns" (a term of art that will be explained below). This lesson plan will delve into some of the most common statutory national security (NS) indicators (also a term of art), including cases involving terrorism-related inadmissibility grounds (TRIG), as well as non-statutory indicators of an NS concern. In doing so, this lesson plan will give you the information you need to understand the CARRP process and, within that process, how to identify cases with NS concerns so that they may be properly adjudicated and processed.

2 NATIONAL SECURITY OVERVIEW

Protecting national security is woven into both the mission and vision of the agency and the RAIO Directorate. In the context of the RAIO mission and overall USCIS values, we are mandated to adjudicate immigration benefits in an accurate, timely manner, always

[1] Perry, Nicholas J., *The Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many Grails*, Journal of Legislation 30 J. Legis. 249, (2004).

with attention to and emphasis on preserving the integrity of our immigration system and minimizing national security risks and vulnerabilities.

RAIO Mission

RAIO leverages its domestic and overseas presence to provide protection, humanitarian, and other immigrant benefits and services throughout the world, while combating fraud and protecting national security.

RAIO Vision

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

The INA contains provisions that prohibit granting most immigration benefits (through either an inadmissibility ground (as adjudicated by Refugee and Overseas Adjudications Officers) or a security/terrorism bar (as adjudicated by Asylum Officers (See also ASM – Supplement 1)) to individuals based on national security reasons. While many immigration statutes at least touch on security concerns, the primary security-related provisions this lesson plan focuses on are found at INA §§ 212(a)(3)(A), (B), and (F) (inadmissibility grounds), and 237(a)(4)(A), (B) (describing classes of deportable aliens).

Security and Terrorism-Related Bars to Asylum

Although asylum applicants do not need to be admissible to be eligible to receive asylum, since INA § 208(b)(2)(A) (listing the bars to asylum) refers to an alien described by certain provisions of the terrorism-related inadmissibility grounds or the terrorist related deportability ground (which in turn refers to all terrorism-related grounds of inadmissibility), all of the terrorism-related inadmissibility grounds are bars to asylum under the terrorist bar.[2] Additionally, asylum may not be granted if there are reasonable grounds to believe that the applicant is a danger to the security of the United States under the security risk bar.[3]

Since a central mission of USCIS is to protect the integrity of the U.S. immigration system, national security matters are a primary consideration in USCIS adjudications. As part of the determination of statutory eligibility for an immigration benefit, you must examine each case for NS concerns and determine whether a bar or inadmissibility applies.

3 TYPES OF NATIONAL SECURITY CONCERNS

For the purposes of handling national security issues in USCIS adjudications, the agency categorizes two types of NS concerns:

- Known or Suspected Terrorists (KSTs)
- Non-Known or Suspected Terrorists (non-KSTs)

3.1 KSTs

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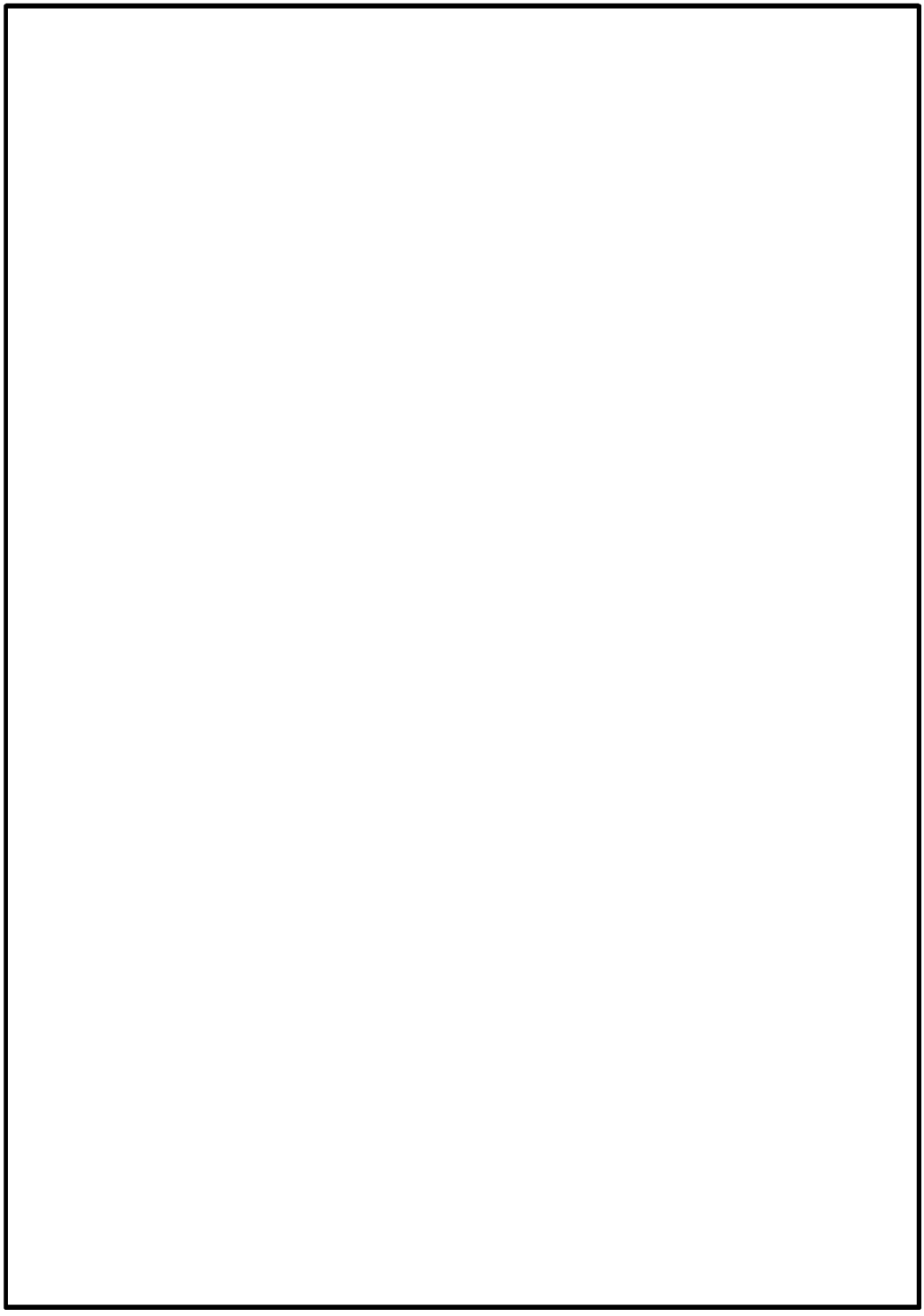
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[2] INA § 208(b)(2)(A)(v).

[3] INA § 208(b)(2)(A)(iv); *see also* *Matter of R-S-H-*, 23 I&N Dec. 629, 640 (BIA 2003) (holding that substantial evidence supported the immigration judge's determination that an applicant who co-founded an organization later named as a "Specially Designated Global Terrorist" organization pursuant to Executive Order 13224 was barred from asylum as a security risk).

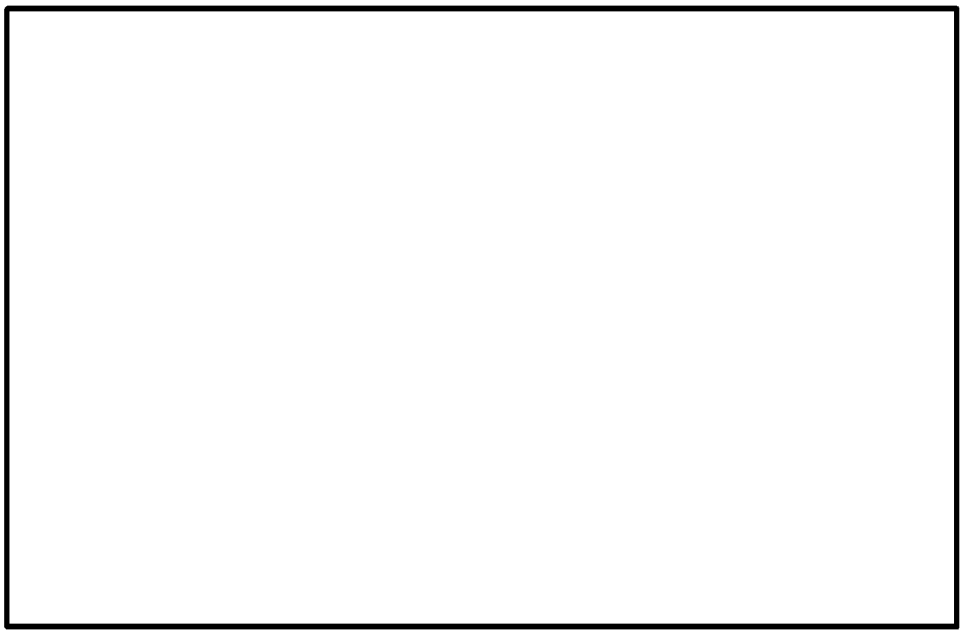
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National Security



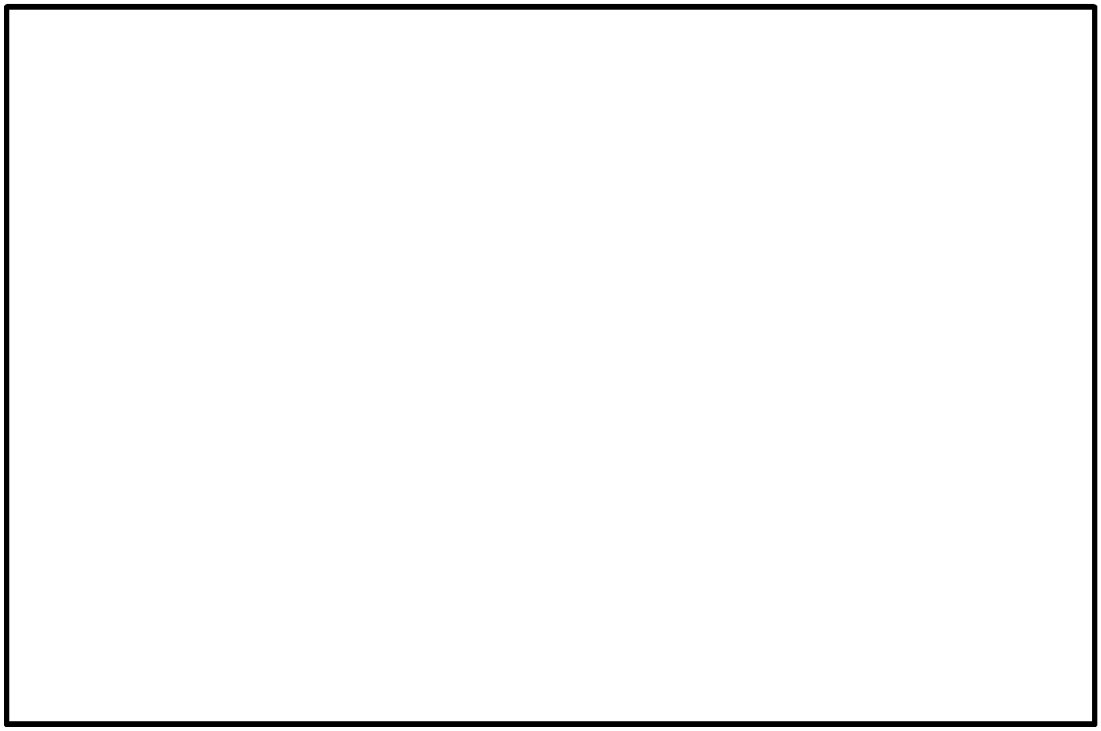
3.2 Non-KSTs

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4 IDENTIFYING NATIONAL SECURITY CONCERNS



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4.1 Indicators of National Security Concerns: Statutory

The statutes that describe activities, individuals and organizations to which an articulable link would render an individual a national security concern are INA §§ 212(a)(3)(A), (B), and (F), and §§ 237(a)(4)(A) and (B). These statutes contain comprehensive definitions of activities, associations, and organizations that indicate an applicant is an NS concern, for example:

- "Terrorist activity" is defined in INA § 212(a)(3)(B)(iii)[13]
- Conduct that constitutes "engaging" in terrorist activity is defined under INA § 212(a)(3)(B)(iv)[14]; and
- "Terrorist organizations" are defined in INA § 212(a)(3)(B)(vi).[15]

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Other sections of the INA which may describe activities that are indicators of NS concerns include:

208(b)(2)(A) Exceptions to Asylum Eligibility
212(a)(2)(I) Inadmissible Aliens – Money Laundering
221(i) Issuance of visas – Revocation of visas or other documents
235(c) Removal of aliens inadmissible on security and related grounds

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[13] For definition, see also section below, "Terrorist Activity" Defined.

[14] For definition, see also section below, "Engage in Terrorist Activity" Defined.

[15] For expanded definition, see also section below, TRIG – "Terrorist Organization" Defined.

[16] The vetting of NS cases through CARRP is a shared responsibility between the adjudicator and FDNS, which varies upon your division.

4.2 Indicators of National Security Concerns: Non-Statutory

In addition to statutory indicators as noted above, there are non-statutory indicators of national security concerns. These non-statutory indicators may not fall squarely under one of the security or terrorism-related inadmissibility grounds, but still may lead to an articulable link with such a ground.

Example

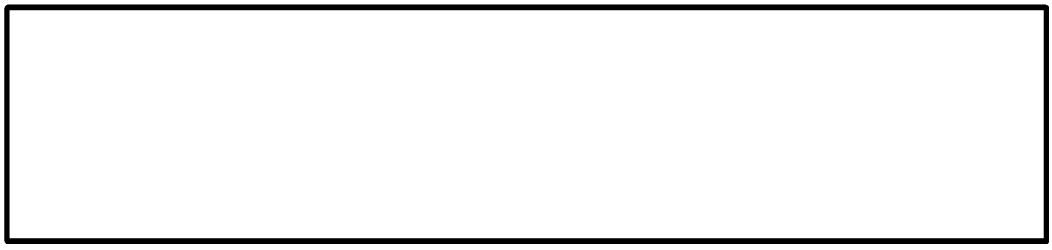
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4.3 Where You May Encounter NS Indicators

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5 INTERVIEWING CONSIDERATIONS AND PREPARATION

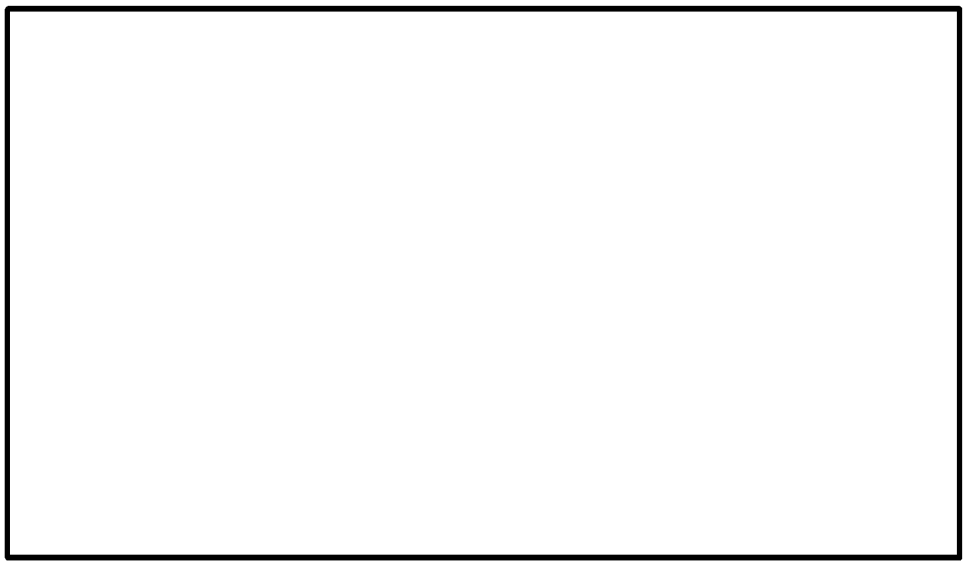
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5.1 Issues for Examination in the Interview/Analysis



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5.1.1 Certain Training/Technical Skills

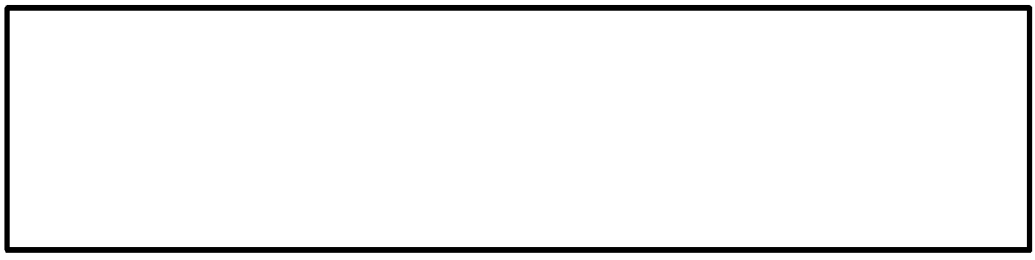
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5.1.2 Engaged in Certain Types of Employment



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5.1.3 Association with People/Organizations of Concern



(b)(7)(e)

5.1.4 Engaged, or Suspected of Engaging, in Criminal or Terrorist Activities



5.1.5 Possession of Documents



(b)(7)(e)

5.1.6 Connection to Areas Known to Have Terrorist Activity



(b)(7)(e)



5.1.7 Unaccounted-for Gaps of Time

(b)(7)(e)



5.2 Fraudulent Documents

(b)(7)(e)



6 THE TERRORISM-RELATED INADMISSIBILITY GROUNDS (TRIG)

As previously noted, the terrorism-related inadmissibility grounds are found at INA § 212(a)(3)(B). This section has a long and complex history, and is the subject of various policy memoranda and determinations by executive branch agencies, as well as decisions by the courts. Because of this complexity, and because TRIG touches upon issues of

(b)(7)(e)



The statute consists of four basic areas: the inadmissibility grounds themselves (INA § 212(a)(3)(B)(i)); the definition of "terrorist activity" (INA § 212(a)(3)(B)(iii)); the definition of "engaging in terrorist activity" (INA § 212(a)(3)(B)(iv)); and the definition of "terrorist organization" (INA § 212(a)(3)(B)(vi)).

This lesson plan will first explore the INA definition of a "terrorist organization."

7 TRIG – "TERRORIST ORGANIZATION" DEFINED

Many of the general terrorism-related grounds of inadmissibility refer to "terrorist organizations." There are three categories, or "tiers," of terrorist organizations defined in the INA.[24] These three tiers are explained below.

7.1 Categories or "Tiers" of terrorist organizations

- **Tier I (Foreign Terrorist Organizations (FTO))**[25]: a foreign organization designated by the Secretary of State under INA § 219 after a finding that the organization engages in terrorist activities or terrorism. In addition, pursuant to legislation, the Taliban is considered to be a Tier I organization for purposes of INA § 212(a)(3)(B);
- **Tier II (Terrorist Exclusion List (TEL))**[26]: an organization otherwise designated by the Secretary of State as a terrorist organization, after finding that the organization engages in terrorist activities; or
- **Tier III ("Undesignated" Terrorist Organizations)**[27]: a group of two or more individuals, whether organized or not, that engages in, or has a subgroup[28] that "engages in terrorist activities." (The definition of "engage in terrorist activity" is found at INA § 212(a)(3)(B)(iv) and is discussed below.)

(b)(7)(e) [redacted]

[24] INA § 212(a)(3)(B)(vi).

[25] INA § 212(a)(3)(B)(vi)(I). *See also* § 7.2, "Foreign Terrorist Organization Designation under INA § 219 (Tier I)" below for more information.

[26] INA § 212(a)(3)(B)(vi)(II). *See also* § 7.3 "Terrorist Exclusion List (Tier II)" below for more information.

[27] INA § 212(a)(3)(B)(vi)(III). *See also* § 7.4, "Undesignated Terrorist Organizations," below, for more information.

[28] See Department of State guidance on what constitutes a subgroup, 9 FAM 40.32 N2.7.

7.2 Foreign Terrorist Organization Designation under INA § 219 (Tier I)

7.2.1 Authority

Under INA § 219, the Secretary of State is authorized to designate an organization as a foreign terrorist organization. The Secretary of State is required to notify congressional leaders in advance of making such a designation.[29]

The designation does not become effective until its publication in the *Federal Register*, and the designation will remain effective until revoked by an act of Congress or by the Secretary of State.

7.2.2 Definition

The Secretary of State is authorized to designate an organization as a terrorist organization if the Secretary finds that:

- The organization is a foreign organization;
- The organization engages in terrorist activity (as defined in INA § 212(a)(3)(B)) or terrorism (as defined in 22 U.S.C. § 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or terrorism[30]; and
- The terrorist activity or terrorism of the organization threatens the security of U.S. nationals or the national security of the United States.[31]

7.2.3 Organizations Currently Designated as Foreign Terrorist Organizations (FTOs)[32]

On October 8, 1997, the Secretary of State published in the *Federal Register* the first list of Tier I terrorist organizations. Most of the organizations were re-designated in October 1999 and October 2001. The Secretary of State has also designated groups as terrorist organizations in separate *Federal Register* Notices each year since 1999.

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[29] INA § 219(a)(2)(A)(i).

[30] *See* *People's Mojahedin Org. of Iran v. Dep't of State*, 327 F.3d 1238, 1243-1244 (D.C. Cir. 2003) (finding that an organization's admission to participation in attacks on government buildings and assassinations was sufficient to support a finding that the group was engaged in "terrorist activity")

[31] INA § 219(a)(1).

[32] See US Department of State, Office of Counterterrorism, Fact Sheet: Foreign Terrorist Organization Designation (Washington, DC, September 1, 2010).

Foreign terrorist organizations designated by the Secretary of State include, among others, al-Qaeda, Boko Haram, Communist Party of the Philippines/New People's Army (CPP/NPA), Basque Homeland and Freedom (ETA), Hamas, Hezbollah, the Islamic State of Iraq and the Levant (ISIL, ISIS, or IS), Liberation Tigers of Tamil Eelam (LTTE), Revolutionary Armed Forces of Colombia (FARC), and Shining Path.

The current FTO list can be found on the Department of State Bureau of Counterterrorism's homepage at http://www.state.gov/g/ct/list/index.htm. This site should be checked on a regular basis for the most current version of the list as additional organizations may be designated at any time.

Although the Taliban is not currently included on the State Department's list of FTOs (because this group was not designated by the State Department under INA § 219), per § 691(b) of Consolidated Appropriations Act, 2008, the Taliban is considered a Tier I terrorist organization.[33]

7.3 Terrorist Exclusion List (Tier II)

7.3.1 Authority

The USA PATRIOT Act added, and the REAL ID Act amended, two additional categories of "terrorist organizations" to INA § 212.[34] The Secretary of State, in consultation with or upon the request of the Secretary of Homeland Security or the Attorney General, may designate as a terrorist organization an organization that "engages in terrorist activity" as described in INA § 212(a)(3)(B)(iv)(I-VI).

7.3.2 Definition

The Terrorist Exclusion List (TEL) designation is effective upon publication in the *Federal Register*. The organizations that have been designated through this process are referred to collectively as the "Terrorist Exclusion List."

> *Unlike Tier I organizations, there is no requirement that the organization endangers U.S. nationals or U.S. national security.*

There are 58 organizations designated as terrorist organizations under INA § 212(a)(3)(B)(vi)(II).

[33] Note: The Taliban is the only group to date that Congress has designated as a Tier I terrorist organization and the only one that does not appear on the FTO list.

[34] INA § 212(a)(3)(B)(vi)(II), (created by § 411(a)(1)(G) of the USA PATRIOT Act of 2001, and amended by § 103(c) of the REAL ID Act).

The Department of State lists the Terrorist Exclusion List at: http://www.state.gov/g/ct/rls/other/des/123086.htm. However, while organizations may be removed from the list, the Department of State is no longer adding organizations to this list.

7.4 Undesignated Terrorist Organizations (Tier III)

Any group of individuals may constitute a "terrorist organization" under the INA even if not designated as such under INA § 219 or listed on the TEL, if they meet the requirements below.

7.4.1 Definition

A group of two or more individuals, whether organized or not, is a "terrorist organization" under the INA if the group engages in terrorist activity, or has a subgroupthat engages in terrorist activity.[35]

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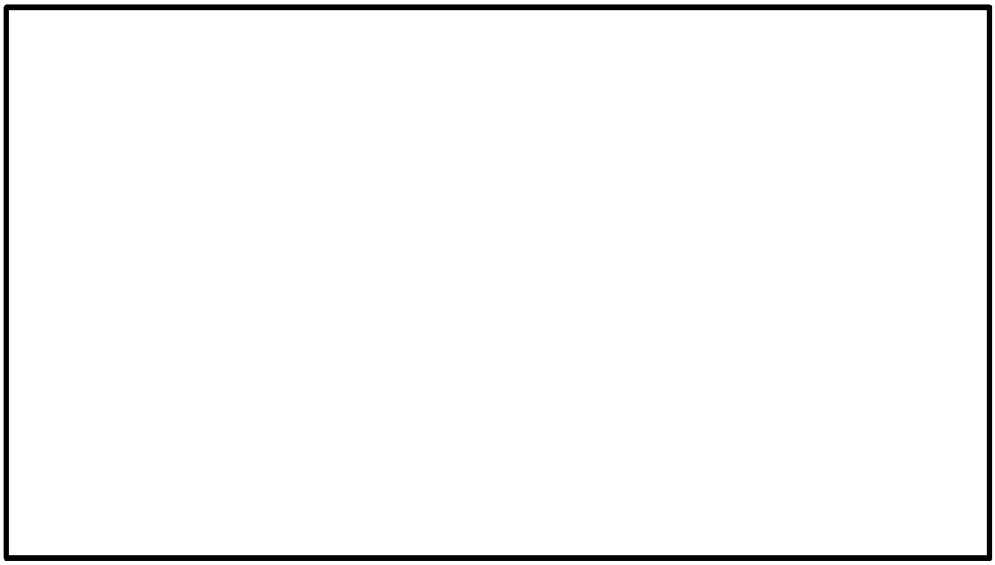
[redacted]

[35] INA § 212(a)(3)(B)(vi)(III).

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The Seventh Circuit Court of Appeals has noted, however, that an organization is not a terrorist organization simply because some of its members have engaged in terrorist activity "without direct or indirect authorization." The activity must be "authorized, ratified, or otherwise approved or condoned by the organization" in order for the organization to be considered to have engaged in terrorist activity.[41]

7.5 Groups Excluded from the Tier III Definition by Statute

As a result of the broad reach of the statute and its application to groups either to which the United States is sympathetic or who have assisted the United States in the past, Congress enacted section 691(b) of the Consolidated Appropriations Act (CAA), 2008, which stated that the following groups *shall not be considered to be terrorist organizations* on the basis of any act or event occurring *before* December 26, 2007[42]:

- Karen National Union/Karen Liberation Army (KNU/KNLA)
- Chin National Front/Chin National Army (CNF/CNA)
- Chin National League for Democracy (CNLD)

(b)(7)(e)



[41] *Hussain v. Mukasey*, 518 F.3d 534, 538 (7th Cir. 2008).

[42] Section 691(b) Consolidated Appropriations Act, 2008, Pub. L. no. 110-161 (2008).

- Kayan New Land Party (KNLP)
- Arakan Liberation Party (ALP)
- Tibetan Mustangs
- the Cuban Alzados (groups opposed to the Communist government of Cuba)
- Karenni National Progressive Party (KNPP)
- appropriate[43] groups affiliated with the Hmong[44]
- appropriate groups affiliated with the Montagnards (includes the Front Unifié de Lutte des Races Opprimées (FULRO)[45])
- African National Congress (ANC)[46]

(Hereafter, this list will be referred to as the "CAA groups" in this lesson plan.)

In December 2014, Congress enacted section 1264 of the National Defense Authorization Act for Fiscal Year 2015, which provides that the following groups, the two major Kurdish political parties in Iraq, are excluded from the definition of "terrorist organization"[47]:

- Kurdish Democratic Party (KDP)
- Patriotic Union of Kurdistan (PUK)

This provision is not time-limited. Unlike the CAA groups, the KDP and the PUK are not considered to be terrorist organizations for activities occurring at any time.

7.5.1 Discretionary Exemption Provision for Groups

The INA provides the Secretaries of State and Homeland Security, in consultation with the Attorney General and each other, the authority to conclude, in their sole unreviewable discretion, that an organization should not be considered a terrorist organization under this section.[48] The Secretary of Homeland Security **may not** exempt a group from the definition of an undesignated terrorist organization if the group:

- engaged in terrorist activity against the United States;

[43] Appropriate groups may be established through country condition reports to show that a subgroup is affiliated with the Hmong or Montagnards.

[44] See also Exercises of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act, October 5, 2007 (FULRO and Hmong).

[45] Effective Oct. 5, 2007.

[46] On July 1, 2008, Congress amended the CAA to add the African National Congress. Pub. L. no. 110-257.

[47] Section 1264(a)(1) National Defense Authorization Act for Fiscal Year 2015, Pub. L. no. 113-291 (2014)

[48] INA § 212(d)(3)(B)(i).

- engaged in terrorist activity against another democratic country; or
- has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians.

To date, this authority *has not* been exercised. However, as explained in Section 10.4 below, the Secretary of Homeland Security *has* exercised the authority not to apply certain provisions of INA § 212(a)(3)(B) to individual aliens with specific activities or associations with certain groups.

7.5.2 Recognized Foreign Governments not Considered Tier III Organizations

As a general matter, INA § 212(a)(3)(B) does not include activity of a recognized and duly constituted foreign government within the definition of "terrorist activity" or "engaging in terrorist activity." Political parties that participate in, or have representation in, a government generally are not considered synonymous with the government of a country for purposes of this determination.

Also, entities in *de facto* control of an area may not be recognized as the government of that area.

If you have questions as to whether an entity should be considered the government for purposes of this determination or other questions related to this issue, please contact your supervisor for referral of the issue to the point of contact (POC) for TRIG-related issues for your Division.

8 TERRORISM-RELATED INADMISSIBILITY GROUNDS

8.1 Statute – INA §212(a)(3)(B)(i) – The Inadmissibility Grounds

The inadmissibility grounds themselves related to terrorist activity are found at INA § 212(a)(3)(B)(i) and are described in detail below. The terrorist activity deportability ground at INA § 237(a)(4)(B), as amended by the REAL ID Act of 2005, encompasses all of the inadmissibility provisions in INA § 212(a)(3)(B) (related to terrorist activities) and INA § 212(a)(3)(F) (related to association with terrorist organizations and activities intended to engage in while in the United States).[49]

Therefore, these grounds of inadmissibility are also grounds of deportability.[50] It is important to note that the actual grounds of inadmissibility are only included in INA §

[49] INA § 212(a)(3)(F) requires consultation between DHS (given this authority under the Homeland Security Act of 2002) and the Department of State. Therefore USCIS rarely applies this ground of inadmissibility.

[50] INA § 237(a)(4)(B) ("Any alien who is described in subparagraph (B) or (F) of section 1182(a)(3) of this title is deportable.") (codified at 8 U.S.C. § 1227(a)(4)(B)).

212(a)(3)(B)(i). Providing material support, for example, is not in and of itself a ground of inadmissibility – it is one of the ways in which an individual may "engage in terrorist activity." INA § 212(a)(3)(B)(iv)(VI). That is, an individual who has provided material support to a terrorist organization is inadmissible under INA 212(a)(3)(B)(i)(I) as an alien who "has engaged in a terrorist activity."

The terrorism-related grounds of inadmissibility under INA § 212(a)(3)(B) apply to an alien who:

- Has engaged in terrorist activity – INA § 212(a)(3)(B)(i)(I);[51]
- A consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity – INA § 212(a)(3)(B)(i)(II);
- Has, under any circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity – INA § 212(a)(3)(B)(i)(III);
- Is a (current) representative[52] of – INA § 212(a)(3)(B)(i)(IV):
    - A terrorist organization (as defined in INA §212(a)(3)(B)(vi)) – INA § 212(a)(3)(B)(i)(IV)(aa);[53] or
    - a political, social, or other group that endorses or espouses terrorist activity – INA § 212(a)(3)(B)(i)(IV)(bb);[54]
- Is a (current) member of a Tier I or II terrorist organization – INA § 212(a)(3)(B)(i)(V);[55]
- Is a (current) member of a Tier III terrorist organization, unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and

[51] *See* sections below "Terrorist Activity" Defined and "Engaging in Terrorist Activity" Defined.

[52] For purposes of the terrorist provisions in the INA, "representative" is defined as "an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity." INA § 212(a)(3)(B)(v).

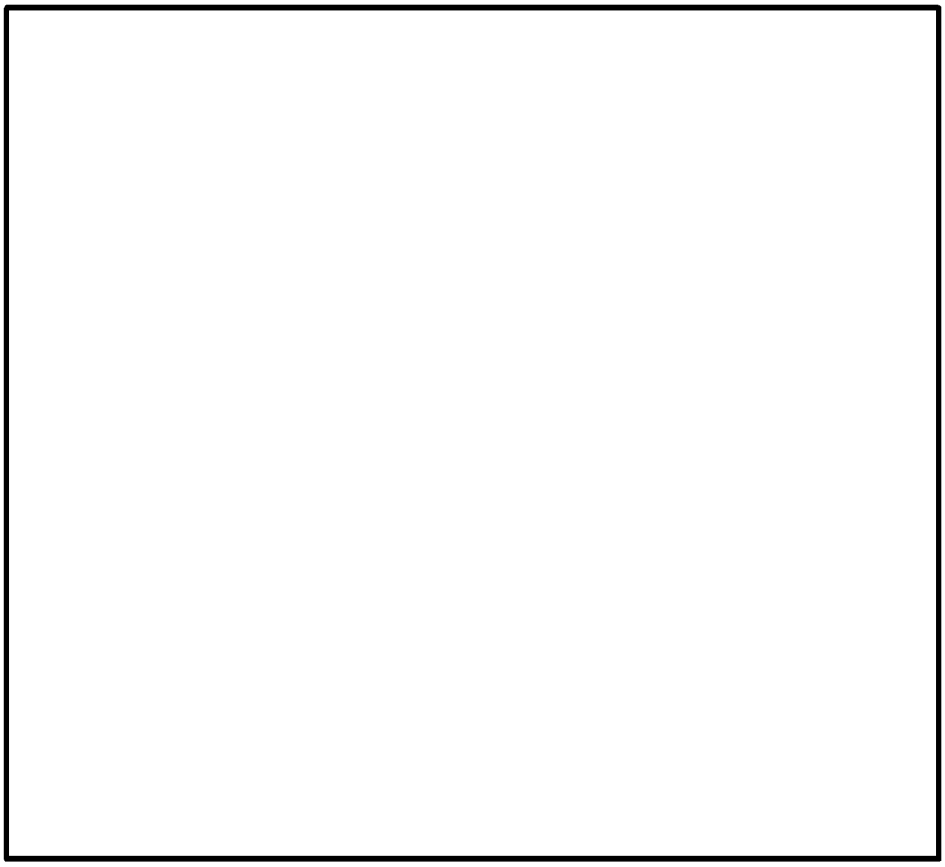
[53] *See* "Terrorist Organization" Defined above.

[54] Note that this ground of inadmissibility is written in the present tense but that prior representation raises the possibility that this ground, or other grounds of inadmissibility, may apply.

[55] INA § 237(a)(4)(B); *see* "Terrorist Organization" Defined. Note: The Taliban should be considered a Tier I terrorist organization pursuant to Section 691(d) of the Consolidated Appropriations Act, 2008.

should not reasonably have known, that the organization was a terrorist organization – INA § 212(a)(3)(B)(i)(VI).[56]

(b)(7)(e)



- Endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization – INA § 212(a)(3)(B)(i)(VII)[60];

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- Has received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization – INA § 212(a)(3)(B)(i)(VIII);



[60] Note that this ground, unlike INA § 212(a)(3)(B)(i)(III), (see subpoint 3 – INA § 212(a)(3)(B)(i)(III), above) *does not* require that the statements be made under circumstances indicating an intention to cause death or serious bodily harm.

"Military-type training" is defined at 18 U.S.C. § 2339D(c)(1) to include: "training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction . . ."[61]

NOTE: On January 7, 2011, the Secretary exercised her exemption authority under INA § 212(d)(3)(B)(i) for individuals who have received military-type training ***under duress***.[62]

- Is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years – INA § 212(a)(3)(B)(i)(IX);

To qualify as a "child," the individual must be unmarried and under 21 years of age.

NOTE: This ground only applies to current spouses and does not apply if the applicant is divorced from the TRIG actor or if the TRIG actor is deceased.

EXCEPTION: The provision above does not apply to a spouse or child – INA § 212(a)(3)(B)(ii):

- who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or
- whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section

8.2 "Terrorist Activity" Defined

Many of the general terrorism-related grounds of inadmissibility under INA § 212(a)(3)(B)(i) refer to "terrorist activity" or "engaging in terrorist activity." Terrorist activity and engaging in terrorist activity are separately defined in the INA, the former at INA § 212(a)(3)(B)(iii) and the latter at INA § 212(a)(3)(B)(iv).

"Terrorist activity" is defined as any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

[61] 18 U.S.C. § 2339D(c)(1).

[62] See 76 Fed. Reg .14418-01 (March 16, 2011) and Duress-Based Exemptions.

- The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle) – INA § 212(a)(3)(B)(iii)(I);

- The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained – INA § 212(a)(3)(B)(iii)(II);

- A violent attack on an internationally protected person or upon the liberty of such person– INA § 212(a)(3)(B)(iii)(III);

An internationally protected person is defined at 18 U.S.C. § 116(b)(4) as a:

  - head of state or a foreign minister and accompanying family members when outside of own country;

  - any other representative, officer, employee, or agent of the U.S. or other government, or international organization or family member when protected by international law (usually when out of own country);[63]

- An assassination – INA § 212(a)(3)(B)(iii)(IV);

- The use of any
  - Biological, chemical, or nuclear weapons – INA § 212(a)(3)(B)(iii)(V)(a); or
  - Explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain) – INA § 212(a)(3)(B)(iii)(V)(b)

With intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property – INA § 212(a)(3)(B)(iii)(V)

- A threat, attempt, or conspiracy to do any of the above – INA § 212(a)(3)(B)(iii)(VI)

8.3 "Engage in Terrorist Activity" Defined

"Engaging in terrorist activity" means, in an individual capacity or as a member of an organization:

[63] 18 U.S.C. § 1116(b)(4).

- To commit or incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity – INA § 212(a)(3)(B)(iv)(I);

- To prepare or plan a terrorist activity – INA § 212(a)(3)(B)(iv)(II);

- To gather information on potential targets for terrorist activity – INA § 212(a)(3)(B)(iv)(III);

- To solicit funds or other things of value for – INA § 212(a)(3)(B)(iv)(IV):
  - a terrorist activity – INA § 212(a)(3)(B)(iv)(IV)(aa);
  - a Tier I or Tier II terrorist organization – INA § 212(a)(3)(B)(iv)(IV)(bb)[64]; or
  - a Tier III (undesignated) terrorist organization that is a group of two or more individuals which engages in or has a subgroup that engages in terrorist activity, unless the solicitor can demonstrate by clear and convincing evidence that he or she did not know, and should not reasonably have known, that the organization was a terrorist organization – INA § 212(a)(3)(B)(iv)(IV)(cc)[65];

  NOTE: *Collecting* funds or other items of value from others in order to pay ransom to a terrorist or a terrorist organization, in order to obtain the release of a third person, does not constitute solicitation of funds for a terrorist activity or for an organization. However, payment of ransom to a terrorist organization generally has been considered to fall under the material support ground of inadmissibility (discussed below).[66]

- To solicit any individual:
  - To engage in conduct otherwise described as engaging in terrorist activity – INA § 212(a)(3)(B)(iv)(V)(aa);
  - for membership in a Tier I or Tier II terrorist organization - INA § 212(a)(3)(B)(iv)(V)(bb); or

[64] Referring to terrorist organizations described in INA § 212(a)(3)(B)(vi)(I) and (II).

[65] Referring to terrorist organizations described in INA § 212(a)(3)(B)(vi)(III).

[66] Memorandum from Dea Carpenter, Deputy Chief Counsel USCIS to Lori Scialabba on Collecting Funds from Others to Pay Ransom to a Terrorist Organization (February 6, 2008).

- for membership in a Tier III (undesignated) terrorist organization (a group of two or more individuals which engages in or has a subgroup that engages in terrorist activity), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization - INA § 212(a)(3)(B)(iv)(V)(cc); or

- To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds, or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training:

  - For the commission of a terrorist activity - INA § 212(a)(3)(B)(iv)(VI)(aa);

  - To any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity - INA § 212(a)(3)(B)(iv)(VI)(bb);

  - To a Tier I or Tier II terrorist organization - INA § 212(a)(3)(B)(iv)(VI)(cc);

  - To a Tier III (undesignated) terrorist organization (a group of two or more individuals which engages in or has a subgroup that engages in terrorist activity), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization - INA § 212(a)(3)(B)(iv)(VI)(dd).

By statute, an alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization (PLO) is considered to be engaged in terrorist activity.[67]

Additional Guidance: Self-defense

USCIS interprets INA 212(a)(3)(b) not to include ***lawful*** actions taken in self-defense under threat of imminent harm, provided the action was considered lawful under the law of the country where it occurred, ***and*** under U.S. and states' laws. The analysis is complicated and requires research of foreign laws. If you have a case in which the self-defense exception may apply, please contact your Division POC for TRIG-related issues. If this issue arises at interview, you should elicit as much detail as possible about the

[67] INA § 212(a)(3)(B)(i).

incident in question, including what kind of force the applicant used, why he or she believed such force was necessary, and other relevant circumstances of the incident and include that information in your query to your Division POC, who will work with the TRIG Working Group to provide further guidance.

9 TRIG - MATERIAL SUPPORT

The terrorism-related ground of inadmissibility you will encounter most often in your adjudications is engaging in terrorist activity through the provision of material support to an individual who has committed or will commit a terrorist activity, or to a terrorist organization.

9.1 Statutory Examples of Material Support

The INA provides the following non-exhaustive list of examples which would constitute "material support"[68]:

- Safe house
- Transportation
- Communications
- Funds
- Transfer of funds or other material financial benefit
- False documentation or identification
- Weapons (including chemical, biological, or radiological weapons)
- Explosives
- Training

Beyond these examples, the INA does not define the meaning of "affords material support."

The statutory list is not an exhaustive list of what constitutes material support.[69]

[68] INA § 212(a)(3)(B)(iv)(VI).

[69] *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298 (3d Cir. 2004) ("Use of the term 'including' suggests that Congress intended to illustrate a broad concept rather than narrowly circumscribe a term with exclusive categories.").

9.2 Factors Relating to "Material Support"

9.2.1 Amount of Support

The amount of support provided need not be large or significant. For example, in *Singh-Kaur v. Ashcroft,* the U.S. Court of Appeals for the Third Circuit upheld the BIA's determination that a Sikh applicant who gave food to and helped to set up tents for a Tier III terrorist organization had provided "material support" under INA § 212(a)(3)(B)(iv)(VI).[70]

The court looked to the plain meaning of the terms "material" ("[h]aving some logical connection with the consequential facts;" "significant" or "essential") and "support" ("[s]ustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed") when evaluating the BIA's interpretation of the statute. Based on the plain language of the terms and the non-exhaustive nature of the list of examples provided in the statute, the court found that the BIA's interpretation that the definition of "material support" included the provision of food and setting up tents was not manifestly contrary to the statute.[71]

The U.S. Court of Appeals for the Fourth Circuit in *Viegas v. Holder* found that "there is no question that the type of activity in which Viegas engaged comes within the statutory definition of material support. The issue is whether Viegas's activities qualify as "material."[72] The court went on to hold that the petitioner's support (paying dues monthly for four years and hanging posters) was sufficiently substantial standing alone to have some effect on the ability of the FLEC to accomplish its goals.[73]

In *Alturo v. U.S. Att'y Gen.*, the U.S. Court of Appeals for the Eleventh Circuit upheld the BIA's determination that an applicant who had given annual payments of $300 to the United Self-Defense Forces of Colombia (AUC), a Tier I terrorist organization, had provided material support. The Court explained, "The BIA's legal determination[] that the funds provided by Alturo constitute 'material support' [is a] permissible construction[] of the INA to which we must defer. The INA broadly defines 'material support' to include the provision of 'a safe house, transportation, communications, *funds*, transfer of funds, or other material financial benefit, false documentation or identification, weapons…explosives, or training,' and the BIA reasonably concluded that

[70] *Singh-Kaur*, 385 F.3d at 300-301.

[71] *Id.* at 298 (quoting *Black's Law Dictionary* (7th ed. 1999)). In reaching this conclusion, the court noted that the BIA reasonably interpreted the terrorist grounds of inadmissibility to cover a wider range of actions than do the criminal provisions regarding material support to a terrorist organization codified at 18 U.S.C. § 2339A. *See id.* at 298.

[72] *Viegas*, 699 F.3d at 803..

[73] *Id.*

annual payments of $300 over a period of six years was not so insignificant as to fall outside that definition."[74]

Although the courts that have considered the issue have generally agreed with the government's position that there is no exception for insignificant or "de minimis" material support implicit in the statute, certain applicants who have provided "limited" or "insignificant" material support to a Tier III organization may be eligible for an exemption. *See* Section 10.5.5, Situational Exemptions – Certain Limited Material Support and Insignificant Material Support.

9.2.2 To Whom/For What the Material Support was Provided

The material support provision applies when the individual afforded material support for the commission of a "terrorist activity," to someone who has committed or plans to commit a terrorist activity, or to a terrorist organization.[75]

9.2.3 Use of Support

How the terrorist organization uses the support provided by the applicant is irrelevant to the determination as to whether the support is material. For example, in *Matter of S-K-*, the BIA found that Congress did not give adjudicators discretion to consider whether an applicant's donation or support to a terrorist or terrorist organization was used to further terrorist activities.[76] It may, however, be relevant to the application of an exemption.

9.2.4 Applicant's Intent

The applicant's intent in providing the material support to an individual or terrorist organization is irrelevant to the determination as to whether the support is material.[77] It may, however, be relevant to the application of an exemption.

[74] *Alturo v. U.S. Att'y Gen.*, 716 F.3d 1310, 1314 (11th Cir. 2013).

[75] *See Singh-Kaur*, 385 F.3d at 298 (3d Cir. 2004); INA § 212 (a)(3)(B)(iv)(VI)(aa) – (dd)).

[76] *Matter of S-K-*, 23 I&N Dec. 936, 944 (BIA 2006).

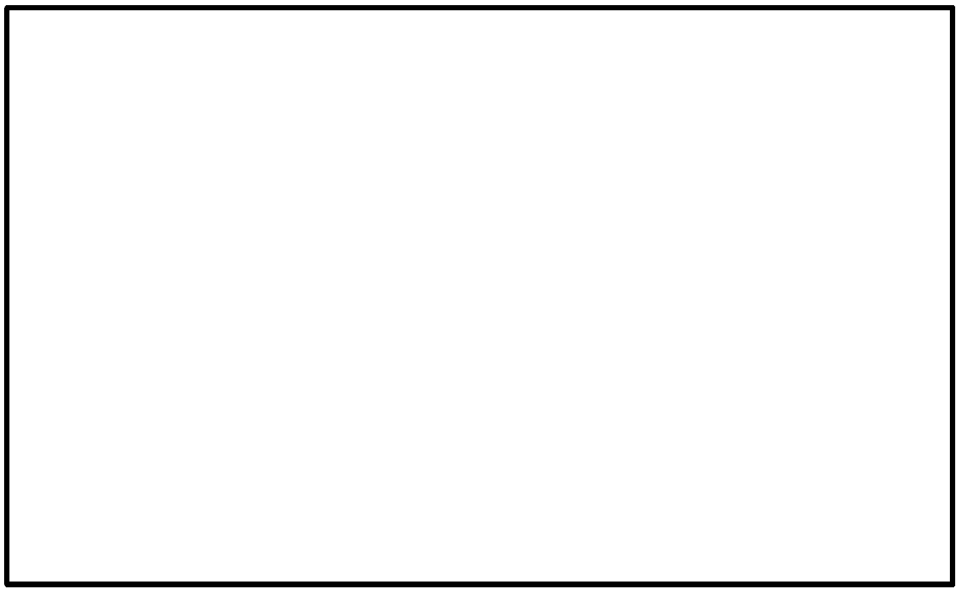
[77] *Id.* at 943 (pointing out that the statute requires only that the applicant provide material support to a terrorist organization, without requiring an intent on the part of the provider).

9.2.5 Relationship of Material Support Provision to Membership in a Terrorist Organization

Current membership in a terrorist organization is a distinct ground of inadmissibility, and is not, in and of itself, equivalent to the provision of material support.[78] While a member of a terrorist organization may have committed an act that amounts to material support to that group (such as paying dues), membership and support are two distinct grounds that should be analyzed separately.

9.2.6 Household Chores

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9.2.7 Duress

Some advocates have argued that there is an implicit exception in the statute for individuals who provided material support to a terrorist organization under duress – that is, that individuals who were forced to give material support to a terrorist organization are not inadmissible. DHS has taken the position, based on the plain language of the statute and the exemption authority given to the Secretary of State and the Secretary of Homeland Security, that there is no statutory duress exception. Since early 2007, though, an exemption has been available for certain applicants who have provided material

[78] INA §§ 212(a)(3)(B)(i)(V)-(VI).

support under duress – that is, these applicants are inadmissible, but DHS may decide to exempt the ground of inadmissibility that applies to them.[79]

Four circuit courts of appeals have upheld BIA decisions holding that the statute does not contain a duress exception. In *Annachamy v. Holder*, the U.S. Court of Appeals for the Ninth Circuit held that "the statutory framework makes clear that no exception was intended." The Court noted that the text of the statute does contain an explicit exception for those applicants who did not know or should not reasonably have known that the organization to which they provided material support was a Tier III terrorist organization and that the inadmissibility ground for membership in the Communist party contains an explicit exception; thus, the Court reasoned, if Congress had intended the statute to contain a duress exception to the material support provision, it would have explicitly included one.[80] Likewise, the Third, Fourth and Eleventh Circuit Courts of Appeals have found that the BIA's construction of the statute to include material support provided under duress was permissible and deferred to its interpretation.[81]

In *Ay v. Holder*, however, the U.S. Court of Appeals for the Second Circuit declined to defer to an unpublished BIA decision holding that the statute does not contain an implicit duress exception. The Second Circuit found that the statute was silent on this issue and therefore, as the Supreme Court had held when considering the "persecutor bar" provision in *Negusie v. Holder*, ambiguous. It therefore remanded the case to the BIA for consideration of the issue.[82]

No court has determined that the statute does contain a duress exception. In cases where you find that an applicant has provided material support to a terrorist organization under duress, you must find that this ground of inadmissibility does apply but consider whether the applicant has established his or her eligibility for the situational exemption. For more information, *see* Section 10.5.1, Situational Exemptions – Duress-Based.

9.3 Lack of Knowledge Exceptions

9.3.1 Exception for Tier IIIs Only (membership, solicitation and material support)

There is an exception for some of the TRIG provisions related to Tier III organizations if the applicant can "demonstrate by clear and convincing evidence that he did not know,

[79] Exemptions are also available for military-type training under duress and solicitation under duress. *See* SectionSection 10.5.1, Situational Exemptions – Duress-Based, below.

[80] *Annachamy v. Holder*, 733 F.3d 254, 260-261 (9th Cir. 2012).

[81] *Barahona v. Holder*, 691 F.3d 349, 353 (4th Cir. 2012); *Alturo v. U.S. Att'y Gen*, 716 F.3d 1310, 1314 (11th Cir. 2013); *Sesay v. Att'y Gen. of U.S.*, 787 F.3d 215, 222 (3d Cir. 2015).

[82] *Ay v. Holder*, 743 F.3d 317, 320 (2d Cir. 2014).

and reasonably should not have known, that the organization was a terrorist organization."[83] This lack of knowledge exception refers to knowledge of the group's activities, and in particular knowledge that the group engages in activities of the type that qualify as "engaging in terrorist activity" under INA § 212(a)(3)(B)(iv). The applicant does not, however, need to know that the group meets the definition of an undesignated terrorist organization under INA § 212(a)(3)(B)(vi)(III).[84]

This exception applies to:

- members of;
- those who solicit funds, things of value or members for; and
- those who provide material support to,

Tier III (undesignated) terrorist organizations only.

If the applicant can show by "clear and convincing" evidence that he or she did not know, and should not reasonably have known, that the organization was a terrorist organization[85], these grounds of inadmissibility do not apply.

"Clear and convincing" evidence is that degree of proof, that, though not necessarily conclusive, will produce a "firm belief or conviction" in the mind of the adjudicator. [86] It is higher than the preponderance of the evidence, and lower than beyond a reasonable doubt.[87]

This exception does not apply to Tier I or Tier II organizations. This exception also does not apply to "representatives" of undesignated terrorist organizations.[88]

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[83] INA § 212(a)(3)(B)(i)(VI), (B)(iv)(IV)(cc), (B)(iv)(V)(cc), (B)(iv)(VI)(dd).

[84] *American Academy of Religion v. Napolitano*, 573 F.3d 115, 132 (2d. Cir. 2009).

[85] INA § 212 (a)(3)(B)(iv)(VI)(dd); *See* Section 7.4 Undesignated Terrorist Organization (Tier III); *see also Matter of S-K-*, 23 I&N Dec. 936, 941-942; *Viegas*, 699 F.3d at 802-803 (upholding the BIA's finding that the applicant "reasonably should have known" his organization was engaged in violent activities despite his lack of specific information about his own faction); *Khan*, 584 F.3d at 785 (holding that the applicant's admission that he knew that a wing of his organization was dedicated to armed struggle and evidence of media reports of violent attacks committed by his organization were sufficient to support a finding that he knew or reasonably should have known it was a terrorist organization).

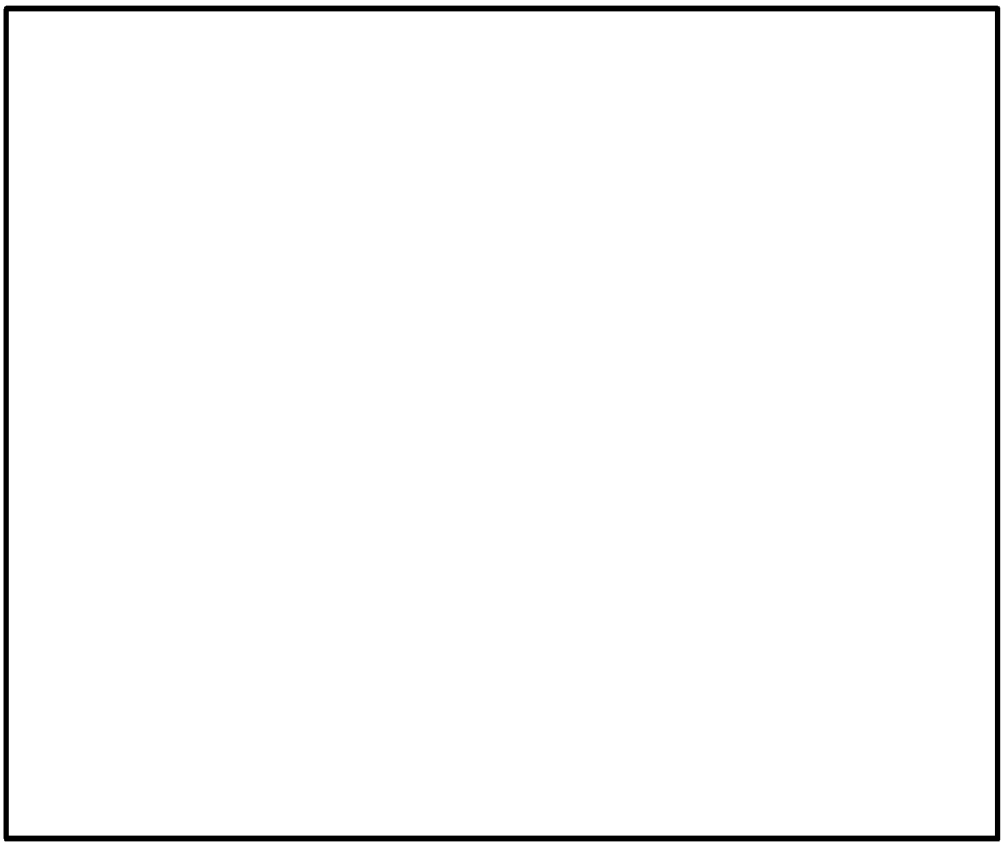
[86] *Matter of Carrubba*, 11 I&N Dec. 914, 917-18 (BIA 1966); *see also Matter of Patel*, 19 I&N Dec. 774, 783 (BIA 1988).

[87] Note that there is both a subjective (did not know) and an objective (should not reasonably have known) component to this exception.

[88] INA § 212(a)(3)(B)(v) – "Representative" defined.

In order to determine whether a lack of knowledge is reasonable, you must consider:

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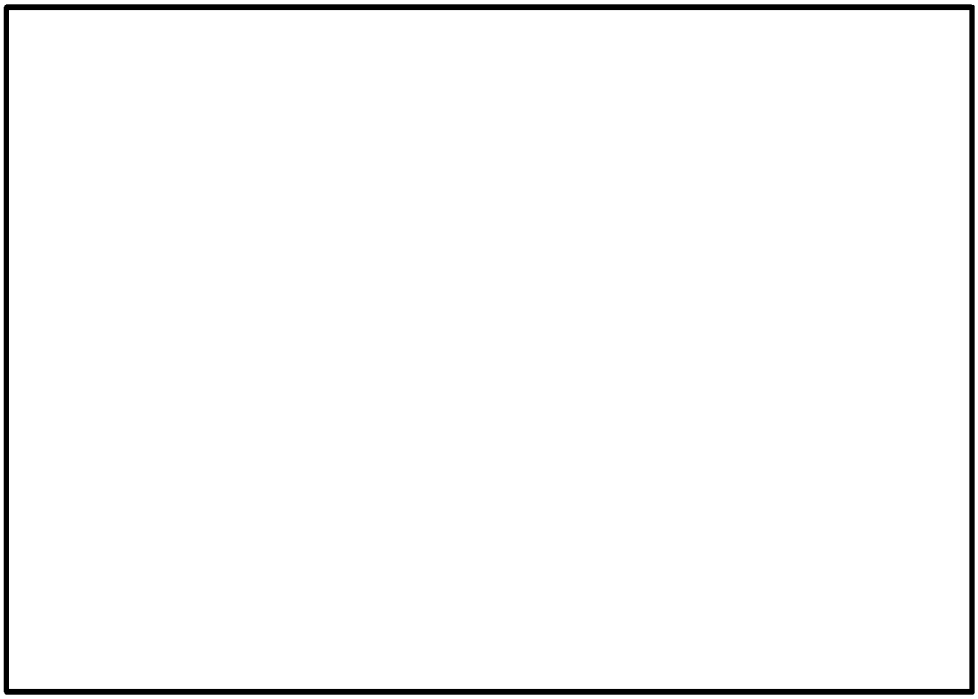
9.3.2 Exception for All Tiers (material support only)

Additionally, under the material support provision, INA § 212(a)(3)(B)(iv)(VI), there is an exception that if the applicant did not know or reasonably should not have known that he or she *afforded material support*, the applicant would not be inadmissible.

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(b)(7)(e)



10 TRIG EXEMPTION AUTHORITY

10.1 General

INA § 212(d)(3)(B)(i), as created by the 2005 REAL ID Act and revised by the Consolidated Appropriations Act, 2008, includes a discretionary exemption provision for certain grounds of inadmissibility under INA § 212(a)(3)(B). This exemption authority can be exercised by the Secretary of Homeland Security or the Secretary of State after consultation with each other and the Attorney General.[89]

Exemptions to date fall into one of three categories: "group-based" exemptions, which pertain to associations or activities with a particular group or groups; "situational" exemptions, which pertain to a certain activity, such as providing material support or medical care; and "individual" exemptions, which pertain to a specific applicant.

Once the Secretary of Homeland Security signs a new exemption authority, USCIS releases (via email and on the USCIS Intranet) the exemption document along with a corresponding

[89] INA §212(d)(3)(B)(i). For some specific examples of the Secretary's exercise of discretion under this provision, see USCIS Fact Sheets.

policy memorandum, which provide further guidance to adjudicators on implementing the new discretionary exemption.

In each of the exercises of exemption authority to date that apply to more than one individual, the Secretary of Homeland Security delegated to USCIS the authority to determine whether a particular alien meets the criteria required for the exercise of the exemption.

10.2 Criteria

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10.2.1 Threshold Requirements

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10.2.2 Exemption Requirements

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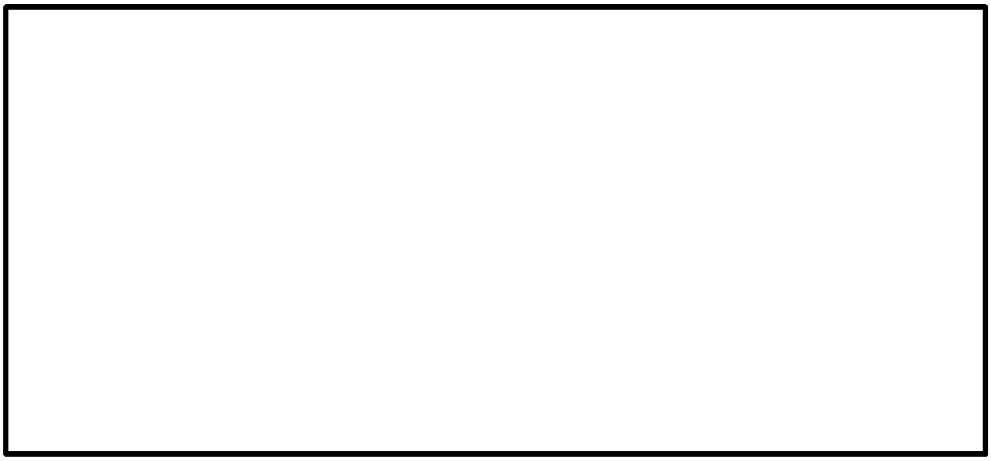
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10.2.3 Totality of the Circumstances

After you have determined that an applicant meets the requirements of an individual exemption, you must consider whether the applicant merits an exemption in the totality of the circumstances. This is a general discretionary analysis that takes into account any and all relevant factors in considering whether an exemption is warranted. A non-exhaustive list of appropriate factors includes:

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10.3 Restrictions on Exemptions

No exemption is possible, regardless of the circumstances, for an individual who is inadmissible under INA § 212(a)(3)(B)(i)(II) (relating to aliens known or reasonably believed to be engaged in or likely to engage after entry in any terrorist activity) or for an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a Tier I or Tier II terrorist organization.[91]

10.4 Group-Based Exemptions

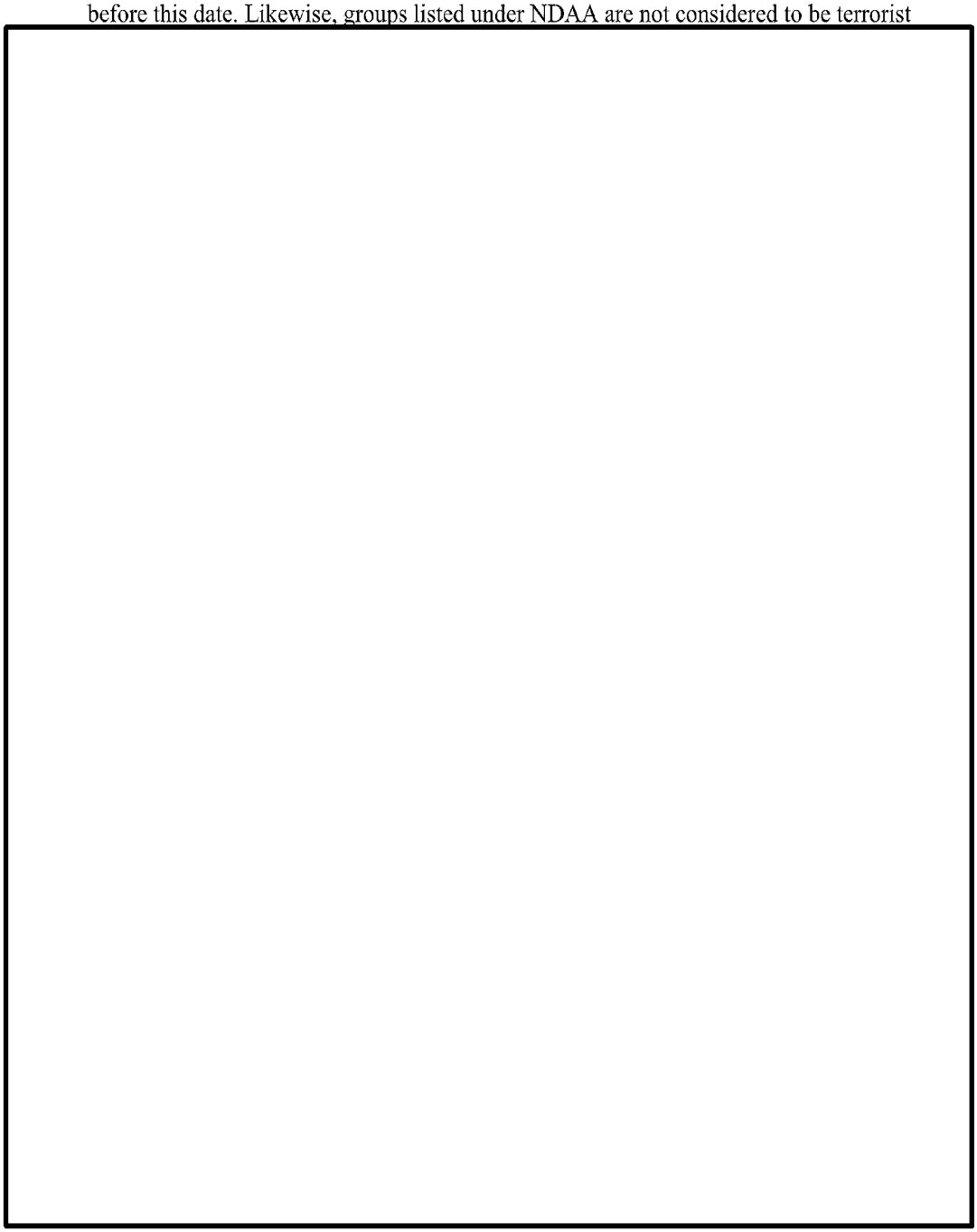
10.4.1 CAA Groups (2008) and NDAA Groups (2014)

Aliens encountered in connection with the organizations covered in the CAA receive "automatic relief" for activities described in INA § 212(a)(3)(B) in which "terrorist

[91] INA § 212(d)(3)(B)(i).

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organization" is a part, and thus are not inadmissible under INA § 212(a)(3)(B) for activities or associations prior to December 26, 2007. This is because under the CAA the groups are not considered "terrorist organizations" with regard to activities occurring before this date. Likewise, groups listed under NDAA are not considered to be terrorist



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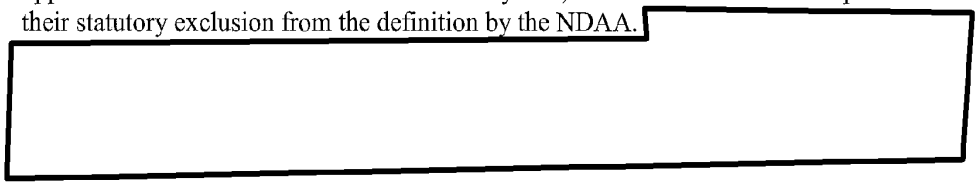
10.4.2 Iraqi Groups

On September 21, 2009, the Secretary of Homeland Security and the Secretary of State, in consultation with each other and the Attorney General, authorized an exemption for all activities and associations (except for future intent to engage) involving the:

- Iraqi National Congress (INC)
- Kurdish Democratic Party (KDP)
- Patriotic Union of Kurdistan (PUK)[96]

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The INC meets the definition of Tier III terrorist organizations due to its activities in opposition to Saddam Hussein and Baath Party rule, as did the KDP and PUK prior to their statutory exclusion from the definition by the NDAA.

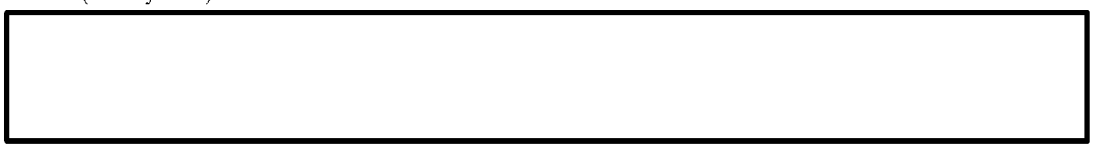


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[96] *See* "Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities Related to the INC, KDP, and PUK" Memorandum to USCIS Field Leadership, Lauren Kielsmeier, Acting Deputy Director, USCIS (January 2010).

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In addition to the threshold requirements listed in Section 10.2.1, this exemption also has an additional threshold requirement that the applicant not thave participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons.

10.4.3 All Burma Students' Democratic Front (ABSDF)

On December 16, 2010, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for all activities and/or associations (except for current engagement or future intent to engage in terrorist activity) with the All Burma Students' Democratic Front (ABSDF).[98]

The ABSDF has operated for many years in defiance of Burma's military government by armed rebellion. Due to activities carried out by the organization, the ABSDF meets the definition of a Tier III organization.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that he or she has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.

10.4.4 Kosovo Liberation Army (KLA)

On June 4, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens who have certain voluntary, non-violent associations or activities with the Kosovo Liberation Army (KLA) as described in INA § 212(a)(3)(B).

The KLA was an Albanian insurgent organization which sought the separation of Kosovo from Yugoslavia in the 1990s. Due to its activities, the KLA meets the definition of Tier III terrorist organization.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also has two additional threshold requirements: first, that the applicant not have not participated in, or knowingly provided material support to, terrorist activities that targeted

[98] Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act, December 16, 2010 (All Burma Students' Democratic Front, 76 Fed. Reg. 2131-01 (January 12, 2011); see also "Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the All Burma Students' Democratic Front (ABSDF)," USCIS Policy Memorandum (December 29, 2010).

noncombatant persons or U.S. interests; and second, that the applicant not have been subject to an indictment by an international tribunal.

10.4.5 AISSF-Bittu Faction

On October 18, 2010, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for individuals who provided material support to All India Sikh Students Federation-Bittu Faction (AISSF-Bittu Faction).

The AISSF was initially formed in the early 1940s to help promote the Sikh religion and to establish an independent Sikh nation. The AISSF-Bittu Faction transformed itself from a militant outfit during the Sikh insurgency of the 1980s and early 1990s into something akin to an interest or lobbying group. Due to the violent activities carried out by the organization, the AISSF-Bittu Faction meets the definition of a Tier III organization.

This exemption does not require duress and is only applicable to the provision of material support.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also has an additional threshold requirement that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.[99]

10.4.6 Farabundo Marti National Liberation Front (FMLN) and Nationalist Republican Alliance (ARENA)

On April 3, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for all activities and/or associations (except for current engagement or future intent to engage in terrorist activity) with the Farabundo Marti National Liberation Front (FMLN) and Nationalist Republican Alliance (ARENA).

The FMLN was formed in 1980 as a left-wing armed guerrilla movement, while the ARENA was formed in 1981 as a right-wing political party that used death squads to support its agenda. The two movements fought on opposite sides of the Salvadoran civil war, and due to their violent activities, they met the definition of Tier III organizations during that time.

[99] *See* Exercise of Authority Under INA § 212(d)(3)(B)(i), 76 Fed. Reg. 2130-02 (January 12, 2011).

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests and that he or she not have engaged in terrorist activity outside the context of civil war activities directed against military, intelligence, or related forces of the Salvadoran government.[100]

10.4.7 Oromo Liberation Front (OLF)

On October 2, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Oromo Liberation Front (OLF).

The OLF is an opposition group founded in 1973 engaged in violent conflict with the Ethiopian government. It falls within the definition of a Tier III organization because of its violent activities.

This exemption applies to solicitation, material support, and military-type training.

This exemption is only available to an applicant who was admitted as a refugee, granted asylum, or had an asylum or refugee application pending on or before October 2, 2013, or is the beneficiary of an I-730 Refugee/Asylum Refugee Petition filed at any time by a petitioner who was an asylee or refugee on or before October 2, 2013.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests and that he or she not have engaged in terrorist activity outside the context of civil war activities directed against military, intelligence, or related forces of the Ethiopian government.[101]

10.4.8 Tigray People's Liberation Front (TPLF)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Tigray People's Liberation Front (TPLF).

[100] *See* Exercise of Authority Under INA § 212(d)(3)(B)(i), 78 Fed Reg. 24225-01, 02 (April 24, 2013).

[101] *See* Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Oromo Liberation Front (OLF), USCIS Policy Memorandum (December 31, 2013).

The TPLF is a political party founded in 1975 in Ethiopia, as an opposition group. It was engaged in violent conflict with the Ethiopian government from then until 1991. It qualified as a Tier III organization during that period because of its violent activities.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

On May 27, 1991, the TPLF, with other parties, succeeded in overthrowing the Ethiopian government and became part of the ruling coalition in the new government. Since that time, its activities would likely not fall within the Tier III definition. Therefore, after that date, an exemption may not be required. Officers should consult COI to verify if this is the case..

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.[102]

10.4.9 Ethiopian People's Revolutionary Party (EPRP)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Ethiopian People's Revolutionary Party (EPRP).

The EPRP is a leftist political party founded in 1972 in Ethiopia. It was engaged in violent conflict with successive Ethiopian governments and other parties from then until 1993. It qualified as a Tier III organization during that period because of its violent activities.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

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[102] *See* Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Tigrayan People's Liberation Front (TPLF), USCIS Policy Memorandum (June 15, 2014).

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.[103]

10.4.10Eritrean Liberation Front (ELF)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Eritrean Liberation Front (ELF).[104]

The ELF is a leftist political party founded in 1960 in Ethiopia with the goal of achieving independence for Eritrean independence. It was engaged in violent conflict with successive Ethiopian governments and other parties from then through 1991. It met the defintion of a Tier III organization during that period because of its violent activities. [105]

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

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In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests. Furthermore, if the applicant's activity or association with the ELF occurred prior to January 1, 1980, the applicant must have been admitted as a refugee, been granted asylum, or had an asylum or refugee application pending on or before October 17, 2013, or be the beneficiary of an I-730 Refugee/Asylum Refugee Petition filed at any time by a petitioner who was an asylee or refugee on or before October 17, 2013.[106]

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[103] *See* Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Ethiopian People's Revolutionary Party (EPRP) (June 15, 2014).

[104] *See* Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Eritrean Liberation Front (ELF) USCIS Policy Memorandum (June 15, 2014).

[105] *See Haile v. Holder*, 658 F.3d 1122, 1127 (9th Cir. 2011) (upholding an Immigration Judge's finding that the ELF constituted a terrorist organization). Note that the applicant in this case testified that the ELF continued to engage in violent activities at least up to 2002.

[106] *See* Exercise of Authority Under INA § 212(d)(3)(B)(i), 78 Fed. Reg. 66037-01 (November 4, 2013).

10.4.11 Democratic Movement for the Liberation of Eritrean Kunama (DMLEK)

On October 17, 2013, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for aliens with existing or pending benefits who have certain voluntary, non-violent associations or activities with the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK).[107]

The DMLEK is an armed group in Eritrea founded in 1995 in opposition to the Eritrean government. It has been engaged in violent conflict with that government since its founding. It qualifies as a Tier III organization because of its violent activities.

This exemption does not require duress, but applies only to solicitation, material support, and military-type training.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires that the applicant not have participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests.[108]

10.5 Situational Exemptions

"Situational" exemptions apply to specified activities with a terrorist organization.

10.5.1 Duress-Based

Some situational exemptions require that the activity have taken place under duress and require an examination into the duress factors to determine eligibility for the exemption.

If duress is required for exemption eligibility, then all duress factors will be elicited and analyzed. Duress has been defined, at minimum, as a reasonably-perceived threat of serious harm under which the material support was provided.[109] In general, the duress factors require consideration of the following issues:

- Whether the applicant could have reasonably avoided the TRIG activity (e.g., providing material support);

[107] *See* Implementation of New Discretionary Exemption under INA Section 212(d)(3)(B)(i) for the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK), USCIS Policy Memorandum (June 15, 2014).
[108] *See* Exercise of Authority Under INA § 212(d)(3)(B)(i), 78 Fed. Reg. 66037-02 (November 4, 2013).
[109] "Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations" Memo, Jonathan Scharfen, Deputy Director (May 24, 2007).

- The severity and type of harm inflicted or threatened;
- To whom the threat of harm was directed (e.g., the applicant, the applicant's family, the applicant's community, etc.);
- The perceived imminence of the harm threatened;
- The perceived likelihood that the threatened harm would be carried out

(b)(7)(e) [redacted] and

- Any steps the applicant took to avoid the TRIG activity (e.g., moving, escape, reporting to authorities, etc.). While this is a factor to consider, please note that there is no requirement that an applicant attempted to escape or take other similar actions. Adjudicators must also be cognizant that in some circumstances it may be extremely difficult for an applicant take such action, and in some cases actions such as those noted could make the threatened harm more likely and/or more severe.
- Any other relevant factor regarding the circumstances under which the applicant provided the material support.

There are now three types of duress-based exemptions available to applicants who meet their particular criteria:

Material Support under Duress – INA § 212(a)(3)(B)(VI)

The material support under duress exemption is by far the most commonly encountered exemption in USCIS adjudications. As noted above, material support is defined broadly and even small amounts of food, supplies, etc. constitute material support.[110]

The Secretary of Homeland Security signed this exemption authority with respect to material support provided under duress to Tier III terrorist organizations on February 26, 2007, and with respect to Tier I and II terrorist organizations on April 27, 2007.[111] Therefore, material support under duress to Tier I, II or III terrorist organizations may be exempted.

[110] *See* Section 9, TRIG – Material Support.

[111] *See* Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, 72 Fed. Reg. 9958-01 (February 26, 2007); Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, 72 Fed. Reg. 26138-02 (April 27, 2007).

Military-Type Training under Duress – 1NA § 212(a)(3)(B)(i)(V111)

An exemption is available for applicants who received military-type training under duress from or on behalf of any organization that, at the time the training was received, was a terrorist organization. The Secretary of Homeland Security signed this exemption authority on January 7, 2011. Military-type training under duress may be exempted if it is from or on behalf of a Tier I, II or III terrorist organizations. You must analyze the organization's activities to determine whether it was a terrorist organization at the time the alien received the training.[112]

18 U.S.C. § 2339D(c)(1) states that "military-type training" includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm, or other weapon, including any weapon of mass destruction (as defined in 18 U.S.C § 2232a(c)(2)). Please note that marching in formation and physical exercising do not meet the statutory definition.

In addition to the threshold requirements listed in Section 10.2.1, an applicant must establish that he or she has not received training that poses a risk to the U.S. or U.S. interests (e.g. training on production or use of a weapon of mass destruction, torture, or espionage).

This exemption does not apply to the use of weapons (combat activities). If an alien received military-type training under duress and also used weapons, he or she would not be eligible for this exemption, even if the combat took place under duress as well.

Solicitation under Duress – INA § 212(a)(3)(B)(iv)(IV)(bb) and (cc) only and INA 212(a)(3)(B)(iv)(V)(cc) and (dd) only

Activities under this exemption category are limited to solicitation of funds or other things of value for a terrorist organization and/or for solicitation of any individual for membership in a terrorist organization. These activities must be conducted under duress.

10.5.2 Voluntary Activity

Medical Care

[112] "Implementation of New Discretionary Exemption Under INA Section 212(d)(3)(B)(i) for the Receipt of Military-Type Training Under Duress" USCIS Memo, Office of the Director (Feb. 23, 2011).

Medical care provided to individuals engaged in terrorist activities or to terrorist organizations or members of such organizations is a form of material support. As such, those who provided medical care to members of a terrorist organization, to a terrorist organization, or to an individual the alien knows or reasonably should have known[113] has committed or plans to commit a terrorist activity, would be inadmissible in spite of the oaths of commitment to serve patients that are often taken by medical professionals. (For those individuals who provided medical care under duress, utilize the exercise of authority described above that exempts provisions of material support under duress (see Section 10.5.1 Duress-Based)).

To address this situation, on October 13, 2011, the Secretary of Homeland Security signed this exercise of exemption authority to allow USCIS to not apply the material support inadmissibility grounds to certain aliens who provided medical care to persons associated with terrorist organizations or the members of such organizations. This exemption is specifically for the voluntary provision of medical care, which includes:

- Services provided by and in the capacity of a medical professional, such as physician, nurse, dentist, psychiatrist or other mental health care provider, emergency room technician, ambulance technician, medical lab technician, or other medical-related occupation; and

- Related assistance by non-medical professionals providing, for example, emergency first aid services to persons who have engaged in terrorist activity (e.g., Good Samaritans and first aid givers).

This exemption does not apply to medical supplies provided independent of medical care. Provision of medical supplies would fall under the provision of material support.

Medical care on behalf of a Tier I or II Organization: INA § 212(d)(3)(B)(i) explicitly prohibits the exercise of exemption authority for aliens who "voluntarily and knowingly engaged in…terrorist activity *on behalf* of" a Tier I or II organization (emphasis added). Therefore, medical care cannot be exempted when the applicant provided the care voluntarily and knowingly on behalf of a Tier I or II organization. For example, this

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(b)(7)(e) This statutory restriction would not apply to an alien who provided medical care on behalf of an undesignated, Tier III terrorist organization. However, the role of the

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[113] If the medical professional did not and reasonably should not have known that the patient he or she was treating was a member of a terrorist organization or involved in terrorist activities, then the inadmissibility/bar would not arise.

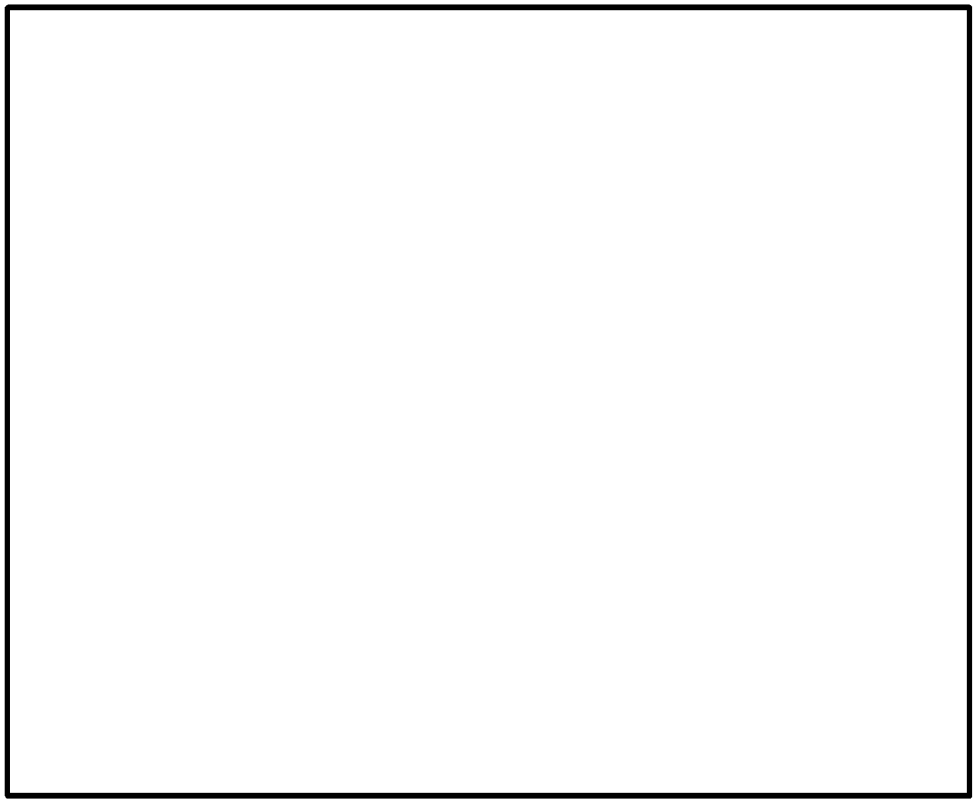
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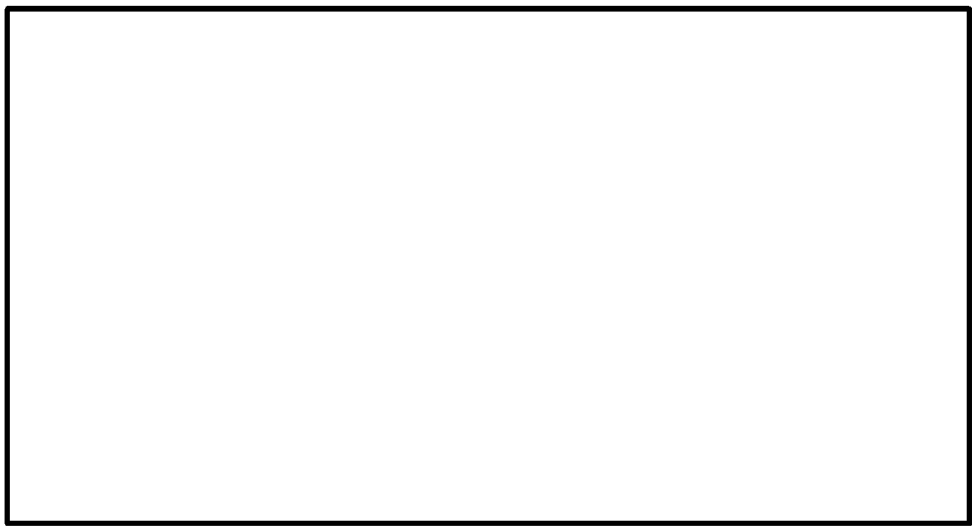
10.5.3 Limited General Exemption

On August 10, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, authorized an exemption for certain aliens with existing immigration benefits who are currently inadmissible under INA section 212(a)(3)(B)(i). Applicants eligible for this exemption must have only select voluntary, non-violent, associations or activities with certain undesignated terrorist organizations. This exemption applies to certain aliens who have already been granted an immigration benefit in the United States (i.e., asylee or refugee status, temporary protected status, or adjustment of status under the Nicaraguan Adjustment and Central American Relief Act or Haitian Refugee Immigration Fairness Act, or similar immigration benefit other than a non-immigrant visa), and to beneficiaries of an I-730 Refugee/Asylee Relative Petition filed at any time by such an asylee or refugee.

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10.5.4 Iraqi Uprisings

On August 17, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General authorized an exemption for individuals who participated in the Iraqi uprisings against the government of Saddam Hussein in Iraq from March 1 through April 5, 1991.[115]

The "Iraqi Uprisings" is a term used to refer to a period of revolt in southern and northern Iraq between March 1 and April 5, 1991.[116] The uprisings in the south and north are popularly referred to as the Shi'a and Kurdish uprisings, respectively. Although these groups are different, their rebellion was fueled by the common belief that Saddam Hussein and his security forces were vulnerable following defeat to the allied forces in the Persian Gulf War.[117] Despite achieving momentary victories, government forces led by the Republican Guard rapidly controlled the rebels.

In addition to the threshold requirements listed in Section 10.2.1, this exemption also requires two additional threshold requirements: first, that he or she has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons not affiliated with Saddam Hussein's regime from March 1 through April 5 of 1991, or U.S. interests; and second, that he or she has not engaged in

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[115] Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 77 Fed. Reg. 51545-02 (August 24, 2012).

[116] Human Rights Watch, *Endless Torment: The 1991 Uprising in Iraq and its Aftermath* (1992).

[117] *Id.*

terrorist activity, not otherwise exempted, outside the context of resistance activities directed against Saddam Hussein's regime from March 1 through April 5 of 1991.

10.5.5 Exemptions for Certain Limited Material Support (CLMS) and Insignificant Material Support (IMS)

On February 5, 2014, the Secretary of Homeland Security and the Secretary of State, in consultation with the Attorney General, authorized two new exemptions for certain aliens who have provided material support to Tier III organizations. These exemptions are known as the Certain Limited Material Support (CLMS) exemption and the Insignificant Material Support (IMS) exemption.[118]

Both exemptions contain provisions specifying that the applicant must not have provided material support to activities that he or she knew or reasonably should have known targeted noncombatant persons, U.S. citizens, or U.S. interests or involved the provision, transportation, or concealment of weapons.[119]

Both exemptions also require that the applicant must not have provided material support that he or she knew or reasonably should have known could be used **directly** to engage in violent or terrorist activity. Therefore, if an applicant has provided any quantity of weapons, explosives, ammunition, military-type training, or other types of support that is generally understood to be used for violent or terrorist activity, the applicant will, in general not be eligible for either the CLMS or the IMS exemption. On the other hand, providing such support such as food, water, or shelter that is generally not directly used for violent activity will usually not disqualify an applicant from consideration for these exemptions.[120]

The CLMS exemption is intended to cover otherwise eligible applicants for visas or immigration benefits who provided certain types of **limited** material support to an undesignated (Tier III) terrorist organization as defined in INA § 212(a)(3)(B)(vi)(III), or to a member of such an organization, or to an individual the applicant knew or reasonably should have known has committed or plans to commit a terrorist activity. The support provided must have been **incidental to routine commercial transactions, routine social transactions, certain humanitarian assistance, or in response to substantial pressure that does not rise to the level of duress ("sub-duress pressure").**[121]

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[118] Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6914-01 (February 5, 2014); Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6913-02 (February 5, 2014).

[119] *Id.*

[120] "Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Certain Limited Material Support," USCIS Policy Memorandum (May 8, 2015); "Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Insignificant Material Support," USCIS Policy Memorandum (May 8, 2015).

[121] Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6914-01 (February 5, 2014).

Routine commercial transactions are transactions in which the applicant could or would engage in the ordinary course of business. To be a routine commercial transaction, the transaction must have occurred on substantially the same terms of other transactions of the same type regardless of the parties to the transaction. A commercial transaction is not routine if it is motivated by the status, goals, or methods of the organization or the applicant's connection to the organization or conducted outside the course of the applicant's business activities.[122]

Routine social transactions are transactions that satisfy and are motivated by specific, compelling, and well-established family, social, or cultural obligations or expectations. A routine social transaction is not motivated by a generalized desire to "help society" or "do good." It involves support no different than the support that the applicant would provide under similar circumstances to others who were not members of undesignated terrorist organizations.[123]

Certain humanitarian assistance is aid provided with the purpose of saving lives and alleviating suffering, on the basis of need and according to principles of universality, impartiality, and human dignity. It seeks to address basic and urgent needs such as food, water, temporary shelter, and hygiene, and it its generally triggered by emergency situations or protracted situations of conflict or displacement. It does not include development assistance that seeks the long-term improvement of a country's economic prospects and chronic problems such as poverty, inadequate infrasturcutre, or underdeveloped health systems.[124]

(b)(7)(e)



Sub-duress pressure is a reasonably perceived threat of physical or economic harm, restraint, or serious harassment, leaving little or no reasonable alternative to complying with a demand. Pressure may be considered sub-duress pressure if providing the support is the only reasonable means by which the applicant may carry out important activities of his or

[122] "Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Certain Limited Material Support," USCIS Policy Memorandum (May 8, 2015).

[123] *Id.*

[124] *Id.*

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her daily life. The pressure must come, either entirely or in combination with other factors, from the organization to which the applicant provided support.[125]

In order for the CLMS exemption to apply, the applicant must not have intended or desired to assist any terrorist organization or terrorist activity.[126]

(b)(7)(e)

Insignificant material support is support that (1) is minimal in amount and (2) the applicant reasonably believed would be inconsequential in effect. In order to determine whether support is minimal, you must consider and evaluate its relative value, fungibility, quantity and volume, and duration and frequency.[127] Material support is "inconsequential in effect" if the actual or reasonably foreseeable impact of the support and the extent to which it enabled the organization or individual to continue its mission or his or her violent or terrorist activity was, at most, insignificant. It is not "inconsequential in effect" if it could prove vital to furthering the aims of an organization by meeting a particularized need at the time the support was provided or involved more than very small amounts of fungible support given with the intention of supporting non-violent ends.

For the IMS exemption to apply, the applicant must not have provided the material support with the intent of furthering the terrorist or violent activities of the individual or organization.[128]

For additional guidance on the application of the CLMS and IMS exemptions, contact your your Division's TRIG POC.

10.6 Expanded Exemption Authority under CAA and USCIS Hold Policy

As discussed above, section 691(a) of the CAA broadly amended the Secretary of State and Homeland Security's discretionary exemption authority, now allowing the Secretaries to exempt almost all activities or associations with terrorist organizations. Because additional exemptions are under consideration and may be issued in the future,

[125] "Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Certain Limited Material Support," USCIS Policy Memorandum (May 8, 2015).

[126] Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6914-01 (February 5, 2014).

[127] "Implementation of the Discretionary Exemption under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act for the Provision of Insignificant Material Support," USCIS Policy Memorandum (May 8, 2015).

[128] Exercise of Authority Under INA § Sec. 212(d)(3)(B)(i), 79 Fed. Reg. 6913-02 (February 5, 2014).

USCIS, in consultation with DHS, has established a policy to hold the vast majority of applications involving terrorist-related bars in expectation that future exemptions may become available.

Currently, the following categories of cases are subject to this hold policy:

- Category 1: Applicants who are inadmissible under the terrorism-related provisions of the INA based on any activity or association that was *not under duress* relating to any Tier III organization, other than those for which an exemption currently exists;
- Category 2: Applicants who are inadmissible under the terrorism-related provisions of the INA, for activities **other than** material support, military-type training, and solicitation of funds or members, based on any activity or association related to a designated (Tier I or Tier II) or undesignated (Tier III) terrorist organization where the activity or association was *under duress* (i.e., combat by child soldiers);
- Category 3: Applicants who are inadmissible as spouses or children of aliens described in categories 1 or 2, whether or not the inadmissible alien is applying for an immigration benefit.

(b)(7)(e)

10.7 Procedures

10.7.1 212(a)(3)(B) Exemption Worksheet

(b)(7)(e)

10.7.2 Processing Cases

More than One Terrorism-Related Ground of Inadmissibility

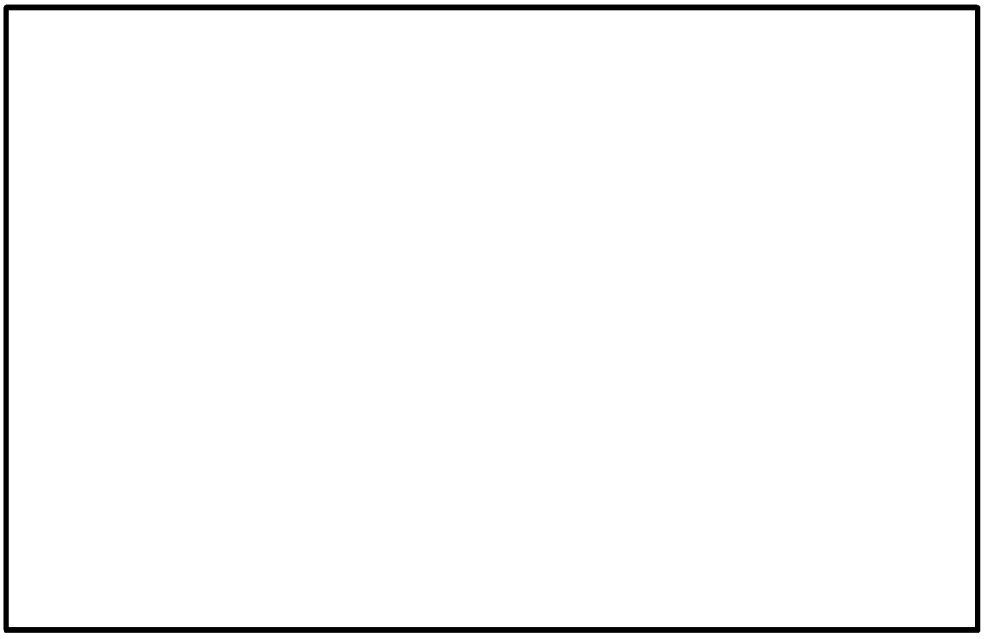
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Holding Cases[129]

See section 10.6 above.

Denials / Referrals

(b)(7)(e)



11 OTHER SECURITY-RELATED GROUNDS

INA § 212(a)(3)(A) and (F) are also security-related inadmissibility grounds that apply to refugee applicants and other intending immigrants and non-immigrants.

[129] Memorandum from Jonathan Scharfen to the Associate Directors; Chief, Office of Administrative Appeals; Chief Counsel, "Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provisions of Material Support to, Certain Terrorist Organizations or Other Groups" (Mar. 26, 2008). See also Memorandum from Michael Aytes to the Field Leadership, "Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases" (Feb. 13, 2009). See also Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases (November 20, 2011).

(b)(7)(e)



INA § 212(a)(3)(A) applies to any alien a consular officer or DHS/USCIS[131] knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in any of the following proscribed activities. There is no exemption or waiver available for these activities:

Any activity:
To violate any law of the U.S. relating to **espionage**[132] or **sabotage**[133] – INA § 212(a)(3)(A)(i);

To violate or evade any law prohibiting the **export from the U.S. of goods, technology, or sensitive information**[134] – INA § 212(a)(3)(A)(i);

Any other **unlawful activity**[135] – INA § 212(a)(3)(A)(ii);

Any activity a purpose of which is the **opposition to, or the control or overthrow of, the Government of the U.S.** by force, violence, or other unlawful means – INA § 212(a)(3)(A)(iii).

Another security-related inadmissibility ground is found at INA § 212(a)(3)(F).[136] This ground makes inadmissible an alien who either the Secretary of State or Secretary of Homeland Security[137] (in consultation with the other) determines meets **both** of the

[131] Although the text of the statute states that this ground (at INA § 212(a)(3)(A)) applies to any alien "a consular officer or Attorney General knows, or has reason to believe seeks to enter the United States to engage solely, principally, or incidentally in any of the following proscribed activities," under the Homeland Security Act of 2002, USCIS (not just a consular officer or Attorney General) has the authority to make this determination although the technical corrections relating to references (to the Attorney General) in the INA have not been made in all places. See Homeland Security Act of 2002. Pub. L. no. 296; 116 Stat. 2135 (2002).

[132] This includes illegally gathering or possessing information and being an unregistered foreign agent.

[133] This includes damage to equipment used to defend the U.S.

[134] This includes trading with the enemy, exporting goods that need permission to export, and releasing sensitive government information.

[135] The Department of State and DHS have interpreted this ground relatively narrowly, to refer to unlawful activity that has an adverse impact on U.S. national security or public safety.

[136] INA § 212(a)(3)(B) & (F) are bars to: refugee status, asylum status, withholding of removal, adjustment of status, cancellation of removal; relief under INA § 212(c) and temporary protected status (TPS). INA § 212(a)(3)(B) & (F) do NOT bar: naturalization, employment authorization, visa petitions, Convention Against Torture (CAT) deferral of removal.

[137] Although a technical correction to the reference in INA § 212(a)(3)(F) (indicating that it is the Secretary of State or Attorney General, in consultation with one another, who would determine that an individual has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States) has not yet been made, under the Homeland Security Act of 2002, DHS has the authority for purposes of making such a determination. See Homeland Security Act of 2002. Pub. L. no. 296; 116 Stat. 2135 (2002).

following criteria: the alien has been associated with a terrorist organization; and while in the U.S., intends to engage in activities which could endanger the welfare, safety, or security of the U.S. This section requires both an association with a terrorist organization **and** an intention to cause harm.

The harm need not occur in the United States, but it must endanger the welfare, safety or security of the United States. Note that the authority to find an alien inadmissible under this section can only be exercised by the Secretary of State or the Secretary of Homeland Security.

Because this inadmissibility ground requires cabinet level concurrence, it is generally not applied. If you have a case in which you believe this ground of inadmissibility may apply, please contact your division's headquarters (HQ) point of contact (POC) for TRIG-related issues.

Although these inadmissibility grounds do not apply to asylum applicants, INA § 208(b)(2)(A)(iv) bars applicants whom there are reasonable grounds for regarding as a danger to the security of the United States from receiving asylum.

In 2005, the Attorney General examined the national security risk bar to asylum in his decision in *Matter of A-H-*, which concerned the application of the exiled leader of an Islamist political party in Algeria who was associated with armed groups that had been involved in persecution and terrorist activities.[138] Relying on the Immigration and Nationality Act's definition of "national security" and noting that the statute does not specify any particular level of risk, the Attorney General held that the bar applies wherever the evidence in the record supports a reasonable belief that the applicant poses "any nontrivial degree of risk" to the national defense, foreign relations, or economic interests to the United States.[139] The Attorney General further clarified that the "reasonable grounds for regarding" standard is consistent with the relatively low "probable cause" standard used in other areas of the law and "is satisfied if there is information that would permit a reasonable person to believe that the alien may pose a danger to the national security."[140]

In *Malkandi v. Holder*, the U.S. Court of Appeals for the Ninth Circuit considered the case of an Iraqi Kurdish applicant who, according to evidence obtained by the government, had facilitated the issuance of medical documentation to a confessed al-Qaeda operative. The Board of Immigration Appeals, applying the Attorney General's framework, found that the applicant was ineligible for asylum based on the national

[138] *Matter of A-H-*, 23 I&N Dec. 774 (AG 2005).

[139] *Id.* at 788.

[140] *Id.* at 788-789.

security risk bar. The Ninth Circuit deferred to the Attorney General's interpretation of the terms of the statute and upheld the Board's determination.[141]

In *Cheema v. Ashcroft*, the Ninth Circuit viewed favorably the BIA's interpretation (in an unpublished BIA decision) that an alien poses a danger to the security of the United States where the alien acts in a way which:

- Endangers the lives, property, or welfare of United States citizens;
- Compromises the national defense of the United States; or
- Materially damages the foreign relations or economic interests of the United States.[142]

Another example of an individual found to constitute a risk to the security of the United States was Omar Ahmed Ali Abdel-Rahman, a well-known Egyptian cleric, who was found to be a security risk because he is the spiritual guide and founder of an extremist group that has carried out numerous terrorist acts.[143]

12 LEGAL ANALYSIS

12.1 Burden and Standard of Proof

You must evaluate the evidence indicating a security-related bar or inadmissibility by the relevant standard of proof as appropriate for your Division's adjudications, as explained in the relevant supplements (see RAD Supplement – 1).

12.2 Documentation Relating to NS Concerns

You must properly document[144] your NS concerns, in line with your division's policy and guidance (see RAD Supplement – 2).

12.3 Dependents/Derivatives

Inadmissibilities and bars related to national security also apply independently to any relative who is included in an applicant's request for an immigration benefit. In some instances, a principal applicant may be granted and his or her dependent/derivative denied or

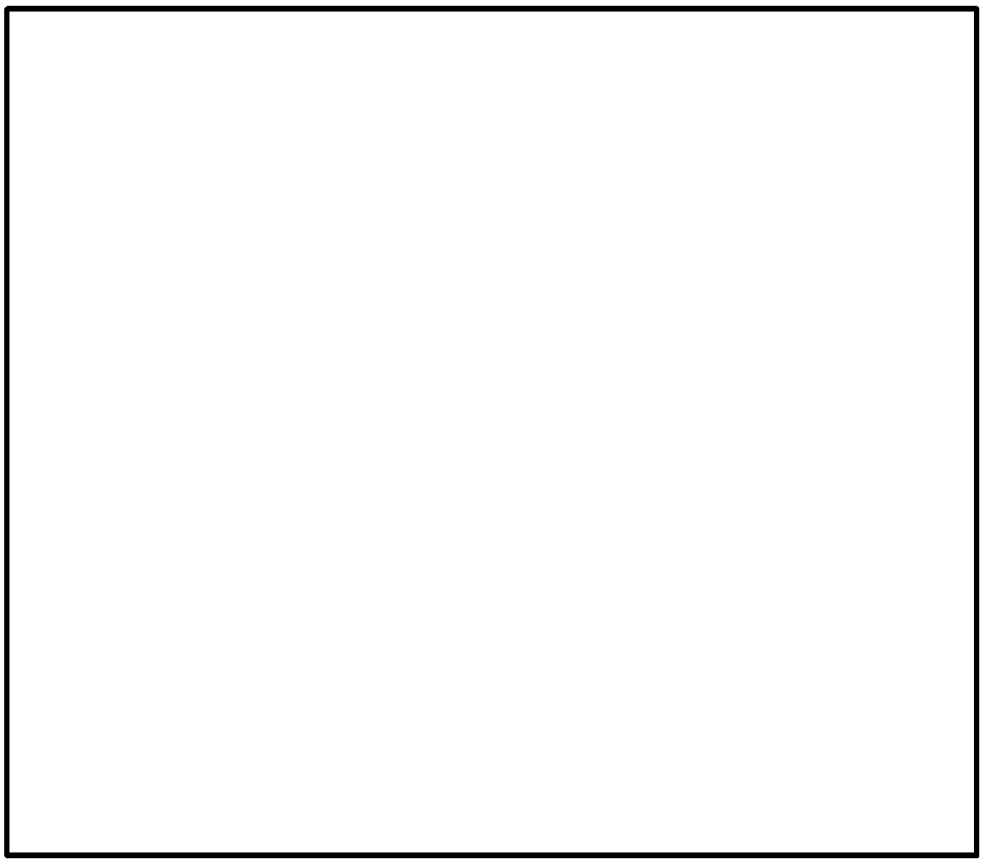
[141] *Malkandi v. Holder*, 576 F.3d 906, 915-916.
[142] *Cheema v. Ashcroft*, 372 F.3d 1147, 1154 (9th Cir. 2004).
[143] *Ali v. Reno*, 829 F. Supp. 1415 (S.D.N.Y. 1993), affirmed 22 F.3d 442 (2d Cir. 1994).
[144] In certain circumstances, NS concerns will be documented in FDNS-DS, a system that is owned by USCIS/FDNS and used by FDNS-IOs. The FDNS-DS SOP can be found on the ECN.

referred because the dependent/derivative is inadmissible or barred for a national security-related reason.[145]

13 PROCEDURE FOR PROCESSING CASES WITH NATIONAL SECURITY CONCERNS (THE CONTROLLED APPLICATION REVIEW AND RESOLUTION PROGRAM (CARRP))

13.1 The CARRP Process

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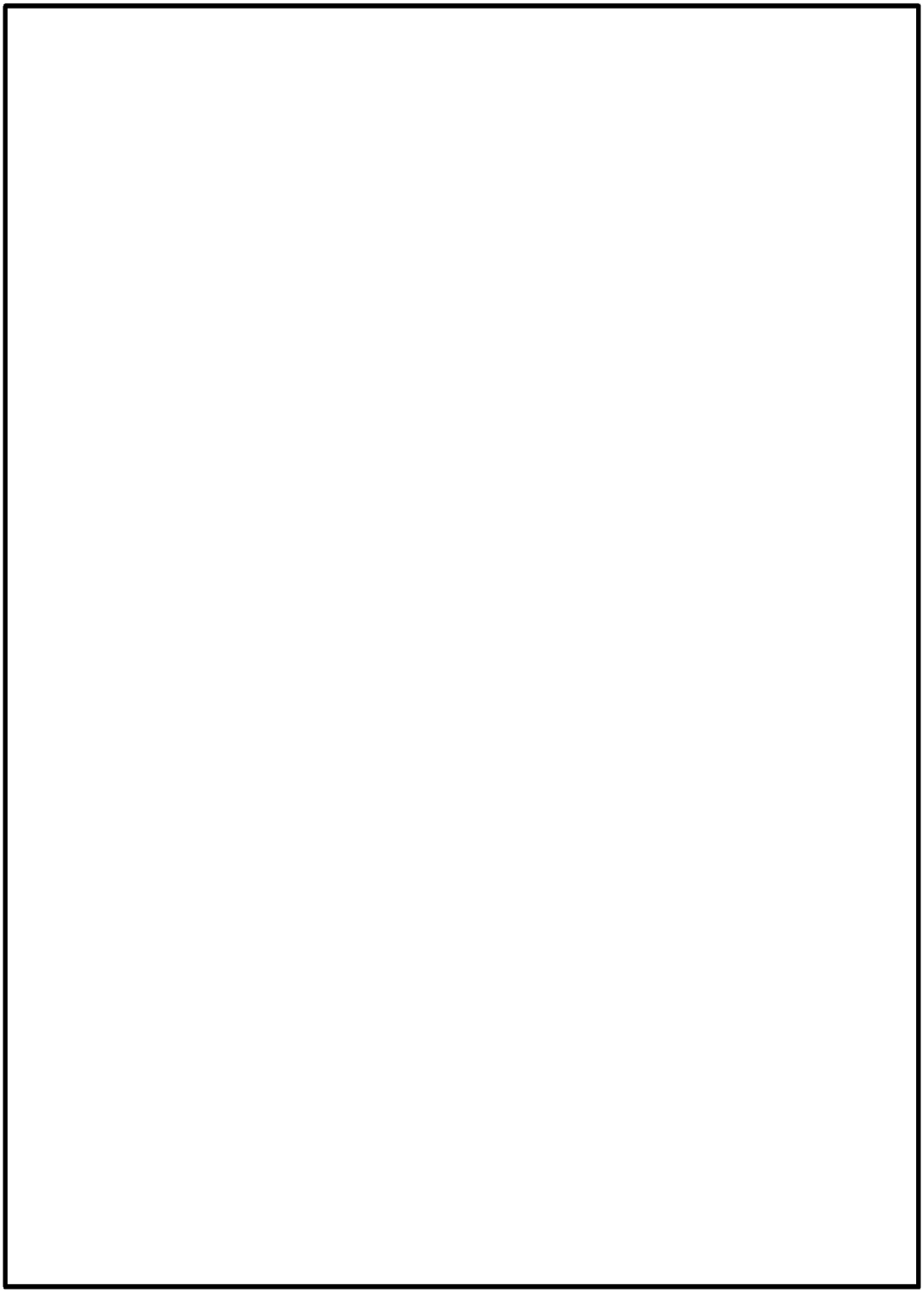


[145] 8 C.F.R. § 208.21(a); INA § 207(c)(2)(A).

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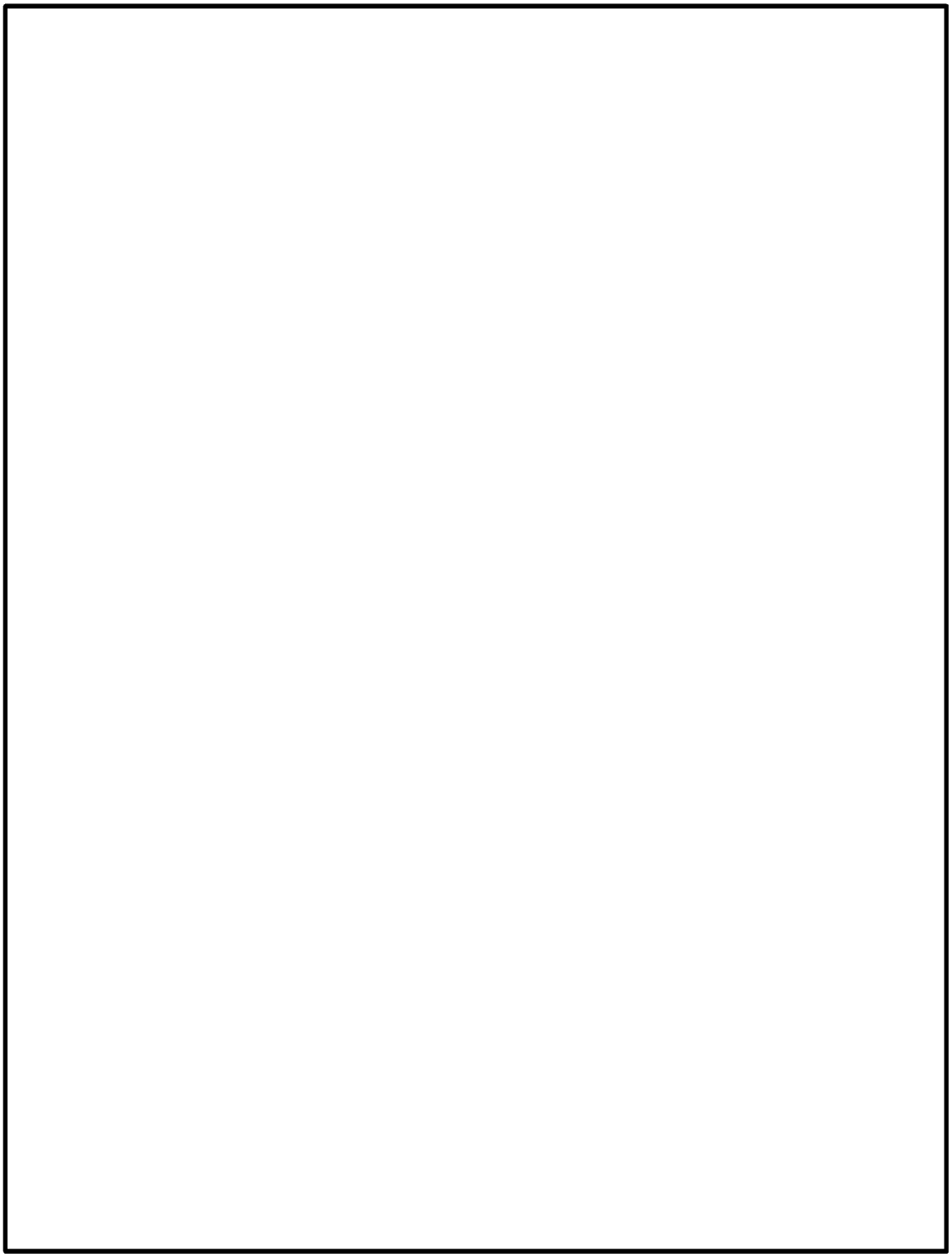


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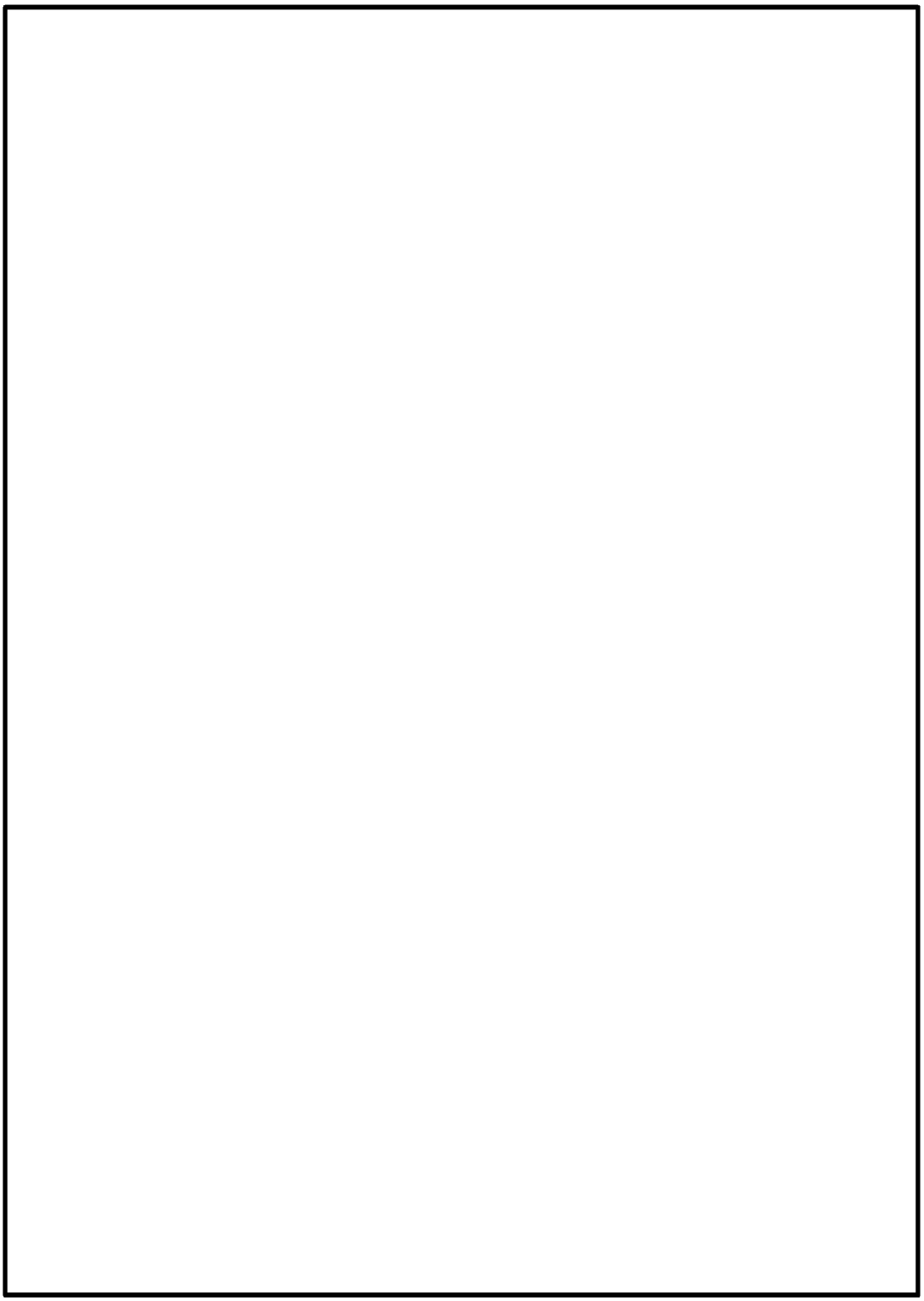


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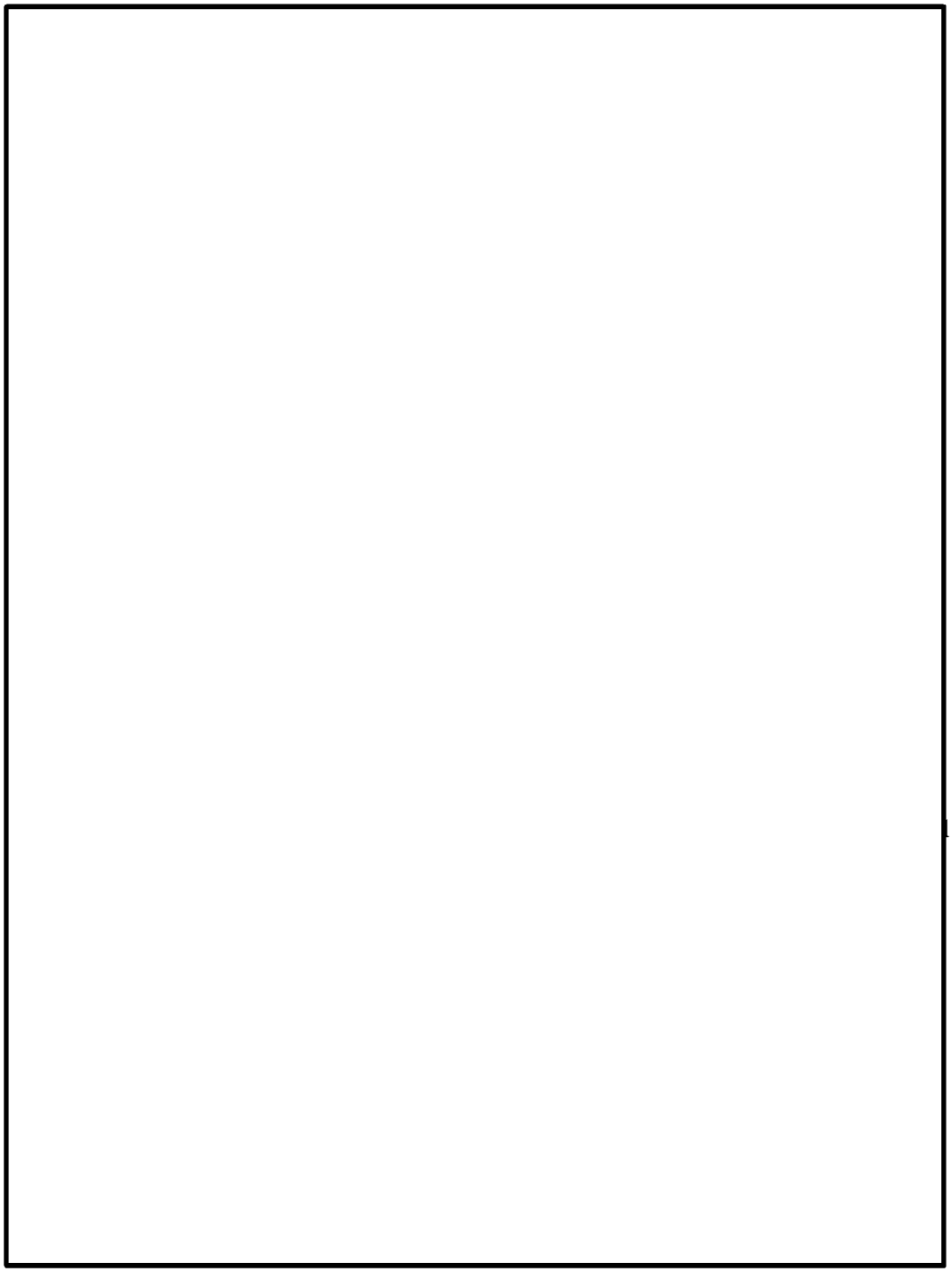
National Security



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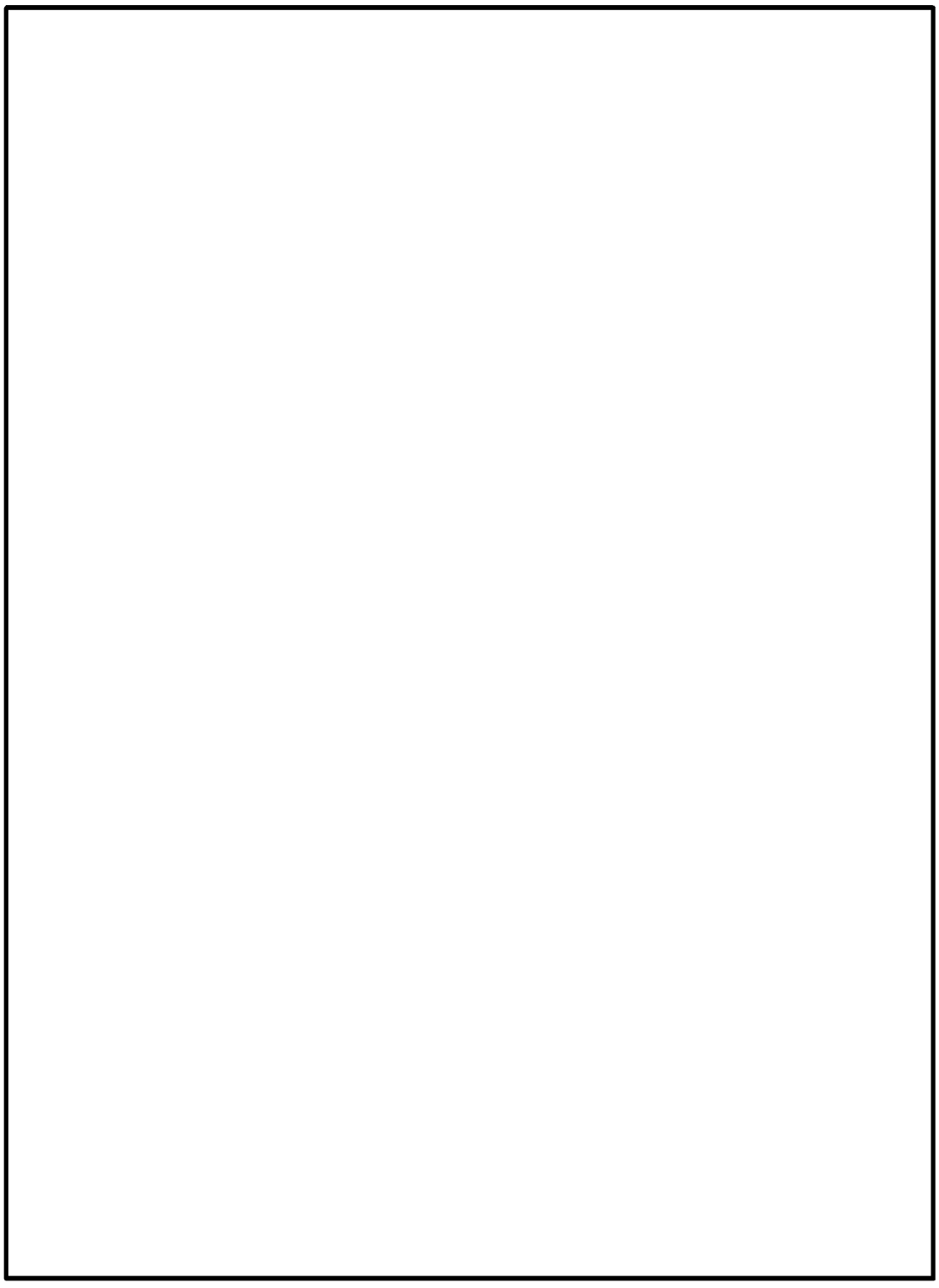


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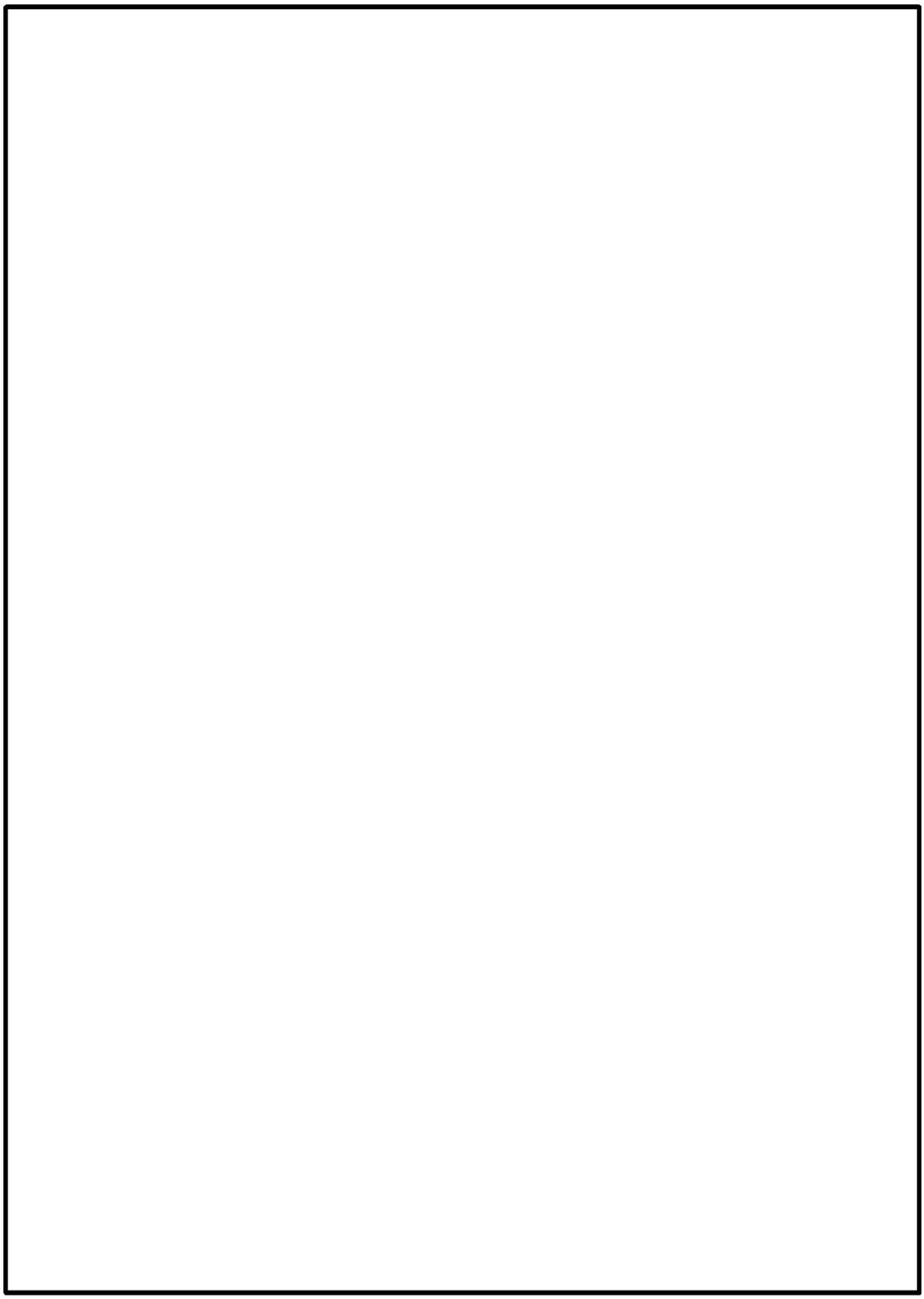
[160] *Id.*

(b)(7)(e)



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14 CONCLUSION

As the United States continues to face national security threats, RAIO plays a critical role in defending the homeland by maintaining the integrity of our immigration benefits programs. In this regard, it is critical for you to properly assess each case in consideration of possible national security concerns and to follow your division's procedures for processing these cases through CARRP.

15 SUMMARY

U.S. immigration laws contain provisions to prevent individuals who may be threats to national security from receiving immigration benefits. As an adjudicator, you will identify potential NS indicators and concerns and process those cases in accordance with these laws.

15.1 National Security Concerns

There are two kinds of NS concerns: Known or Suspected Terrorists (KSTs) and Non-Known or Suspected Terrorists (non-KSTs). KSTs are identified by specific systems check results. Non-KSTs are NS concerns identified by any other means, including, but not limited to, applicant testimony, file review or country conditions research.

NS indicators may lead to finding an NS concern. NS indicators can be statutory or non-statutory

An NS concern exists if there is an articulable link between the applicant and the activities, associations described in to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in INA §§ 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) (commonly referred to as TRIG), or other non-TRIG matters relating to national security, as described in the CARRP Operational Guidance, Attachment A, discussed above.

15.2 Interviewing National Security Cases

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15.3 Terrorism-Related Inadmissibility Issues

(b)(7)(e)

[redacted]

15.3.1 Terrorist Organizations

Under the INA, there are three tiers of terrorist organizations. Tier I organizations appear on the Foreign Terrorist Organizations list while Tier II organizations are on the Terrorist Exclusion List (TEL). A Tier III terrorist organization is group of two or more individuals that, whether organized or not, engages in terrorist activity, or has a subgroup[169] that engages in terrorist activity.[170] Depending on the tier of the organization, there are a variety of immigration consequences.

15.3.2 Terrorism-Related Inadmissibility Grounds

The inadmissibility grounds related to terrorist activity are listed at INA § 212(a)(3)(B).

15.3.3 Material Support

(b)(7)(e)

[redacted]

15.3.4 TRIG Exemption Authority

INA § 212(d)(3)(b)(i), as revised by the 2005 REAL ID Act and the Consolidated Appropriations Act, 2008, includes a discretionary exemption provision for certain grounds of inadmissibility under INA § 212(a)(3)(B). This exemption authority can be exercised by

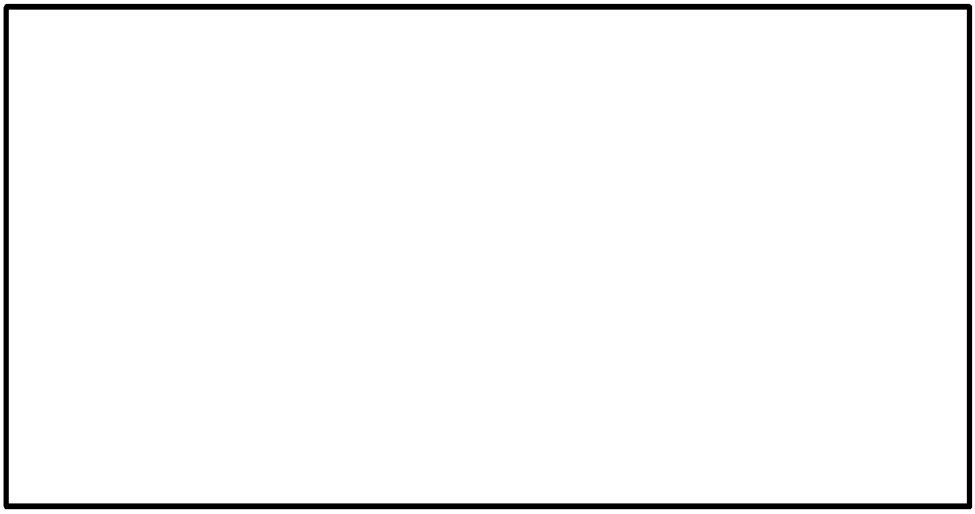
[169] See Department of State guidance on what constitutes a subgroup, 9 FAM 40.32 N2.7.

[170] INA § 212(a)(3)(B)(vi)(III).

the Secretary of Homeland Security or the Secretary of State after consultation with each other and the Attorney General.[171]

15.4 CARRP

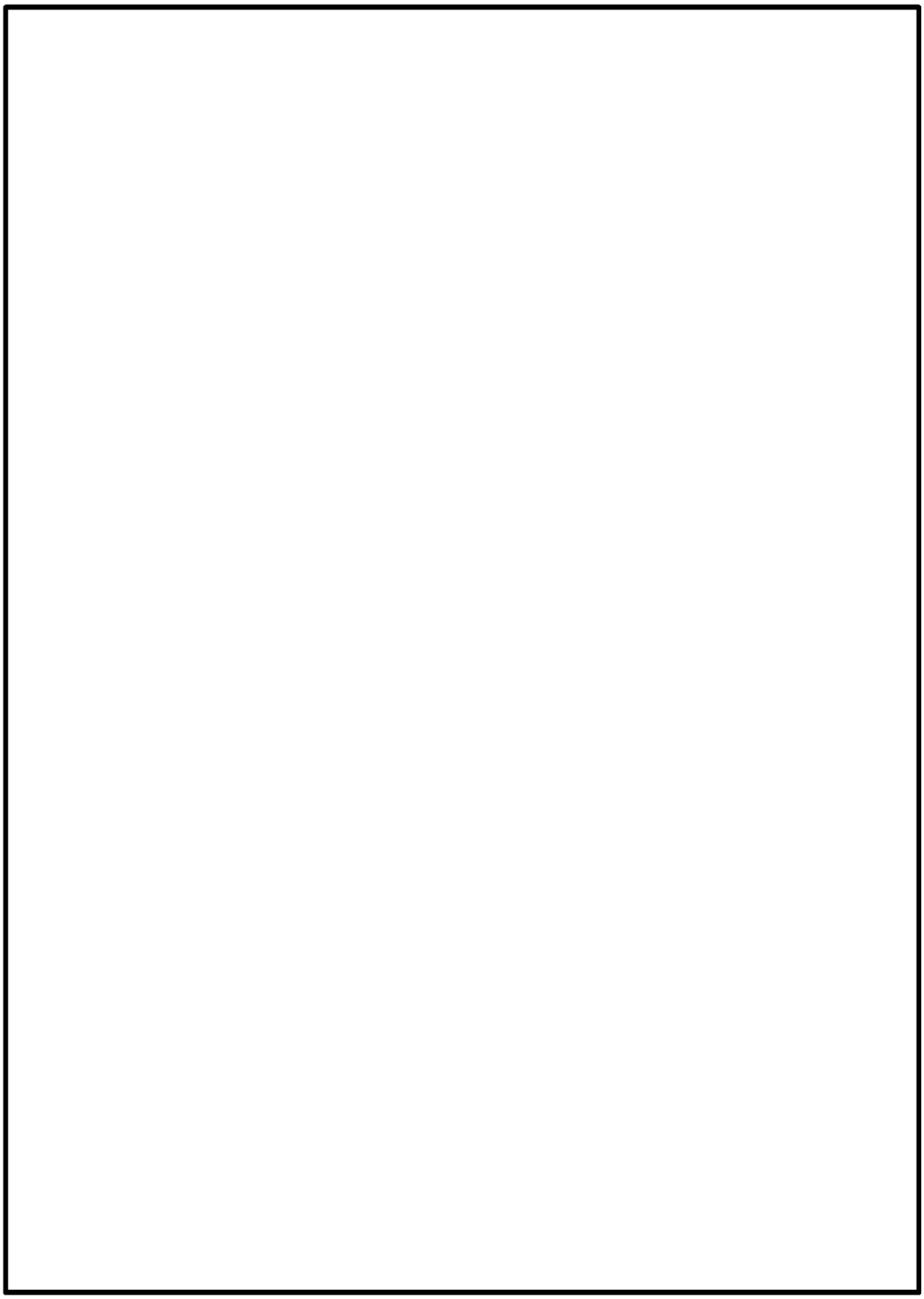
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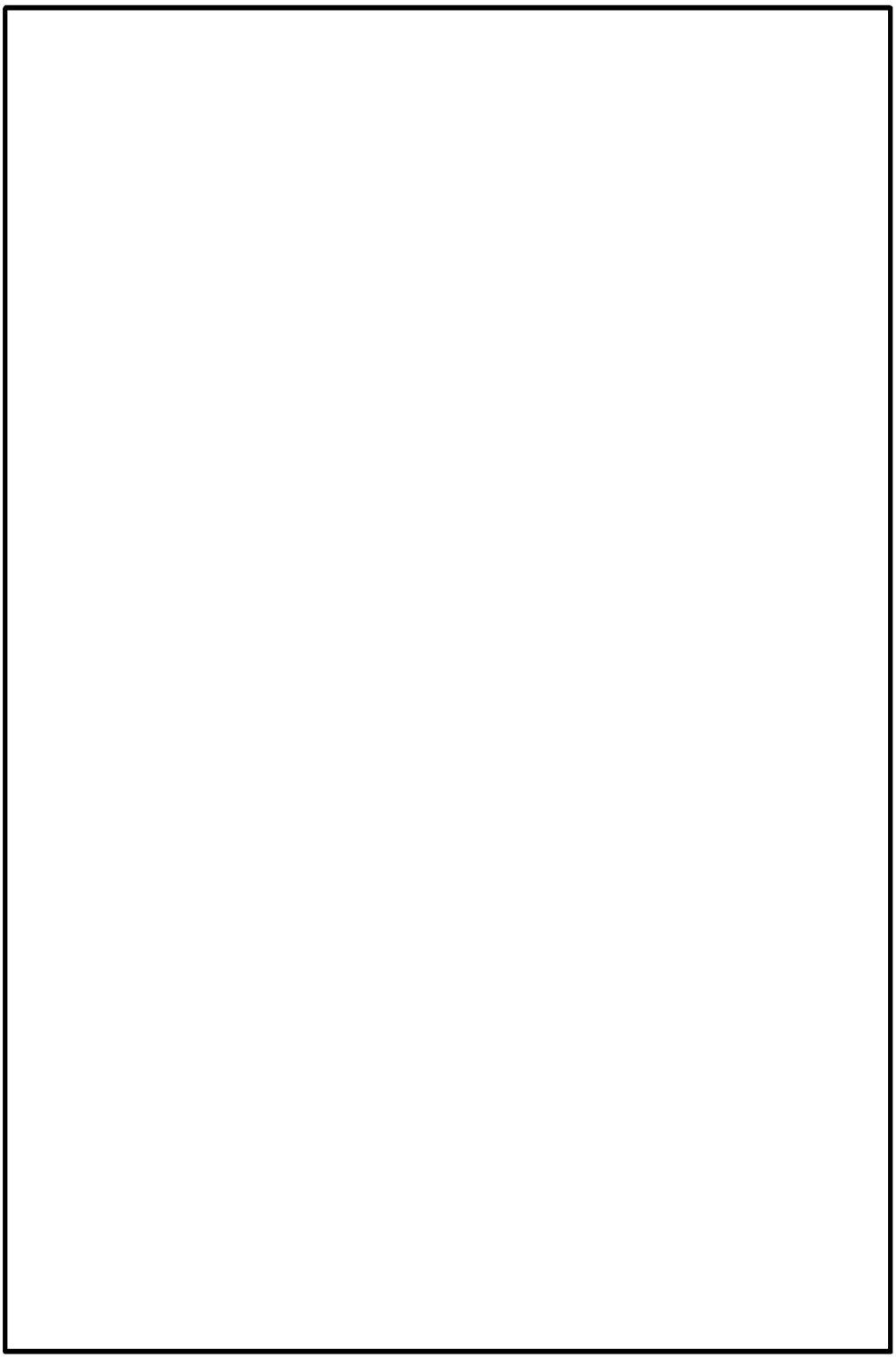
[171] INA § 212(d)(3)(B)(i). For some specific examples of the Secretary's exercise of discretion under this provision, *see* USCIS Fact Sheets.

PRACTICAL EXERCISES

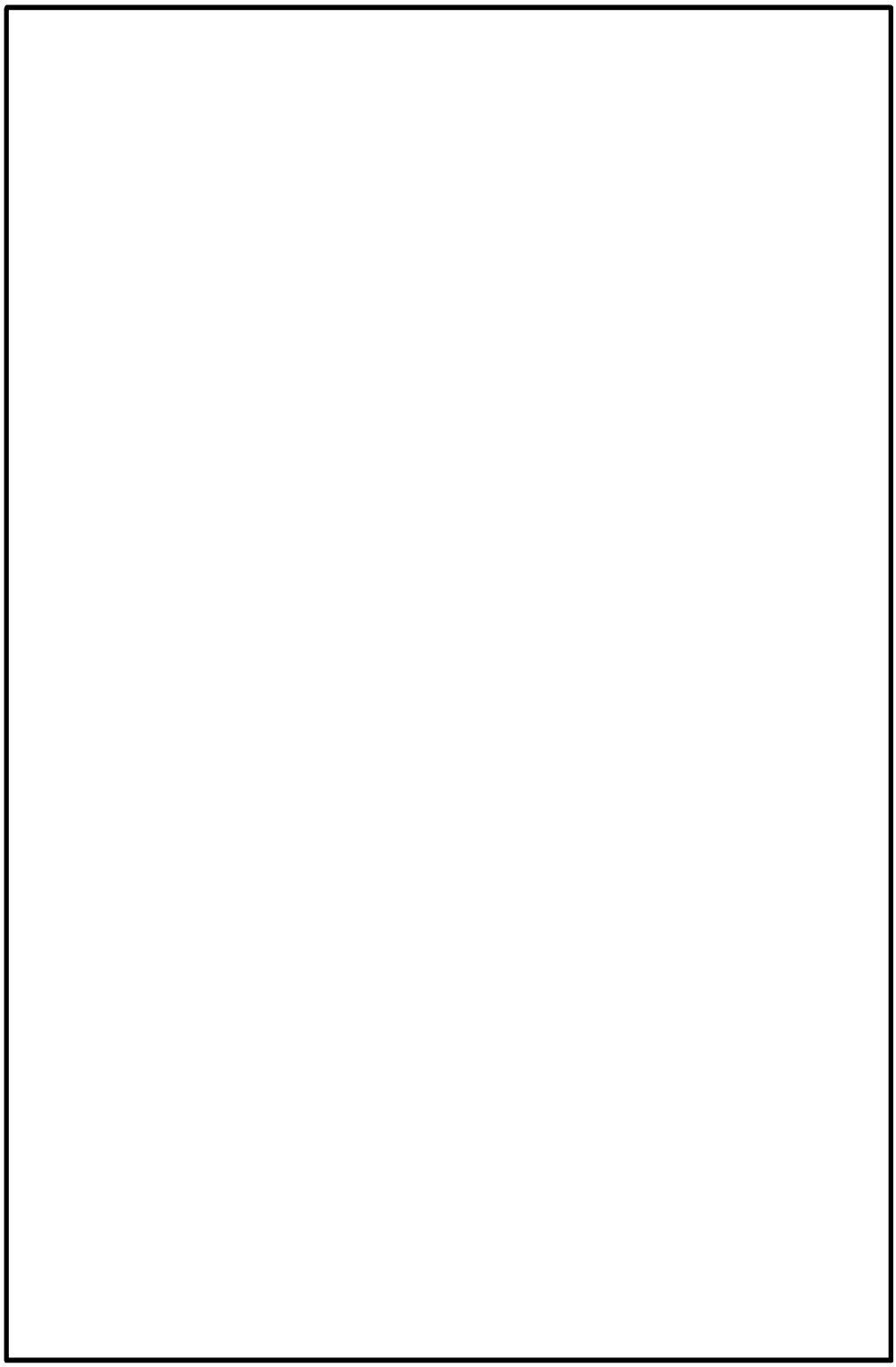
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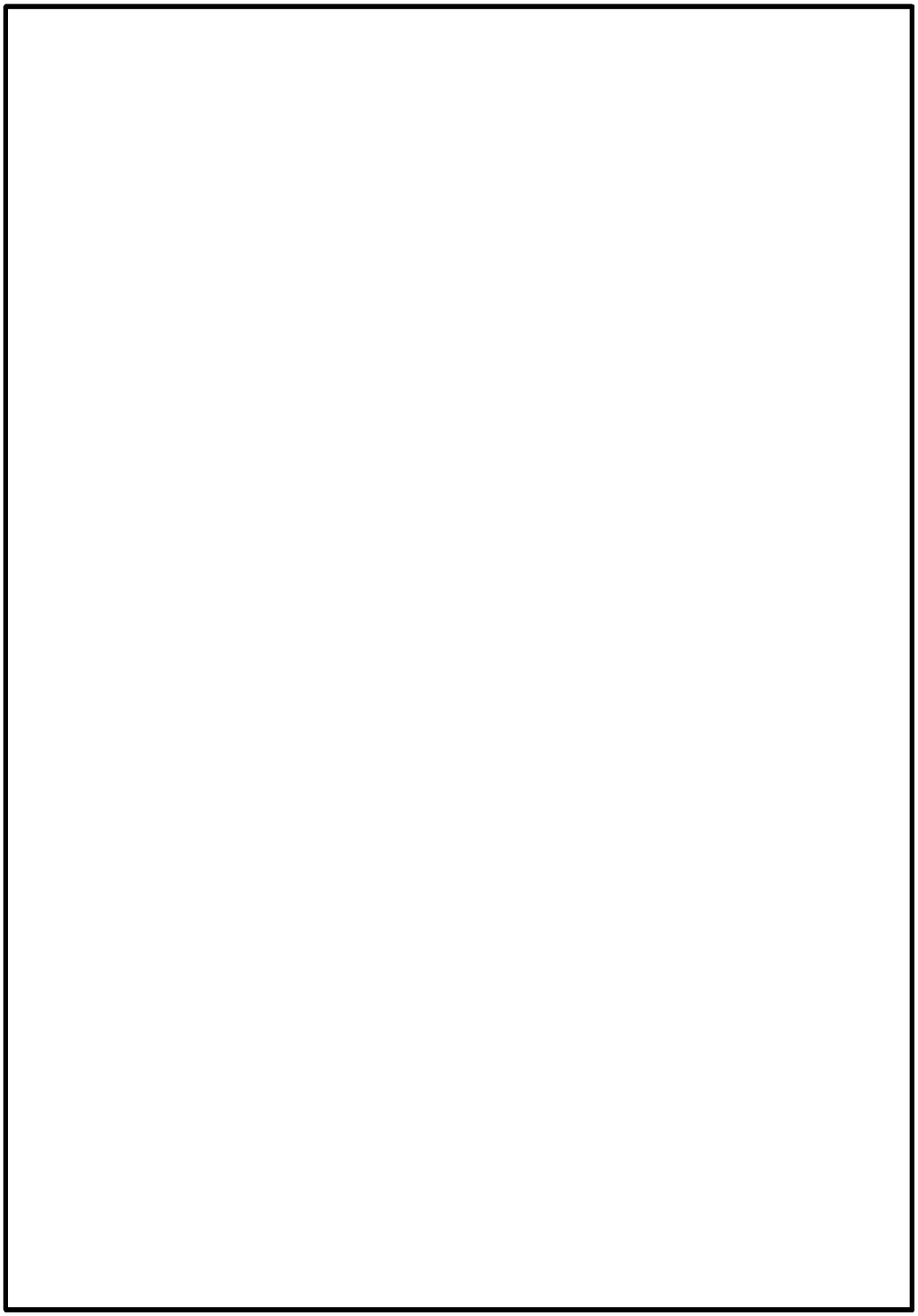
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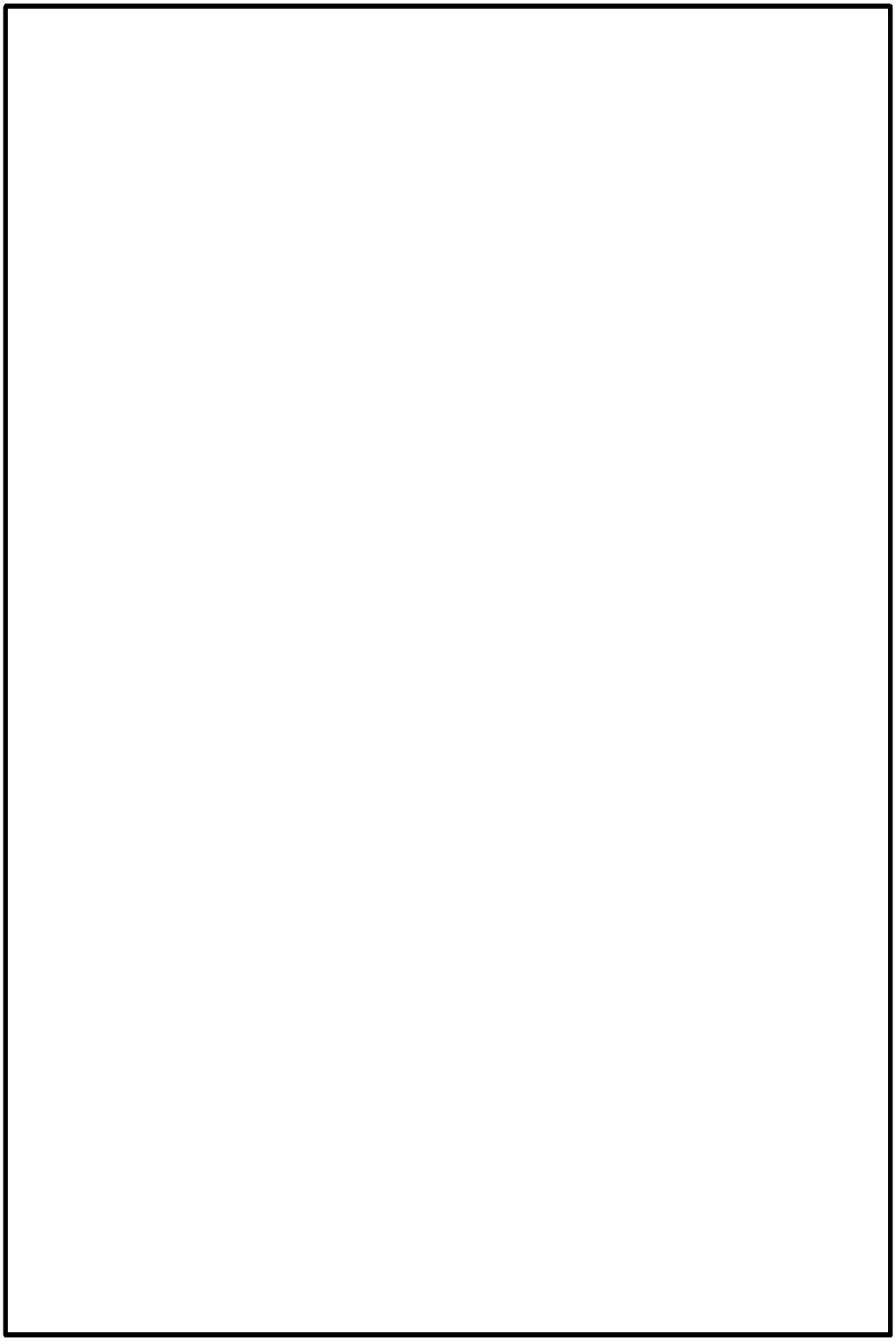
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OTHER MATERIALS

16 RESOURCES

At various points in your interview preparation, red flags may indicate you need to do additional research to make sure you can conduct an informed, thorough interview of a case with potential TRIG or other NS issues. For example, in order to determine if a group is a Tier III organization, you should research the group and assess what kinds of activities it has been involved in. The following resources provide useful information that you should take into consideration when adjudicating cases in which the applicant or a dependent may be barred/inadmissible as an NS concern.

16.1 USCIS Refugee, Asylum and International Operations Research Unit (Research Unit)

The Research Unit's Country of Origin Information (COI) research documents are a primary source of information for officers at RAIO. Research Unit products include specific COI that could be helpful when adjudicating cases involving national security matters. Research Unit products may be accessed through the RAIO Research Unit ECN Page

.

In accordance with each Division's established procedures, you may submit queries to the Research Unit (email to RAIOResearch@uscis.dhs.gov) when additional country conditions information is required to reach a decision in a case. Query responses are posted to the RAIO Research Unit ECN page.

16.2 USCIS Fraud Detection and National Security Directorate

In support of the overall USCIS mission, the Fraud Detection and National Security Directorate (FDNS) was created to enhance the integrity of the legal immigration system, detect and deter benefit fraud, and strengthen national security.

FDNS has established a website on the USCIS intranet that includes in the "Department Resources" section links to information on various databases as well as several websites maintained by other organizations. See also RAIO Intro to Fraud materials.

16.3 Department of State

The Department of State's Office of Counterterrorism maintains a body of resource information on its website, http://www.state.gov/s/ct/, which addresses issues of terrorism.

Annual Country Reports on Terrorism

The Department of State is required to submit to Congress an annual report on terrorism each year on April 30. The report includes detailed assessments of foreign countries where significant acts of international terrorism have taken place. Also included is information on the activities of those terrorist groups known to be responsible for the kidnapping or death of an American citizen or financed by a state sponsor of terrorism.

The report is typically divided into three main parts: an overview of terrorism in the year covered by the report; a discussion of the activities relating to terrorism (both in support of, and to combat, terrorism) in particular countries arranged by geographical region; and an overview of those countries designated as state sponsors of terrorism. In addition, the report includes a section that provides background information on foreign terrorist organizations designated under INA § 219, and background information on other terrorist groups.

State Sponsors of Terrorism

As an instrument of foreign policy, the President must impose sanctions on those countries designated as state sponsors of terrorism by the Department of State under § 2405(j) of the Appendix to Title 50 of the United States Code.[172] States designated are those that have "repeatedly provided support for acts of international terrorism."[173]

As of the date of this module (May 4, 2018), there are three designated state sponsors of terrorism: Iran, Sudan, and Syria.[174] Cuba, North Korea, and Libya were recently removed from the list. However, North Korea is being closely monitored to consider re-designation as its current activities and political climate is considered.

For each country, the report provides an overview of the manner in which these states have sponsored terrorist activity.

[172] 50 App. U.S.C.A 2405 (West 2002)

[173] *Id.*

[174] "Country Reports on Terrorism" Department of State, Bureau of Counterterrorism, 2011 *available at* http://www.state.gov/j/ct/rls/crt/2011/index.htm.

16.4 Department of the Treasury, Executive Order 13224 – Specially Designated Nationals List

On September 23, 2001, President Bush issued Executive Order 13224, which expands the government's authority to designate individuals or organizations that support financially or otherwise, or associate with, terrorists.[175] The executive order also allows the United States Government to block the designees' assets in any U.S. financial institution or held by any U.S. entity.

The Department of the Treasury Office of Foreign Assets Control maintains on its website a list of individuals and groups designated under this executive order – the Specially Designated Nationals List (SDN). The list includes hundreds of groups, entities, and individuals. A link to the list can be found here (available in pdf, or as listed by program or country), or you can search a specific name or entity under this site: http://sdnsearch.ofac.treas.gov/.

You should check the Department of the Treasury website for the most current version of the list as additional individuals or entities may be designated at any time.

NOTE: A designation under this list does not make an organization a designated terrorist organization for immigration purposes under INA § 212(a)(3)(B)(vi)(I)-(II), but it suggests that the organization has engaged in terrorist activity as defined by INA § 212(a)(3)(B)(iv) and therefore may meet the definition of an undesignated terrorist organization under INA § 212(a)(3)(B)(vi)(III).

16.5 United Nations – Al-Qaeda Sanctions List[176]

The United Nations Security Council Committee established "the List" in accordance with the UN resolutions 1267 (in 1999) and 1989 (in 2011) that detail individuals, groups, and other entities associated with al Qaeda.

NOTE: While many groups on this list may correspond to the Foreign Terrorist Organization (FTO) list ("Tier I") or the Terrorist Exclusion List (TEL) ("Tier II"), a group's being otherwise designated under "the List" does not make the organization a designated terrorist organization for immigration purposes under the INA but may suggest that an organization has engaged in terrorist activity as defined by INA § 212(a)(3)(B)(iv) and therefore may meet the definition of an undesignated terrorist organization under INA § 212(a)(3)(B)(vi)(III), as is true for the SDN noted above.

[175] Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

[176] The United Nations, Security Council Committee, Resolution 1267/1989, Al-Qaeda Sanctions List. http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml.

16.6 DHS Intel Fusion

The list of internet links provided by the DHS Office of Operations Intel Fusion website includes links to U.S. Government sites, such as sites for CBP, CIS, and ICE Intelligence, the Central Intelligence Agency, and the Federal Bureau of Investigation, as well as links to international agencies such as Interpol. The main webpage also links to the ICE Forensic Document Laboratory (see below). Under the Reports section on the main page is a link to the Anti-Terrorism site. In it you will find country reports on terrorism, foreign terrorist organizations reports, and other resources that may be valuable for TRIG research. To obtain access to this site, set up your account by following the directions on the sign-in webpage at https://intel.ice.dhs.gov/. You will need a TECS account to access the website.

16.7 Homeland Security Investigations Forensic Laboratory (HSIFL)

The mission of the HSIFL is to provide a wide variety of forensic document analysis and law enforcement support services for DHS.[177]

The HSIFL Forensic Section conducts scientific examinations of documentary evidence and its representatives testify to their findings as expert witnesses in judicial proceedings. On a case-by-case basis, forensic examinations are conducted for other Federal, State, and local law enforcement agencies.

The HSIFL maintains a site within the DHS Intel Fusion website noted above. Under the "Alerts" section of the site, the HSIFL posts documents alerting officers to specific trends in the use of fraudulent documents including exemplars to assist in determining the authenticity of documents received in the adjudication process.

16.8 Liaison with Other DHS Entities

The adjudication of cases involving national security involves a number of parties outside of RAIO. Other entities within USCIS and DHS provide legal guidance and investigative support for these cases. Much of this interaction occurs at the headquarters level, though local offices also engage their ICE counterparts to coordinate action on cases as needed.

[177] Mission Statement, Homeland Security Investigations Forensic Laboratory, ICE Office of Intelligence, *available at* http://www.ice.gov/hsi-fl/.

16.8.1 USCIS Fraud Detection and National Security Directorate (FDNS)

The USCIS Fraud Detection and National Security Directorate coordinates the sharing of information and development of policy on the national level regarding fraud and national security. FDNS-IOs assist in the field with internal and external vetting; FDNS HQ is responsible for vetting certain kinds of NS concerns.

16.9 Other Internet Resources

In addition to accessing resources and websites through the U.S. Government sites listed above, other public internet sites provide excellent background information on national security matters.

16.9.1 IHS Jane's: Defense & Security Intelligence & Analysis

Through the DHS Library (select "Jane's" from the right-hand column section titled "Resources A-Z"), you have access to two Jane's Defense & Security Intelligence & Analysis (Jane's Intelligence) databases: the "Military and Security Assessments Intelligence Centre" and the "Terrorism and Insurgency Centre."

NOTE: These accounts are only available by clicking from the DHS intranet. Otherwise, if you find the site from a separate link, you will only have public (limited) access to these sites.

The Security Assessments database brings together news and country conditions relating to the country's military capabilities to respond to threats. Also included are reports detailing the country's infrastructure and economy.

The Terrorism and Insurgency database contains material regarding terrorist activities within a country and analysis of threats to national or regional security.

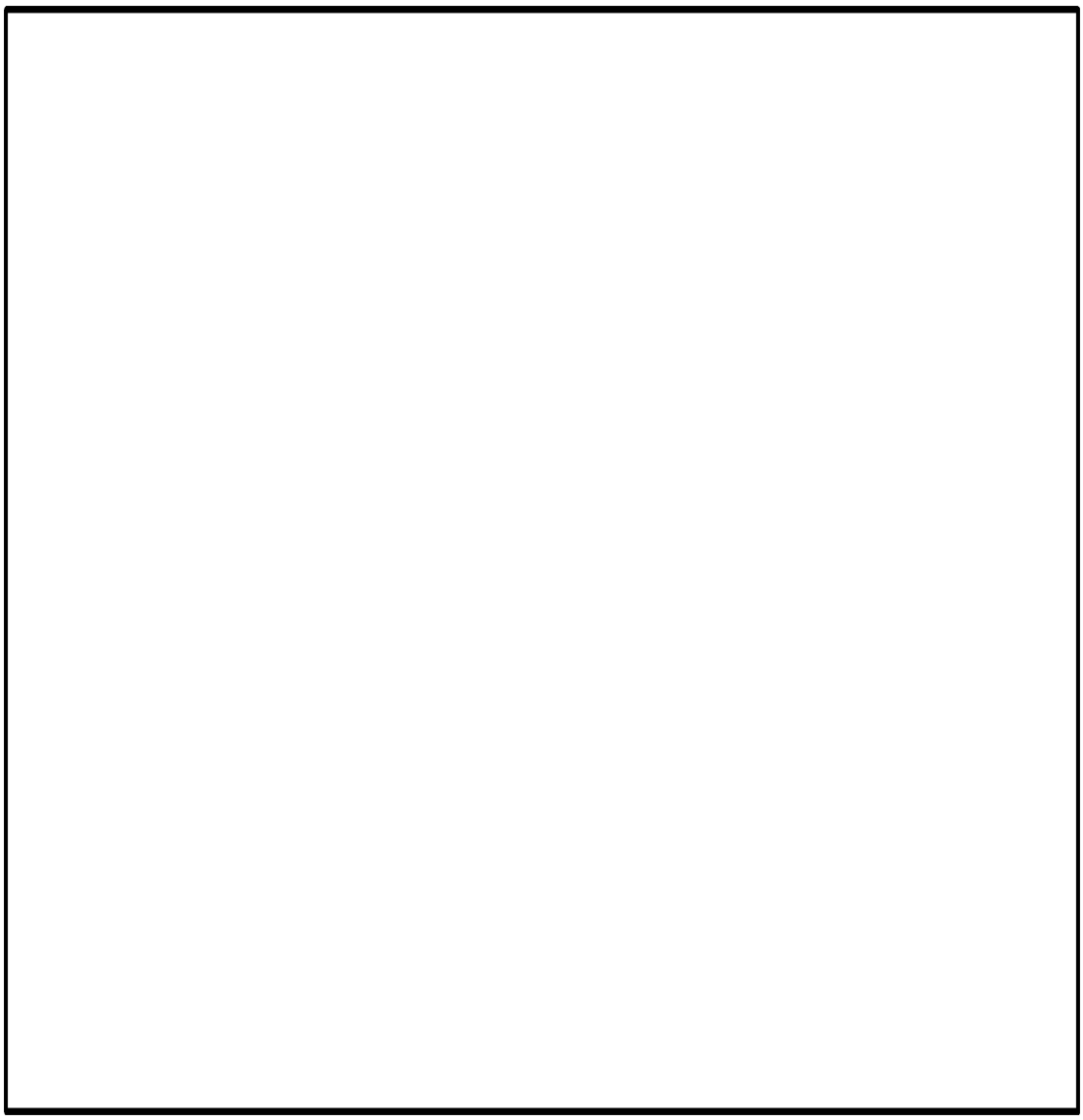
Both databases will help you make informed determinations as to whether the applicant may be subject to a terrorism-related inadmissibility ground.

16.9.2 Dudley Knox Library of the Naval Postgraduate School

The internet site of the Dudley Knox Library of the Naval Postgraduate School in Monterey, California provides links to internet resource materials organized by topic. The website for the Dudley Knox Library can be accessed at: http://www.nps.edu/Library/Research/SubjectGuides/index.html. Under "Subject Guides," click "Terrorism" under Special Topics and a list of resources are provided – e.g., links to bibliographies on terrorist issues, reports, documents and articles; and government and other NGO websites.

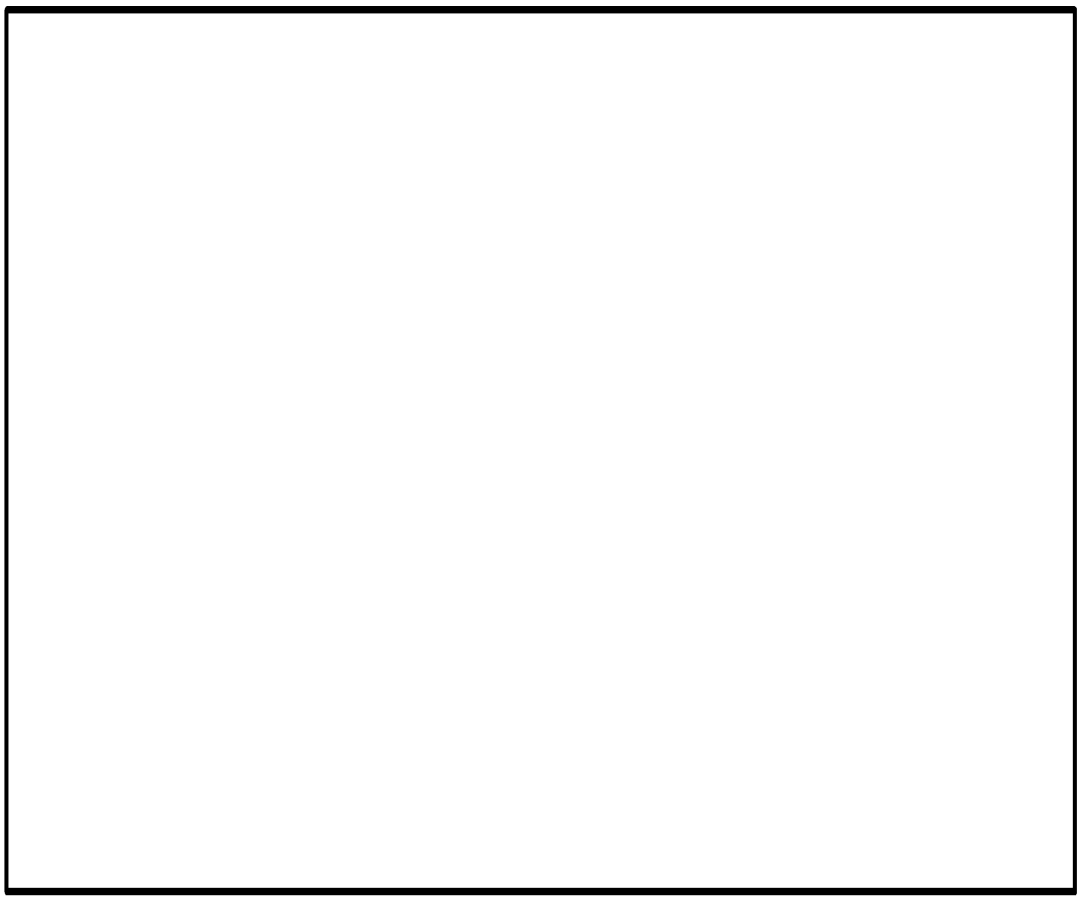
16.10 TRIG Exemption Matrices

(b)(7)(e) **Group-Based Exemptions**



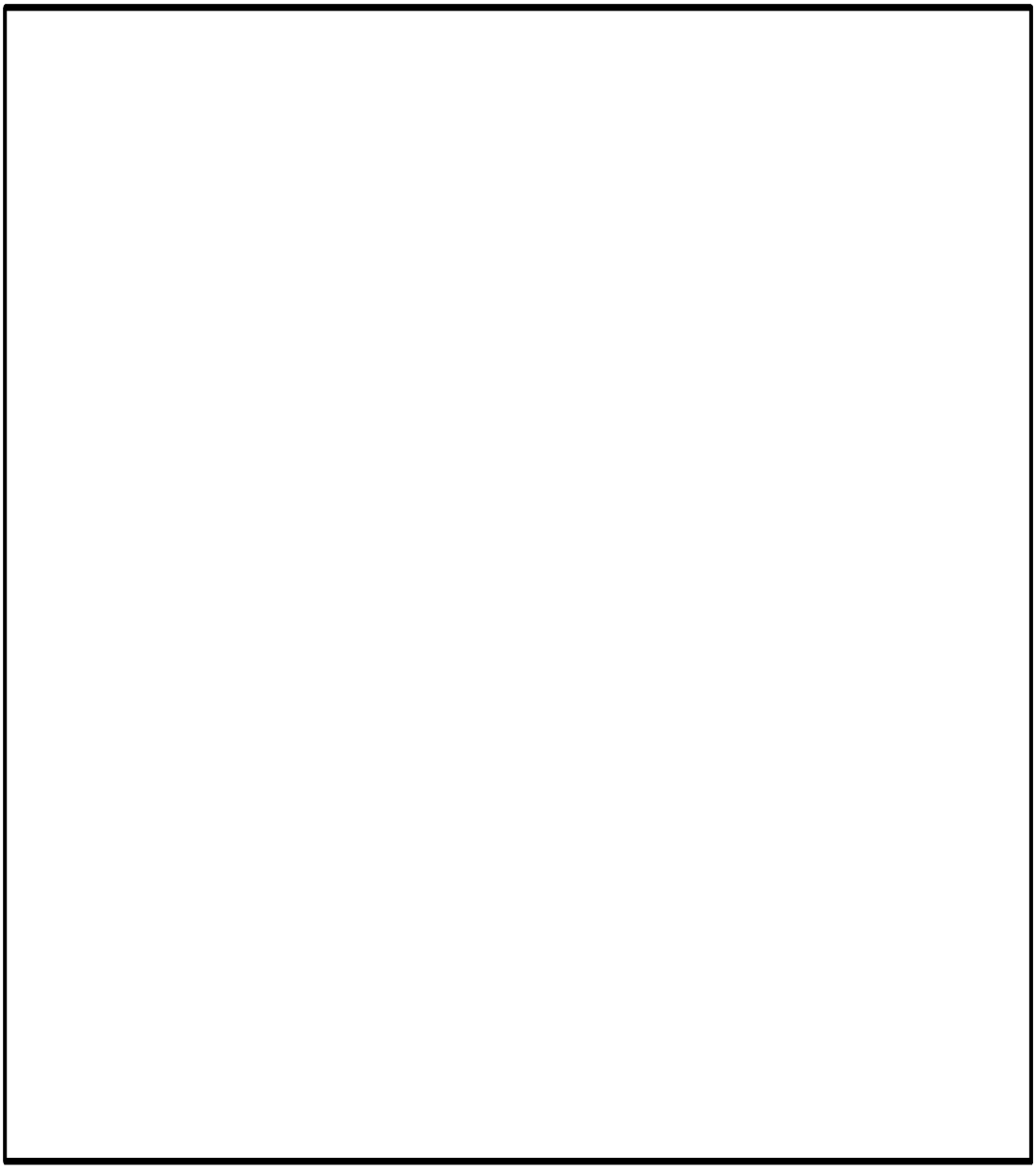
FOR OFFICIAL USE ONLY (FOUO) – LIMITED OFFICIAL USE / LAW ENFORCEMENT SENSITIVE

(b)(7)(e)

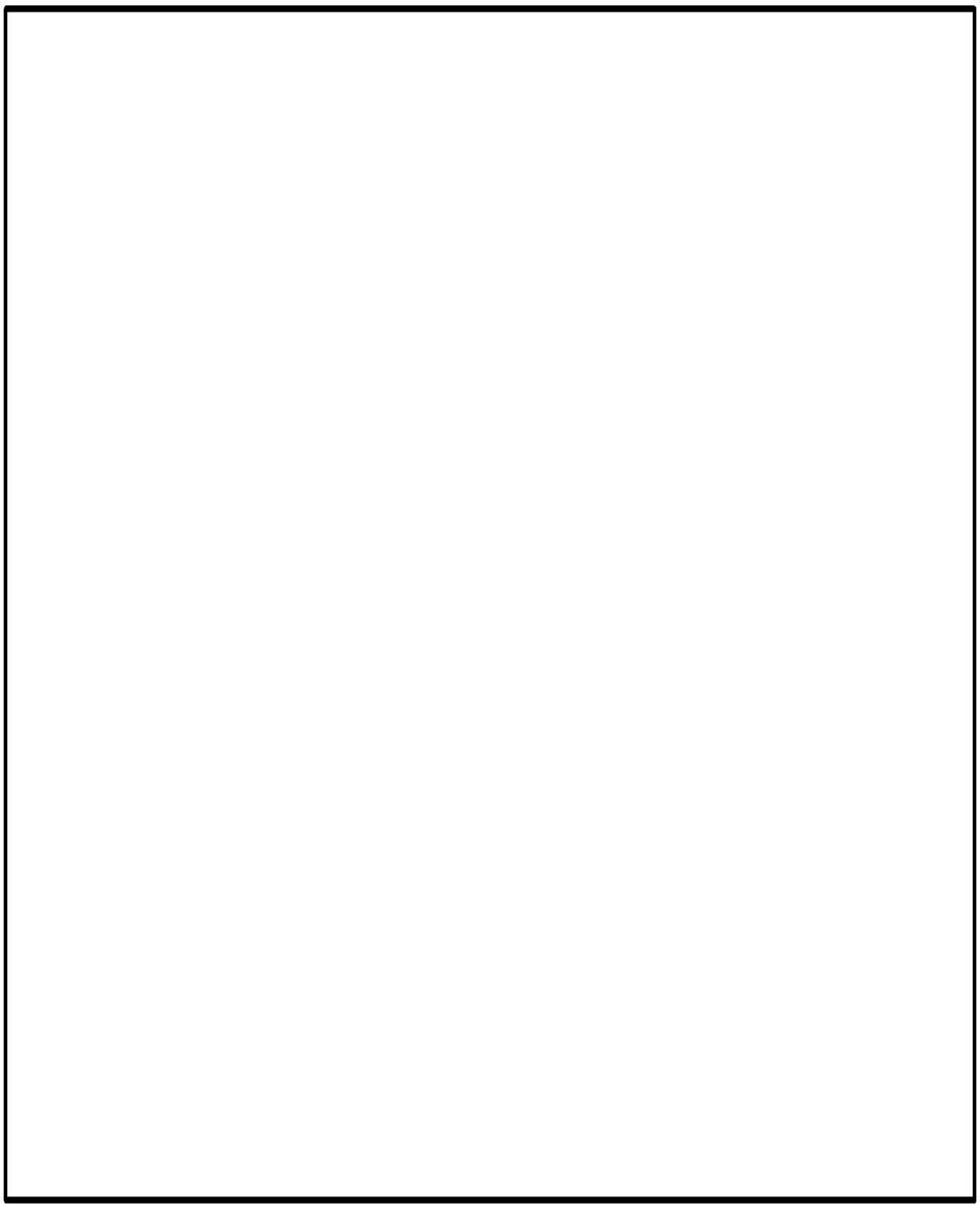


(b)(7)(e)

Situational Exemptions



(b)(7)(e) Other Materials National Security



SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. "Processing of Refugee Cases with National Security Concerns" Memo, Barbara Strack (Chief, RAD) and Joanna Ruppel (Chief, IO) (November 19, 2008).

2. "Operational Guidance for Vetting and Adjudicating Refugee Cases with National Security Concerns" Issued along with Attachment – "Refugee Adjudication Standard Operating Procedure: Cases Involving National Security Concerns" Memo and Operational Guidance, Barbara Strack, Chief of Refugee Affairs Division (May 14, 2008).

3. Summary of Terrorism-Related Inadmissibility Provisions

4. CAA Group Exemptions Chart

ADDITIONAL RESOURCES

1. USCIS Connect, RAD page (contains links to guidance and memos on TRIG, TRIGFAQs and CARRP).

SUPPLEMENTS

RAD Supplement – 1

12.1 Burden and Standard of Proof for TRIG Inadmissibility Grounds

If the evidence indicates that the applicant may be inadmissible to the United States pursuant to INA § 212(a), then the applicant must establish clearly and beyond doubt that the disqualifying issue does not apply in order to be eligible for resettlement in the U.S. as a refugee pursuant to INA § 207(c).[178]

[178] INA § 235(b)(2)(A).

(b)(7)(e)

For example,

[redacted]

(b)(7)(e)

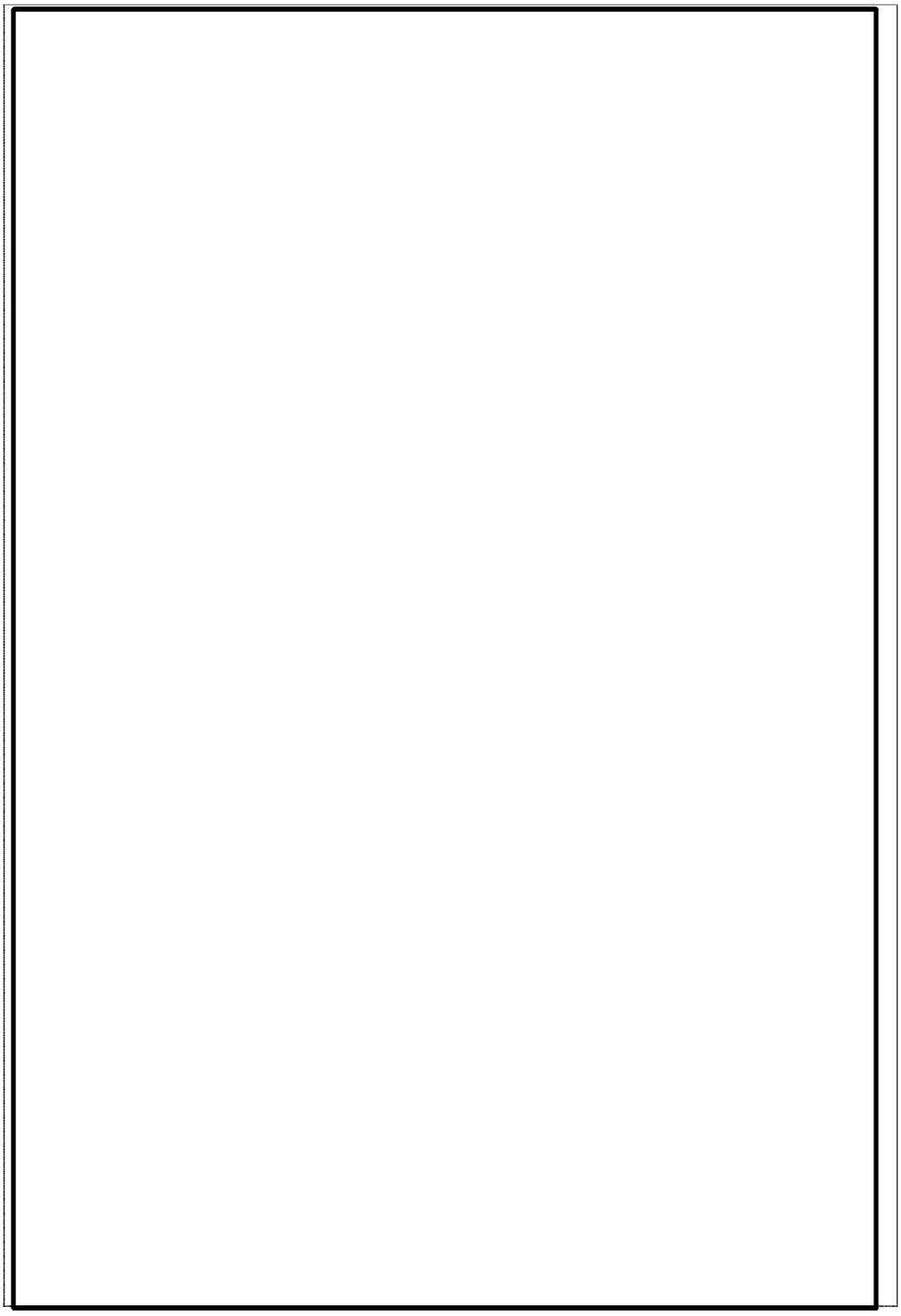
RAD Supplement – 2

12.2 Documenting Cases Involving National Security Indicators and Concerns (CARRP Procedures) [179]

[redacted]

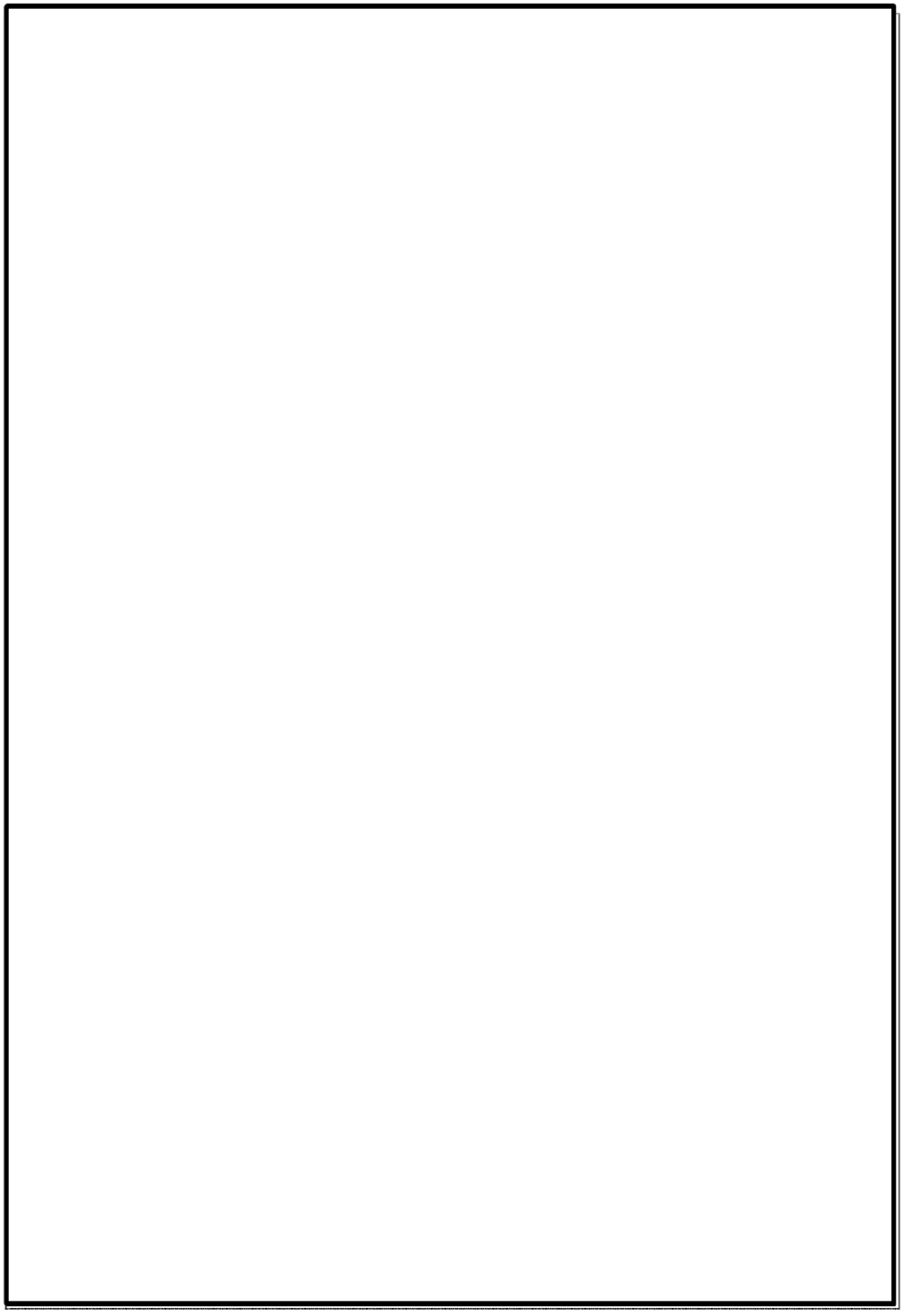
[179] See Refugee Adjudication Standard Operating Procedures: Cases Involving National Security Concerns, (May 14, 2008) for a full discussion of national security policy and procedures.

(b)(7)(e)



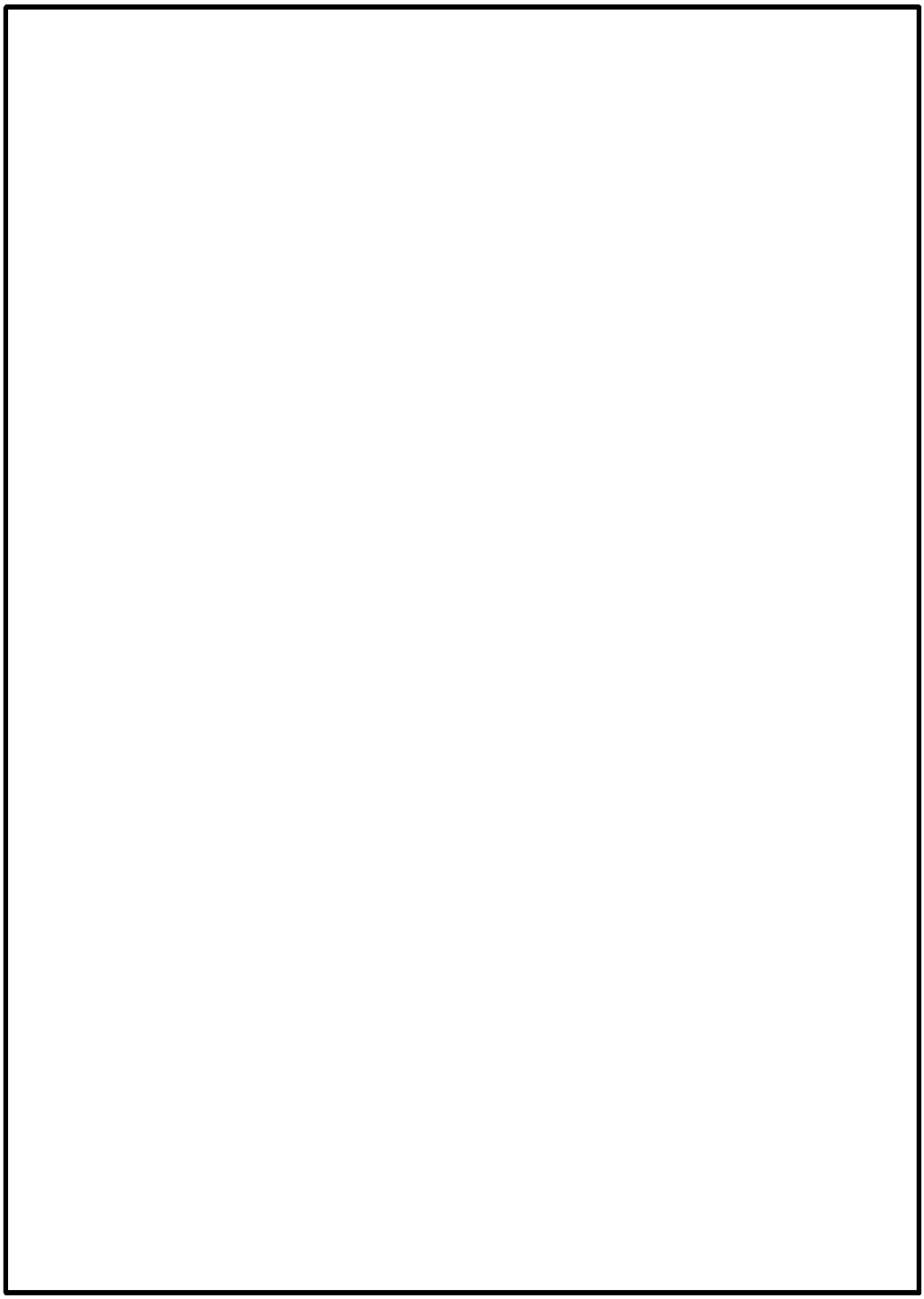
Supplement A
Refugee Affairs Division National Security

(b)(7)(e)



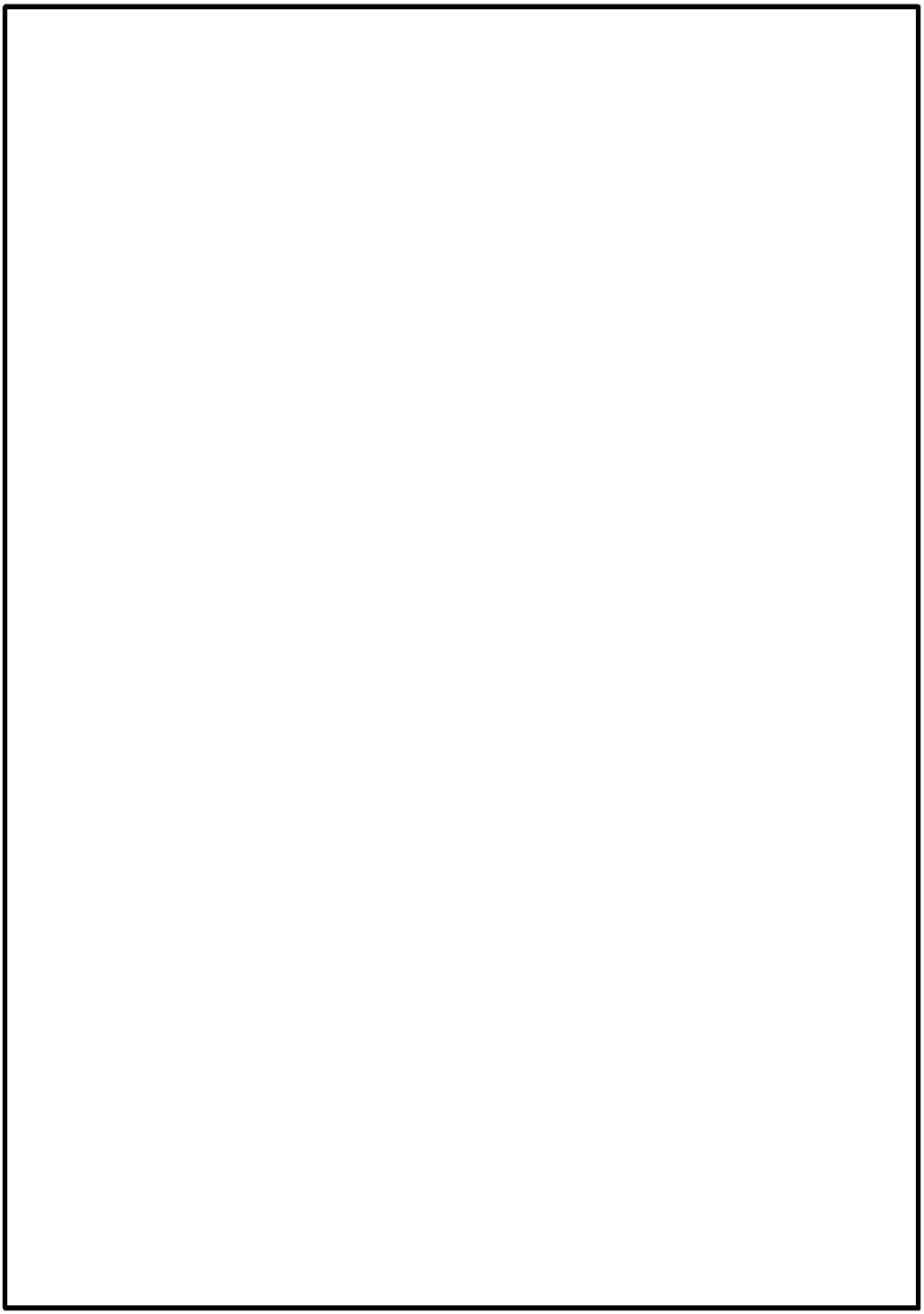
Supplement A
Refugee Affairs Division National Security

(b)(7)(e)



Supplement A
Refugee Affairs Division National Security

(b)(7)(e)

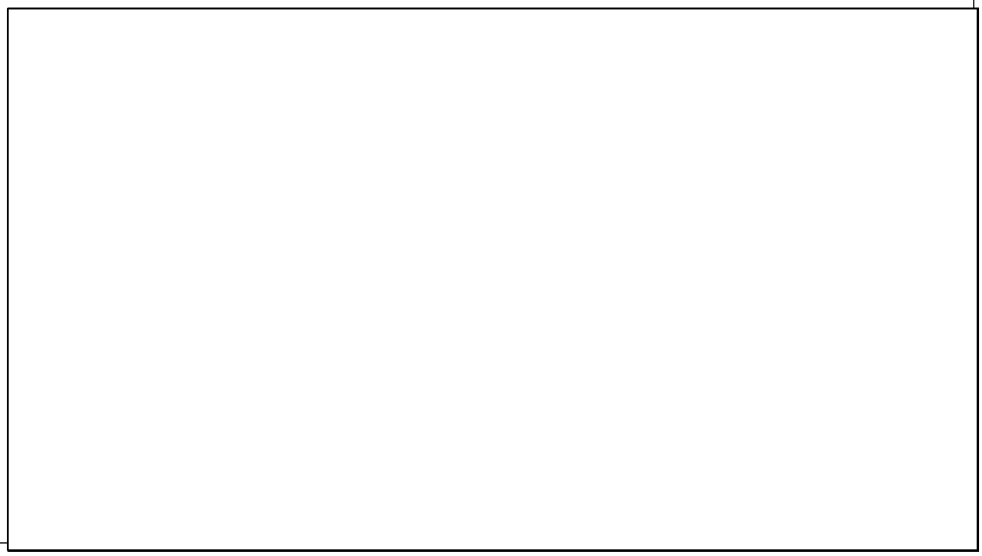


RAD Supplement – 3

13.1.2 The CARRP Process: Internal Vetting and Eligibility Assessment

Cases that Require HQRAD Review[180]

(b)(7)(e)



[180] "Processing of Refugee Cases with National Security Concerns," (November 19, 2008). Note, RAD/HQ may discretionarily deny cases with national security concerns.

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. "Updated Instructions for Handling TECS B10 Hits," Ted H. Kim, Acting Chief, Asylum Division (June 19, 2012).
2. Asylum Division Identity and Security Checks Procedures Manual (ISCPM), especially Section VIII of the ISCPM regarding Cases Involving Terrorism or Threats to National Security.
3. Asylum Division Affirmative Asylum Procedures Manual (AAPM).
4. "Issuance of Revised Section of the Identity and Security Checks Procedures Manual Regarding Vetting and Adjudicating Cases with National Security Concerns" (ISCPM), Joseph Langlois, Chief, Asylum Division (May 14, 2008).

ADDITIONAL RESOURCES

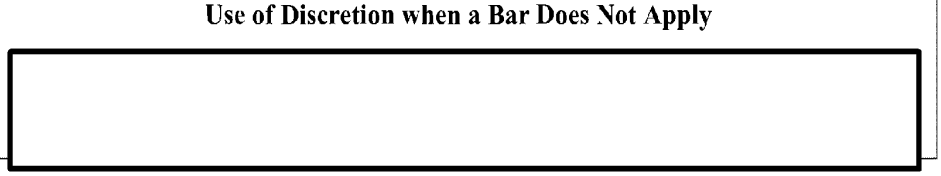
1. ECN Overview for ASM Training.
2. *Matter of A-H-*, 23 I&N Dec. 774 (AG 2005)
3. *Singh-Kaur v. Ashcroft*, 385 F.3d 293 (3d Cir. 2004)
4. *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003)

SUPPLEMENTS

(b)(7)(e)

ASM Supplement – 1

Use of Discretion when a Bar Does Not Apply



(b)(7)(e)

ASM Supplement

Note Taking – National Security

Asylum Division procedures require that officers take notes in a sworn statement format when:

- The applicant admits, or there are serious reasons to believe, he or she is associated with an organization included on either the Foreign Terrorist Organizations List or the Terrorist Exclusion List, both of which are compiled by the Department of State and are available at http://www.state.gov/s/ct/
- The applicant admits, or there are serious reasons to believe, she or he is involved in terrorist activities
- There are serious reasons for considering the applicant a threat to national security

The use of the sworn statement is crucial because an applicant's admission may be used as a basis to institute deportation or removal proceedings against him or her,

(b)(7)(e)

[183] *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

or as a basis for DHS to detain the applicant.

For further explanation and requirements, see RAIO Module, *Interviewing - Note-Taking*, including the Asylum Supplement and see the Affirmative Asylum Procedures Manual (AAPM).

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. "Guidance for International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns" Memo, Alanna Ow, Acting Director of International Operations (April 28, 2008).

2. "Processing of Refugee Cases with National Security Concerns" Memo, Barbara Strack (Chief, RAD) and Joanna Ruppel (Chief, IO) (November 19, 2008).

ADDITIONAL RESOURCES

1. "Updated Background Identity and Security Check Requirements for Refugee/Asylee Following-to Join Processing" Memo Joanna Ruppel, Chief, International Operations (March 29, 2011).

SUPPLEMENTS

IO Supplement -1

13.1 The CARRP Process

Non-benefit conferring petitions mainly relate to USCIS applications such as an I-130, *Petition for Alien Relative* in which an applicant is demonstrating a family relationship but not seeking a specific immigration benefit. The International Operations Division primarily encounters and adjudicates these cases in the field. There is instructional operations guidance on how to handle such cases located on the FDNS website: *Guidance for the International Operations Division on the Vetting, Deconfliction, and Adjudication of Cases with National Security Concerns – April 28, 2008*. If you encounter an NS concern on a non-benefit conferring petition, you will be required to note in TECS that an inadmissibility under INA § 212 may exist for the beneficiary. However, further CARRP processing is not required.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiff,

-v-

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al.

Defendants.

17 Civ. 7572 (ALC)

DECLARATION OF JILL A. EGGLESTON
IN FUTHER SUPPORT OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE'S
MOTION FOR SUMMARY JUDGMENT

I, Jill A. Eggleston, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury:

1. I am the Associate Center Director in the Freedom of Information and Privacy Act ("FOIA/PA") Unit, National Records Center ("NRC"), United States Citizenship and Immigration Services ("USCIS"), within the United States Department of Homeland Security ("DHS"), in Lee's Summit, Missouri. I have held the position of Associate Center Director since February 4, 2008. I am also an attorney, licensed to practice law by the State of Kansas in 1983. Prior to joining DHS, I served for 19 ½ years as Associate General Counsel for the Defense Finance and Accounting Service ("DFAS") of the U.S. Department of Defense ("DoD"). As part of my duties with the DFAS, among other things, I provided legal advice to the agency on the release of information sought under the FOIA and PA.

2. I submit this declaration in further support of USCIS's motion for summary judgment in the above-referenced matter. The statements contained in this declaration are based on my personal knowledge, my review of relevant documents kept by USCIS in the course of ordinary business, and upon information provided to me by other USCIS employees in the course of my official duties.

INFORMATION WIITHHELD PURSUANT TO EXEMPTION 5

3. FOIA Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." *Id.* To qualify for Exemption 5 protections, a document must satisfy two conditions. The document's source must be a government agency and it must fall within the ambit of a privilege against discovery recognized under Exemption 5.

4. The agency withheld information in three records, described below and in my prior declaration dated March 14, 2019 ("Eggleston Declaration"), pursuant to the deliberative process privilege, which is designed to protect the decision making processes of government

agencies. The privilege protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would result in harm and would have a chilling effect on the ability of the government to engage in internal debate and deliberations when developing agency policy.

5. **Pages 52-56; copy of a memorandum, dated February 8, 2017, and entitled "Briefing Memo for the Acting Director: Recommendation to Eliminate the USCIS Terrorism-Related Inadmissibility Grounds (TRIG)," which included a draft copy of a proposed new USCIS policy, entitled "Policy Memorandum: Revised Guidance for Processing Cases Involving Terrorism-Related Inadmissibility Grounds and Elimination of the Hold Policy for Such Cases."**

   These five pages of records were partially withheld pursuant to Exemption 5's deliberative process privilege. As described in the Eggleston Declaration, these pages contain discussions and recommendations from USCIS staff to senior agency management regarding a proposed revision to the USCIS TRIG implementation policy. Released portions of this memo describe its purpose as follows: "[t]his paper provides information regarding cases currently being held by USCIS pursuant to the existing USCIS TRIG hold policy and a review of relevant considerations for determining whether these cases should continue to be held or released for adjudication." The withheld portions do not reflect positions that are or became binding on the agency, but rather, contain recommendations and analyses concerning revisions to TRIG exceptions and the possible application of such revisions to certain asylum applications.

6. **Pages 59-63, Senior Policy Council-Briefing Paper: TRIG Exemptions & INA § 318**

   These five pages of records were partially withheld pursuant to the deliberative process privilege of Exemption 5. As described in the Eggleston Declaration, this internal agency briefing paper was prepared by agency personnel for senior agency management and discusses specific TRIG exemptions and how they could be interpreted and applied to specific types of applicants who seek immigration benefits from USCIS. In addition, this memorandum contains a recommendation for senior agency management concerning agency policy. The withheld portions do not reflect positions that bound the agency, but rather, contain legal analysis and a recommendation regarding what the agency policy should be.

7. **Pages 64-70, Options Paper: Exercise of Authority Relating to the Terrorism-Related Inadmissibility Grounds.**

   These seven pages of records were partially withheld pursuant to the deliberative process privilege of Exemption 5. As described in the Eggleston Declaration, this internal agency memorandum was prepared by agency personnel for senior agency management and discussed options for implementing an Executive Order that directed the Secretaries of State and DHS to consider rescinding the TRIG exemptions permitted by Section 212 of the INA (EO 13780 – Protecting the Nation from Foreign Terrorist Entry into the United States, March 9, 2017). Specifically, the paper presented senior USCIS management with three

options for a final agency decision for issuing a new agency policy that implemented the Executive Order. These options did not constitute final policy guidance or imposed a binding position on the agency, but rather, contain analyses of different possible positions. In addition, while some of the withheld material is purely factual, it is inextricably intertwined with deliberative material and analysis such that it cannot reasonably be segregated and released. For example, in the "Background" and "Methodology" sections of the Options Paper, the drafters discuss specific asylum applications and the agency's various methods for analyzing those applications, thus intertwining the facts of specific cases with the agency's deliberations and analyses. Releasing those facts would result in incomplete, unintelligible and fragmented sentences.

INFORMATION WITHHELD PURSUANT TO EXEMPTION 7(E)

8. FOIA Exemption 7(E) protects from disclosure records or information compiled for law enforcement purposes and would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions. Exemption 7(E) applies to categorical protections of law enforcement techniques and procedures, and it does not require that the disclosure will cause harm.

9. USCIS has responsibility to enforce federal immigration law pursuant to the INA. Documents compiled by USCIS that relate to administrative immigration proceedings conducted by its staff are documents considered to be compiled for law enforcement purposes. The records produced to Plaintiff relate to USCIS's duty to properly enforce United States immigration law during adjudications of applications and petitions submitted to USCIS by individuals seeking immigration benefits from the United States government. Primarily, the records described herein are used to train USCIS immigration officers how to screen for possible terrorism ties and terrorism-related inadmissibility grounds pursuant to the INA when interviewing applicants and adjudicating petitions and applications from individuals seeking immigration benefits from USCIS. Thus the records described herein that are withheld pursuant to FOIA Exemption 7(E) were compiled for a law enforcement purpose.

10. Exemption 7(E) applies even if the law enforcement procedures or techniques are generally known, as disclosure of the specific procedures or techniques may reduce or nullify their effectiveness.

11. As described in the Eggleston Declaration, USCIS withheld information in various records relating to training USCIS immigration officers to screen applicants for possible terrorist ties. In a number of documents, *see e.g.* Eggleston Decl. at ¶¶ 22, 26-41, USCIS withheld model or sample questions for immigration officers to use when screening applicants. For example, pages 485 and 502 contain suggested questions for immigration officers to use to determine whether an applicant provides material support for terrorism, and to determine whether an applicant provides support to a terrorist organization under duress. *See id.* at ¶ 39. These questions reflect specialized methods that USCIS has refined through its decades of enforcing United States immigration laws.

12. While the fact that immigration officers screen for terrorist ties is generally known to the public, specific questions and the actual questioning techniques are not generally known to

the public. The particular information the questions and follow-ups were designed to elicit includes information that would shed light on terrorist organizations' activities and help determine whether the applicant had any ties to such terrorist organizations and activities.

13. USCIS also withheld information in certain records concerning when an applicant qualifies for a TRIG exemption. *See* Eggleston Declaration at ¶¶ 26, 36. If an applicant were to review these criteria, applicants could tailor their testimony to meet the requirements for a particular exemption. That is because the listed criteria does more than mirror the TRIG statute; the criteria provide guidance for how to interpret the statute in various factual circumstances. For example, USCIS withheld a "non-exhaustive list of appropriate factors" to evaluate in such a "discretionary analysis," Dkt. No. 109-3 at 68, noting that the factors are not "requirements" but rather "factors to be considered." Releasing those factors would enable applicants to tailor their answers to meet such criteria – criteria which is not otherwise available and known to the public.

14. The information withheld in certain records under the heading "What is reasonable lack of knowledge?" contains examples of factual scenarios where an applicant has demonstrated that he or she reasonably did not know that a certain organization was a terrorist organization. Dkt. No. 109-3 at 53. The withheld information is not definitional or a legal interpretation, and its release would provide applicants with guidance as to how to tailor their testimony.

15. USCIS released all segregable factual portions from its productions in this matter. For example, the information withheld in Chapter 13.1 in the RAIO Directorate – Officer Training Manual describes the process under the Controlled Application Review and Resolution Program, including subsections concerning: (1) the identification of a national security concern; (2) internal vetting and eligibility assessment procedures; (3) external vetting procedures; and (4) final adjudication processes. Dkt. No. 109-3 at 123, 181-87. While USCIS redacted the names of the subsections above in the text of the chapter, USCIS included them in the text of the table of contents. *See id.* In addition, the chapter contains some factual information, but it is minimal and interwoven with guidance, procedures and techniques used to process cases with national security concerns, in the context of the Controlled Application Review and Resolution Program. Moreover, the withheld information contains procedures for inter-agency coordination, techniques for reviewing internal databases, and procedures for coordinating with other agencies.

CONCLUSION

16. USCIS provided all responsive, reasonably segregable, non-exempt information. For these reasons, USCIS's actions in response to Plaintiff's FOIA request were in full compliance with FOIA.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed in Lee's Summit, Missouri, on this _14___ day of __May_____ 2019.

Jill A. Eggleston
Associate Center Director
Freedom of Information Act and Privacy Act Unit
USCIS National Records Center

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.

Defendants.

Civil Action No. 1:17-CV-07572-ALC

SUPPLEMENTAL DECLARATION OF TONI FUENTES IN SUPPORT OF THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION

I. INTRODUCTION

I, Toni Fuentes, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Officer of the U.S. Immigration and Customs Enforcement ("ICE") Freedom of Information Act ("FOIA") Office. I have held this position since September 30, 2018, and am the ICE official immediately responsible for supervising ICE responses to requests for records under the Freedom of Information Act, 5 U.S.C. § 552 (the FOIA), the Privacy Act, 5 U.S.C. § 552a (the Privacy Act), and other applicable records access statutes and regulations. Prior to this position, I have held numerous FOIA positions over the past 20 years, including: FOIA Director for the National Protection and Programs Directorate ("NPPD") at the U.S. Department

of Homeland Security ("DHS"); Government Information Specialist for Department of Justice, U.S. Marshal's Service, Office of General Counsel; Government Information Specialist for the Department of Defense, Office of the Inspector General's FOIA Office; FOIA Officer, Paralegal Specialist for Department of the Navy, NAVAIR/NAWCAD's Office of Counsel; Management and Program Analyst for Department of Homeland Security, Customs and Border Protection's FOIA Office; and FOIA Paralegal Specialist for the National Aeronautics and Space Administration's Office of Chief Counsel.

2. The ICE FOIA Office is responsible for processing and responding to all FOIA, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. The ICE FOIA Office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

3. My official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. The ICE FOIA Office is responsible for the receipt, processing, and response to all FOIA and Privacy Act requests received at ICE. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. Due to my experience and the nature of my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of the FOIA and the Privacy Act. In that respect, I am familiar with ICE's processing of the FOIA request dated August 7, 2017, that the Knight First Amendment Institute at Columbia University ("Knight Institute" or "Plaintiff") submitted to ICE, which is the subject of this litigation.

4. I make this declaration in my official capacity in support of ICE's motion for partial summary judgment in the above-captioned action. The statements contained in this declaration

are based upon my personal knowledge, my review of records kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties. The documents attached hereto are kept by ICE in the ordinary course of its business activities.

5. I submit this supplemental declaration to further explain the withholdings pursuant to Exemption (b)(5) for the four records identified in Plaintiff's opposition motion for summary judgment.

6. In addition, as described in my previous declarations on September 29, 2017, ICE produced 1,666 pages of documents to plaintiff, releasing 13 pages in full and withholding 1653 pages in part. See Dkt. No. 113 at ¶ 9; see also Dkt. No. 108. ICE included descriptions of those withholdings in its Vaughn Index, Dkt. No. 98-1, except for 16 pages inadvertently omitted; accordingly, I submit this declaration in order to supplement the Vaughn Index, in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Attached as Exhibit 1, the supplemental Vaughn Index provides a description of how ICE withheld portions of the records located in response to the Plaintiff's FOIA request and an explanation of the basis for withholding 16 pages pursuant to Exemptions (b)(5) and (b)(7)(E) of the FOIA.

II. WITHHELD INFORMATION IN FOUR RECORDS PURSUANT TO EXEMPTION 5

7. **Record #1:** This draft document, created around 2010-time frame, is a memorandum entitled "Removal of National Security Threat Aliens" and is accompanied by an email drafted in 2017 with the subject heading "235(c)." This memorandum discusses Section 235(c) of the Immigration and Nationality Act (INA), which provides a process to exclude aliens

who present a threat to national security. The statutory provision allows the U.S. Government to initiate removal of an arriving alien based on classified or sensitive information, without subjecting the evidence to unnecessary exposure. The memorandum includes sections discussing ICE's interpretation and implementation of Section 235(c); a case study illustrating, at the time, the last known removal using Section 235(c) authority; proposed revisions to Section 235(c); and recommendations on whether to use the provision for removals.

8. FOIA Exemption (b)(5), 5 U.S.C. § 552(b)(5), protects from disclosure inter- or intra-agency records that are normally privileged in the civil discovery context. Pursuant to Exemption (b)(5), the three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

9. ICE applied Exemption (b)(5) to protect from disclosure documentation subject to the deliberative process privilege. ICE withheld an intra-agency email correspondence and memorandum containing: opinions regarding ICE's interpretation and implementation of INA Section 235(c); suggestions on whether to utilize the statutory provision; and a communication between ICE employees where an employee summarizes his/her impression of the memorandum and its utility.

10. This draft memorandum did not bind the agency. The memorandum provides general background information and was used to assist with discussions on recent changes to Section 235(c) and how those changes impact ICE's interpretation and implementation of the provision. The accompanying email shows that this draft memorandum was sent by the Acting Deputy Chief of the National Security Law Section (NSLS) of the Office of the Principal Legal Advisor (OPLA) to the Chief of NSLS and to the Chief Counsel for OPLA's Washington, DC's

Office of Chief Counsel. The memorandum is water-marked DRAFT and labeled "Privileged Document: Attorney-Client, Attorney Work Product" on each page; therefore, it was intended to be kept confidential.

11. The content of the memorandum and email between ICE employees are non-final and pre-decisional in nature. They are protected by the deliberative process privilege because the integrity of the deliberative or decision-making process within the agency would be compromised by their disclosure. Release of these materials would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel, adversely impact the quality of internal policy decisions and the development of ICE agency positions. These materials do not reflect final agency actions or policy; instead they are a reflection of the issues the authors have determined to be, in their judgment, worthy of discussion or consideration by colleagues or superiors and their release could serve to undermine that discussion and consideration and confuse the public.

12. ICE also applied Exemption (b)(5) to protect from disclosure documentation subject to the attorney-client privilege because it contains confidential communications between an attorney and his or her client(s) related to legal matter for which the client sought professional legal advice. This privilege applies to the facts that are divulged to the attorney and encompasses the opinions given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure to encourage a full and frank discussion between the client and the client's legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, it could result in a

chilling effect on interactions and communications between agency employees and their legal counsel.

13. In particular, ICE withheld a memorandum and communications between ICE attorneys, regarding Section 235(c) of the INA, and ICE's interpretation and implementation of Section 235(c). These confidential communications were between OPLA attorneys where they were discussing changes to Section 235(c) and the impact of those changes to ICE. Disclosure of these communications could chill future interactions and communications between agency employees and their legal counsel. To the best of my knowledge, this document was intended to be and was kept confidential.

14. ICE also applied Exemption (b)(5) to protect from disclosure documentation subject to the attorney work product privilege. This privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. Its purpose is to protect the adversarial trial process by insulating the attorney's preparation from scrutiny.

15. Here, this privilege was applied to a record containing information that was prepared by an agency attorney, specifically, the attorney's thoughts and strategy regarding the utility of Section 235(c). Furthermore, in its recommendations, the memorandum contemplates the rise of legal challenges if a certain path is taken. This memorandum was prepared in anticipation of litigation given the rise in challenges to the previous Administration's immigration policies.

16. **Record #2:** This draft document, created in April 2017, is a memorandum entitled "Inadmissibility Based on Endorsing or Espousing Terrorist Activity: First Amendment Concerns" and is accompanied by emails, also drafted in 2017, with the subject heading "RE: Endorsing and

espousing terrorist activity paper." This memorandum discusses First Amendment concerns that may arise in applying the security-related ground of inadmissibility under Section 212(a)(3)(B)(i)(VII) of the INA. The memorandum also discusses alternative inadmissibility grounds that can be used in lieu of Section 212(a)(3)(B)(i)(VII).

17. ICE applied Exemption (b)(5) to protect from disclosure documentation subject to the deliberative process privilege. ICE withheld a memorandum containing: opinions regarding inadmissibility based on endorsing or espousing terrorist activity; potential alternative inadmissibility grounds; and conclusions on whether First Amendment protections impact this ground for inadmissibility.

18. This draft memorandum did not bind the agency. The accompanying emails show that this memorandum was still being reviewed, commented, and edited by various stakeholders, including managing attorneys of ICE, USCIS, and the Department of State. The last email reflects that the most recent version was being sent back to the Department of Homeland Security (DHS) for another round of review before ultimately sending to DOJ for review. In addition, the memorandum specifically states that it is recommended that the drafters seek the views of the Department of Justice (DOJ) "prior to making any decision" about expanding any reliance on this ground of inadmissibility.

19. ICE also applied Exemption (b)(5) to protect from disclosure documentation subject to the attorney-client privilege because it contains confidential communications between an attorney and his or her client(s) related to legal matter for which the client sought professional legal advice.

20. In particular, ICE withheld a memorandum regarding First Amendment concerns that may arise in applying the security-related ground of inadmissibility under Section 212(a)(3)(B)(i)(VIII) of the INA. These confidential communications were between ICE's attorneys and attorneys from other federal agencies, where they were reviewing and editing the memorandum on behalf of their clients. To the best of my knowledge, this document was intended to be and was kept confidential.

21. ICE also applied Exemption (b)(5) to protect from disclosure documentation subject to the attorney work product privilege.

22. Here, this privilege was applied to a memorandum containing information that was prepared by agency attorneys, specifically, attorneys' notes, questions, thoughts and strategy regarding the impact of the First Amendment on this particular inadmissibility ground. This memorandum was prepared in anticipation of litigation given the rise in challenges to the current Administration's immigration policies.

23. The memorandum is water-marked DRAFT and labeled "FOR OFFICIAL USE ONLY / DELIBERATIVE & PREDECISIONAL / ATTORNEY WORK PRODUCT / ATTORNEY-CLIENT COMMUNICATION" on each page; therefore, it was intended to be kept confidential.

24. **Record #3:** ICE is withdrawing Exemption (b)(5) from the record and will produce the document to plaintiff, maintaining the redactions previously applied pursuant to Exemptions 6 and 7(C).

25. **Record #4:** This document is entitled "ICE ability to Use 212(a)(3)(C) Foreign Policy Charge." The document includes a brief summary with notes and quotes for determining whether Section 212(a)(3)(C) can be used by the Secretary of State as grounds for inadmissibility.

26. ICE applied Exemption (b)(5) to protect from disclosure documentation subject to the deliberative process privilege. ICE withheld a memorandum containing: opinions regarding the use of Section 212(a)(3)(C) of the INA as a ground for inadmissibility; and notes supporting the employee's opinions.

27. This document did not bind the agency. The document is not organized like typical ICE memoranda and is not signed by or formally addressed to ICE leadership. The memorandum simply supplies factors for consideration while providing analysis on whether the Secretary of State should use Section 212(a)(3)(C) Foreign Policy Charge to render an alien inadmissible under the INA.

III. ORGANIZATION OF THE SUPPLEMENTAL VAUGHN INDEX

28. The enclosed *Vaughn* Index, attached as Exhibit A, encompasses sixteen (16) pages of the production release in September 2017, which provides a description of specified redactions and correlates each redaction to the corresponding exemption applied.

29. Each record has been assigned a Document Identification number (or bates stamp number, located at the bottom right hand side of every page) associated with that record. This number is located in the first column of the *Vaughn* Index. The second column identifies whether the records were redacted in full or in part. Column three is titled "Description of Records and Redactions, and Reasons for Redactions." Within this column, the Plaintiff will find a description of the record, a description of the type of information that was redacted, and the reason for the

redaction. Specifically, this column highlights the personal privacy and/or law enforcement interests found within the record and the harm that could occur, should the record be released. Finally, the fourth column of the *Vaughn* Index contains the statutory exemption(s) applied to the redaction(s) within the record(s).

30. A *Vaughn* Index is provided for Exemptions (b)(5) and (b)(7)(E). *A true and correct copy of Defendant's Vaughn Index is attached at Exhibit A.*

A. Description of Records Released to the Plaintiff by ICE

31. The sixteen (16) pages of records, consisting of three documents, released to the Plaintiff originated from the ICE Office of Policy. A complete description of these documents, and the bases for the withholding of information in said documents, is detailed in ICE's *Vaughn* Index.

IV. WITHHOLDINGS ASSERTED BY ICE PURSUANT TO FOIA EXEMPTIONS

A. 5 U.S.C. § 552 EXEMPTION 5

32. Exemption 5 of the FOIA allows the withholding of inter- or intra-agency records that are normally privileged in the civil discovery context. Pursuant to Exemption (b)(5), the three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

33. ICE applied FOIA Exemption (b)(5) to protect from disclosure documentation subject to the deliberative process privilege and attorney-client privilege. Specifically, ICE withheld internal discussions consisting of comments and proposed edits of draft memoranda and legislations, and discussion among ICE employees regarding ICE policy statements.

34. The aforementioned, withheld communications and records are non-final and pre-decisional in nature; these communications contemplate: (1) potential immigration enforcement actions, (2) content of employee guidance, (3) details of agreements with state and local entities, and (4) possible content of public statements regarding official ICE positions and policies. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, preliminary conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. This would result in a chilling effect on intra- and inter-agency communications. ICE employees must be able to discuss proposed agency action freely. Further, if draft, un-finalized responses to media inquiries, and draft information regarding agency policies and enforcement actions were released, the public could potentially become confused regarding ICE's mission, priorities, and enforcement activities.

35. Specifically, emails originating from OPLA regarding draft, proposed responses to inquiries from federal agencies involve communications between subordinate and supervisory employees at ICE. These communications set forth the questions posed to ICE, proposed answers, and summaries of internal meetings, for consideration in evaluating draft responses. The pre-decisional emails also involve deliberation between supervisory employees representing different offices or divisions within ICE. These emails provided non-final opinions regarding the appropriate ICE response to questions posed by federal agencies.

36. Emails originated by OPLA containing substantive comments regarding policy considerations and enforcement guidance, as well as status updates to supervisory ICE employees

inform the appropriate decision maker(s) within ERO and the Director's Office regarding the merits of the proposed memoranda and legislation. In the responsive documents, supervisory employees additionally provided feedback and questions to subordinates regarding their proposed comments. The withheld email contents are protected by the deliberative process privilege, as release of these communications would expose ICE's decision-making process in such a way as to inhibit the free exchange of information among agency personnel.

37. The attorney-client privilege applies to a category of records that contains confidential communications between an ICE attorney and his/her client (employees in ERO and the Director's Office) relating to a legal matter for which the client has sought professional advice. This privilege applies to facts that are divulged to the attorney and encompasses the opinions given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure in order to encourage a full and frank discussion between the client and his legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel.

38. Furthermore, certain information has been withheld pursuant to the work product privilege, which protects documents and other memoranda prepared by an attorney in contemplation of litigation. The redacted portions contain material prepared by agency attorneys concerning pending or possible litigation in immigration and federal court. Disclosure of this information would release specific legal notes, guidance, analysis and strategy involving pending or anticipated litigation.

B. 5 U.S.C. § 552 EXEMPTION 7 THRESHOLD

39. Exemption 7 establishes a threshold requirement, which must be met in order for certain information in the records subject to this litigation to be withheld on the basis of subparts (b)(7)(A), (b)(7)(C), and (b)(7)(E). Specifically, the redactions at issue must be contained within a record of information compiled for a law enforcement purpose.

40. The information for which FOIA Exemption (b)(7) has been asserted in the instant matter satisfies this threshold requirement. Pursuant to the Immigration and Nationality Act, codified under Title 8 of the U.S. Code, the Secretary of Homeland Security is charged with the administration and enforcement of laws relating to the immigration and naturalization of aliens, subject to certain exceptions. See 8 U.S.C. § 1103. ICE is the largest investigative arm of DHS, and is responsible for identifying and eliminating vulnerabilities within the nation's borders. ICE is tasked with preventing any activities that threaten national security and public safety by investigating the people, money, and materials that support illegal enterprises. The records at issue in this matter pertain to ICE's immigration enforcement actions and information sharing with state entities in support of ICE's mission.

C. 5 U.S.C. § 552 (b)(7)(E)

41. This exemption protects from disclosure information compiled for law enforcement purposes where release of the information "would disclose techniques and procedures for law enforcement investigations or prosecutions," or where it would "disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E).

42. ICE applied FOIA Exemption (b)(7)(E) to protect from disclosure investigative techniques and law enforcement procedures. For a complete listing of all material withheld pursuant to FOIA Exemption (b)(7)(E), please see Defendant's Vaughn index at Exhibit A.

43. Disclosure of the internal processes and techniques of law enforcement could assist unauthorized parties with the circumvention of law enforcement efforts.

V. SEGREGABILITY

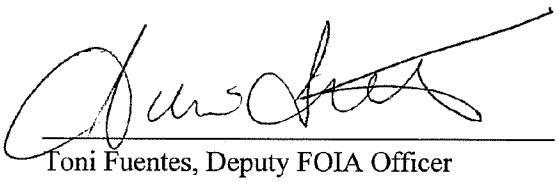
44. 5 U.S.C. § 552(b) requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt."

45. My staff, under my supervision, has reviewed each record line-by-line to identify information exempt from disclosure or for which a discretionary waiver of exemption could be applied.

46. With respect to the records that were released in part, all information not exempted from disclosure pursuant to the FOIA exemptions specified above was correctly segregated and non-exempt portions were released.

VI. JURAT CLAUSE

47. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed this 17th day of May 2019.



Toni Fuentes, Deputy FOIA Officer
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Knight First Amendment Institute v. Department of Homeland Security, et. al.
Case No. 17-cv-07572 (S.D.N.Y.)

U.S. Immigration and Customs Enforcement *Vaughn* Index

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Page Numbers	Withholding Full/Partial	Description of Records and Redactions, and Reasons for Redactions	Exemption(s) Applied
2017-ICFO-43023 September 29, 2017 Production Pages 1-3	Full	**Document:** Draft memorandum with questions and answers related to most recent updates for several ICE Homeland Security Investigations (HSI) programs, including the Counterterrorism and Criminal Exploitation Unit (CTCEU), the National Counterterrorism Center, the Visa Security Program (VSP), and the Biometric Identification Transnational Migration Alert program (BITMAP). The memorandum's purpose is to provide a quick summary of the status of each aforementioned program. The document is watermarked "DRAFT." **Redactions**: The information withheld throughout the document under (b)(5) contains four questions with responses to each corresponding question. The responses contain statistics, success stories, and the most recent status of the projects. **Reason**: FOIA Exemption (b)(5): The information being withheld contains pre-decisional, draft, and deliberative information. This document is a compilation of information regarding four HSI activities. This document was created to serve as talking points or notes for HSI management, which includes opinions regarding next steps and analysis concerning the success of the pilot program. This document was drafted by components within HSI and sent to OPLA for review; thus, it is not a final draft. Disclosure of this information would chill the free and frank exchange of ideas and recommendations and hamper the agency's ability to efficiently and effectively formulate its final positions on issues of public significance. The document also contains non-final agency decisions pertaining to updates on several HSI programs and options being considered to expand their implementation. **Redactions**: The information withheld under (b)(7)(E) contains sensitive information about several HSI programs, including information regarding evaluating and/or methods for accessing certain social media platforms. The information withheld contains anecdotes that could assist unknown parties with potentially circumvention of law enforcement techniques regarding social media; while also informing such parties the current limitations of the programs. **Reason**: ICE FOIA applied FOIA Exemption (b)(7)(E) to protect from disclosure information compiled for law enforcement purposes, the release of which would disclose investigative techniques and/or procedures. The disclosure of status and next steps for these law enforcement programs could reveal techniques and/or procedures for law	Freedom of Information Act 5 U.S.C. § 552 (b)(5)

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Page Numbers	Withholding Full/Partial	Description of Records and Redactions, and Reasons for Redactions	Exemption(s) Applied
		enforcement investigations or prosecutions or disclose guidelines for law enforcement investigations or prosecutions which are not well known to the public and could reasonably be expected to risk circumvention of the law. The disclosure of this information could reasonably be expected to risk the circumvention of law by allowing individuals to access law enforcement sensitive information as well as personally identifying information of DHS personnel thereby potentially interfering with ICE ongoing investigations, obstructing enforcement proceedings, and endangering the safety of DHS employees. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities.	
2017-ICFO-43023 September 29, 2017 Production Pages 4-6	Partial	**Document:** Memorandum entitled "Extreme Vetting – Visa Security Program (VSP) – Pre-Adjudication Threat Recognition and Intelligence Operations Team (PATRIOT)." This memorandum is authored by the Assistant Director for HSI's National Security Investigations Division. **Redactions**: The information withheld in the email under (b)(5) proposes initiatives to meet executive mandates concerning future capabilities of the VSP PATRIOT program. These proposals are under consideration and may change as ICE offices and ICE employees deliberate. The proposals include funding information and a recommended approach toward expansion. **Reason**: FOIA Exemption (b)(5): The information being withheld contains pre-decisional, draft, and deliberative information. The document is not a final draft. Disclosure of this information would chill the free and frank exchange of ideas and recommendations and hamper the agency's ability to efficiently and effectively formulate its final positions on issues of public significance. The document also contains non-final agency decisions, options being considered, and recommendations. **Redactions**: The information withheld under (b)(7)(E) contains sensitive information about HSI's Visa Security Program-PATRIOT program. The information withheld contains detailed requirements for worldwide expansion of the VSP, the challenges that VSP faces, funding needs to sustain and expand the program, and descriptions of other programs (e.g., social media expansion) working in conjunction with VSP to help identify visa applicants with some nexus to terrorism or criminal activity. In connection with	Freedom of Information Act 5 U.S.C. § 552 (b)(5); (b)(7)(E).

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Page Numbers	Withholding Full/Partial	Description of Records and Redactions, and Reasons for Redactions	Exemption(s) Applied
		specific proposals to expand particular programs, the document explains the operational needs of those programs. **Reason**: ICE FOIA applied FOIA Exemption (b)(7)(E) to protect from disclosure information compiled for law enforcement purposes, the release of which would disclose investigative techniques and/or procedures. The disclosure of law enforcement techniques and/or procedures for law enforcement investigations or prosecutions or disclose guidelines for law enforcement investigations or prosecutions which are not well known to the public and could reasonably be expected to risk circumvention of the law. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Furthermore, if released, individuals could circumvent the law by knowing how ICE reviews and assesses visa applications for potential threats, thereby allowing them to counter ICE's operational and investigative actions during enforcement operations.	
2017-ICFO-43023 September 29, 2017 Production Pages 7-16	Partial	**Document:** Draft memorandum with subject heading "ICE Implementation Plan for Executive Orders." The document is watermarked "DRAFT" and contains comment bubbles, red-lines track changes, newly proposed language. **Redactions**: The information withheld in the document under (b)(5) contains proposed plans and edits that were under review and being changed as ICE offices and ICE employees provided edits, comments, and recommendations on the proposed draft. The memorandum proposes implementation plans for ICE regarding Executive Orders entitled "Border Security and Immigration Enforcement Improvements" and "Enhancing Public Safety in the Interior of the United States" issued by the President on January 25, 2017. **Reason**: FOIA Exemption (b)(5): The information being withheld contains pre-decisional, draft, and deliberative information. The document is not a final draft. Disclosure of this information would chill the free and frank exchange of ideas and recommendations and hamper the agency's ability to efficiently and effectively formulate its final positions on issues of public significance. The document also contains non-final agency decisions, options being considered, and recommendations.	Freedom of Information Act 5 U.S.C. § 552 (b)(5)

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JA-573

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF JUSTICE, and U.S. DEPARTMENT OF STATE,

Defendants.

17 Civ. 7572 (ALC)

NOTICE OF APPEAL

Notice is hereby given that United States Immigration and Customs Enforcement, United States Citizenship and Immigration Services, and United States Department of State, defendants in the above-named case, hereby appeal to the United States Court of Appeals for the Second Circuit from the Opinions and Orders entered in this action on September 13, 2019, September 23, 2019, and September 14, 2020.

Dated: New York, New York
November 12, 2020

Respectfully submitted,

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Acting United States Attorney for the
Southern District of New York
Attorney for Defendants-Appellants

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